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International Adoption:
The Case for Change

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Assignment

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• Elizabeth Bartholet and David Smolin, The Debate, chapter in INTERCOUNTRY ADOPTION: POLICIES, PRACTICES, and OUTCOMES, 233, 2012 2-34

• Kathryn Joyce, The Evangelical Orphan Boom, NY Times, 9/21/13 35-37

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• Sen. Landrieu et. al. Children in Families First Act of 2013, September 2013 38-48

• CHILDREN IN FAMILIES FIRST, A legislative initiative to ensure permanent, loving families for children who need them and to revitalize the U.S. international adoption program, 2013 49-56

• Whitney A. Reitz, Adoption: For Children Without Parents, the Best Form of Protection, Vital Speeches, Vol. LXXIX, No. 5, May 2013 57-60

Paulo Barrozo:

Whitney Reitz joined Senator Landrieu’s staff in October 2012, as a Senior Policy Advisor on International Child Welfare. She focuses on permanency issues for children living outside of family care and revitalizing the U.S. intercountry adoption program.

Ms. Reitz has worked on humanitarian immigration and assistance issues at the U.S. Citizenship and Immigration Services and the State Department for over 20 years. At USCIS, Ms. Reitz helped lead the USCIS Special Humanitarian Program for Haitian Orphans in 2010, which united nearly 1,200 Haitian orphans with their U.S. families after the tragic earthquake. In 2011, Ms. Reitz served as a principal negotiator in multiple rounds of talks which resulted in the U.S. and Russia signing an adoption agreement, thereby preserving an important option for Russian children in need of permanent families.

For over 20 years, Ms. Reitz has dedicated her career to humanitarian issues, with an emphasis on immigration, working extensively on intercountry adoption, refugee admissions and assistance, international migration and temporary protected status.

Paulo Barrozo is an Assistant Professor at Boston College Law School. His work focuses on Criminal Law (national and international), International Law, and Legal Theory. He received an S.J.D. from Harvard Law School and a Ph.D. in Political Science from the Rio de Janeiro University Research Institute. Before coming to Boston College Law School in the fall of 2009, Professor Barrozo was a Clark Byse Teaching Fellow, a Landon H. Gammon Fellow, and a Graduate Fellow in Jurisprudence at Harvard Law School. As a Lecturer at Harvard University, Professor Barrozo was a ten-time recipient of the Distinction in Teaching award and the first recipient of the Stanley Hoffman Prize for Excellence in Teaching. In addition to his academic work, Professor Barrozo is an active advocate for the rights of the neurodiverse and the unparented, appearing before international bodies such as the Inter-American Commission on Human Rights and the United Nations.
Session Description

In recent years, due to restrictive policies, the number of Americans adopting from abroad has sharply declined, with international adoptions into the United States projected to be down by two-thirds in 2013 from its peak in 2004. At the same time, the number of orphaned and unparented children has been steadily increasing, and there are waiting lists of American parents hoping to adopt. Opponents to international adoption include the most preeminent global children’s organizations like UNICEF and Save the Children.

Some argue that this situation is a gross human rights violation, leaving unparented children across the globe in devastating conditions, including 8-12 million in institutions. Social science evidence clearly indicates that growing up in institutional care, even the best institutional care, is incredibly damaging to children. The small number of children who are eventually freed up for adoption are languishing in institutions and other impermanent situations for longer and longer periods of time.

Whitney Reitz currently serves as the Senior Policy Advisor on International Child Welfare for U.S. Senator Landrieu, a champion of children’s causes in the Senate. With Reitz’s guidance, Landrieu is submitting ground-breaking new legislation aimed at removing barriers to international adoption so that more unparented children across the globe can be placed in stable homes sooner. Reitz will discuss the proposed legislation and its relationship to the problems as she sees them with current policy on international adoption. Prior to Landrieu’s Office, Reitz worked at the U.S. Citizenship and Immigration Services and the State Department, where she leveraged her position in the federal government to implement the adoption out of Haiti of many children during the post-earthquake period.

Professor Paulo Barrozo will comment on the significance of the Landrieu legislation from his perspective as a human rights scholar and advocate. He will describe strategies he has employed to reform international adoption, including testifying before the Inter-American Commission on Human Rights and recent efforts to use the International Covenant on Civil and Political Rights. He will provide his vision for an international adoption regime under which the human rights of children are central.
Chapter 18
The Debate
Elizabeth Bartholet and David Smolin

Part I: Bartholet’s Position

I welcome this opportunity to address issues central to the debate over international adoption. Given space limitations, I rely on my prior publications for documentation of claims made here (see http://www.law.harvard.edu/faculty/bartholet/), citing more specifically as necessary. I will respond to the three prescribed questions and then finally respond directly to Professor Smolin’s position.

1. From a worldwide perspective, identify basic human rights, core human needs, and best interests of unparented children, those living without family care including those in institutionalized care.

There are many millions of unparented children worldwide living in dire circumstances -- some 143 million orphans, 8–10 million children in orphanages, and hundreds of millions on the streets. A more limited number are in foster care or group homes.

Children’s most basic needs include the need to be nurtured from infancy on by permanent, loving parents. Children have related needs to be protected against the conditions that characterize life in orphanages, on the streets, and in most foster care. Decades of social science and developmental psychology demonstrate that children need parents to develop normally in emotional, intellectual, and physical terms, and demonstrate
as well the devastating damage children suffer when denied nurturing parental care, particularly in their early years (see Chapters 13, 14). Studies show that even the best institutions fail to provide what children need, and most unparented children are living in terrible institutions that provide almost no human interaction, and often fail even to keep them alive.

Long-term solutions to the problem require preventing the poverty, disease, wars, and other disasters that produce so many unparented children. Ideally, parents should be able to raise the children they produce. But today we have hundreds of millions of unparented children, as we will have for decades, if not millennia, to come.

We should do what we can to get as many of these children as possible into nurturing homes. This means we should make efforts to support birth families so that some of these children can return home. But we know that limited numbers will or should return home. Resources to support family reunification will be limited. Many children were removed from their homes because of maltreatment, and family reunification under such circumstances puts children at significant risk of ongoing maltreatment, even when family support services are provided.

Adoption serves children’s needs essentially as well as biologically-linked parenting, and far better than foster or institutional care. And adoptive homes will be found in significant numbers only through international adoption. The conditions that produce so many unparented children in poor countries also limit the number of prospective adoptive parents. Bias against adoption or against the racial minority groups from which many unparented children come often makes it hard to find in-country adoptive homes.
Accordingly, international adoption should be embraced as one of the best available options for unparented children.

International adoption demands no resources from resource-starved countries. Indeed it more than pays for itself, since adoptive parents pay the costs of placing and supporting children. Adoption also brings new resources into poor countries through adoption fees and adoption-related humanitarian work and charitable contributions.

However, policy makers have failed to date to embrace international adoption. Instead they have surrounded it with restrictions, often citing “subsidiarity” principles and adoption “abuses.”

2. How should we understand the subsidiarity principle of the Hague Convention and how do the expressions of that principle in the CRC and the Convention aid or hinder the best interests of the child?

The subsidiarity principle is generally understood to mean, in the context of international adoption, a preference for keeping children in their country of origin over placing them abroad. Many argue that this principle means children should be placed in international adoption only as a last resort, after exploring all in-country options.

These ideas are a corruption of the original understanding of subsidiarity, according to human rights scholar, and former Chair of the Inter-American Commission on Human Rights, Paolo Carozza. He says subsidiarity was designed to serve individual human rights, not state sovereignty, and the core idea was that children be brought up in a family — ideally their family of origin, but if not then a substitute family that can provide the same sense of intimate community (Carrozza, 2003).
The Convention on the Rights of the Child (CRC) and the Hague Convention on Intercountry Adoption (Hague Convention or HCIA) both defer to state sovereignty, leaving nation states free to ban international adoption altogether regardless of whether they can provide children with nurturing homes in the absence of such adoption. Both provide that if countries choose to allow international adoption, they should exercise a preference for placing children in-country. The CRC requires a more powerful in-country preference, mandating that in-country foster care and other “suitable” care be chosen over out-of-country adoption, and that “due regard . . . be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background” (Bartholet, 2011). The HCIA requires “due consideration” of in-country placement before out-of-country, but prioritizes international adoption over any in-country placement except adoption and other “family” care (Bartholet, 2011).

Many powerful organizations like the U.N. Committee on the Rights of the Child (UNCRC), United Nations Children’s Fund (UNICEF), and Save the Children have used subsidiarity claims in their efforts to restrict international adoption. They focus on the CRC rather than the Hague Convention, even though the HCIA was clearly designed to take a step beyond the CRC in the direction of validating international adoption and limiting the in-country preference. Since the Hague Convention is more recent and far more specific to international adoption, it should govern under accepted international law principles, but these organizations tend either to ignore its subsidiarity provisions, or to claim that they are no different than those in the CRC. They regularly promote in-country foster care over out-of-country adoption.
Although these organizations often say that they accept international adoption at least as a last resort, they often treat it as a non-option. They publish reports on solutions for unparented children that make no mention of international adoption, but recommend consideration of virtually all in-country options including group homes, sibling-headed households, and new improved institutional care. They recommend the creation of foster care and other in-country solutions that do not now exist, effectively condemning to ongoing institutionalization children who might have found international adoptive homes.

These treaties and these organizations have a powerful influence on nation states. All countries except the United States and Somalia have ratified the CRC, and almost all countries that engage in international adoption, including the United States, have ratified the Hague Convention.

Countries with many unparented children in need of adoptive homes may oppose international adoption for additional reasons. National pride often makes them reluctant to admit they cannot care for “their” children. Resentment against past colonialist domination and current disparities in wealth and power often makes them eager to attack international adoption as an exploitative move.

Accordingly, many countries ban international adoption altogether, or simply fail ever to make it an option. Many institute holding periods, requiring that institutionalized children not be placed abroad for periods ranging from six months to two or three years, while supposedly in-country options are pursued. Since there will be no good in-country options for the overwhelming majority of children, these holding periods generally mean simply delaying the possibility of adoptive placement abroad, or denying it altogether.
because as children age their possibilities for placement diminish. Holding periods also condemn even those children lucky enough to eventually be placed in adoption, to the harm caused by additional time in institutional care.

Many countries cut back on the number of children sent abroad for adoption, claiming they can take care of their children in-country. China made such an announcement a few years ago, although there was no evidence it had enough permanent nurturing homes in-country to serve all those baby girls stacked up in orphanages.

The form of subsidiarity written into the CRC, promoted by organizations like the UNCRC, UNICEF, and Save the Children, and adopted by many countries is contrary to children’s best interests. Some important court decisions have recognized the conflict between extreme versions of subsidiarity and the principle that children’s best interests should govern. They have ruled that when there is such a conflict, children’s best interests trump according to fundamental human rights principles and, indeed, according to the CRC itself. They have found that children have a right to international adoption if the alternative is institutionalization.¹

I believe there should be no preference whatsoever for placing children in-country, whether in institutions, foster care, or even adoption, if children’s best interests are the driving consideration, as the CRC, the Hague Convention, and most participants in the international adoption debate say they should be. Instead the goal should be to place unparented children as early in life as possible, so as to maximize their opportunities to overcome damage suffered during the prenatal period, in the original biological home, or in institutional care, and provide them the best chance for healthy development.

¹ See discussion of decisions by courts in India, South Africa, and Malawi in Bartholet (2010a).
For most unparented children the real alternative to international adoption is life, or
death, in institutions or on the streets. Obviously children’s interests are better served by
placement in adoptive homes, as the above-noted courts recognized, and even
organizations like UNICEF generally admit when pressed.

Preferences for foster care are also inconsistent with children’s best interests.
Typically there is no foster care available, and such preferences simply relegate children to
continued institutionalization. Moreover, strong social science evidence indicates that even
where foster care exists and is supported by significant resources (as in the United States),
it serves children’s needs much less well than adoption. There is no reason to think foster
care will work better in desperately poor countries. Indeed there is evidence that in many
countries the phrase “foster care” is used to describe something that bears no resemblance
to the family care it is supposed to emulate. Often it is simply a euphemism for child
slavery, as has been documented in Haiti.

Although many criticize preferences for in-country foster and institutional care over
out-of-country adoption, most believe that there should be a preference for in-country
adoption. However I see no evidence and no common sense reason to support such a
preference, looking at the issue from a child’s rights perspective. Any preference means,
almost inevitably, delay in adoptive placement, which often leads to denial of placement.
This was the experience in the United States during the 1970s through the early 1990s,
when preferences for placing children within the same racial group resulted in delaying
and denying adoptive placement for significant numbers of black children. Moreover, the
extensive body of social science accumulated on transracial and international adoption
reveals no evidence that children suffer any harm from placement across racial, national, or other lines of difference. These studies demonstrate instead that the key factor in determining children’s well being is how early in life they are placed in adoptive homes.

Arguments can be made that countries and groups that have suffered oppression in the past should have some right to hold onto children as a form of reparations or means of empowerment. But we don’t think of countries as having the right to hold onto adult members of their populations, although various totalitarian regimes have often tried to wall their populations in. If we truly respect children’s human rights we shouldn’t treat children as reparations or affirmative action chits.

Nor is there reason to believe that holding onto unparented children is a winning strategy for national empowerment. Children growing up in institutions or on the streets represent significant costs, although they are often called “precious resources” by those engaging in debate over international adoption. Even grossly inadequate institutions are costly to support. Significant resources would be required to improve these institutions, or build foster care. And children graduating from even improved institutions or foster care will end up costing their countries dearly as they move on in disproportionate numbers to unemployment, substance abuse, homelessness, crime, and incarceration.

Some argue that current law may limit policy makers’ options. The CRC should be no problem, since the Hague Convention should govern. But the HCIA mandates a preference for in-country adoption over out-of-country adoption, and also has ambiguous language preferring in-country “family” care.
The Hague Convention should, however, be read in light of the overriding mandate in both the CRC and the HCIA that children’s best interests trump other considerations. Any preference for in-country adoption over out-of-country should be implemented through a concurrent planning strategy, mandating development of pools of domestic and international adoptive parents simultaneously, and placement of children in international adoption if there is no domestic adoptive home immediately available.2

3. How should the law (and the governments of sending and receiving nations) respond to concerns with child trafficking, corruption, and adoption fraud in the intercountry adoption system?

Abuses exist in international adoption in the form of violations of the laws against paying parents to surrender parental rights, fraud against birth parents in connection with surrender, and kidnapping. But there is no persuasive evidence that such abuses are widespread; instead, they seem a very small part of the total international adoption picture, with the overwhelming majority of adoptions taking place in compliance with the law. Moreover, the evidence shows that international adoption serves children extremely well, with the children placed early in life doing essentially as well as children raised in untroubled biological homes, and those placed later helped enormously in overcoming damage suffered prior to adoption (see Chapter 13).

The serious, systemic abuses to children occur when unparented children are denied the nurturing homes that international adoption provides. Institutional care subjects the millions of children kept in institutions to horrible forms of neglect and often to active

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2 See the International Adoption Policy Statement (Child Advocacy Program, 2008), endorsed by numerous human rights and child rights organizations and experts.
abuse as well. Institutional care often kills children, and it systematically destroys the life potential of those who live. Children who graduate from institutions or grow up on the streets are the ones who are at serious risk of abuses in the form of child trafficking for sex and other slavery, and exploitation as child soldiers. There is no evidence that international adoption serves as a front for any of these forms of serious exploitation.

