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NEGATIVE BRIEF: Adoption

By Vance Trefethen

**This brief can be used generically against any AFF case that increases adoption of children from the Middle East. NEG will argue that international adoptions are bad, not good, and therefore it’s a bad thing to try to increase them.**

OPENING QUOTES / NEGATIVE PHILOSOPHY / REVERSE SAD STORIES TOLD BY AFF

International adoption isn’t really about saving children. If we cared about poor kids, we’d just help the poor families

Prof. David Smolin 2007. (an adoptive father; also Professor of Law, Cumberland School of Law, Samford Univ; Director, Center for Biotechnology, Law and Ethics; J.D. 1986, Univ of Cincinnati College of Law; B.A. 1980 New College of the Univ of South Florida) 2007 VERMONT LAW REVIEW, CHILD LAUNDERING AS EXPLOITATION: APPLYING ANTI-TRAFFICKING NORMS TO INTERCOUNTRY ADOPTION UNDER THE COMING HAGUE REGIME <http://www.humantrafficking.org/uploads/publications/Smolinadoption.exploitationend.doc>

The expectation in the United States has been that such birth parents should be so overwhelmed with gratitude to the individual for giving the child a “better life” that they would indeed feel gratitude rather than resentment. It may be that some birth parents in such situations do feel and express these sentiments. The concern for the child, the hope that the child will have greater opportunities than the parent, and the crushing sense of hopelessness that such poverty can bring may indeed come into play. Victims of exploitation sometimes are so oppressed that they feel grateful even to those who exploit them. Objectively speaking, however, the decision to intervene in such situations by spending $30,000 for a Guatemalan adoption, rather than $50 for a one-time humanitarian project—or $240 per year, per family for a long term economic development project—is clearly driven primarily by the desire of the adoptive parents for children and the intermediaries for profits. In a very real sense, the combined poverty and fecundity of the birth family are being exploited for the benefit of others, to the harm of the birth family. The fact that the birth family makes a “choice” in some such situations is overshadowed by the choice of interventions made by those who select a much more expensive adoption over a much less expensive intervention that would have kept the birth family intact.

Adoption is not necessarily “good” – we need an attitude adjustment

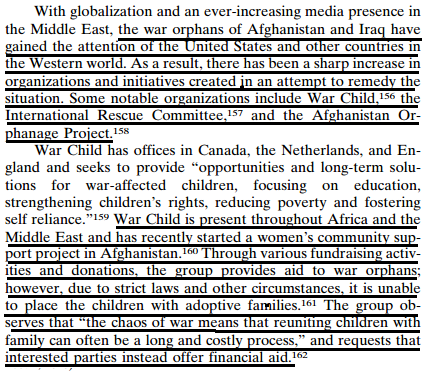
Prof. David Smolin 2007. (an adoptive father; also Professor of Law, Cumberland School of Law, Samford University; Director, Center for Biotechnology, Law and Ethics; J.D. 1986, University of Cincinnati College of Law; B.A. 1980 New College of the University of South Florida) 2007 VERMONT LAW REVIEW, CHILD LAUNDERING AS EXPLOITATION: APPLYING ANTI-TRAFFICKING NORMS TO INTERCOUNTRY ADOPTION UNDER THE COMING HAGUE REGIME <http://www.humantrafficking.org/uploads/publications/Smolinadoption.exploitationend.doc>

The reason it is difficult to consider adoption a form of exploitation is that our intuitions have been conditioned to consider adoption as an inherently good, rather than harmful, act. Even to consider that *some* adoptions might be “exploitative” seems contradictory, since adoption is considered in its essence a “good” and helpful act. These intuitions, however, are misguided, at least from the perspective of the birth family. To the degree that adoptions are—and they often are—built upon the destruction and denigration of birth family relationships, adoption is not an inherent or essential good, but is at best a tragic good. Once one perceives adoption through the lens of the birth family, and the child as an initial member of a birth family, then adoption comes into focus as a deeply difficult, problematic act inherently steeped in loss.

