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International Adoption: A Way Forward

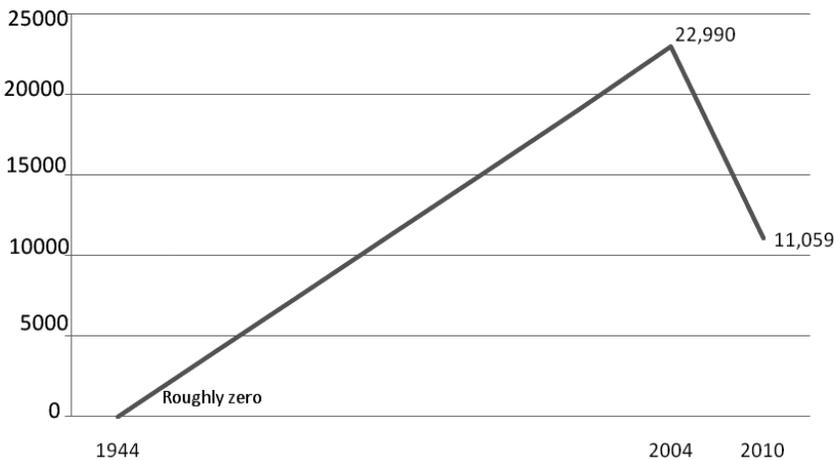
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INTERNATIONAL ADOPTION: A WAY FORWARD

This issue grows out of a conference on international adoption entitled *Permanency for Children*, held at New York Law School on March 5, 2010.¹ The speakers addressed issues posed by the current situation in international adoption, and have expanded on their ideas in the articles presented here. Together, these articles make an important contribution to the literature on international adoption, and provide new ideas as to how to move forward to shape policy in this area so as to better advance children's rights and interests.

International adoption is in turmoil. Those who believe in such adoption as an institution that provides unparented children with the nurturing, permanent homes they need often describe this as a crisis. They point to the dramatic reduction in the number of children served, and to the fact that even those children now being placed are generally older and have suffered more damage, putting them at risk for lifelong problems. The number of international adoptions has fallen by more than half in the last six years, after steadily rising during the prior six decades. The following chart illustrates these contrasting trends for the United States, which is responsible for

**INTERNATIONAL ADOPTION TREND 1944-2010:
United States Immigrant Orphan Statistics**



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1. Video of this conference is available online. *2010 Adoption Policy Conference*, N.Y.L. SCH., http://www.nyls.edu/centers/harlan_scholar_centers/justice_action_center/annual_conferences/adoption_conference/seventh_annual_conference (last visited Mar. 19, 2011). This introduction is based on articles written by various presenters at the conference, including myself. Many of my ideas contained herein are discussed at greater length, and relevant sources documented, in: ELIZABETH BARTHOLET, NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE (1999); Elizabeth Bartholet, *International Adoption: The Human Rights Position*, 1 GLOBAL POL'Y 91 (2010) [hereinafter Bartholet, *The Human Rights Position*]; Elizabeth Bartholet, *International Adoption: The Child's Story*, 24 GA. ST. U. L. REV. 333 (2008) [hereinafter Bartholet, *The Child's Story*]; Elizabeth Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 BUFF. HUM. RTS. L. REV. 151 (2007) [hereinafter Bartholet, *Thoughts on the Human Rights Issues*].

roughly half of the world's total number of international adoptions.² Critics of international adoption often describe the current situation as one characterized by widespread corruption and abuse, calling for significant new restrictive regulations.

The articles in this issue provide important new support for international adoption as an appropriate way to serve children's rights and interests. They also provide important information on issues of corruption and abuse in this area, and about ways to address any such problems without penalizing unparented children by denying them the homes they need.