The common response to law violations in the international adoption area is to shut down such adoption through temporary or permanent moratoria, and to impose increasingly severe restrictions that effectively if not officially shut down such adoption. For example, alleged baby selling was used to shut down Guatemala’s international adoption program entirely for two years, and to help justify the strict new law that Guatemala boasts will limit such adoption to some two hundred children annually, as compared to the several thousand previously placed annually. Alleged abuses have helped justify bans on private intermediaries throughout Central and South America. Since these intermediaries served as the lifeblood of such adoption, these bans have effectively shut it down.

This response makes no sense as a way of addressing adoption law violations. It punishes unparented children by locking them into institutions and denying them the nurturing adoptive homes they need. It puts children at far greater risk of true trafficking and exploitation.

The response to adoption abuses should be the same as in other areas of law violation — enforce existing law, strengthen that law as appropriate, and punish those violating the law. Biological parents often violate the laws against abuse and neglect of
children. Society does not respond by telling parents they can no longer take their newborns home from the hospital because henceforth all children are to be raised in institutions to protect against parental misconduct. Instead society enforces and sometimes strengthens the laws against parental misconduct.

Some say that it is hard for poor countries with limited infrastructure to enforce laws prohibiting baby selling and other adoption abuses. This may be. But it is also hard, indeed impossible, for these countries to guarantee nurturing parental homes for all their children. Even if adoption law violations occur, the harm such violations cause children and birth parents is minimal compared to the harm caused by shutting down or severely restricting international adoption.

Part I: Smolin’s Position

I appreciate the opportunity to participate in this exchange of views with Professor Elizabeth Bartholet, and hope that this dialogue will help illuminate some of the conflicting perspectives concerning intercountry adoption. Given space limitations, these essays do not include footnotes. Extensive citations of sources can be found in my adoption-related writings, many of which are available at my website (http://works.bepress.com/david_smolin/). I too will respond to the three prescribed questions and then finally respond directly to Professor Bartholet’s position.

1. From a worldwide perspective, identify basic human rights, core human needs, and best interests of unparented children, those living without family care including those in institutionalized care.
Human rights documents throughout the modern era make clear that the family is the fundamental group unit of society, and the child is a part of his/her family as a matter of both basic human need and fundamental human right. These fundamental human rights include the right of a child to remain with the family to which she was born, and the corollary right of parents to the care and custody of each child born to them. Thus, the family that the child belongs with, as a matter of the rights of the child and of her parents, is clearly the family into which the child is born. Further, the child is born not only to a father and mother, but also into a broader set of relationships, including siblings, grandparents, aunts and uncles, cousins, and so on. Thus, as a matter of widespread cultural practice, human need, and fundamental rights, the family into which the child is born extends beyond the parents, and beyond the nuclear family, to include an inter-generational and extensive family group.

The phrase “unparented children, those living without family care including institutionalized care,” contains multiple ambiguities. Do “unparented children” include children residing separately from their living parents? Do “unparented children” include those living with extended family members (grandparents, uncles and aunts, etc.), but whose parents are dead? Is a child living in a long term foster care situation “unparented?” Does the phrase “those living without family care including those in institutionalized care” include all children living in “orphanages,” boarding schools, group homes, and hostels? What counts as an institution? These ambiguities are similar to those which have developed over the more common term, “orphan.” In the context of adoption, both
domestic and intercountry, the question of when a child needs a new (adoptive) family is deeply controversial.

Beginning a discourse on adoption with the image of a child alone, without family ties, is inherently misleading. Children do not fall from the sky; they come into this world amidst a web of relationships. When a child is found alone, the first question that must be asked, therefore, is how the separation of child from parents and family occurred. The first relevant image is not of the child already alone, but of the child with her original family; the next relevant image is that of the event which tragically separated the child from her parents.

Put another way, there is, in one sense, no such thing as an “unparented” child. No one comes into this world without having parents. The phrase “unparented child” suggests a child who really, in fact, has no parent. Such a person has never existed.

A better term, then, might be a “separated child.” A child separated from her parents and family is, as the CRC makes clear, highly vulnerable. The first right and need of such a child is a determined effort to reunify her with her family: first her parents, and if not her parents, then other family members. This effort should normally include an effort to determine the circumstances under which the separation occurred, and whether some kind of assistance might make a successful reunion possible.

Sometimes the most determined efforts to reunify a child with her family are unsuccessful. It may be impossible to identify the family of an abandoned child. The parents and extended family may be unwilling to raise their child. The parents may pose a severe threat to the safety of the child, and no relatives may be available to raise the child.
Depending on the circumstances and age of the child, it may be necessary to provide such a separated child with another family who can love and provide for the child. This new family may be an adoptive family, although there are a variety of family settings that could accomplish the same end of providing a family environment for a child.

Some forms of institutional care are so profoundly destructive of children that they constitute an emergency situation, which should be remedied as quickly as possible. The profound developmental, emotional, and physical damage caused by poor quality institutional care, particularly of infants and young children, and sometimes of older children, has been well documented. Other forms of care which might be called institutional, such as some SOS Children’s Village, or hostels/orphanages which provide an education, room, and board to impoverished children, are positive interventions which can provide better opportunities for some children than would remaining full-time in the family home. Thus, some forms of “institutional care” provide a family-like environment, and some are, in effect, boarding schools for the poor, providing children with opportunities for education and adequate nutrition not available at home. Sometimes the decision to place a child in what could be called “institutional care” reflects parental decision-making and responsible care, rather than parental abandonment. Thus, it would be wrong to assume that all children living without their parents in what could be considered an “institutional setting” are in need of adoption, or are “unparented.”

Sometimes, the adjustments and adaptations that a particular adoptive placement would require are so extreme as to negate the benefits of placing an older child in an adoptive family. For example, transferring an emotionally-troubled American teenage
“orphan” with behavioral, cognitive, and/or educational issues from a group or foster home, to an adoptive home in China with Chinese adoptive parents who speak no English, would be inappropriate. Assuming such teenager had no cultural or language affinities with China, the resulting demands for cultural and language adjustment would overwhelm the child. Although not always recognized, the reverse situation---moving a Chinese speaking teenager from a Chinese orphanage into an English-speaking American family---can be just as disastrous. Much-older children should not be placed into societies for which they lack the language, educational and cultural skills necessary for success, and are too old to attain these necessary skills prior to adulthood. The gain of a family, for a much older child, cannot make up for the wrong of transferring them into a world which requires adjustments of which they may be incapable.

2. How should we understand the subsidiarity principle of the Hague Convention and how do the expressions of that principle in the CRC and the Convention aid or hinder the best interests of the child?

The subsidiarity principle of the Hague Convention and CRC prioritizes interventions on behalf of a child separated from her parents and/or family, or facing a possible future separation. First, efforts should be made to reunify the child with her family, or to avoid a future separation of the child from her parents. The first priority is thus family preservation. If family preservation efforts are unsuccessful, then interventions on behalf of the child within the child’s own nation have priority over international adoption. Thus, both the CRC and the Hague Convention clearly favor domestic adoption over intercountry adoption. The status of placements other than adoption, from foster care
to various kinds of institutional care, is more controversial. Some would stress the temporary, insecure, and potentially damaging nature of such non-adoptive placements, and argue that intercountry adoption should have priority over all domestic placements short of full adoption. Others argue that even institutional care should have priority over intercountry adoption, and that nations are required to develop child welfare systems that provide adequate options for their children within the nation of origin. One middle position would divide between domestic foster care and institutional care, so that domestic foster care would be viewed as a family-like environment having priority over intercountry adoption, while intercountry adoption would have priority over institutional care. I would prefer a middle position that evaluates domestic options short of adoption individually, taking account of the quality and nature of the placement, as well as the age and capacities of the child. As indicated under question one, a placement that moves a much older child to a new country, language, and culture may be more destructive to the child than high quality foster or institutional care within her own nation, despite the advantages of receiving a permanent adoptive family. In addition, in some instances high quality foster or institutional care may serve as a relatively secure and positive care setting, particularly for older children; from this perspective, the negative label of “institutional care,” while sometimes quite accurate, is too conclusory and imprecise a term to form the basis of a legal rule. The wide variety of placements short of full adoption, and the significant differences among children in regard to their needs, history, capacity, age, and situation, counsel against an absolute rule.
The subsidiarity principle implements the best interests of the child by safeguarding the child’s relationships to her original parents and family. This conclusion follows from the fundamental principle, described in question one, that children and their families have corollary rights to preserve their familial relationships. These family ties represent a multi-generational heritage and set of connections which ground the child, as a human person, in a specific set of identities. Stripping a child of her identity and familial, community, and cultural heritage is a severe deprivation of rights, as the child generally has no choice in the matter and has her fundamental orientation to herself and the world altered without her consent.

The subsidiarity principle also preserves the child’s right to maintain continuity with her culture, language, community, and nation, even when she cannot remain with her original family. Some dismiss the connection of children to the nation, community, or culture of their original family as merely nationalist or group ownership of children in derogation of children’s rights. Such a dismissal of subsidiarity ignores the connection of human beings not only to their families, but also to the broader cultural, language, and societal groups to which they and their families belong. The well-recognized fact that many adoptees find it meaningful to return to their nation of origin even when they do not locate their original family, indicates the strength of the larger ties protected by subsidiarity. Adoption involves not only the loss of the original family, but also the loss of the original culture, community, and nation into which the child was born. The subsidiarity principle safeguards the best interests of the child by recognizing the losses inherent to adoption, and those specific to intercountry adoption; the subsidiarity principle favors
interventions and placements that will avoid or minimize these losses to the degree compatible with the child’s needs for permanency and day-to-day love and care.

The subsidiarity principle further safeguards the best interests of the child by protecting the child against powerful market forces that would commodify the child as an international asset to be sold to the highest bidder. While children are not and should not be viewed as commodities, market pressures have distorted the practice of intercountry adoption. There is a great unmet desire for children in developed nations: particularly children with qualities such as youth (i.e., infants), good health, a preferred gender, or a particular race. This unmet desire has created a huge demand-side pressure, which causes intercountry adoption to be practiced as a means of locating children for prospective adoptive parents in rich countries. The supply of legally available children in developing nations meeting these desired characteristics of youth and health is much smaller than the demand. The subsidiarity principle, properly implemented, prevents adoption agencies and facilitators from exploiting the poverty and powerlessness of poor families in developing nations to extract the kinds of children in greatest demand. Under the subsidiarity principle, the first obligation is to provide assistance that will allow families to keep their children, rather than exploiting imbalances of wealth and power to extract children for intercountry adoption.

Most children truly in need of adoption, in both the United States and other nations, are older children and children with special needs (including children with serious physical, cognitive, emotional, and educational disabilities or difficulties.) Absent the subsidiarity principle, those children are often ignored or passed over by a demand-driven
adoption system seeking to extract children with the more desirable characteristics of youth and health. The subsidiarity principle is a necessary corrective that requires interventions to be chosen according to the rights and needs of the child and original family, rather than according to the desire of adults for healthy infants and adoption agencies and facilitators for monetary compensation.

3. **How should the law (and the governments of sending and receiving nations) respond to concerns with child trafficking, corruption, and adoption fraud in the intercountry adoption system?**

   Significant segments of the adoption community are in deep denial about the prevalence and seriousness of abusive practices in intercountry adoption. This denial, and the subsequent failure to adequately respond to these abuses, constitutes the greatest threat to the future of intercountry adoption.

   The historical and legal record indicates that “the abduction, the sale of, or traffic in children,” as the CRC and Hague Convention describe it, is the most significant category of abusive practices. My work has termed these practices child laundering (although I did not invent the term). Typically, child laundering consists of obtaining children illicitly through force, funds, or fraud, providing false paperwork that indicates that the children are abandoned or relinquished “orphans,” and then processing these “orphans” through the official intercountry adoption system. The preparatory materials of the Hague Convention, created between 1988 and 1993, name this kind of “trafficking” as the most significant abusive practice of the time, and indicate it was particularly prevalent in Latin American
nations. The 1993 Hague Convention states that the creation of safeguards to prevent “the abduction, the sale of, or traffic in children” is one of the purposes of the Convention.

Unfortunately, in the years since the Convention was finalized, significant child laundering practices have arisen in many nations, including Cambodia, Chad, China, Guatemala, Ethiopia, Haiti, India, Liberia, Nepal, Samoa, and Vietnam. While the Hague Convention has some flaws, the principal reasons for these continued abuses have been the failure to ratify and properly implement the Convention. The United States, statistically the most significant receiving nation, did not effectively ratify the Convention until 2008. Even to the present day, the United States implementation of the Convention has fundamental flaws. These include a failure to limit the amounts of money that are sent to intermediaries (facilitators, attorneys, orphanages, and others) in countries of origin; a failure to make United States adoption agencies legally responsible for the illicit actions of foreign intermediaries or partners; a failure to require Hague accreditation or apply Hague standards to agencies placing children from non-Hague Convention nations; and a failure to provide for adequate investigation and prosecution of child laundering and other abusive practices.

The most fundamental problem is money. Guatemala is the most obvious example (see Chapter 7). Between 2002 and 2008, 24,778 Guatemalan children came to the United States for intercountry adoption, with the typical fee paid to Guatemalan attorneys in the range of 15,000 to 20,000 USD per child: a total of 371 to 495 million dollars over seven years. In a country with poor governmental capacity, chronic corruption, endemic violence against women, the scars of a 36 year civil war, and a significant percentage of the
population living in extreme poverty, these unaccounted-for funds incentivized systematic child laundering. The United States government instituted single DNA, and then double DNA, testing, but it was eventually proven that even the system of double DNA testing had been violated (see Chapter 5). Fundamentally, no amount of regulation can overcome the incentives for abuse when such large amounts of money are introduced into vulnerable developing nations.

Despite a constant stream of substantial evidence of severe abusive practices, as documented by the Hague Conference on Private International Law, International Social Service, Terre des Hommes, the United States government, journalists such as E. J. Graff of the Schuster Institute for Investigative Journalism, my own work, and that of many others (see Chapters 2, 3, 4, 5, 7, 10), some adoption proponents have minimized the extent and significance of these practices. Reports of abusive practices have been interpreted as a conspiratorial attack motivated by ideological opposition to intercountry adoption. The result is tragic. Significant components of the adoption community react to serious wrongdoing by defending status quo practices that incentivize child laundering. Instead of demanding positive reforms that could safeguard intercountry adoption against such wrongdoing, much of the adoption community resists the necessary reforms in the areas of money and agency accountability. Some adoption “advocates” vainly hope that prosecutions of a few “bad” actors will be enough to safeguard the intercountry adoption system, in a developing nation context where those actors have been provided more than enough cash to buy their way out of trouble, and where the primary cause of the abuse is
financial incentives for child laundering provided by over-generous fees and unregulated donations.

Some individuals are ideologically opposed to intercountry adoption, but I, and many others seeking to document abuses and safeguard the system from them, are not among them. In the end, the truest enemies of intercountry adoption are those who refuse to acknowledge the very real abuses, and resist the only reforms capable of safeguarding the system from those abuses.

Bartholet and Smolin Respond

Each author responds to the assertions made by the other in questions 1-3 in this section below.