INHERENCY

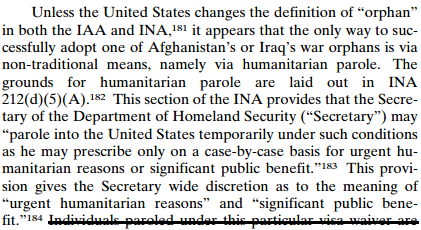
Status Quo has a better solution: Private charities that are increasingly helping orphans on site in the Mid East

Alice Richards 2013. (attorney) Bombs and Babies: The Intercountry Adoption of Afghanistan’s and Iraq’s War Orphans JOURNAL OF THE ACADEMY OF AMERICAN MATIRMONIAL LAWYERS 2013 <http://sc.aaml.org/sites/default/files/MAT207_2.pdf>



“Humanitarian Parole” exception already exists under US law

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SIGNIFICANCE / HARMS

Babies are only available because American money is available

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, <http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love>

Guatemala’s example is extreme; it is widely considered to have the world’s most notorious record of corruption in foreign adoption. But the same troubling trends have emerged, on smaller scales, in more than a dozen other countries, including Albania, Cambodia, Ethiopia, Liberia, Peru, and Vietnam. The pattern suggests that the supply of adoptable babies rises to meet foreign demand—and disappears when Western cash is no longer available.

Outside of China, the need for international adoption has virtually disappeared

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, <http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love>

To complicate matters further, while international adoption has become an industry driven by money, it is also charged with strong emotions. Many adoption agencies and adoptive parents passionately insist that crooked practices are not systemic, but tragic, isolated cases. Arrest the bad guys, they say, but let the “good” adoptions continue. However, remove cash from the adoption chain, and, outside of China, the number of healthy babies needing Western homes all but disappears.

In East Europe and Central Asia, babies can be adopted within their own country – the need for international adoption may be zero.

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, [http://www.foreignpolicy.com/articles/2008/10/15/the\_lie\_we\_love](http://www.brandeis.edu/investigate/gender/adoption/docs/FPFinalTheLieWeLove.pdf)

Nigel Cantwell, a Geneva-based consultant on child protection policy, has seen the dangerous influence of money on adoptions in Eastern Europe and Central Asia, where he has helped reform corrupt adoption systems. In these regions, healthy children age 3 and younger can easily be adopted in their own countries, he says. I asked him how many healthy babies in those regions would be available for international adoption if money never exchanged hands. “I would hazard a guess at zero,” he replied.

The world orphan crisis is a myth

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, [http://www.foreignpolicy.com/articles/2008/10/15/the\_lie\_we\_love](http://www.brandeis.edu/investigate/gender/adoption/docs/FPFinalTheLieWeLove.pdf)

**W**e all know the story of international adoption: Millions of infants and toddlers have been abandoned or orphaned— placed on the side of a road or on the doorstep of a church, or left parentless due to aids, destitution, or war. These little ones find themselves forgotten, living in crowded orphanages or ending up on the streets, facing an uncertain future of misery and neglect. But, if they are lucky, adoring new moms and dads from faraway lands whisk them away for a chance at a better life. Unfortunately, this story is largely fiction. Westerners have been sold the myth of a world orphan crisis.

There are not a large number of infants with no homes who need international adoption

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, [http://www.foreignpolicy.com/articles/2008/10/15/the\_lie\_we\_love](http://www.brandeis.edu/investigate/gender/adoption/docs/FPFinalTheLieWeLove.pdf)

Orphans are rarely healthy babies; healthy babies are rarely orphaned. “It’s not really true,” says Alexandra Yuster, a senior advisor on child protection with UNICEF, “that there are large numbers of infants with no homes who either will be in institutions or who need intercountry adoption.”

UNICEF world orphan numbers are unreliable

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, <http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love>

That assertion runs counter to the story line that has long been marketed to Americans and other Westerners, who have been trained by images of destitution in developing countries and the seemingly endless flow of daughters from China to believe that millions of orphaned babies around the world desperately need homes. UNICEF itself is partly responsible for this erroneous assumption. The organization’s statistics on orphans and institutionalized children are widely quoted to justify the need for international adoption. In 2006, UNICEF reported an estimated 132 million orphans in sub-Saharan Africa, Asia, Latin America, and the Caribbean. But the organization’s definition of “orphan” includes children who have lost just one parent, either to desertion or death. Just 10 percent of the total—13 million children—have lost both parents, and most of these live with extended family.

International adoption process is developed to meet the US demand

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, <http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love>

“Guatemala is a perfect case study of how international adoption has become a demand-driven business,” says Kelley McCreery Bunkers, a former consultant with UNICEF Guatemala. The country’s adoption process was “an industry developed to meet the needs of adoptive families in developed countries, specifically the United States.”

It’s about Americans with money in search of children, not children in search of homes

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, [http://www.foreignpolicy.com/articles/2008/10/15/the\_lie\_we\_love](http://www.brandeis.edu/investigate/gender/adoption/docs/FPFinalTheLieWeLove.pdf)

We are told that millions of children are waiting for their “forever families” to rescue them from lives of abandonment and abuse. But many of the infants and toddlers being adopted by Western parents today are not orphans at all. Yes, hundreds of thousands of children around the world do need loving homes. But more often than not, the neediest children are sick, disabled, traumatized, or older than 5. They are not the healthy babies that, quite understandably, most Westerners hope to adopt. There are simply not enough healthy, adoptable infants to meet Western demand—and there’s too much Western money in search of children. As a result, many international adoption agencies work not to find homes for needy children but to find children for Western homes.