Paulo Barrozo's article takes on the ambitious and important task of establishing the jurisprudential basis for finding that children have basic human rights to the homes that often can be found only through international adoption.³ He notes that while scholars have begun to articulate the child's right to international adoption in human rights terms, they have yet to adequately develop the underlying theory.⁴ This, he says, means that international adoption has been unduly vulnerable to attack by those approaching the issues from a consequentialist rather than a deontological perspective—those who argue for restrictions on such adoption in order to serve apparent interests of parents, communities, and nations. “[I]n the context of adoption, [consequentialism] 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.”⁵ Barrozo talks of how post-colonial thinking conceptualizes children as “race, religion, or cultural heritage carriers,” leading to their imprisonment in institutions and inadequate homes.⁶ He shows how differently policy makers would approach adoption abuse issues if they took this human rights perspective, and condemns moratoria and other severe restrictions on international adoption as inconsistent with children's fundamental rights to family.

Barrozo argues persuasively for the fundamental quality of the child's right to family, the “pre-condition for the enjoyment of most other human rights.”⁷ This right to family means the kind of authentic, loving parenting that adoption generally provides, but that foster and institutional care are generally incapable of providing.

2. International adoption was extremely rare until after World War II. Richard R. Carlson, *Transnational Adoption of Children*, 23 TULSA L.J. 317, 318 n.25; Elizabeth Bartholet & Joan H. Hollinger, *International Adoption Overview*, in ADOPTION LAW AND PRACTICE § 10.02 [1], 10.05 to 10.06 (Joan H. Hollinger ed., 2010). The figure for 2004 is from *Adoptions to the United States*, U.S. DEP'T. OF STATE, OFFICE OF CHILDREN'S ISSUES, http://www.adoption.state.gov/news/total_chart.html. The figure for 2010 is from the U.S. DEP'T. OF STATE, FY 2010 ANNUAL REPORT ON INTERCOUNTRY ADOPTIONS (2010) [hereinafter 2010 ANNUAL REPORT], available at http://adoption.state.gov/pdf/fy2010_annual_report.pdf.

3. Paulo Barrozo, *Finding Home in the World: A Deontological Theory of the Right to be Adopted*, 55 N.Y.L. SCH. L. REV. 701 (2010–11).

4. See generally *id.*

5. *Id.* at 710 (footnote omitted).

6. *Id.* at 725.

7. *Id.* at 731.

The right to family thus leads to the right to adoption for unparented children, and the right to international adoption because, clearly, there are not nearly enough in-country adoptive homes for all those in need:

The ubiquity, therefore, of the problem of unparented young and the universality of the human right of the unparented to grow . . . 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.⁸

Richard Carlson's article also does an important service by systematically taking on all the important arguments made by critics of international adoption, analyzing them carefully and rationally in light of the actual facts.⁹ His overall conclusion is that while international adoption has experienced the kind of malfeasance and scandal that periodically occur in domestic adoption, "adoption—whether domestic or intercountry—is not inherently flawed. For all the risks it might pose in any individual case, it remains the best way to match many thousands of children in need with prospective parents."¹⁰ In response to those who claim that there are limited numbers of true "orphans," and thus argue that there is no real need for international adoption, Carlson analyzes the facts and demonstrates persuasively that there are clearly many more unparented children in need of adoption than are currently being served.

Carlson classifies the critics of international adoption as either "cynical critics" who oppose such adoption in principle, or "moderate critics" who generally support intercountry adoption in principle so long as in-country options are preferred, but are concerned about the abuses they say taint the international adoption system.¹¹ He then systematically analyzes and significantly debunks all the arguments made by both categories of critics. He positions himself between the moderate critics and his third group, the "vigorous advocates" of international adoption, and argues for "careful regulation" of such adoption to address the real problems that exist, and against the over-regulation that he says is counterproductive and harmful to children.¹²

In analyzing the range of arguments made by the "cynical critics," Carlson looks at those who take the extreme position of advocating an absolute ban on international adoption. He finds no basis for their claims that international adoption is characterized by widespread trafficking, baby selling, and exploitation.¹³ He notes that many of these critics engage in false stereotypes and "sensational but false or exaggerated

8. *Id.* at 730.