Bartholet Responds to Smolin

On the first question, Smolin argues that the phrase “unparented children” is ambiguous, and its definition overly broad in including “those living without family care including those in institutionalized care.” He says institutional care is really not so bad, and often better than what biological parents can provide. But experts in child welfare are united in their belief, based on brain science, social science, and developmental psychology, that institutions, even the better ones, are almost always terrible for children, brutally unloving in the short term, and seriously harmful to their life prospects in the long term. The USA Congressional Coalition on Adoption Institute (CCAI) recently initiated the Way Forward project based on this widespread consensus, with the goal of helping African leaders move children out of institutional care into families.3

3 I am one of the group of U.S. and African child welfare experts named as members of this Way Forward project.
On the second question, Smolin argues that the subsidiarity principle, as generally interpreted, serves children’s best interests. He supports the classic positions argued by opponents of international adoption, promoting in-country solutions like foster and even institutional care over out-of-country adoption. He separates himself from such opponents by his claim that he would evaluate such in-country options individually rather than by a general preference rule. But his reasoning indicates that he too believes that in-country options are generally preferable because they serve children’s interests in cultural continuity. He indulges in the classic false romanticism about the value of “cultural heritage” to children growing up deprived of the basic human right to the heritage of parental love. He ignores the horrible realities characterizing most unparented children’s lives.

In my view subsidiarity, as generally interpreted to favor almost all in-country options over out-of-country adoption, has operated contrary to children’s best interests. It has been used to justify locking children into institutions rather than placing them in available international adoptive homes. It is now being used to justify placing children in paid foster care in-country in preference to international adoption, although foster care has never worked as well for children as adoption. Paid foster care presents particular risks to children in poor countries, where desperation will motivate many to offer to “parent” for the stipend alone.

Some justify subsidiarity as serving the interests of in-country parents, both the original biological parents, and those interested in becoming foster or adoptive parents. Others justify it as serving the interests of sovereign nations. Neither are worthy goals, if
children’s rights to grow up in nurturing homes are at issue. Parents and sovereign nations should be guided by the best interests of children, not their own interests in holding onto children they cannot care for, or in getting paid to foster. Nor will keeping children in-country enrich or strengthen impoverished nations. Subsidiarity does serve, of course, to enrich and empower organizations like UNICEF that work in-country.

On the third question, having to do with adoption abuses, Smolin says supporters of international adoption are in “denial.” “Denial” is a favored claim by those who don’t like the facts others put forth. Smolin has no evidence that serious abuses are extensive -- abuses such as kidnapping, fraud on birth mothers inducing non-consensual relinquishments, and payments to birth mothers inducing relinquishment decisions they would not have otherwise made. A recent law review article by Richard Carlson gives the lie to Smolin’s claims, addressing his arguments in detail. I summarize that article in my introduction to the issue, as follows:

Richard Carlson’s article … systematically tak[es] on all the important arguments made by critics of international adoption, analyzing them carefully and rationally in light of the actual facts…. [He] find[s] no reason to believe that corruption, trafficking, fraud, or other serious abuses are prevalent. He argues… that there is no persuasive proof that significant adoption abuse is widespread, and that while some illegalities exist in this area, as in all areas of human endeavor, they are far outweighed by the positive impact of international adoption on children as well as their families and countries of origin (Bartolet, 2010-2011, pp. 690, 695-696).4

4 See also Carlson (2011).
Critics like Smolin never weigh the costs of adoption abuses against the costs of human rights violations to children when they are denied adoption. The truth is that institutionalization is responsible for the systematic violation of the fundamental rights of millions of children on a daily basis. The closing down of international adoption that Smolin and other critics encourage denies many thousands of children per year the opportunity to escape.

I want to address such serious adoption abuse as actually exists. But I want to do so by penalizing those perpetrating such abuse, and not penalizing innocent children as we now do by shutting down international adoption or restricting it in ways that deny institutionalized children the opportunity to find adoptive homes.

Smolin’s claim that adoption abuses are common relies on use of the vague “laundering” term, merged with complaints that international adoption fees and donations are so large that they create the risk of corruption. But there is no reason to equate all funds connected to international adoption with corruption, while assuming that all other funds flowing to poor countries represent an unmitigated good.

International adoption results in very significant funding for services for poor children and families in-country, and related humanitarian work. One measure of only a small part of this funding is the study conducted by the Joint Council on International Children’s Services, an umbrella organization for agencies involved in international adoption. Its January 2011 newsletter reports that in just one country, Ethiopia, Joint Council partner-organizations contributed in just one year, 2010, $14 million in services, primarily in community development, including medical care, family empowerment and
preservation, education, and foster and kinship care, serving over 1.6 million children and families, with less than 0.1% of them served through international adoption. Smolin characterizes this kind of funding as corruption, arguing that it encourages international adoption. But why not recognize that both this kind of funding for in-country services and international adoption help children?

UNICEF is involved in different kinds of funding deals. Together with the USA Government it pressured Ethiopia to reduce by 90% its international adoption program, based on alleged adoption illegalities. When the CCAI’s Way Forward project met in Ethiopia a few months later, officials announced a USA grant of $100 million, with 10% channeled through UNICEF, for in-country services work. Those I consulted with, who had decades of experience on the ground there and reason to know what was going on, thought the quid pro quo clear -- shut down international adoption and we’ll give you $100 million USD. Why isn’t this kind of apparent deal characterized as corruption? Why isn’t it condemned as harmful to children, shutting off the international adoptive homes that represent for many their best option? Why isn’t Smolin interested in investigating any corruption or other misuse of funds given to organizations like UNICEF for in-country work?

Smolin’s characterization of international adoption as “exploiting imbalances of wealth and power to extract children” reflects a classic claim that such adoption is simply a modern manifestation of the evils of colonialism. Colonialist exploitation was an evil. But the modern phenomenon of international adoption involves individual parents taking into their homes and hearts children in need for whom there is no other good option. A
significant percentage of these parents are devoting their lives to trying to help children horribly damaged by pre-adoptive lives in institutional care recover and thrive. Sensible and caring policy makers should be able to recognize that this is not colonialism, and to regulate in a way that protects children’s rights to nurturing homes

**Smolin Responds to Bartholet**

Professor Bartholet eloquently describes a prevalent adoption fantasy, in which the creation of a large-scale adoption system employing highly-paid private intermediaries can be operated ethically and with little collateral damage in nations where corruption, document fraud, bribery, poverty, deep inequality, and human trafficking are prevalent. According to this fantasy, all the law need do is prosecute the few wrongdoers and otherwise keep regulation to a minimum, allowing the system to match an endless number of vulnerable orphans with eager adoptive parents in the West. Unfortunately, without adequate monetary controls and regulation such adoption systems soon reflect the societies in which they operate, becoming themselves rife with corruption, fraud, bribery, exploitation of the poor and powerless, and human trafficking. Indeed, the infusion of millions of dollars from the United States into poor and transition economies creates new incentives for corruption, fraud, and human trafficking, effectively creating a market in children. Invoking the desperate situations of many children in developing nations and the human desire to protect and nurture, Professor Bartholet fails to account for how systems created to alleviate human ills can sometimes cause more harm than good.
Within Professor Bartholet’s adoption fantasy, adoption is an inherent, rather than relative, good; she therefore dismisses or minimizes harms related to adoption that are generally considered serious issues in the broader adoption community.

For example, Professor Bartholet says there is “no evidence that children suffer any harm from placement across racial, national, or other lines of difference.” This “no harm” assessment is consistent with her position that there should be no preference for domestic over intercountry adoption.

Similarly, Professor Bartholet appears to perceive very little loss or harm to children in regard to adoption generally, saying that “[a]doption serves children’s needs essentially as well as biologically-linked parenting…”

There is little in Professor Bartholet’s answers, and in her articles, that acknowledges one of the central themes of modern adoption literature: loss. It is one thing to say (as I would) that the gains of an adoption, domestic or intercountry, can be enough to outweigh the losses involved, making it the best option for a child under certain (generally tragic) circumstances. It is another thing to approach adoption (as Professor Bartholet appears to do) from a perspective that minimizes and dismisses the substantial losses involved in adoption.

Adoption involves the loss of relationship and connection to one’s original parents, sibling, and extended family. Any perspective on adoption that does not, at the outset, understand this is as a significant loss and harm to both child and original family is, I believe, dangerous and deficient. This danger is particularly great in a culture like that of the United States, which practices a system of closed-record, secret adoption in which the
law pretends that the child was born to the adoptive parents. It is not healthy to feed the legal and cultural pretense that adoptive children have no connection to the multigenerational family group that conceived and birthed them. In a world in which we (outside the context of adoption) acknowledge that both nature (genetics) and nurture matter, pretending that genetic inheritance and nine months of nurture in the womb mean nothing makes no sense. Such a pretense makes even less sense given the large numbers of older child adoptions in which children have spent a significant part of their childhood with their original family.

It also makes no sense to ignore the additional losses of culture, language, and nationality involved in intercountry adoption. Professor Bartholet ignores studies and adoptee accounts which amply illustrate the psychological difficulties and complexities created by these losses. For example, one recent survey of Korean adoptees by the Evan B. Donaldson Institute found that 78% of Korean adoptees during childhood considered themselves to be, or wanted to be, White. Surely it is a harm to feel psychologically driven to deny a significant aspect of one’s body, identity, and genetic inheritance.

Acknowledging that these very real losses and harms can be outweighed, in a given case, with the gains involved in an intercountry adoption, is very different from minimizing or denying the losses and harms involved in the first place.

Professor Bartholet’s response to the harms caused by illicitly obtaining children through kidnapping, fraud, and child-buying is equally dismissive, saying there is “no persuasive evidence that such abuses are widespread.” She further states that “the overwhelming majority of adoptions [are] taking place in compliance with the law.” In
doing so, Professor Bartholet brushes aside widespread evidence from a broad variety of sources documenting serious, systemic misconduct in many nations, including Cambodia, Ethiopia, Guatemala, India, Nepal, and Vietnam. While it is possible to bury one’s head and issue “see no evil” pronouncements, such is hardly a sound basis for public policy.

Professor Bartholet similarly dismisses other difficulties by silence and inattention, saying little in these essays, as well as her articles, about the central problem of money in the intercountry adoption system. Instead of calling for limitations on the amounts of money that can be sent to intermediaries in developing nations, she specifically defends the role of “private intermediaries,” calling them the “lifeblood” of adoptions from Central and South America. Lifeblood indeed!! A system that pays “private intermediaries” thousands of dollars to obtain children from vulnerable families living in extreme poverty in developing nations is inviting child laundering. How can the rights of children and poor and vulnerable families be protected in a system that so obviously incentivizes the illicit sourcing of children?

Professor Bartholet may be unconcerned about illicit sourcing of children because she assumes that with so many children in obvious need of intercountry adoption, it is not much of an issue. This picture of virtually endless numbers of children in need of intercountry adoption is misleading. For example, Professor Bartholet uses the estimate of 143 million orphans (presumably from UNICEF), while ignoring the clarification from UNICEF that their various estimates of “orphans” include those who have lost only one parent. Hence, about 90% of such “orphans” are still living with a parent, and thus are not relevant to discussions of the need for intercountry adoption. Similarly misleading is
Professor Bartholet’s presumption that Chinese orphanages still are overwhelmed with large numbers of baby girls, despite strong evidence that the numbers of healthy infants in Chinese orphanages has been sharply reduced, in part through (illegal but prevalent) sex selective abortion. Similarly, Professor Bartholet ignores extensive evidence that there are increasing numbers of domestic adoptions—and waiting lists for domestic adoption of healthy babies of both genders-- in nations such as China and India. There are, I would argue, relatively few healthy babies or toddlers truly in need of intercountry adoption.

Lumping all “orphans,” street children, institutionalized children, etc., together to demonstrate a need for intercountry adoption ignores important differences between such children, as well as the highly differential number of available, qualified adoptive parents. There are millions of Americans, many with fertility issues, yearning to adopt a healthy infant or toddler. There are, however, relatively few who can or should attempt a high-risk adoption of a much older, highly traumatized child---indeed, we don’t even have enough adoptive parents for such children within the United States, given the many much older children waiting for adoption from our foster care system. In addition, many much older street and institutionalized children may be incapable of adapting to conventional family life, let alone making the huge adaptations of language and culture expected of intercountry adoptees. Thus, despite the existence of many older, special needs and disabled children both in the United States and globally who are separated from their families, there are very few of the kinds of children the vast majority of prospective adoptive parents seek: healthy young infants or toddlers. Hence, the existence of millions
of institutionalized and street children does not prevent the illicit sourcing of the kinds of children most sought by prospective adoptive parents.

Professor Bartholet unfortunately ignores the capacity of monetary incentives for intercountry adoption to draw children unnecessarily into institutional care, creating the very kind of harm (the institutionalization of children) which she most decries. As the very “private intermediaries” she praises seek out the kind of children for which they will be paid, children are pulled, through various illicit means, out of families and into orphanages; while some of those children are eventually adopted (despite not being true orphans), others die or live out their childhood in these damaging institutions.

Professor Bartholet also over-states the influence of the Hague Convention, whether for good or ill, when she states that “almost all countries that engage in international adoption…have ratified” the Convention. In fact, a number of significant sending nations, such as Ethiopia, Russia, South Korea, Ukraine, and Vietnam, have not ratified the Convention, leading to a situation where a significant proportion of adoptions to the United States are non-Hague Convention adoptions. (The United States does not apply Hague Convention rules to adoption from non-Hague Countries.) Since the United States ratification of the Hague Convention was not effective until April 2008, and adoptions to the United States constitute approximately half of all intercountry adoptions, much of the development of the contemporary system has, until very recently, occurred outside the rubric of the Convention. Overall, the tendency of Professor Bartholet to scapegoat the Hague Convention, the CRC, and various human rights organizations for the ills of the system is unfortunate. While these documents and organizations certainly have
their flaws, those pale in comparison to the poor practice standards endemic among the private adoption agencies that dominate intercountry adoption practice in the United States.

It is those agencies that have created virtual bidding wars for adoptable children in nation after nation, while linking to intermediaries and partners who practice in a context of widespread falsification of documents, bribery, corruption, and child laundering. In this kind of context, it is very difficult to sort out ethical from unethical adoptions, and to engage in the kind of accuracy in documents and social work practice which would provide the best chance of success for high-risk adoptions of older and special needs children.

The intercountry adoption system is in trouble. Advocates for the system, such as Professor Bartholet, seek to blame an ever-widening circle of supposed “enemies” of adoption; instead, they would do better to change course and make common cause with those, like myself, who see serious reform as the only possible solution.

Editors’ Note

The editors, Judith Gibbons and Karen Rotabi, would like to thank Professors Bartheolet and Smolin for bringing the differences in opinion about intercountry into sharp focus and for elucidating the complexity of the issues involved.
The Evangelical Orphan Boom

BY KATHRYN JOYCE

IF you attend an evangelical church these days, there’s a good chance you’ll hear about the “orphan crisis” affecting millions of children around the world.

These Christian advocates of transnational adoption will often say that some 150 million children need homes — though that figure, derived from a Unicef report, includes not only parentless children, but also those who have lost only one parent, and orphans who live with relatives.

Evangelical adoptions picked up in earnest in the middle of the last decade, when a wave of prominent Christians, including the megachurch pastor Rick Warren and leaders of the Southern Baptist Convention, began to promote adoption as a special imperative for believers. Adoption mirrored the Christian salvation experience, they argued, likening the adoption of orphans to Christ’s adoption of the faithful. Adoption also embodied a more holistic “pro-life” message — caring for children outside the womb as well as within — and an emphasis on good deeds, not just belief, that some evangelicals felt had been ceded to mainline Protestant denominations.

Believers rose to the challenge. The Christian Alliance for Orphans estimates that hundreds of thousands of people worldwide participate in its annual Orphan Sunday (this year’s is Nov. 3). Evangelicals from the Bible Belt to Southern California don wristbands or T-shirts reading “orphan addict” or “serial adopter.” Ministries have emerged to raise money and award grants to help Christians pay the fees (some $30,000 on average, plus travel) associated with transnational adoption.

