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The Child as a Person

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A response to 'International Adoption: The Human Rights Position'
Elizabeth Bartholet*

Response to Article

The child is objectified and commodified when international adoption is seen through the lenses of border policing, protectionism, national pride and cultural fetishism.

Unfortunately, this is the approach to international adoption embraced and promoted by the Hague Convention on Intercountry Adoption, the adoption laws of most of its state parties, the policies of UNICEF and the attitudes of many childcare and advocacy groups around the world. To disapprove of their views is not to question their good intentions or seriousness of purpose. The problem, in fact, is deeper, and ultimately rests on muddled conceptions of human rights and the personhood of children.

A few examples will suffice to illustrate the point and set the record straight. Conspicuously in Article 1, the Hague Convention announces what will be the emphasis throughout the treaty, 'to prevent the abduction, the sale of, or traffic in children'. UNICEF's policy statements on international adoption tend to reinforce this approach to international adoption, denouncing 'the growth of an industry around adoption, where profit, rather than the best interests of children, takes centre stage'.¹

Unicef's *Children on the Brink 2004: A Joint Report of New Orphan Estimates and a Framework for Action* documents the shocking number of 16,200,000 double orphans in Africa, Asia and Latin America alone. Despite that, the 46-page report mentions adoption/adoptive just twice, and then only in the context of makeshift or half-hearted local-only adoption options: 'There is a pressing need to ensure that family based 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' (p. 15); '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' (p. 20). In the same report, institu-

tionalization is referred to euphemistically as 'Center for Orphaned Children', 'Community School', 'Day Care Center', 'Center for Children' and the like.

The historical lineage of the position taken by the Hague Convention and UNICEF is no mystery. From as early as the 15th century, struggles to form and consolidate nation states turned into efforts to create large and replenishable armies and working forces. From the perspective of emerging nation states, the first and most precious natural resource was their population, and the highest policy priority 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'. This view became part of the policy DNA of nation states and, after the Second World War, of their international organization creatures. By the second part of the 20th century, population management ideologies were compounded by the inability or unwillingness to transcend the resilience of localism and culturalism against clear commitment to the universalism of the human rights of the child as a person. No one should think it is easy to honor mandates as important as the individual rights of the child when deeply torn between contradicting values and rationales.

On the other hand, in many ways it has never been better to be a child than in our time. The evolution of the legal and moral status of the child has, however, been a slow one. It took millennia for children to progress from being little more than labor and transactional resource for families and reserve and replacement economic and military resource for states. Later, children came to be seen by post-colonial sensibilities as culture carriers. In most parts of the world, only relatively recently have children achieved the legal status of object of protection on the part of families, societies and states. 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

*E. Bartholet, (2010) 'International Adoption: The Human Rights Position', *Global Policy*, Vol. 1, No. 1, pp. 91-100. DOI: 10.1111/j.1758-5899.2009.00001.x

child as a person and subject of human rights that is embodied in the policies of the Hague Convention and UNICEF.

Against this historical background and our present circumstances, Bartholet's article is a critical and constructive call for action in favor of a true commitment to the child as a subject of human rights.

Good jurists are like this. Give them a problem, and they will think their way through a principle under which to address it. Accept their principle, and they will hold you to it, boiling the principle down to its detailed institutional entailments. Bartholet is a good jurist. The problem here is clear: sound social, developmental and biomedical research prove with rare consensus and an abundance of cohering evidence that no solution to the problem of unparenthood compares favorably to growing up as daughters or sons in adoptive families. The principle Bartholet offers is to consider each and every child as an independent and fully fledged subject of human rights – as a person. The institutional entailment of this principle, she continues, is straightforward: states and international organizations are under an international human rights obligation proactively to promote and facilitate urgent adoption. In light of the devastating effects of institutionalization and other forms of crushing dependence and uncertainty, states should concurrently plan both for domestic and for transborder adoption options, proceeding with whichever offers a nurturing family for the unparented child first.

I agree. The ubiquity of the problem of unparenthood and the universality of the human rights principle to grow as a daughter or son in a 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. International adoption is an essential component of this response.

Now, let me make it clear, true adoption (or permanent guardianship cum de facto adoption where the domestic law does not allow close relatives formally to adopt) by extended family is 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, placement of children with extended family or community means little more than unpaid and unregulated domestic labor under parental-like authority. This is no substitute for the experience of unconditional love growing up with loving and caring parents.

A staggering number of children are either institutionalized, condemned to lives on the streets or to live as accessories to families or communities that will never fully and unconditionally welcome them as sons and daughters. Their fate should not depend on a news-making calamity like the recent Haitian earthquake which led that country to cooperate with other countries to expedite adoption of unparented children. And it will not if we heed the diagnosis and proposals Bartholet advances in her article.

In terms of law, morality and policy, it makes a world of difference to approach the humanitarian crisis of global unparenthood from a discerning human rights perspective rather than from the perspective of populational management and cultural reproduction. Bartholet persuasively argues that we take the first perspective. It is illegal, a moral disgrace and a policy disaster to do otherwise.

The international human rights of the child reject the suffering, regimentation and isolation of children without parents. Because the effects of institutionalization, abandonment and second-class belonging generally prevent children from fully enjoying other rights later in life, the human right to grow in a family is a precondition for the enjoyment of most other human rights.

Unparented children are the most discrete and insular minority of any country, often subjected to the brutal logics of the orphanage-to-asylum pipelines. Until they find a nurturing family, their predicament is one of crushing vulnerability and dependence upon their respective states and the institutions that claim to speak for them while holding fast to objectifying and commodifying preconceptions and prejudices. The stakes in Bartholet's argument could not be higher. And she is right.

Note

1. http://www.unicef.org/media/media_41918.html [accessed 23 January 2010].