9. Richard Carlson, *Seeking the Better Interests of Children with a New International Law of Adoption*, 55 N.Y.L. SCH. L. REV. 733 (2010–11).

10. *Id.* at 734.

11. *Id.* at 738.

12. *Id.* at 778.

13. *Id.* at 741–46.

charges.”¹⁴ Carlson carefully analyzes the arguments made by other “cynical critics,” arguments that international adoption harms the children adopted, their birth parents, the children left behind, and the nation. He demonstrates that there is simply not much to these claims, and nothing that would justify severe restrictions on international adoption, such as strong preferences for keeping children in-country, that result in their placement in institutions and foster care.¹⁵

In looking at the arguments made by the “moderate critics,” Carlson states that these critics generally “err in favor of more stringent regulation or moratoria to prevent illegal or unethical practices, even if this means suspending or severely curtailing the opportunity for perfectly legal adoptions.”¹⁶ Analyzing their claims regarding the prevalence of corruption, improper financial inducements, and misrepresentations or fraud, he concludes that although such problems exist, varying in degree by country, overall they are “not that bad” and do not justify the kinds of severe regulatory restrictions, including moratoria, often proposed as solutions.¹⁷

Carlson urges consideration of the costs of regulation in terms of, for example, increased financial barriers for adoptive parents and increased incentives to evade regulations. He argues that “overzealous and misplaced regulatory response”¹⁸ may breed more corruption: “As more nations prohibit intercountry adoption or raise costs and regulatory hurdles, the cost of adoption soars upward, making it even more likely that there *will* be corruption in an ever smaller number of nations that do permit intercountry adoption.”¹⁹ He cautions against moratoria, noting that domestic adoption in the United States continues despite the inevitable scandals and abuses over the years, “because the good that adoption offers for all the parties exceeds the risks.”²⁰

Carlson calls for international law reforms that would take important steps beyond the Convention on the Rights of the Child²¹ and the Hague Convention on Intercountry Adoption²² to *require* nations to authorize both domestic and international adoption, and to “discourage hard national preferences.”²³ International law should, he says, “demand early family placement by any means, including

14. *Id.* at 745.

15. *Id.* at 741–46.

16. *Id.* at 764.

17. *Id.* at 765.

18. *Id.* at 771.

19. *Id.*

20. *Id.* at 769.

21. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

22. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *concluded* May 29, 1993, 1870 U.N.T.S. 167 (entered into force May 1, 1995) [hereinafter Hague Convention].

23. Carlson, *supra* note 9, at 778.

intercountry adoption, so that children do not wait in institutions to the point of physical and emotional harm while authorities search for local parents.”²⁴

My own article argues that the “permanency” referred to in the conference title “is not enough,” because children need the true, nurturing parenting provided by adoption that is not provided by most foster care or by institutional care, even when they are “permanent.”²⁵ This is an important issue in the international adoption debate: the Convention on the Rights of the Child provides a preference for in-country foster care and other “suitable” in-country care over out-of-country adoption;²⁶ UNICEF and other critics of international adoption generally support in-country over out-of-country options for children even when as a practical matter this relegates them to institutional care.

I have in previous writings taken the position that international adoption generally serves the rights and interests of unparented children better than the available alternatives, that such adoption should be understood as a fundamental human right, and that there is no justification for the kinds of restrictions on such adoption promoted by its critics—restrictions such as moratoria, elimination of private intermediaries, and holding periods to promote in-country over out-of-country placements.²⁷

Here, I focus simply on the kind of strategic thinking that I believe should guide supporters of international adoption. I emphasize the importance of recognizing that such adoption is currently in crisis, while simultaneously maintaining hope for its future. I state that those opposing such adoption “are speaking a language of a past in which it was common to see people as essentially defined by their race and national origin,”²⁸ arguing that globalization and legal developments like the Multiethnic Placement Act²⁹ indicate that international adoption should find new acceptance in the future.

I emphasize the importance of those supporting international adoption working together and reaching out to make new allies, given the power of the opposing forces. But I simultaneously emphasize the importance of standing up for the core principles I think should guide policy rather than compromising simply because the opposition is so powerful.