However well intended, this enthusiasm has exacerbated what has become a boom-and-bust market for children that leaps from country to country. In many cases, the influx of money has created incentives to establish or expand orphanages — and identify children to fill them.

In some cases, agencies may hire “child finders” to recruit children of the age and gender that prospective adoptive parents prefer, sometimes from impoverished but intact families. Even nonprofit agencies with good reputations may turn to such local recruiters in countries where they don’t already have established partners — or where the demand for children exceeds the supply.

The potential for fraud and abuse is high. Orphanages tend to be filled by kids whose parents want better opportunities for them, while the root problem — extreme poverty — goes unaddressed, a Unicef worker in Ethiopia told me. Worse, some families in places with different cultural norms and legal systems relinquish their kids believing that it is a temporary guardianship arrangement, rather than an irrevocable severance of family ties.
In 2006, the family of three sisters adopted from Sodo, Ethiopia, said they were told that adoption would give the children a chance at an American education and that they would later return. The adoptive parents, then living in New Mexico, said they’d been falsely assured by an evangelical agency, Christian World Adoption, that they were saving destitute children orphaned by AIDS, who might otherwise have become sex workers.

When the children arrived and were told the adoption was permanent, they were distraught. And when the adoptive family complained, the agency maintained that the adoption was justified under Ethiopian law and counseled the parents to trust in God’s plan. When the adoptive family complained to the Better Business Bureau in North Carolina, where the agency was based, it threatened to report the family to child protective services in New Mexico. (The agency has since gone bankrupt.)

Though most are not as nightmarish, adoption complications are common. Some adoptive parents have even hired private investigators to try to verify the stories they were told about their kids.

When scandals emerge, governments lumber into action. But then the demand just shifts to another country, and the problems start all over again. In the early 1990s, Romania saw an adoption boom after shocking images of orphanages — housing young victims of Nicolae Ceausescu’s compulsory birth policies — became public. But over time, stories of other Romanian kids’ being coerced into adoption or bought from their families surfaced. Romania halted international adoptions in 2001.

Also in the 1990s, the number of adoptions from Vietnam soared, but the outrageous fees paid to child finders — sometimes more than $10,000 — caused the government in 2003 to press pause to reform the system. (But when the adoptions resumed in 2005, so did the problems.)

At the height of Guatemala’s adoption boom in the middle of the last decade, nearly 1 percent of babies were sent to the United States, before stories of child buying and even kidnapping prompted a shutdown in 2008. Then the boom shifted to Ethiopia and, now, Uganda and the Democratic Republic of Congo.

Of course, adoption problems aren’t limited to Christian agencies, and they don’t originate with them, but some movement insiders say that evangelicals — whether driven by zeal or naïveté — have had a disproportionate impact on the international adoption system. Groups like Unicef and Save the Children have made clear that millions of “orphans” are, in fact, not eligible for transnational adoption, but advocates often disregard these warnings as signs of ideological opposition to adoption — a charge Unicef has denied.

After some high-profile adoption horror stories, the number of transnational adoptions to the United States fell to fewer than 9,000 last year, from a high of nearly 23,000 in 2004. Last year, only China and Ethiopia sent more than 1,000 adoptees to America, and only South Korea and Russia topped 500. (Russia this year banned adoptions by American parents.)
This boom-and-bust, musical-chairs cycle does little to improve child-welfare systems in developing countries and has perpetuated a culture of aid-based orphanage construction — the reverse of the trend in wealthy countries, which have phased out institutions in favor of foster care.

The United States must improve regulation. There are no specific limits to what agencies can spend in other countries and little oversight in the system, which relies on peer reviews from other adoption agencies. And often there is little political will to investigate agency wrongdoing. While the United States abides by the Hague Convention on Intercountry Adoption — a set of standards promulgated in 1993 to prevent abuses — American agencies can often dodge responsibility for abuses by blaming local partners. Moreover, many foreign children brought into America come from countries that have not signed the convention.

Policy reforms, domestic and international, won’t be enough without a change in thinking, particularly among American evangelicals. Some Christian groups have begun to heed the call to do good works overseas, by focusing on aid that keeps families intact or improves local foster care and adoption. Some churches have backed programs overseas that provide emergency foster parents, or day care programs for widowed mothers. But many churches still preach the simplistic message that there are more Christians in the world than orphans, and that every adoption means a child saved.

For too long, well-meaning Americans have brought their advocacy and money to bear on an adoption industry that revolves around Western demand. Adoption can be wonderful when it’s about finding the right family for a child who is truly in need, but it can also be tragic and unjust if it involves deception, removes children from their home countries when other options are available, or is used as a substitute for addressing the underlying problems of poverty and inequality. We can no longer be blind to the collateral damage that good intentions bring.

*Kathryn Joyce is the author of “The Child Catchers: Rescue, Trafficking, and the New Gospel of Adoption.”*
To realign structures and reallocate resources in the Federal Government, in keeping with the core American belief that families are the best protection for children and the bedrock of any society, to bolster United States diplomacy and assistance targeted at ensuring that every child can grow up in a permanent, safe, nurturing, and loving family, and to strengthen intercountry adoption to the United States and around the world and ensure that it becomes a viable and fully developed option for providing families for children in need, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. LANDRIEU (for herself, Mr. BLUNT, Mr. BURB, Mr. INHOFE, Mr. KIRK, Ms. KLOBUCHAR, Mrs. SHAMBACh, Ms. WARREN, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To realign structures and reallocate resources in the Federal Government, in keeping with the core American belief that families are the best protection for children and the bedrock of any society, to bolster United States diplomacy and assistance targeted at ensuring that every child can grow up in a permanent, safe, nurturing, and loving family, and to strengthen intercountry adoption to the United States and around the world and ensure that it becomes a viable and fully developed option for providing families for children in need, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the
“Children in Families First Act of 2013”.

(b) TABLE OF CONTENTS.—The table of contents is
as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; purposes.
Sec. 3. Definitions.

TITLE I—REALIGNMENT OF CERTAIN INTERNATIONAL CHILD
WELFARE RESPONSIBILITIES AND FUNCTIONS

Sec. 101. Establishment of Bureau of Vulnerable Children and Family Security
in the Department of State.
Sec. 102. Responsibilities of U.S. Citizenship and Immigration Services for ac-
creditation of adoption service providers.
Sec. 103. Transfer of functions and savings provisions.
Sec. 104. Responsibilities of U.S. Citizenship and Immigration Services for
adoption-related case processing.

TITLE II—ANNUAL REPORTING

Sec. 201. Annual report on children living without families.

TITLE III—PROMOTION OF A COMPREHENSIVE APPROACH FOR
CHILDREN IN ADVERSITY

Sec. 301. Establishment of a USAID Center for Excellence for Children in Ad-
versity.

TITLE IV—FUNDING AND EFFECTIVE DATES

Sec. 401. Authorization of appropriations.
Sec. 402. Effective dates.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress makes the following find-
ings:

(1) The people of the United States recognize
and believe that children must grow up in perma-
nent, safe, and nurturing families in order to develop and thrive.

(2) Science now proves conclusively that children suffer immediate, lasting, and in many cases irreversible damage from time spent living in institutions or outside of families, including reduced brain activity, reduced IQ, smaller brain size, and inability to form emotional bonds with others.

(3) Governments in other countries seek models that promote the placement of children who are living outside family care in permanent, safe, and nurturing families, rather than in foster care or institutions; but many governments lack the resources or infrastructure to adequately address this need.

(4) Despite the good efforts of countless governments and nongovernmental organizations, millions of children remain uncounted and outside of the protection, nurturing care, permanence, safety, and love of a family. Without the care of a family, these children are forced to live on the streets, in institutions, in paid foster care, in child-headed households, in group homes, or as household servants.

(5) No reliable data currently exists to define and document the number and needs of children in the world currently living without families, but avail-
able evidence demonstrates that there are millions of children in this situation needing immediate help.

(6) The December 2012 Action Plan for Children in Adversity commits the United States Government to achieving a world in which all children grow up within protective family care and free from deprivation, exploitation, and danger. To effectively and efficiently accomplish this goal, it is necessary to realign the United States Government’s current operational system for assisting orphans and vulnerable children, and processing intercountry adoptions.

(7) All options for providing appropriate, protective, and permanent family care to children living without families must be considered concurrently and permanent solutions must be put in place as quickly as possible. Solutions include family preservation and reunification, kinship care, guardianship, domestic and intercountry adoption, and other culturally-acceptable forms of care that will result in appropriate, protective, and permanent family care. Preference should be given to options that optimize child best interests, which generally means options which provide children with fully protected legal status and parents with full legal status as parents, including full parental rights and responsibilities. The
principle of subsidiarity, which gives preference to in-country solutions, should be implemented within the context of a concurrent planning strategy, exploring in- and out-of-country options simultaneously. If an in-country placement serving the child’s best interest and providing appropriate, protective, and permanent care is not quickly available, and such an international home is available, the child should be placed in that international home without delay.

(8) Significant resources are already dedicated to international assistance for orphans and vulnerable children, and a relatively small portion of these resources can be reallocated to achieve more timely, effective, nurturing, and permanent familial solutions for children living without families, resulting in fewer children worldwide living in institutions or on the streets, more families preserved or reunified, and increased domestic and international adoptions.

(b) PURPOSES.—The purposes of this Act are—

(1) to support the core American value that families are the bedrock of any society;

(2) to protect the fundamental human right of all children to grow up within the loving care of permanent, safe, and nurturing families;
(3) to address a critical gap in United States foreign policy implementation by adjusting the Federal Government’s international policy and operational structures so that seeking permanent families for children living without families receives more prominence, focus, and resources (through the reallocation of existing personnel and resources);

(4) to harness the diplomatic and operational power of the United States Government in the international sphere by helping to identify and implement timely, permanent, safe, and nurturing familial solutions for children living without families, including refugee or stateless children;

(5) to ensure that intercountry adoption by United States citizens becomes a viable and fully developed option for creating permanent families for children who need them;

(6) to protect against abuses of children, birth families, and adoptive parents involved in intercountry adoptions, and to ensure that such adoptions are in the individual child’s best interests; and

(7) to harmonize and strengthen existing intercountry adoption processes under United States law—
(A) by ensuring that the same set of procedures and criteria govern suitability and eligibility determinations for prospective adoptive parents seeking to complete intercountry adoptions, whether or not the child is from a foreign state that is a party to the Hague Adoption Convention; and

(B) by aligning the definitions of eligible child for Convention adoptions and non-Convention adoptions to the maximum extent possible.

SEC. 3. DEFINITIONS.

In this Act:


(2) APPROPRIATE, PROTECTIVE, AND PERMANENT FAMILY CARE.—The term "appropriate, protective, and permanent family care" means a nurturing, lifelong, commitment to a child by an adult, or adults with parental roles and responsibilities that—
(A) provides physical and emotional support;

(B) provides the child with a sense of belonging; and

(C) generally involves full legal recognition of the child's status as child of the parents and of the parents' rights and responsibilities regarding the child.

(3) CENTRAL AUTHORITY.—The term "central authority" has the meaning given the term in section 3 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14902).

(4) CHILDREN IN Adversity.—The term "children in adversity" means children living inside or outside of family care who are deprived, excluded, vulnerable, or at risk for violence, abuse, exploitation, or neglect.

(5) CONVENTION ADOPTION.—The term "Convention adoption" has the meaning given the term in section 3 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14902).

(6) CONVENTION COUNTRY.—The term "Convention country" has the meaning given the term in section 3 of the Intercountry Adoption Act of 2000.
(42 U.S.C. 14902) and for which the Hague Adoption Convention has entered into force.

(7) GUARDIANSHIP.—The term “guardianship” means a permanent legal relationship between an adult and a child, whereby the adult is lawfully invested with the power, and charged with the duty, of taking care of the child. While some forms of guardianship are not truly permanent, the form of guardianship referred to and supported under this Act is permanent guardianship. A Kefala order issued by a country that follows traditional Islamic law does not qualify as an adoption under United States law, but may be a form of guardianship in some circumstances.

(8) HABITUAL RESIDENCE DETERMINATION.—The term “habitual residence determination” means a factual determination of where a prospective adoptive parent (or parents) resides and where the child resides for purposes of an intercountry adoption case.

1 (10) **KINSHIP CARE.**—The term "kinship care" means the full time care, nurturing, and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child, so long as those persons have the capacity and commitment to function as true parents for the child on a permanent basis. It does not include paid kinship foster care.

2 (11) **NON-CONVENTION ADOPTION.**—The term “non-Convention adoption” means—

3 (A) an adoption by United States parents of a child from a non-Convention country in accordance with subparagraph (F) of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1));

4 (B) an adoption by United States parents of a child under the laws of the child’s country of origin (generally when the parents are living in the child’s country of origin and therefore able legally to complete a domestic adoption); or

5 (C) in certain circumstances (generally with respect to relative adoptions or adoptions by dual national parents), an adoption by United States parents of a child from a Convention country if that country allows legal and
valid adoptions to take place outside the scope of the Convention.

(12) **NON-CONVENTION COUNTRY.**—The term “non-Convention country” means a country in which the Hague Adoption Convention has not entered into force, regardless of whether or not that country has signed the Convention.

(13) **UNPARENTED CHILDREN.**—The term “unparented children” means children lacking the legal, permanent, safe, and nurturing care of a parental figure or figures, either inside their country of origin, in the country of their habitual residence, or elsewhere, regardless of their lawful or unlawful immigration status in their current country of residence.

(14) **VULNERABLE CHILDREN.**—The term “vulnerable children”, consistent with the United States Agency for International Development’s definition, means children and youth who are under 18 years whose safety, well-being, growth, and development are at significant risk due to inadequate care, protection, or access to essential services.

* * * * *
CHILDREN IN FAMILIES FIRST

A legislative initiative ensure permanent, loving families for children who need them and to revitalize the U.S. international adoption program 2013

WHAT’S WRONG?

Globally, the number of children without families increases every day.

Children have a right to be loved, to grow up in a family, their biological family or another one, in their country, or somewhere else.

Families, all over the world, are out there with open homes and open hearts, wanting to take them in.

We are failing the children.
SCIENCE PROVES THE DAMAGE

Children without families experience toxic stress which often leads to permanent damage!!

Scientific studies prove that children’s brains don’t develop properly without consistent parental care and connection.

Children who cannot bond with a parental figure during the first years of life experience toxic stress which often leads to profound, permanent damage.

SCIENCE PROVES THE DAMAGE

A PICTURE OF THE NEUROLOGICAL IMPACT ON A CHILD’S BRAIN FROM INSTITUTIONALIZATION

Childhood Adversity: Inside the Brain

- Reduced brain activity
- Reduced IQ
- Smaller brain
- Mental health problems
- Inability to attach
- Difficulty earning a living

SOME RECOVERY POSSIBLE

TIME IS OF THE ESSENCE
THE SCOPE OF THE PROBLEM

NO RELIABLE DATA AVAILABLE
BECAUSE
NO ONE COUNTS.

No one knows how many children live without families:

• In institutions,
• On the streets,
• In refugee camps,
• As asylum seekers or stateless people...

BUT INDICATORS SHOW NEED ON THE RISE

Double Orphans Reported by UNICEF

Note: Double orphans counted here are children whose parents are both dead. BUT, these figures do not include children in institutions, street children, refugee or asylee or stateless children.
MEANWHILE, ADOPTIONS TO U.S. FALLING YEAR AFTER YEAR

This is a symptom of a much larger problem. International adoption isn’t THE answer. It’s one answer among many. But we are failing at using all of them and a generation of children is being destroyed...