Almost all international adoptions make US officials uneasy

E.J. Graff 2008. (associate director and senior researcher at Brandeis University’s Schuster Institute for Investigative Journalism) Nov/Dec 2008 “The Lie We Love,” FOREIGN POLICY, <http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love>

One U.S. official told me that when embassy staff in a country that sent more than 1,000 children overseas last year were asked which adoption visas they felt uneasy about, they replied: almost all of them.

SOLVENCY

Afghan law bans adoptions – the US cannot overrule Afghan law. “Guardianship” is not sufficient to qualify under Afghan law

US State Department 2006. INTERCOUNTRY ADOPTION – **AFGHANISTAN June 2006** <http://www.passportsusa.com/family/adoption/country/country_362.html>

In general, intercountry adoptions are private civil legal matters governed by the laws of the children's home country, which has the primary responsibility and jurisdiction for deciding what would be in the children's best interests.  The U.S. Embassy in Kabul has confirmed that Afghan law, which is based on Islamic Shari'a law, does not currently permit full adoptions as they are generally understood in the United States.  Afghanistan does grant a more limited arrangement akin to guardianship; however, even if an Afghan court or other Afghan authority were to grant a U.S. citizen guardianship rights for an Afghan child, the child would likely be unable to immigrate to the United States, unless the citizen could establish both that the child qualifies as an "orphan" as defined in section 101(b)(1)(F) of the Immigration and Nationality Act and, under Afghan law, the "guardianship" order gave the citizen authority not only to care for the child but to bring the United States for the specific purpose of the child's adoption in the United States.  Since Afghan law does not permit adoption, it is not clear that an Afghan guardianship order could give this authority.

Afghanistan law doesn’t recognize/allow adoption.

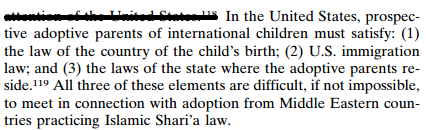
**Analysis: AFF can fiat that the US immigration law recognize Afghan “guardianship,” but they can’t fiat that Afghanistan accepts guardianship as adoption**

Embassy of Afghanistan 2006. (official web page of Afghanistan’s embassy in the U.S. The web page is dated as “copyright 2006-2014” so we took the oldest date to be entirely fair.) Frequently Asked Questions FAQ: General Questions about Afghanistan <http://www.embassyofafghanistan.org/page/frequently-asked-questions>

At the moment, there is no adoption under Afghan law, only guardianship, which, as we understand the Bureau of Citizenship and Immigration Services in the Department of Homeland Security and the Board of Immigration Appeals may deem insufficient for the purposes of immigration under the Immigration and Nationality Act. Guardianship refers to sponsoring Afghan children to travel to the U.S. for obtaining an educational opportunity, etc. We occasionally receive inquiries from kind and concerned citizens concerned about the plight of the children of Afghanistan and offering the possibility of adopting them. We appreciate very much your support and friendship, but regret that at this time, it is not possible to adopt Afghan children, for the aforementioned reasons.

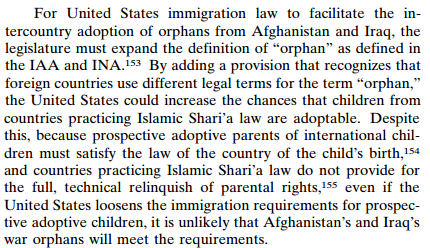
Two other barriers: Aff changes US Federal law, but US State law and Islamic “Sharia” law also block adoption from the Middle East

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Relaxing US immigration law will be unlikely to get more Afghan or Iraqi war orphans to be adopted

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DISADVANTAGES of international adoptions

1. Children are worse off.

Adopting kids from Afghanistan would probably make them worse off

US State Department 2006. INTERCOUNTRY ADOPTION – **AFGHANISTAN June 2006** <http://www.passportsusa.com/family/adoption/country/country_362.html>

The U.S. and international media have occasionally reported on the difficult situation faced by Afghanistan's children, and it is completely understandable that some American citizens want to respond to such stories by offering to open their homes and adopt these children in need.  However, it is a generally agreed international principle that uprooting children during a war, natural disaster or other crisis may in fact exacerbate the children's situation.  It can be extremely difficult in such circumstances to determine whether children who appear to be orphans truly are.  It is also not uncommon in a hostile situation for parents to send their children out of the area, or for families to become separated during an evacuation.  Even when it can be demonstrated that children are indeed orphaned or abandoned, they are often taken in by other relatives.  Staying with relatives in extended family units is generally a better solution than uprooting a child completely.