Accordingly, I urge rejection of laws like the draft Families for Orphans Act, promoted by some who see themselves as supporters of international adoption. That Act is one among many attempts to appease the critics of international adoption by agreeing to positions that are harmful to children, such as powerful preferences for

24. *Id.*

25. Elizabeth Bartholet, *Permanency Is Not Enough: Children Need the Nurturing Parents Found in International Adoption*, 55 N.Y.L. SCH. L. REV. 781 (2010–11).

26. CRC, *supra* note 21.

27. *See* sources cited *supra* note 1.

28. Bartholet, *supra* note 25, at 783.

29. Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, §§ 551–554, 108 Stat. 4056 (codified as amended at 42 U.S.C. § 1996b (2000)).

in-country placement and severe regulatory restrictions, which lock children into institutions and deny them families. I argue that supporters of international adoption should stand strong for the children who cannot fight for themselves. They should stand strong for what they know is right. They should reject the false romanticism characterizing birth and national heritage rhetoric however many self-styled children's rights organizations promote that rhetoric. They should fight to liberate children from the intolerable conditions characterizing institutional care, and to place them as early in life as possible in adoption, whether domestic or international.³⁰

Whitney Reitz's article is a powerful plea from someone who has seen children in desperate conditions and taken important action to help those children get the families they need, despite the criticism that action would inevitably engender.³¹ Reitz has served the U.S. government in a number of different positions, including as an officer of the U.S. Citizenship and Immigration Services, where she played an important role in bringing many Haitian orphans into the United States for adoption on an expedited basis during the immediate aftermath of the disastrous earthquake of January 12, 2010. This Special Humanitarian Parole Program for Haitian Orphans came under predictable attack from the critics of international adoption, who made arguments about the risk of depriving children of their heritage and of moving too fast to place children with adoptive parents. Reitz speaks about the issues based both on her experience on the ground, her experience implementing this Program, her two decades of experience with immigration and humanitarian relief, as well as her experience as the mother of three.

Reitz finds it "hard to understand why anyone would argue that we should not bring foreign children into the United States Human suffering abounds—self-inflicted and otherwise. We are all in need of help from each other."³² She proudly defends the Haitian Humanitarian Parole Program, which brought roughly one thousand orphans who had previously identified adoptive families in the United States "out of harm's way quickly" when the normal process could have taken years, calling her work as part of this Program "the privilege of my career."³³

Reitz challenges the heritage claims made by the Program's critics, arguing that

the "authentic culture" argument really doesn't hold water. Is authentic malnutrition and neglect really better than a loving home in another country? Is an authentic orphanage or institution really a better plan than a family? . . . I cannot agree that keeping a child institutionalized or in a refugee camp or otherwise warehoused somewhere in the country of origin can ever be a better answer than a loving, permanent home.³⁴

30. See generally Barthelet, *supra* note 25.

31. Whitney A. Reitz, *Reflections on the Special Humanitarian Parole Program for Haitian Orphans*, 55 N.Y.L. SCH. L. REV. 791 (2010–11).

32. *Id.* at 792.

33. *Id.* at 793.

34. *Id.* at 796.

She challenges the claims that expediting these cases was wrong because it risked making mistakes or wrongfully separating some children from possible family connections. She talks of the delays typical of policies governing refugees, of the “Lost Boys of Sudan” who, after surviving horrendous experiences, finally arrived in a refugee camp in Kenya—and were still there ten years later because family-tracing efforts had not been completed.³⁵ She asks: “Too fast? Can we discuss too slow? When is it too slow, in terms of removing children from situations like these and letting them be part of families?”³⁶

Reitz urges that this Program be seen as a model for future humanitarian responses. “The best of what is possible in America . . . can become part of our response to tragedy going forward [W]e need to allow the fences to fall and work together as human beings responding to the crying need of our fellow creatures.”³⁷

In a world of government bureaucrats who focus almost entirely on the risks allegedly involved in moving children out of disastrous situations into adoptive homes—including the risk that they will be accused of wrongful action—Reitz’s article is an inspiring example of one bureaucrat’s courage to act to promote children’s rights and interests.