THE SEEDS OF CHANGE

U.S. Government Action Plan on Children in Adversity
A Framework for International Assistance: 2012-2017
NATIONAL ACTION PLAN ON CHILDREN IN ADVERSITY

- Strong Beginnings
- Families First
- Freedom from violence, exploitation

National Action Plan Objectives
THE PROBLEM

U.S. foreign policy implementation doesn’t further the core American value that children belong in families -- biological or adoptive -- because families are the bedrock of any society.

- The number of children without families is rising.
- The USG doesn’t focus sufficient resources on identifying children living without families and finding them families.
- The USG doesn’t facilitate international adoption. It impedes it.

CHILDREN IN FAMILIES FIRST (CHIFF)

Addresses the problems by:

1. Supporting the implementation of the 2012 ACTION PLAN ON CHILDREN IN ADVERSITY: A Framework for International Assistance, with particular focus on objective two – Families First.

2. Realigning and expanding the roles the U.S. Government plays in international adoption, so that this tool of protection for children living without families can be revitalized.
WHAT CHIFF DOES

Millions of children living without families.
In orphanages or other institutions
As street children
As refugees
As stateless people

Weak Government Child Welfare Systems

LACK OF DATA

Counting
Registering
Prioritizing
Finding Solutions

Where this legislation will help

Family Preservation
Family Reunification
Domestic Adoption
International Adoption

HOW CHIFF DOES IT

• NEW THINGS
  • New organization with expanded mandate within the Department of State focused on International Child Welfare.
  • New, interagency, annual reporting requirement on children without families.
  • New Center for Excellence on Children in Adversity and associated spending authority to jump-start implementation the National Action Plan, with special emphasis on objective two – Families First.
HOW CHIFF DOES IT

• CHANGED THINGS

• Streamlines and realigns international adoption processing and procedures as follows:
  • DOS -- Diplomatic leadership, engagements, and programming, integrating the priority of permanence for children
  • USAID -- Child welfare development programming integrating the priority of permanence for children
  • USCIS -- All case processing in international adoptions up to the immigrant visa, streamlined and simplified procedures, accreditation of U.S. adoption service providers

WHAT CHIFF ACHIEVES

• **U.S. leadership** on our core value of families first

• **Improved child welfare systems** around the world

• **Timely and better protection for children** through
  • Family preservation
  • Family reunification
  • Domestic and Kinship adoption
  • International adoption

• Fewer children in institutions or on the streets

• **Revitalized international adoptions** to the U.S.
ADOPTION: THE BEST FORM OF PROTECTION

"An institution won’t agonize over when to step in and when to give a child a little bit more hope, nurturing or encouragement. Institutions cannot love like parents can."


Thank you for that introduction, and my thanks to Pepperdine Law School and the Noobaar Institute for inviting me to speak here on behalf of Senator Mary Landrieu.

Three years ago last month, a magnitude 7.0 earthquake hit Port au Prince, Haiti. We all watched in horror as the degree of death and devastation became apparent. At the time, I was working for U.S. Citizenship and Immigration Services in the International Operations Division.

At USCIS, we started to think right away about how we could use U.S. immigration tools to help. Within a few days, the Secretary of Homeland Security announced the Special Humanitarian Parole for Haitian Orphans, a program I helped develop and implement. But I’m not here to tell you about that program. I just want to tell you about some people I got to know working on it—American parents who risked their lives to protect orphaned Haitian children, people who were heroes.

Over the months that USCIS ran
the program, I spoke to hundreds of the U.S. adoptive parents who were doing everything they could for the children they were trying to adopt. For them, these children were already theirs. Their love and anguish and determination were a constant source of energy and inspiration. The power of their love replenished me and my staff day after day as we worked to rescue those children.

One adoptive mother from southern Virginia stands out in my memory. She was adopting a 7-year-old girl who had spent most of her life in an orphanage in Port au Prince. That orphanage was destroyed by the earthquake, and its children, with the few caregivers who stayed, were left on the street. (Most of the caregivers went to look for their own families.)

Crying, this adoptive mother asked me whether or not she should go to Haiti. I didn’t know what to say. She asked me what I’d do if the little girl was my child, and I said I’d go.

She found a way to fly down to Port au Prince, and she found her daughter. For three days and three nights, she slept with that little girl on the street, protecting her from harm with her own body and nothing else.

After three days, she got through the throng around the Embassy and inside with her daughter. They slept on the floor in the Consular Section for the next week, before we got them out on a back-haul flight with other paroled children.

Now here’s the real kicker. I learned after she was home, and safe with her daughter from Haiti, that she was four months pregnant when she went down there to find her. I am in awe of her, of the power of her love, and of the sacrifices she was willing to make to protect her child. Her baby was born safely later in 2010.

I have a picture that she sent me months later of her adopted daughter in pink tights and a tutu, at ballet class, posing and smiling for the camera. This adoptive mother is a hero to me for what she did.

It was totally crazy in Haiti after the earthquake. No one had drinking water or food. So many people were living in the streets. There was no sanitation, no medical care. There was death and violence. People were desperate.

One night I was on the phone with an American doctor who was caring for sixty-odd orphans we were working with. The children were already matched with American parents and were pretty far along in the process. We were talking about how the children were doing and how to get them to the Embassy. They were sick with dehydration and diarrhea and had just gotten relief supplies that day, only food and water.

I heard a lot of noise in the background, and his voice all of the sudden got really tense and high. I asked, “what’s wrong?”, and then I heard gunshots. He had no weapon or way to protect himself or the children. All he could to was take them as far away from the food and water as they could get. He was trying to move all the kids, screaming into the phone, crying. He was so scared and thought they were going to be killed.

We lost our connection, and I called the Embassy through the State Department control room. Our amazing people down there—the military guys and the CBP guys—got to that orphanage within a few hours with buses. They took all the kids to the Embassy and then straight to the airport. The doctor got home safe and all the kids got home to their parents safe.

I found out later that one of the children at that orphanage was this doctor’s adopted son. He could’ve taken his son and gone sooner, but he wouldn’t leave with just his son. He stayed to make sure they all got out. He is another hero to me.

The incredible love and protection that comes from a parent is a part of international adoption that I’m here to tell you about today. It’s not the part people talk about, because generally it’s not newsworthy. Usually it’s more pedestrian, the love of parents for children—even children from half way across the world whom they’ve only met once or twice, because somehow that magic happens fast.

For the kids in Haiti, and for kids in orphanages all around the world, and for those who don’t have a parent willing or able to take care of them, parents, adoptive or otherwise, provide protection, in all the rich meanings of that word, for their children. There’s no substitute for that relationship.

So if adoption creates a parent for a child who needs one, and a parent provides protection, then adoption creates protection for children who otherwise have none.

You’ll notice I’m not saying “international adoption,” because I don’t think it matters. We can all agree that adoption close to home is preferable, but in all honesty, today, it’s often not possible in many countries. What I believe matters most is the nurturing, healing, protective love of a family, wherever that family may be.

Domestic or international, the placement of a child who needs a family in a family who wants to and can care for that child is the best thing we can do for a child who otherwise won’t have a family.

You all have probably heard about the U.S. adoption program in Guatemala, the program that has been closed since 2008. Everyone who talks about that program purses their lips and shakes their head, as if to say, “That was bad. Good thing we stopped it.” I want to offer a different perspective.

Over the course of the program in Guatemala, 27,000 children who had little-to-no chance of a decent life came to live with loving American families. I know—I know from the inside about some of the bad things that were happening in Guatemala. I also know what we were doing to prevent it, things like imposing two separate DNA tests on relinquished children at different points in the process.

I know we were able to block some bad things from happening, and I know about a handful of cases that make me nuts because something really awful happened. But the proportionality of ‘bad to good in that
program is something that all of us in the
field need to ponder, carefully. I
don’t really want to debate the relative
merits of that program today, but I
do want to make a point. Thousands
upon thousands of good adoptions
happened during the program, and
they are not happening now.

Now let me tell you a story about
one of the U.S. families adopting in
Guatemala, who, five years later, is still
hanging in there, trying to complete
their adoption of their son.

These parents met Wilson shortly
after his birth, when they were
matched with him in 2007. His birth
mother was unmarried, too young and
too poor to care for him, and so she
relinquished him to the orphanage at
birth. This family knows her. She has
been forced to appear for repeated
DNA tests. The United States and
Guatemala asked her to confirm again
and again that she really wants her
child to find an adoptive home in the
U.S., and the pain and humiliation has
taken a terrible toll on her.

This American family isn’t wealthy.
The adoptive Mom is a nurse and
Dad is a sales and marketing guy for a
restaurant chain. They live in Texas.
But they have traveled to Guatemala
every 6 weeks for the past 6 years.
They celebrate every birthday with him in
the orphanage. They take him
Christmas presents. They bring clothes
for all of the other kids in the orphan-
age, because they’ve gotten to know so
many of them and because they know
how little those kids have.

Wilson developed a chronic skin
condition while living in the squalor of
the orphanage. They bought prescrip-
tion medication for him to treat it, but
it is too hard to bring it in and out of
the United States on every trip. So
they store it above a ceiling tile in the
hotel room they always stay in while
they visit.

The Guatemalan Supreme Court
ruled in their favor, but they still haven’t
been able to bring him home. And
now, they’ll have to start again in a new
process, which will take months at best.
But they will never give up. They keep
going back, and they keep fighting for
their child.

Again, I look at these people as
heroes, but the truth is that they simply
love their child. And I would do the
same for my children.

In my twenty years as a humanitar-
ian-immigration specialist for the State
Department and for USCIS, I have
personally worked on hundreds, and
touched thousands, of adoption cases
involving children from all over the
world. I have spent time in the coun-
tries where the children come from,
worked with the government officials in
those countries, visited orphanages, and
seen first-hand what is happening.

I have had access to historical data
about the largest cases, including the
ones people characterize as utterly
fraud-ridden. I have been involved
in some of the trickiest, most heart-
wrenching cases, and I know what
happens when things go wrong.

I know the good and the bad of
international adoption, and I am
convinced that the good far outweighs
the bad. I also see that in recent years,
receiving countries like the United
States have convinced themselves of
the opposite—that international adop-
tion does more harm than good.

I believe that conviction is massively
in error.

When I get frustrated with the nega-
tive rhetoric and with the accusations,
which seem to spin out of dwelling on
the horror stories and the handful of
very public cases that have gone wrong,
I spend time revisiting my file full of
pictures and the letters about the joy
of families we’ve created and children
who found love.

What we miss in these conversations
when we use the words “international
adoption” and “human trafficking” in
the same sentence is that we are talk-
ing about two entirely separate things.
And, talking about them together, to
me, has the effect of asserting that
international adoption is trafficking. I
understand there are some in this audi-
ence who believe that to be true.

I don’t.

Since 1999, 234,000 children from
around the world have been adopted
and have immigrated to the United
States to live with their new families.
That’s nearly a quarter of a million
children.

You will hear from others in these
next two days about human traffick-
ers, people who go into the mountains,
or highlands, or remote villages and
steal children to sell—for all kinds of
reasons. Yes. That happens. It is one of
the most despicable crimes that takes
place in our world.

But of the quarter of a million inter-
national orphans who found homes in
the United States in the past 14 years,
children who now have protection and
love, two governments scrutinized evi-
dence and approved every one of those
cases, one at a time. We on the U.S.
side did not find concrete evidence of
malfeasance, or of child buying, much
less human trafficking in those quarter-
million successful adoptions.

When we do find evidence, we deny
the cases. About eight to ten percent of
adoption cases each year are denied,
most for bureaucratic reasons, not for
wrong-doing, but some.

Now, I can’t rule out the possibility
that bad things have happened and we
didn’t know or didn’t have evidence.
All immigration programs are flawed
to a degree. We do our best, we make
human judgments, and some people
cheat and lie. But I plead with this
community to use words like traffick-
ing with great care. The harm of that
accusation is immeasurable.

I see it in Wilson’s case. I see it in
the thousands of Guatemalan children
who have no chance now and are
growing up in institutions. I see it in
the story of a child from Kyrgyzstan who
died while governments fussed about
whether her case could be completed. I
see it in the hundreds of cases coming
to my attention now of U.S. parents
who have Russian children in their
hearts, but will not be able to bring
them home. Do you all know that
according to Russia’s own reporting,
95 percent of Russian children who
grow up in their orphanages end up on
the streets, unable to function, and are
very likely to die shortly after their 18th birthdays? This is a tragedy.

We must, as a community, stop using inflammatory language unless we have concrete, specific evidence to support it. Fraud, child-buying, and human trafficking have very specific legal meanings. I am so grateful to my years at USCIS for teaching me those definitions and the circumspection that is essential to their use.

I'm sure you can tell that this issue means a great deal to me. I have three children of my own.

I am a parent. I am a Mom, and it is my job to protect my children. It's cliché to say that I'd jump in front of a bus for them, but I would. Honestly, I sometimes wish protecting them was that simple of a calculation. As a Mom, it's also my job to know when to step in, when to stand up to the school system that didn't want to give my son the special help he needed for his learning disability, and to know when to let my kids fall down, when to let them fail. Because kids need to learn to fail, and they need to fail knowing that they'll still survive.

I've watched my 11-year-old daughter take her licks at a Tae Kwon Do tournament. She ended a sparring match crying from a blow that was too hard. But that was a learning and growing experience for her, and letting her take her licks in this protected way was a good thing for her; and I know that. Of course, I wanted to go belt the kid who kicked her in the stomach, but I didn't.

I know I'm repeating myself, but here I go again: parents are—by far—the best form of protection we can give children who need it. An institution won't agonize over when to step in and when to give a child a little bit more hope, nurturing, or encouragement.

Institutions cannot love like parents can.

There are millions of children around the world who live outside of family care and have no—no—prospect of a family, other than through international adoption. And I find it to be truly sad that there just aren't enough families for the millions-and-millions of children all over the world who need families. We have to work on that.

But here's something that's even sadder: there are families, lots of them, out there trying every day to offer unparented children homes through adoption, but they are unable to do so. They get driven away or denied by bureaucratic hurdles.

Instead of doing our very best as governments to make sure that every child has a family, we focus on the negative in trying to make sure nothing ever goes wrong. I would argue that to a large extent, in recent times, the focus has been on the wrong tragedy. With unparented children suffering and dying every day, it's an egregious failure on all of our parts that we don't find a way to make use of the incredible resource that is families willing to adopt unparented children.

Scientific evidence proves what we all know in our hearts anyway: Every day spent in an institution is a brain-killing day.

I'd like to offer an alternative vision of how the United States Government might do its work to find permanent families for children who need them, including through international adoption, in a much more robust way.

Senator Landrieu and I both believe that the U.S. Government should be an advocate for the world's unparented children, a leading source of expertise and action planning for ensuring that unparented children get families, and a loud voice in the international arena speaking for the importance of adoption, international or otherwise, as an essential tool of protection.

Senator Landrieu is committed to introducing legislation that will re-invent how the United States Government approaches permanency for unparented children. I have joined her staff to help in the crafting of that legislation. International adoption will play a major role in our approach, because we believe that adoption is not something to protect children from. For children without families, adoption is the best form of protection.