The final two articles discuss laws governing adoption illegalities. One deals with criminal statutes enabling the prosecution of those responsible for such illegalities, and the other deals with laws governing the status of internationally adopted children whose adoptions are found to have been illegal in some respect.

The first, co-authored by Katie Rasor, Richard M. Rothblatt, Elizabeth A. Russo, and Julie A. Turner, provides information about existing federal laws in the United States that could be used to prosecute those who violate international adoption law.³⁸ These include primarily the relatively recent Intercountry Adoption Act (IAA),³⁹ which is applicable to all Hague Convention adoptions, as well as the Foreign Corrupt Practices Act,⁴⁰ the Travel Act,⁴¹ and the visa fraud statutes.⁴² The authors also analyze a variety of other federal statutes that might be applicable to certain aspects of illegal adoption transactions, as well as laws they see as less likely to be useful.

35. *Id.*

36. *Id.* at 797.

37. *Id.* at 798.

38. Katie Rasor, Richard M. Rothblatt, Elizabeth A. Russo & Julie A. Turner, *Imperfect Remedies: The Arsenal of Criminal Statutes Available to Prosecute International Adoption Fraud in the United States*, 55 N.Y.L. SCH. L. REV. 801 (2010–11).

39. 42 U.S.C. § 14901 (2006).

40. 15 U.S.C. § 78 (2006).

41. 18 U.S.C. § 1952 (2006).

42. *Id.* §§ 1546, 1001, 1028.

It is important to know that such laws exist and can be used to penalize those who commit serious adoption abuses. Policy makers now commonly act as if the primary response to international adoption abuses should be to ban such adoption altogether through temporary or permanent moratoria, or through restrictive regulation that enormously limits the numbers of adoptions, such as the prohibition on private intermediaries, which has effectively shut down international adoption through most of Central and South America.⁴³ I have characterized these kinds of responses to adoption abuses as punishing unparented children by requiring their ongoing incarceration in institutions, when it is the law violators who should be punished.

The Rasor et al. article also recommends expansion of the arsenal of criminal law tools available by amending the IAA and by making more aggressive use of other applicable criminal statutes. These recommendations are based on dubious claims that international adoption is rife with serious fraud and other significantly harmful illegal conduct. Thus, the authors say that children from third-world countries “are frequently stolen, bought, or kidnapped . . . and subsequently processed through the adoption system as orphans,”⁴⁴ that illegal intercountry adoption “is a prevalent and serious problem,”⁴⁵ and that despite the “regrettably common” illegalities, “criminal prosecution of those involved is rare.”⁴⁶

There is a debate about the extent to which illegal action occurs in international adoption and about how serious such illegalities are in terms of posing actual harm to children, birth parents, or others. Some critics of international adoption make the kinds of claims that Rasor et al. make. However others, including myself, point out that these claims are unproven and argue that they are in fact false. We say that while some illegalities of course exist here as in all areas of human conduct, there is no persuasive evidence that serious law violations causing significant harm are widespread.⁴⁷ Richard Carlson’s article in this issue provides a thorough analysis of the various claims made by critics of international adoption, the likely extent of illegal conduct, and the level of seriousness of such conduct. Carlson comes to a different and, in my opinion, much more persuasive conclusion than Rasor et al., finding no reason to believe that corruption, trafficking, fraud, or other serious abuses are prevalent. He argues, as I have in previous articles, 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

43. See Barcholet, *The Child’s Story*, *supra* note 1, at 333, 342.

44. See Rasor et al., *supra* note 38, at 802.

45. *Id.* at 822.

46. *Id.* at 803.