Thank you.
PAULO BARROZO

Finding Home in the World: A Deontological Theory of the Right to be Adopted

ABOUT THE AUTHOR: Paulo Barrozo is an Assistant Professor at Boston College Law School. He is thankful to Elizabeth Bartholet, Ruth-Arlene Howe, and Sanford Katz for their inspiration. Rebecca Ashby provided outstanding research assistance, for which the author is grateful.
I. INTRODUCTION

The family is a political institution, and it is so in two complementary ways. First, the family is political in the sense that it is usually on families that the development of the individual’s mature capacities for political engagement first hinge. But the family is also political because political choices—whether in the form of legislative or court decisions, economic policies, adoption policies, etc.—reach deeply within and shape the family. When it comes to the institution of the family, there is no politically neutral choice, including the choice to just leave things where they stand.

It is to this political institution, the family, that law and custom everywhere first allocate the fiduciary duties of each adult generation in relation to the capacities created, expanded, and honed during the course of human evolution, and embodied in each new generation. Humanity evolved to become capable of learning, creativity, imagination, judgment, interpersonal connection, communication, goal-oriented action, and love. Certainly, each newcomer to the rankings of humanity comes endowed with these capacities differently. Tragically, the endowment is sometimes meager. Notwithstanding whatever endowments an individual may possess in his or her early years, the hope, if not the assumption, is that families will play a central role in nurturing those endowments to their fullest expression.

We may promptly concede that in far too many cases, families fail miserably in the discharge of their fiduciary duties, and yet the fact—amply confirmed by the social, developmental, and bio-medical sciences, as well as by ordinary experience—remains that no other type of institution compares to a good family when it comes to the care and nurturing of the young. The reason why this is the case tends to elude anyone taking a materialist approach to the requirements of a successful upbringing, for many other institutions, including well-funded orphanages, provide better access to food, shelter, education, health care, safety, and sundry conveniences than the typical family in many if not most parts of the world. What seems to set good families apart and explain their success in upbringing is that they parent. That is, in the context of typical families, the tasks involved in upbringing are mediated by love. As G. W. F. Hegel insightfully pointed out, “the family . . . has as its determination the spirit’s feeling . . . of its own unity, which is love.”

One important reason why love matters so much is because it counterbalances the relative vulnerability of the young vis-à-vis structures of power, such as the family, that routinely allocate resources the young need to survive and develop. In his important book on vulnerability, Robert Goodin characterized relationships of vulnerability as those in which (1) “[t]he relationship embodies an asymmetrical balance of power,” (2) “[t]he subordinate party needs the resources provided by the relationship in order to protect his vital interests,” (3) “the relationship is the only source of such resources,” and (4) “[t]he superordinate party in the relationship

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exercises discretionary control over those resources.” Yet families do not possess a monopoly over resources for the young. The state, social organizations, and communities certainly may supplement or substitute for families, thus breaking their monopoly. Furthermore, the law creates floors below which families or any substitute caretaker cannot withhold resources from children and adolescents. And yet, seen through the prism of the four-point criterion of vulnerability, the typical existence of the young is marked by profound relative vulnerability. It is on adults close and afar—whether acting in their personal capacities as parents, kin, or neighbors, or as agents of the state or broader society—that the young depend. Unless and until love intervenes, all that is left to the young is the daily renewal of an unmediated experience of vulnerability—a crushing psychological predicament for anyone to be in. The point is not that love sugarcoats this cold reality, although it certainly does that to some extent. Rather, love alters this reality by changing, on one side, the motivations and dynamics of resource allocation and, on the other, the way that the vulnerable experience power asymmetry. When loved by a good family, objective vulnerability is subjectively experienced by the young as care, protection, trust, and affection. And this subjective experience provides the best environment for the expansion and development of the potential with which a child was initially endowed. Not a small accomplishment for love.

There is a second, connected reason why love affects the change in kind from caregiving to parenting. Love creates the kind of conservatory where the share of human capabilities each person is endowed with can have a fair chance of flourishing. This is the developmental role of love. It is in the experience of profound and unconditional love that the young ordinarily find the terra firma that assures them of their place in the world, and where their own sense of limitation and vulnerability is transmuted into self-confidence and an appetite for the future as an inviting frontier of open possibilities.

Another important aspect of the human potentials first entrusted to families that receives less attention is the way these potentials condition the personal meaning and enjoyment of human rights during an individual’s lifespan. Actual enjoyment of the positive and negative freedoms and entitlements to shares of public goods that constitute the traditional bill of rights have one major presupposition: that individuals possess at a minimum the human capacities to learn, create, imagine, judge, connect, communicate, act, and love. When these capacities fail to be minimally present for any individual, the meaning of human rights is changed for him or her and the individual’s enjoyment of those rights becomes deeply challenging. Sometimes the frugal possession of human capacities is not caused by persons and institutions in any significant way. In other cases, however, this frugality is the work of human action and omission. When the latter occurs, it constitutes the first and deepest aggression a person can suffer on his or her human rights.

It is not difficult to connect the arguments thus far advanced. Because they interject a buffer of love between the young and the harshness of a world of vulnerability, typical families are the best institution in which to grow and develop whatever portion of human potential individuals possess at various points of their young lives. Thus, the young not growing up in good families constitutes potentially one of the most serious breaches of their human rights because of its possible, if not probable, far-reaching effects.

For the unparented young, the only access to parenting is through adoption. The obvious corollary to this reality is that to give the unparented access to an adoptive family is a human rights-imposed duty, binding individuals, society, and public and private institutions. This is, in its most fundamental expression, the deontological conception of adoption as a fundamental right. Its most eloquent defender, Elizabeth Bartholet, envisions a world “in which we recognize children as citizens of a global community with basic human rights entitlements.”4 She writes that “core human rights principles give children the right to true family care. Unparented children have a right to be placed in international adoption if that is where true families are available. They have a right to be liberated from the conditions characterizing orphanages, street life and most foster care.”5

Adoption is the institution of one person becoming a son or daughter, and another becoming a respective parent by force of a deliberate decision of a judicial or other state authority. However compelling the deontological paradigm of adoption may be, it took millennia for adoption to be seen in this light, and even now this view is only gradually shaping the institution of adoption. For most of history, adoption in particular and family law in general, developed under the influence of consequentialist considerations (adoption is to serve concrete interests of the adopter), occasionally tempered by charitable impulses (the well-being of the adoptee is to be sought), and, more recently, couched in human rights language (adoption if and when allowed ought to respect the human rights of the child).6

Because of the continued dominance of consequentialist views, the deontological paradigm that emerges in the form of a human rights approach to adoption faces two major and partially connected obstacles. First, and despite the fact that the human

6. Examples of discounting consequentialism with charitable impulses and dressing it with human rights rhetoric are abundant. One does not need to go beyond the Hague Convention on Intercountry Adoption to find it: “the child,” one reads in the preamble, “for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Preamble, concluded May 29, 1993, 1870 U.N.T.S. 167 (entered into force May 1, 1995) [hereinafter IAC]. Article 1 of the Convention, speaking of the objects of the convention, starts with: “[T]o establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law.” Id. art. 1.
rights approach has found compelling advocates, its jurisprudential basis has yet to be fully articulated. And in part because of insufficient theorization, the emerging deontological adoption is constantly at risk of being rhetorically and practically subsumed or engulfed by the resilient consequentialist-cum-charity paradigm. This article addresses these two obstacles, laying out the foundations of a deontological theory of adoption.

Part II analyzes the consequentialist-cum-charity understanding of adoption. Part III expounds on what I call the value theory of rights. Part IV articulates the jurisprudential foundations of deontological adoption and the human right to be adopted. The reader will probably find that this article operates at a high level of theorization. This is by design, for high theory is needed in order to dispel the confusion and contradictions that plague first order analyses and opinions on the matter. And while the decision to take the theoretical path indicates my ambitions in relation to this article, it also demarcates the limited attention the article is able to give to important details. Hopefully, others will rectify, supplement, and detail the foundations laid out in this work.

II. CONSEQUENTIALIST-CUM-CHARITY THEORY OF ADOPTION

In the early 1990s, the Hague Convention on Intercountry Adoption was received as a children's rights document. It has since proven not to be so, unsurprisingly, for it was not designed to be a children's rights document. Instead, the Convention adopts a dominium perspective—that is, of a sovereign-like absolute property ownership—in relation to unparented children. This position relies on property and contract analogies and respective transactional and diplomatic jargon; it is not concerned with how to maximize compliance with the human right to be adopted, but rather with violations (e.g., abduction, sale, trafficking) of states' monopolistic dominium over their populations. Consequently, it focuses predominantly on safeguards and policing. This is a recipe for non-compliance with the human right of the unparented to be adopted. It betrays states' monopolistic claims over national children as natural resources and political pawns. And that monopoly, according to the terms of the Convention, can be exercised at will. How then can we explain why so many children's rights advocates, at the time of the Convention's development and to this day, defend the Convention and its categories and mechanisms as a promoter of children's rights? To understand this, we need to turn to the history and substance of the consequentialist-cum-charity theory of adoption.

7. Maybe nothing illustrates this risk more dramatically than the way international adoption is treated by international organizations, governments, the media, and the public.

8. This is unsurprising, I should add. Indeed, one reads in the Preparatory Works for the Hague's Sixteenth Session that it should choose two out of three subjects for possible convention drafting by the following session. See Permanent Bureau, Proceedings of the Sixteenth Session 1988, Miscellaneous Matters, Hague Convention on Private Int'l Law, Tome I, 253 (1991). Intercountry adoption was one of them, and the other two were business-related topics. The Convention shows the marks of protection of states' monopolistic dominium over unparented children through private law categories.
Finding Home in the World: A Deontological Theory of the Right to Be Adopted

A. Historical Excursus

Adoption is as old as recorded history. But as even a perfunctory study of its history reveals, from the beginning the institution was seen and used primarily as a means to benefit the social, political, and economic interests of adopters. It was only within the bounds demarcated by mundane benefits for adopters that charitable motives were allowed to operate. Only gradually, and hardly before the twentieth century, did the well-being of the adoptee and sentimental motives on the part of adopters become less marginal as a matter of both personal decision making and adoption policy design. Nonetheless, these more recent changes continue to operate within a consequentialist paradigm tempered by charitable or, to update the language, humane considerations and, more recently, dressed in a right-of-the-child rhetoric.

In ancient Rome, adoption reflected the harsh culture of Roman civilization and was rarely done for charitable reasons or sentimental motivations. It was first and foremost done for property, financial, or political reasons. In Rome, only male citizens who were head of the household could adopt. The *paterfamilias*, by either giving or receiving in adoption, used the institution as an additional mechanism to implement strategies regarding social status, family name perpetuation, and restructuring of the family, as well as a way to face inheritance and financial difficulties or opportunities.

There existed at the time two similar institutions, adrogation and adoption. Adrogation occurred when an individual who was emancipated from a previous family was taken under the *potestas* of another *paterfamilias*. If, however, the individual was directly transferred from one *paterfamilias’s* *potestas* to another’s, this constituted adoption, properly speaking. While adrogation was done publicly, adoption was done privately. Adrogation and adoption were not restricted to minors, although Justinian, in an effort to curb some of the abuses of the institution, imposed the requirement that the *paterfamilias* interested in adopting had to be at least eighteen years older than the adoptee. Women received discriminating treatment as adopters and adoptees. Women needed an emperor’s license to adopt, which was usually only obtained by women who had no surviving offspring to whom to leave their estate. Furthermore, while women could be adopted, they could not be adrogated. In any event, adoption of women was the exception, in part because they were unable to continue the adopter’s family name. In addition, adoption and adrogation brought all the entitlements possessed by the adoptee under the *potestas* of the adopter. In cases where the adoptee was a *paterfamilias*, his entire household would come under his adopting father’s *potestas*.


In eighteenth-century England, Blackstone was still writing of “legitimate child[ren],” explaining that those were the ones “born in lawful wedlock.” 11 “The duty of parents to provide for the maintenance of their children, is a principle of natural law,” he added. 12 And “[t]he power of parents over their children is derived from . . . their duty: this authority being given them, partly to enable the parent more effectually to perform his duty, and partly as a recompense for his care and trouble in the faithful discharge of it.” 13 Blackstone’s codification and memorialization of English law foretells a tension that would inform the consequentialist-cum-charity adoption paradigm for centuries to follow, namely the tension between foregrounding the interests of children while simultaneously allowing their instrumentalization on behalf of parental interests.

Another leap forward in history shows that by the early 1900s, and due in no small measure to Charles Dickens’s novels, England had changed enough to see children generally, and those in need of adoption in particular, through charitable rather than through purely instrumental lenses. This same wave of change also brought regulation of child labor and other child welfare reforms to the country. However, in the England of the World Wars, adoption was seen in part, along with contraception, as a tool for family planning available to potential adopters.

As adoption in England was being retooled by Victorian and post-Victorian culture in a new consequentialist-cum-charity paradigm, it continued to suffer from great stigma. The memory of baby farms was still too alive; places where unwanted children were sent by their parents, usually an unmarried biomother, to be adopted by the “baby farmer,” usually a woman, in exchange for monetary compensation. Conditions in baby farms were tragic and mortality rates very high. It would have been surprising if the combination, on one side, of instrumentalization for family planning and, on the other, stigmatization did not lead to secrecy surrounding adoption in England. 14 And so it did. Compounding the stigma of adoption were desperate biomothers who would abandon, murder, or sell their children. 15 Only well into the twentieth century did adoption consequentialism—despite continuing to see the unparented young as a family planning tool—extend to bioparents’ charitable impulses, primarily in relation to biomothers who were increasingly seen through the lenses of victimization. 16

12. Id.
13. Id. at 347.
15. Id. at 30. A great deal of unmarried mothers were thought to be immoral, and could be detained in an institution indefinitely under the Mental Deficiency Act of 1913. Id. at 33.
Early policies to address the problem of abandoned children included their forced emigration to British colonies. By the time of World War I, thousands of children had been “exported” to live in indentured servility abroad, though the war started to change that. Families left childless by war sought adoption as a mechanism for family reconstitution. The National Children Adoption Association (NCAA) and the National Adoption Society (NAS), both dating from 1917–1918, became active players in adoption, selecting and matching adoptees and adopters. Eugenics, which was making its way to mainstream culture everywhere, extended the breeder mentality to adoption.¹⁷

The National Council for the Unmarried Mother and her Child (NCUMC) was soon founded with the mandate to look after the welfare of biomothers and their children. The NCUMC promoted the view that adoption ought to be seen as a last resort, to be used as an exception.¹⁸ The NCAA, NAS, and NCUMC campaigned for legal adoption, which culminated in the Adoption of Children Act of 1926. The new law placed discretionary authority in the courts concerning matters of adoption, which legalized it, while agencies retained their license and initiative to match adopters and adoptees.¹⁹ The majority of adoption agencies tended to vet potential adopters, asking for references, conducting interviews, and establishing probation periods, which included home visits, before adoptions were finalized.²⁰ Some, however, did not, and the Adoption of Children (Regulation) Act of 1939, following recommendations of the Departmental Committee on Adoption Societies and Agencies, limited the role of private agents. Informing those changes was the view that the well-being of the child should be the primary utility to be served by adoption.