47. See, e.g., Barcholet, *Thoughts on the Human Rights Issue*, *supra* note 1, at 185–91; Barcholet, *The Child’s Story*, *supra* note 1, at 371–76; Barcholet, *The Human Rights Position*, *supra* note 1, at 96–97; see also Carlson, *supra* note 9.

by the positive impact of international adoption on children as well as their families and countries of origin.⁴⁸

Rasor et al. rely almost entirely for their claims regarding the extensive nature of serious adoption abuses on a single article by a single academic, David Smolin, who, as Carlson indicates in his article in this issue, is known as one of the most extreme critics of international adoption. Carlson addresses Smolin's arguments in some detail.⁴⁹

Rasor et al. also rely on documents related to "trafficking in persons" including "women and children," which relate to the admittedly large problem of selling human beings into slavery, prostitution, and other situations of outrageous exploitation—documents which prove nothing about the extent to which international adoption might involve illegal conduct.⁵⁰ The authors cite to no personal or professional experience with international adoption informing their opinions as to the prevalence of adoption abuses.

The authors' conclusions that prosecutions have been too rare, and that existing criminal laws are too weak, depend on their view that serious adoption abuses are widespread. However, prosecutions may be rare simply because persuasive evidence of serious wrongdoing is hard to come by, and that may be because there are not large numbers of cases in which such wrongdoing is occurring involving persons covered by U.S. law. It may also be true that prosecutors should make greater use of existing law, but there is no way of knowing this without a serious analysis of the level of serious wrongdoing and the approach prosecutors are taking in cases reported to them or investigated by them. Without such evidence, I find no basis for concluding that current laws are inadequate to the task of penalizing serious adoption abuses. The authors argue that recent prosecutions of illegal intercountry adoption have resulted in plea agreements with penalties "too minimal to serve as effective deterrents,"⁵¹ with no discussion of who it is that found those penalties inadequate or why. And the authors admit that the IAA, the most directly applicable statute, which clearly criminalizes the kind of fraud and financial inducements that most see as the core adoption abuses, has not yet been utilized by prosecutors.⁵²

Rasor et al. imply that more criminal restrictions are inevitably a positive thing, helping to stamp out more adoption abuses.⁵³ But as I have written in previous articles, restrictions on adoption have many costs, including, for example, limiting the number of children who receive nurturing adoptive homes, as well as delaying adoption and thus increasing the damage to children waiting for placement.⁵⁴ Carlson

48. See generally Carlson, *supra* note 9; Bartholet, *Thoughts on the Human Rights Issues*, *supra* note 1, at 151, 153 n.5 & 185–91; Bartholet, *The Human Rights Position*, *supra* note 1, at 96–97.

49. See Carlson, *supra* note 9, at 756–59.

50. See Rasor et al., *supra* note 38, at 803 n.15.

51. *Id.* at 822.

52. *Id.*

53. *Id.*

54. See, e.g., Bartholet, *The Child's Story*, *supra* note 1, at 371–76; Bartholet, *Thoughts on the Human Rights Issues*, *supra* note 1, at 185–91.

discusses some of the costs, noting that increased restrictive regulation governing adoption will make such adoption more expensive, thus limiting the homes available to children in need, and that it even risks increasing serious abuses by providing new incentives to avoid the ever-more-costly legitimate adoption system altogether.⁵⁵ These costs must be weighed in the balance by policy makers along with the benefits of adoption rather than imposing new restrictions based solely on the costs of illegal adoption abuses.

The second article focused on adoption illegalities is by Elena Schwieger.⁵⁶ She analyzes the laws governing the status of internationally adopted children when legal or procedural irregularities have occurred in the process of their adoptions. She notes that while some law violations are intentional, many are unintentional, resulting from the complex legal framework and myriad of requirements governing such adoptions.⁵⁷ The article indicates how different kinds of irregularities would impact an adopted child's legal status with regard to adoption, citizenship, and immigration under the provisions of applicable international treaties and U.S. laws and regulations.⁵⁸ The article concludes that these legal regimes are significantly inconsistent, and urges that policy makers take action to provide clearer guidance.⁵⁹

This article is helpful in clarifying the legal situation. But it should not be read to indicate that large numbers of international adoptions are at risk of successful legal challenges resulting in adoption disruption, with the children ordered to be returned to their country of origin. Such disruptions are extraordinarily rare, both in the domestic and international context, and generally occur only in cases of very serious fraud or other violations of core adoption law principles.⁶⁰ Nonetheless, this article makes a good case for law and policy reform designed to provide stronger protection for internationally adopted children's status in terms of adoption, citizenship, and immigration in the overwhelming majority of cases in which no serious misconduct has occurred.