Across the Atlantic, apprenticeship, the flip side of indentured servility, was the form that adoption and foster care first took. Starting in the colonial times, the governments of the American colonies would often act as parens patriae, intervening in families on behalf of the children and compulsorily placing unparented children, as well as the very poor, in apprenticeships. Later, urbanization and greater poverty led to a growing number of children being placed in orphanages, one solution for which was the use of “orphan trains.” Beginning in 1854, orphan trains were used to bring children from the East to the West to be placed in groups working in rural areas.²¹ English-style baby farms also existed in the United States, with the same record of neglect, abuse, and mortality rates.²²

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¹⁸. Id. at 62, 74.
¹⁹. Id. at 113–17.
²⁰. Id. at 136.
In the mid-nineteenth century, Mississippi and Texas were the first states to establish registries for adoptions, which followed the general format used to register property deeds. In 1851, Massachusetts enacted the first modern adoption law in the country, which identified the needs and well-being of children as the primary goal (utility) to be served through adoption. Soon after, twenty-five states would pass adoption legislation modeled after Massachusetts’s. At the time, most placement agencies were religiously affiliated enterprises seeking to bring ill-adjusted or abandoned children into their faiths. Adoptions tended to be made by “matching,” seeking phenotypical resemblance and avoiding “defects” in order to facilitate secrecy. In fact, matching was central to what had been rightly called “kinship by design,” a form of family engineering done by private parties as well as by the state. Kinship by design relied on detailed regulations and standards, as well as on the authority of psychological and scientific knowledge.

A landmark in child welfarism was the foundation, in 1912, of the U.S. Children’s Bureau, charged by Congress with a broad mandate to “investigate and report” on child welfare in the nation. Subsequently, the Child Welfare League of America (CWLA), a private agency comprising of adoption agencies from around the country, was founded in 1921. In 1938, the CWLA published adoption standards, which included safeguards for children, adopters, and the state. Failure to follow the standards would lead to suspension from the CWLA. Alongside the evolution of welfarism came advances in social sciences and in educational, psychological, and development theories, which gave welfarism the authority of science. The role of science in shaping adoption was one of postulating which means would most efficiently lead to the desired consequences, whether the welfare interest of children, the family planning interests of adopters, or the population management interest of the state. All, to be sure, sufficiently intertwined in charitable or humanitarian discourse.

Humanitarian impulses are not, however, merely dependent upon consequentialist forces. They have their own dynamic and internal push. There is indeed, in the operation of ordinary practical reason, a dialect of reflection, for “it is an essential principle of every use of our reason to push its cognition to consciousness of its

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23. *Carp, supra note 21, at 11–12.*
24. *See id. at 14.*
25. *Herman, supra note 22, at 122–23.*
26. *See id. at 9.*
27. *See id. at 2–3.*
28. *See id. at 58.*
29. *See id. at 98, 105, 156–57, 256.*
necessity." This reflective folding of reason upon itself in search of assurances of the rationality and soundness of its contents is the very element of transition from an uncritical to a critical morality. In part because of the push of reflectivity inherent in humanitarianism, following the devastation left by World War II, humanitarianism gained a new momentum in Western culture. This led, in the field of child policy, to changes in adoption practices meant to increase placement of disabled and minority children. That was followed by an increase, in the decade from 1953–1962, in the number of transcultural and transracial adoptions. Along with the question of confidentiality, transculturality and transraciality would become the center of the debate about adoption in the United States.

Throughout its history, from Rome through England to America, adoption was marked by its instrumentalization by adopters within a changing framework of charity or humanity, and against the background of regulation that closely traced the demands of instrumentalization and charity at each step. The recent mimetic appropriation of child’s rights discourse by adoption consequentialism can only poorly cover what it is not willing to change. Where do the strength, appeal, and resilience of adoption consequentialism come from? In order to better explain the power of the consequentialist underpinnings in the evolution of adoption, I turn now to the most basic and general elements of consequentialism in law and policy.

B. The Structure of Consequentialism in Adoption Law and Policy

Consequentialism has always dominated adoption law and policy, as the historical précis above illustrates. Understanding its elementary argumentative structure and the view of the world it comes from and helps sustain is a fundamental step toward weakening its grip. The stakes in weakening the ascendance of consequentialism in adoption are indeed high, for in the context of adoption, it quickly turns into instrumentalization of the young in the name of the state, politics, ethnicity, race, religion, economic interests, or reductionist conceptions of child well-being, which in practice, if not in discourse, are satisfied when minimal material conditions of survival are provided. The picture is further complicated when tradition weighs in to freeze reform initiatives in the name of risk aversion, which borders, if not completely trespasses into, the irrational. That is why hope for clarity on the matter must start with an understanding of the basic elements of the consequentialist outlook, including its usual alliance with conservatism. What then is the elementary structure of consequentialism that has had demiurgic powers on the life of the institution of adoption?


32. In the United States, transracial adoption has been particularly controversial. A very cautionary argument is well-presented by Ruth G. McRoy & Louis A. Zurcher, Jr., *Transracial and Inracial Adoptees: The Adolescent Years* (1983).
We should start by recognizing that we are all consequentialists, but only in part. Our cognitive apparatuses, as well as the cultural worlds we inhabit, cannot dispense with consequentialism, or at least with a version of it. But how much should we allow ourselves to rely on its counsel in the context of adoption? In the history of ideas, consequentialism finds support in that type of theory of knowledge that gives heuristic primacy to the senses, tailored as they are to capture and process the external material world. Hidden underneath the consequentialist interest in the material world is the belief that the maximization of preferences or well-being is the basic good in human existence, and that any hierarchy among courses of action is to be established in light of their expected consequences in the promotion of those preferences or well-being.

Whereas the various types of duties and rights-based moral outlook called deontologism attempt to establish a list and hierarchy of courses of action by speculation—and therefore an aprirorism of reason at least substantially uncontaminated by the material stakes and instrumental interests of the sensorial experience—consequentialism makes the inverse move. Lived experiences and the concrete material interests and stakes that come with it have the privilege of establishing both the list and the hierarchy of the ends and corresponding courses of action one ought to pursue. These ends, rather than presented as a duty discovered or constructed by reason, are determined by the demands of adaptation to circumstances or suggested by hedonist or more general welfarist considerations.

The basic mental operation implicated in consequentialism is the analysis of the relative efficiency of competing courses of action and the expected benefits of competing ends. Through strategic cost-benefit calculation and empirical observation, consequentialism hopes to detect the behavioral patterns best manifesting a tendency to produce the most efficiently desired ends, the stipulation of which is given by the nature of things or the relevant concrete circumstances. Especially note the work that the idea of “tendency” is performing for consequentialism; patterns of behavior are regarded as appropriate to the extent they tend to produce target outcomes. I will come back to this point later in this article.

For now, let us focus on the ends and consider one question that consequentialism has found difficult to answer: Under what set of criteria may any end be said to be good? In the context of his critique of the Levellers, David Hume wrote that “if we examine the particular laws, by which justice is directed, and property determined; we shall still be presented with the same conclusion. The good of mankind is the only object of all these laws and regulations.” This, of course, still begs the question of what exactly is the good of humankind. The answers given by consequentialists to this question tend to circumnavigate at least one of a few fixed ontological points, namely, the general requirements of a well-functioning society (not necessarily a just or decent one), and the desirability of maximizing pleasure and minimizing the pain of individuals, or, lastly, some broader welfarist conception of pain and pleasure.

In the adoption field, it is clear how much these ontological, normative, and cognitive aspects of consequentialism are interdependent. It is first in the mutual support of normative and cognitive stances that the architecture of the consequentialist-cum-charity adoption paradigm is founded. For the consequentialist mindset, there are no goods-in-themselves other than the survival of society (or some discreet group within society) and the physical pleasure or the general well-being of individuals. Consequentialism is not about human flourishing; it is about survival and hedonism, two centerpieces of modern culture and sensibility.

Thus, the consequentialist argumentative structure is bounded, on one side, by the individual experience of pain and pleasure (and its welfarist extensions) and, on the other, by the collective experience of life in society. Human life takes place, therefore, between atomistic physicalism and society, between individual survival and social reproduction. The speculative as well as practical import for adoption of this thought scheme cannot be overstated. Once stripped of the sugarcoating rhetoric of charity and rights of the child, the reality is that throughout its history, adoption served the bare survival needs of children and the perceived needs of society (such as for mechanisms of status modification, hiding reproductive problems or moral missteps, family and property planning, and management of the population as a natural resource of states, ethnicities, races, and religions).

When it comes down to choice of adoption policies, now, as in the past, cost-benefit analysis rather than deontological considerations take the front seat. UNICEF’s policy on intercountry adoption provides examples of this. In a recently published policy statement titled UNICEF’s Position on Inter-country Adoption, the organization weighs, on one hand, the view that,

for children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution.

On the other hand, the organization is concerned about perceived risks created by “the growth of an industry around adoption, where profit, rather than the best interests of children, takes centre stage. Abuses include the sale and abduction of children, coercion of parents, and bribery.” Unfortunately for millions of unparented

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34. A good-in-itself is that which survives without justification in the form of a reference to another good.
36. Id. UNICEF’s 2009 Report on Regular Resources states that the organization’s regular expenditures per country are based on three criteria: the country’s under-five mortality rate, its gross national income per capita, and the absolute size of its child population. UNICEF, REPORT ON REGULAR RESOURCES 2009 14 (2010), available at http://www.unicef.org/publications/files/UNICEF_RR_Report2009_091410.pdf. The Report goes on to state that regular expenditures go to “priority countries” which are determined based on the above three criteria. “These unrestricted funds are allocated to those countries
children around the world, UNICEF resolved the calculus in favor of precautionary measures, stalling or altogether stopping adoption in the form of moratoria.

The outcome of this type of cost-benefit analysis and the related application of precautionary principles is to ensure the breach of the fundamental right to be adopted for millions of unparented children and adolescents. But for many proponents of this approach, the outrage at the mass violation of this fundamental right, directed at such a vulnerable segment of the global population, passes without leaving any traces of outrage or remorse. Assuming their good motivations, which I am sincerely prepared to do, the reason why they seem untouched by the systemic human rights violations they directly perpetrate or indirectly condone is to be found in the way consequentialism tends to ill-equip, in terms of moral outlook, those who see the world through it. In international adoption law and policy, consequentialism-cum-charity is a powerful blindfold over the nature and entailments of the cosmopolitan right of the unparented to be adopted, everything else being equivalent, by the first good parent from a relatively safe place to come forward.\footnote{For contemporary attempts to specify, in the Kantian tradition, the substance and some of the institutional implications of cosmopolitanism, see, for example, Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal (James Bohman & Matthias Lutz-Bachmann eds., 1997); Joseph H. Carens, Aliens and Citizens: The Case for Open Borders, 49 REV. POL. 251 (1987); Robert E. Goodin, What is so Special about Our Fellow Countrymen, 98 ETHICS 663 (1988); David Held, Democracy: From City-States to a Cosmopolitan Order?, 40 POL. STUD. 10 (Supp. 1992); Thomas Pogge, Cosmopolitanism and Sovereignty, 103 ETHICS 48 (1992).}

Only in the combined effect of consequentialism, conservatism, and adoption prejudice can one start to find an explanation for the resistance toward international adoption in quarters where one would expect to find enthusiastic and committed support for it.

Returning to the discussion of the idea of “tendency,” the cost-benefit analysis promoted by adoption consequentialism has an important twist. When carefully examined, it reveals itself to be, in truth, an ethic of conviction disguised as an ethic of results. This requires explanation because consequentialism sets itself in opposition to deontologism. The explanation is nonetheless fairly simple and found in the idea of tendency. As far as I know, for the first time in the history of thought, eighteenth-century consequentialism gave moral status to the concept of tendency operating in the social universe.\footnote{A predated appearance of this concept can be found in the form of statistics in nineteenth-century natural and social sciences, as in the works of Laplace and Spencer, respectively. See, e.g., Herbert Spencer, Social Statics, Abridged and Revised: Together with the Man Versus the State (1896); Pierre-Simon Laplace, A Philosophical Essay on Probabilities (Frederick Wilson Truscott & Frederick Lincoln Emory trans., Chapman & Hall 1902) (1866).}
Consequentialism denies the possibility of certainty about any future outcome of courses of action undertaken in the present and replaces it with reliance on the tendency that courses of action have to produce certain outcomes. In doing so, consequentialism falls in line with modernity's turn to probabilism. The issue is that, when looked at more closely, reliance on tendency and its elevation to a moral principle is no more than authorization to act according to the agent's conviction with regard to that tendency. The *ex post facto* correction of the course of action selected as the best one impacts only similar convictions in the future, but does not in any way impinge on the moral quality of the course of action that an agent rationally, but ultimately wrongly, chose at the time. In fact, for moral approbation, consequentialism does not require that the result of an action advance the utilities of individuals or societies, whatever those utilities may be. All that is required for approbation is the choice of that which seems, under the given conditions, to be the course of action with the greatest tendency to produce desired outcomes.\(^39\)

In any event, the uncertainty about the future inherent in the idea of tendency can do little to placate fear and angst about the future. When adoption law and policy is approached from a consequentialist mindset, this uncertainty calls for a delicate and fragile process of continuous attachment to the status quo, which of course is not changed just because the plea for stasis in adoption may take on the discursive form of charity and the best interests of potential adoptees. If one starts from consequentialism, one ends in conservatism.

Anchored in the main tenets of general consequentialism, adoption consequentialism is characterized by a conservatism that instrumentalizes the young in the name of precautionary principles and of national, ethnic, racial, religious, and family planning interests. The deployment every day of more nuanced best interests, charity, and children's rights rhetoric have no power to change that reality, although it has gone a long way towards making it acceptable, if not largely invisible.

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\(^39\). The reader may find it therefore surprising that generations of intellectuals, century after century, attempted, and still attempt, to justify the idea that a coherent moral philosophy of results exists.
The basic structure of the value theory of a fundamental right of the young unparented to be adopted can be thus expressed:

The right to grow in a good family protects the human dignity and potential for flourishing of the unparented young, by:

(1) Primarily allocating to the young and their advocates standing to claim this right in the course of promoting the human dignity and potential for flourishing embodied by the former.

(2) Creating an obligation for state and international organizations to seriously and consistently promote and to a maximum possible guarantee the rights, privileges, powers, and immunities into which this right can be disaggregated.

(3) Creating the obligation for states and international organizations to remedy, by a combination of retrospective compensatory remedies and prospective efforts, any violation of this right.

Where:

(4) Lack of access of the unparented to a good family through adoption constitutes a grave violation of the human dignity and potential for flourishing that they embody.

In this way, the substance of the right of the unparented to be adopted is redefined as the protection of the value of human dignity and the potential for flourishing as embodied in every child and adolescent.

Considerable prejudice against adoption has always existed. In the modern era, and until recently, adoption, when known outside of the privacy of the family, amounted to a public confession of reproductive incapacity, and to be adopted carried the marks of rejection and the stigma of second-class status. Even as late as the twenty-first century, adoption prejudice makes its presence clear throughout adoption law and policy. Of course, today adoption prejudice must hide behind charitable sensibilities and human rights rhetoric, but there is no doubt it continues to exist. For example, it is not only acceptable, but also a source of social prestige, for physicians and health care corporations worldwide to profit in the billions of dollars every year by providing biological reproductive services.64 However, it is considered a grave

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moral shortcoming if professions and business enterprises provide adoption services, and prosper doing so.

Also, historically, population was seen as the most precious natural resource for any nation state or nation-state-to-be. States draw armies and laborers from the largest population possible. Post-colonial sensibilities reconceived this natural resource approach to children by seeing them as race, religion, or cultural heritage carriers. This has tragically led to the imprisonment of children in institutions and abusive domestic relationships. Despite the much greater risk, both in absolute numbers and proportionally, of abuse in the context of biological parenting, no one seems to be advocating a moratorium on biological reproduction as an acceptable means to address the millions of cases every year of neglect and abuse of the young by their biological parents. Yet one negative headline is enough to lead the world to call for adoption delays (under the favorite language of “safeguards”) or moratoria.