It is interesting that at this moment of crisis for international adoption, with the numbers having dropped so precipitously over the past six years, several of these articles indicate that such adoption is the likely way of the future. Paulo Barrozo writes:

55. See Carlson, *supra* note 9, at 778.

56. Elena Schwieger, *Getting to Stay: Clarifying Legal Treatment of Improper Adoptions*, 55 N.Y.L. SCH. L. REV. 825 (2010–11).

57. See *id.* at 826.

58. See generally *id.*

59. See *id.* at 850–51.

60. For international adoptions, see, e.g., 2010 ANNUAL REPORT, *supra* note 2, indicating no reports of disruptions in Hague Convention adoptions (i.e., interruptions of placement during the post-placement but pre-adoption period), and indicating a total of twenty-two disruptions and dissolutions (dissolving of final adoption), or .002% for the 11,059 FY 2010 adoptions. For domestic adoptions, see generally ROBERT H. MNOOKIN & D. KELLY WEISBERG, CHILD, FAMILY AND STATE 507–10 (5th ed. 2005), and ADOPTION LAW AND PRACTICE, *supra* note 2, at §§ 8.01 and 8.02, both describing the limited circumstances triggering such disruptions.

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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.⁶¹

I also write that “there is every reason to believe that international adoption will be embraced in the future as an appropriate way to find homes for children in need,” pointing to an array of legal, factual, and attitudinal changes in society.⁶² Richard Carlson writes that the current crisis “is not the end for intercountry adoption, it is a transition.”⁶³ He explains the current situation as the result of such adoption having evolved from its limited early beginnings to become “a highly visible global phenomenon . . . and therefore an attractive target for a wider circle” of critics.⁶⁴ He implies that with appropriate reform curbing the most abusive practices, and mandating affirmative endorsement of such adoption, it can take its proper place providing good homes to many children in need.⁶⁵

International adoption may have a bright future in which it will serve the needs of many, many more children than it does today, and indeed many, many more than it did at its peak. This does seem likely given many trends in today’s world, including increasing globalization, increasing emigration and immigration, increasing intermarriage among various racial, ethnic, and national groups, and increasing recognition, at least on a rhetorical level, of the importance of children’s rights. This would of course be a wonderful thing for future children because we can, sadly, predict that this future world will continue to feature many unparented children. But if this is the future, then we should get there sooner rather than later. John Kerry famously asked, in his testimony to the Senate Foreign Relations Committee on April 23, 1971: “[H]ow do you ask a man to be the last man to die in Vietnam? How do you ask a man to be the last man to die for a mistake?”⁶⁶ How do we ask children to stay in institutions, to give up their opportunity to grow up in a loving family, so that they can in turn become adults capable of experiencing the other joys of life, for a cause that the world will end up concluding makes no sense?

If we will in the future recognize that unparented children should be seen as citizens of the world, with rights to be parented by the first qualified parents that

61. Barrozo, *supra* note 3, at 731.

62. Bartholet, *supra* note 25, at 783.

63. Carlson, *supra* note 9, at 734.

64. *Id.* (footnote omitted).

65. *See generally id.*

66. John Kerry, Testimony to the U.S. Senate Foreign Relations Committee, Vietnam Veterans Against the War Statement (Apr. 23, 1971), *available at* http://www.pbs.org/wgbh/amex/vietnam/psources/ps_against.html.

step forward, regardless of their race, ethnicity, and nationality, then we are sacrificing existing children for absolutely no good reason.