Children are self-standing, full-fledged possessors of human rights. Because they are silent and, for those in orphanages or hidden behind the walls of abusive families, also invisible, many self-appointed advocates feel free to make light of their plight. This attitude, when expressed or acted upon by states and international organizations, is illegal under human rights law as it is well-understood—and a moral disgrace. In this article, I have criticized, from the perspective of deontological adoption, the consequentialist-cum-charity position taken by UNICEF, the Hague Convention, and many childcare and advocacy organizations. A Joint United Nations Programme study found over sixteen million double orphans in Africa, Asia, and Latin America alone. Despite that, the forty-six page report mentions adoption just twice, and then inadequately, in the form of makeshift local adoption substitutes. In the same report, institutionalization is referred to euphemistically as “Center for Orphaned Children,” “Community School,” “Day Care Center,” “Center for Children,” and the like.

I have elsewhere affirmed that to condemn the views on international adoption of institutions such as UNICEF is not to question the good intentions or seriousness of purpose of those bodies. The problem is deeper, ultimately resting on views propped by the structure of consequentialist thinking that muddle conceptions of human rights and the personhood of the young. Those views also betray great imaginative and institutional conservatism.

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67. Id. at 15, 20 (“There is a pressing need to ensure that familybased [sic] care is available for these children, either through support for relatives, foster care, local adoptive placement, or community organizations that are integrally linked to the community . . . . For children who slip through the extended family safety net, arrangements preferable to traditional institutional care include foster placements, local adoption, surrogate family groups integrated into communities, and smaller-scale group residential care in homelike settings.”).

68. Paulo Barrozo, The Child as a Person, 1 Global Pol’y 228 (2010).
From as early as the fifteenth century, struggles to unify and consolidate nation states turned into efforts to create large and replenishable armies and working forces. From the perspective of emerging states, the first and most precious natural resource was its population, and the highest policy priority was population management. “The principal object of my policy’, stated Joseph II in the 18th century, was ‘the preservation and increase of the number of subjects. It is’, he added, ‘from the greatest number of subjects that all the advantages of the state derive.”69 This view became part of the policy DNA of nation states and, after World War II, of their international organization creatures. By the second part of the twentieth century, population management ideologies were compounded by the inability or unwillingness to transcend the resilience of localism and culturalism against clear commitments to the human rights of the young as a person. No one should think it is easy to honor mandates as important as the human rights of the unparented when they are deeply torn between contradicting values and loyalties as the consequentialist-cum-charity self-appointed spokespersons for the unparented young are.

On the other hand, in many ways it has never been better to be a child than in our time, though the evolution of the legal and moral status of the young was a slow one. It took millennia for children to progress from being little more than labor and transactional resources for families and economic and military resources for states. Later, children came to be seen by post-colonial sensibilities as an identity medium. In most parts of the world, children achieved the legal status of objects of protection on the part of families, societies, and states only relatively recently. Twenty years ago, the arc of this evolution reached the point of considering the child as an independent, self-standing subject of human rights. But the earlier stages of the evolution of the legal and moral status of the child have never been completely replaced. The result is the truncated and ambivalent conception of the child as a person and subject of human rights found in the rhetorical cloaks of consequentialism-cum-charity in adoption.70

Throughout history, adoption has been instrumentalized within a constantly shifting and highly adaptable framework of charity or humanity, and against the background of regulation that traces closely the demands of instrumentalization and charity at each step. Against this, the deontological paradigm of adoption proclaims that to have the buffer of love placed between the young in her or his vulnerability and the harsh world in which we live can only be achieved through the enforcement of a fundamental right of the unparented to be adopted. It further argues that because of the centrality of growing up in good families to the present and future enjoyment of human rights, lack of access of the unparented to a good family through adoption constitutes a grave violation of the human dignity and potential for flourishing that

69. Id. at 228. This is also quoted in Tim Blanning, The Pursuit of Glory: The Five Revolutions that Made Modern Europe 1648–1815, at 41 (2007).

70. Even more sophisticated philosophical reflection on adoption tends to fall to the attraction of the consequentialist paradigm dressed in rights discourse. See, for example, Mary Lyndon Shanley, Toward New Understandings of Adoption: Individuals and Relationships in Transracial and Open Adoption, in Child, Family, and State 15 (Stephen Macedo & Iris Marion Young eds., 2003).
they embody. This violation gives rise to obligations on the part of states and international organizations to guarantee the rights, privileges, powers, and immunities into which this right can be disaggregated, and for states and international organizations to remedy, by a combination of retrospective compensatory remedies and prospective efforts, any violation of these obligations.

B. Negative and Positive Violations

How do states, international organizations, and other entities, such as child welfare organizations, comply with a right to be adopted? Because the act of adopting is inherently voluntary and should remain so, compliance on the part of institutions lies in doing all within their power and means to promote and facilitate adoption, and when the young has found, or has been found by, a good family willing to adopt, institutions should support their coming together as a family in the shortest possible time. This all seems straightforward enough, but those familiar with global adoption know all too well that the daily routine of adoption across borders is to have institutionalized unparented children and loving, eager parents kept apart by states, international organizations, and child welfare organizations.

The reason why these institutions are able to get away with massive and widespread human rights violations has three connected roots. First, they operate in a global cultural environment dominated by the consequentialist-cum-charity conception of adoption, a conception that, as argued above, is disabling the rights of the unparented. Second, those institutions deploy welfarist and human rights rhetoric able to benumb observers already standing in the consequentialist-cum-charity paradigm. Finally, they have thus far been able to get away with their human rights violations because their action is indirect, meaning that they tend to operate negatively and positively at the structural level. The preceding sections addressed the first two roots of the violation. In this section, I focus on the negative and positive structures of the violation.

The duties created by the human right of the unparented to be adopted are not satisfied by the purity of charitable or humanitarian motivations, or with the coating of human rights rhetoric. Especially in the context of international adoption, attention must be paid to the negative and positive means of violations of the right of the unparented to be adopted. In a universe permeated by tragedies brought about by good intentions, it is especially important to understand the operation of structures of violation that act behind the backs or through the agency of the well-intended. I have argued in this article that the idea that the young possess inherent and unconditional dignity and potentials that ought to be tapped is central to deontological adoption. It is precisely the deontological element of this idea that enables criticism of courses of action, individual or collective predicaments, social structures, and the legal and policy choices that channel them.

Structural causes or conditions of violations of the right to be adopted can be negative or positive. Negative structures function by restricting or filtering out opportunities to escape human rights violations, or by maintaining insufficient, though...
favorable, conditions for such violations. Positive structures, on the other hand, set in
place and in motion the causes and conditions of rights violations, or otherwise forge
the very forms of collective engagement in which such violations thrive.

Closely intertwined with negative structure and positive structure is the idea of
vulnerability mentioned in Part I of this article. The rejection of vulnerability has
taken two expressions. The first rejects vulnerability as an intrinsic component of the
human predicament and responds to this predicament with ataraxia—tranquility
and suspension of judgment in the ancient Pyrrhonic and Epicurean traditions—
mental flight, and practical evasion. In direct opposition to this conception, the
second expression of the rejection of vulnerability embraces both the joys and risks of
human intellectual, moral, and practical engagement, and focuses on the imagination
of strategies of individual empowerment. It is in this second expression that a concern
with vulnerability is best understood in the context of the human endowments that
the human right of the unparented to be adopted seeks to protect and foster.

Consider first the negative structures of violations. In The Subjection of Women,
John Stuart Mill offers the insight that institutions never come to social life at a
perfectly isonomic starting point for its members. When they arrive in social life,
institutions crystallize previous social arrangements and distributive patterns. Mill
writes that,

Laws and systems of polity always begin by recognising the relations they
find already existing between individuals. They convert what was a mere
physical fact into a legal right, give it the sanction of society, and principally
aim at the substitution of public and organized means of asserting and
protecting these rights, instead of the irregular and lawless conflict of physical
strength. Those who had already been compelled to obedience became in this
manner legally bound to it.

When the current Hague Convention-based regime of international adoption was
set in place, it found millions of unparented children worldwide and powerful
political and cultural interests trying to position themselves between the unparented
and available good parents on the global stage. There is little doubt that, thus far at
least, the spirit and implementation of the Hague system sided with the powerful
political and cultural interests prolongs and makes permanent the institutionalization,
make-shift placement, or homelessness of millions of unparented children. And the
mechanisms used to accomplish this mass violation of fundamental rights were
primarily negative structures in the form of legal frameworks, implementation
choices, funds reallocation, and partial or complete adoption moratoria.

Mill also explains the subtleties of the interaction between structures and forms
of consciousness in their evolutionary dynamic, an interaction that is constantly
hidden behind the opacity of the mechanisms of social cohesion and behavioral
patterns. Speaking of the predicament of women, Mill pointed to the way the social
structure in which they are embedded negatively influences their opportunities to

71. See supra note 3 and accompanying text.
escape suffering, rendering them, on the contrary, considerably more vulnerable to
cruelty and exploitation. As he dramatically states the problem, “sex is to all women;
a peremptory exclusion.”\(^7\) A form of exclusion that, because of the largely stealthy
and rather negative operation of its structural components, remains widely unseen.
Invisible, its victims are thus condemned to “the feeling of a wasted life”\(^7\)
and suffering without sympathy from the rest of society. What womanhood was for
women, unparenthood is for the unparented—that is, a peremptory exclusion.

Mill’s probing criticism calls for awareness about the way negative structures
operate to maintain the status quo. He speaks of the “cruel experience” of those who
historically tried to oppose the mechanisms of human unhappiness, and of how their
insubordination was met with the force of law and the whole apparatus of social
norms and entrenched prejudices. Responsible for an ideological and practical
insurrection against the powers of negative structure, the rebels appeared “in the
eyes of those whom they resisted . . . not only guilty of crime, but the worst of all
crimes.”\(^7\)

With the practical and institutional mechanisms of negative structures of
violation—foremost among which is, in the case of international adoption, the
conservatism of consequentialism-cum-charity and the adoption laws and policies it
helped forge—comes its ideological component by the influence of which Mill once
asked, “was there ever any domination which did not appear natural to those who
possessed it?”\(^7\) This question for Mill spoke to the “fanaticism with which men cling
to the theories that justify their passions and legitimate their personal interest”\(^7\)
and the fact that “power holds a smoother language, and whomsoever it oppresses, always
pretends to do so for their own good.”\(^7\) One could not better describe the nature and
effect of the consequentialism-cum-charity ideological block over the hard realities
of unparenthood.

Mill’s analysis of negative structures impacting women in the nineteenth century
is almost perfectly transferable to the condition of the unparented in our time. In the
case of the unparented, as well as that of the women Mill had in mind, legal and
social apparatuses are reinforced by the combination of impossibility of collective
action caused by the dispersion of its directly interested agents with the proximity to
which these agents are kept to the micro agents—in the case of adoption, the many
putative advocates and protectors of children that turn out to defend their
objectification and instrumentalization—of negative structures of violations of the
human right to be adopted.

\(^7\) Id. at 187.
\(^7\) Id.
\(^7\) Id. at 13.
\(^7\) Id. at 20–21.
\(^7\) Id. at 21.
\(^7\) Id. at 92.
Positive structures of violation have the same effect by other means. The central point here is that positive structures act through the diffuse agency of macro social arrangements and legal frameworks to proactively and directly violate the right of the unparented young to be adopted. This causal force of positive structures are already figured prominently, if in a rustic and underdeveloped form, in Plato, as the initial exchanges in *The Laws* so well illustrate.79 In the operation of positive structures—such as the scheme of central authorities in international adoption or UNICEF’s overt and behind-the-curtains campaign for adoption moratoria—the impersonal, often inescapable and stealthy causal complexes set in place and urged forward by these structures lead to the violation of the rights of millions to grow in a good family. As much as negative structures, positive ones also attract an ideological counterpart in the form of mechanisms of rationalization, legitimation, and veiling.

Deontological reason is then urged to break through the ideological fog and shed light on the material and ideational bases of negative and positive structures of violations of the right to be adopted. Only those prepared to pay an immense intellectual price can be oblivious to the pervasiveness of active impersonal social mechanisms of exclusion, exploitation, immiseration, and humiliation of the unparented. Unfortunately, there are too many in the field of adoption who are willing to pay this price.

**V. CONCLUSION**

We all come to the world embodied—that is, as biological structures. There is of course a deep kind of vulnerability that comes with that, to which individuals and societies respond by placing the bare minimum conditions for life maintenance at the top of their priorities. That conceded, it is essential to equally understand that biological embodiment does not exhaust who and what we are; that there are human endowments that can and should be protected, nurtured, and directed to life purposes. When that happens, individuals and our species as a whole experience the kind of transcendence upon which the meaning of each person’s life depends. Because of their importance in placing love at the center of the experience of both biological and existential vulnerability, it is understandable why good families occupy a privileged position in the biographical as well as the sociological dimensions of the life of the species.

The ubiquity, therefore, of the problem of unparented young and the universality of the human right of the unparented to grow as daughter or son in a good family requires nothing less than a truly cosmopolitan response. Unparented children and prospective parents around the world should meet, regardless of country, race, or culture. Global adoption is the preeminent institutional mechanism for making this happen.

79. Plato, *The Laws* 13 (Trevor J. Saunders trans., Penguin Books 2004) (350 B.C.) (“At every stage the lawgiver should supervise his people, and confer suitable marks of honour or disgrace. Whenever they associate with each other, he should observe their pains, pleasures and desires, and watch their passions in all their intensity; he must use the laws themselves as instruments for the proper distribution of praise and blame.”).
Full adoption (or permanent guardianship with de facto adoption where domestic laws do not allow close relatives to formally adopt) by extended family is usually better than other types of adoption, provided that the general conditions for adoption are met and it builds on existing trust, loyalty, care, and love. But the existential limbo of uncertain status in which children often find themselves in extended family or community placement is no substitute for real parent-child relationships. All too often, the placement of children with extended family or with the community means little more than free domestic labor under parental-like authority. This is no substitute for the experience of growing up with loving and caring parents.

In terms of law, morality, and policy, it makes a world of difference to approach the humanitarian crisis of global unparenthood from a discerning deontological perspective rather than from the consequentialism-cum-charity characteristic of the dominant adoption paradigm, which turns the unparented into instrumentalities of blood, race, culture, heritage, or politics. The international human rights of the child reject the avoidable vulnerability, suffering, regimentation, and isolation of children without parents. Because the effects of institutionalization, abandonment, and second-class belonging generally prevent children from fully enjoying most other rights later in life, the human right to grow in a family is a pre-condition for the enjoyment of most other human rights.

Unparented children are among the most discrete and insular minorities anywhere, constantly subjected to the orphanage-to-asylum pipeline. Until they find a good family of their own, the unparented live in crushing vulnerability and dependence upon their respective states and the institutions and organizations that claim to speak for them while holding fast to objectifying and instrumentalizing preconceptions and prejudices. When loved by and in a good family, objective vulnerability is subjectively experienced by the young as care, protection, trust, and affection. This subjective experience speaks to the inherent dignity of every child as a person and provides the best environment for the expansion and development of the potentials with which a child was initially endowed.

Deontological adoption offers a conception of adoption consistent with the promotion of the dignity and flourishing potential of the unparented as a human right to be adopted. Thus far, it has had a greater impact on the rhetoric of the dominant adoption consequentialism paradigm than on concrete adoption laws and policies. The only solace is to know that to the extent idealistic reason has a place in the future of humanity, deontological adoption will prevail and the young unparented everywhere will have a good chance to overcome imposed barriers of borders, ethnicity, race, culture, and religion in order to find a home and be part of a family. To have to wait for that is a tragedy, but to know that the cosmopolitan right of the unparented to be adopted will become reality one day is no small solace.