2. Horrific emotional impact.

Women are manipulated into giving up their babies and then have emotional regrets similar to women who have abortions

Prof. David Smolin 2007. (an adoptive father; also Professor of Law, Cumberland School of Law, Samford University; Director, Center for Biotechnology, Law and Ethics; J.D. 1986, University of Cincinnati College of Law; B.A. 1980 New College of the University of South Florida) 2007 VERMONT LAW REVIEW, CHILD LAUNDERING AS EXPLOITATION: APPLYING ANTI-TRAFFICKING NORMS TO INTERCOUNTRY ADOPTION UNDER THE COMING HAGUE REGIME <http://www.humantrafficking.org/uploads/publications/Smolinadoption.exploitationend.doc>

Ironically, the socially conservative moral vision undergirding twentieth-century domestic adoption required a denial of what might be called the “natural law” of mother-child relationships. Those who most embraced motherhood failed to understand how “unnatural” and disabling it can be for a woman to bear and birth a child, and then try to pretend that the event never occurred. Indeed, from a traditionalist family perspective the horrific narratives of women who regret losing their children to adoption read like the narratives of women who regret their abortions. There is the same sense of being pressured by difficult circumstances, manipulative intimates, and strangers into an irredeemably painful “choice.” There is the same denial of one’s nature as a woman and a mother, and of one’s relationship to a child. The question of whether these anti-abortion ways of narrating and reconstructing the impact of abortion on women are accurate or balanced is beyond the scope of this Article. The present irony, however, is that social traditionalists embrace the motherhood of pregnant women facing the abortion decision, while tending to deny the motherhood of those same women in relation to the adoption decision.

3. Exploitation and slavery

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Viewing the question of exploitation and harm from the perspective of the birth family as a family, rather than a mere collection of individuals, is also helpful. When profit-motivated individuals take children from a family and place the child for adoption, they are clearly exploiting the birth family as a unit. The capacity of the birth family to procreate and nurture their young is being exploited. The birth family is treated in effect as breeders, as was done historically with slavery in the United States, when slaves’ capacity to produce and raise more slaves was a part of their value.

4. Poverty. International adoption diverts us from real solutions.

1) diverts funds into the expensive adoption process that could be used to help the poor birth family;   
 2) diverts government attention away from solving the root cause of why the birth family was poor in the first place.

Prof. Elizabeth Bartholet 2005. (Harvard Univ. law school; founder and Faculty Director of Harvard Law School’s Child Advocacy Program) “International Adoption, chapter in "CHILDREN AND YOUTH IN ADOPTION, ORPHANAGES, AND FOSTER CARE", <http://www.law.harvard.edu/faculty/bartholet/pdfs/IAChapter5FINAL.pdf>

Some arguments made by adoption opponents seem harder to answer. They point out that at best international adoption is a band-aid operation providing homes to only a small fraction of the children in need in any sending country, and argue that the funds spent on giving homes to the handful would be much better spent improving conditions that would benefit the larger group of children in need. A related argument is that the governments of both sending and receiving countries should do more to change the conditions of poverty that result in children being abandoned and surrendered for adoption, rather than making efforts to facilitate the transfer of such a limited number of children to adoptive parents.

5. Exploitative selling of human beings.

International adoptions from poor countries are equivalent to buying & selling babies even when conducted legally

Prof. David Smolin 2007. (an adoptive father; also Professor of Law, Cumberland School of Law, Samford University; Director, Center for Biotechnology, Law and Ethics; J.D. 1986, University of Cincinnati College of Law; B.A. 1980 New College of the University of South Florida) 2007 VERMONT LAW REVIEW, CHILD LAUNDERING AS EXPLOITATION: APPLYING ANTI-TRAFFICKING NORMS TO INTERCOUNTRY ADOPTION UNDER THE COMING HAGUE REGIME <http://www.humantrafficking.org/uploads/publications/Smolinadoption.exploitationend.doc>

Thus, when deeply impoverished women in developing countries are offered financial assistance conditioned on relinquishing their children for adoption, but not one penny if they keep their children, most in the adoption community fail to even perceive this as a sale, let alone an exploitative sale. When adoptive parents spend $30,000 to bring a child to the United States for adoption, where perhaps $50 would have been enough to keep the birth family intact, the law smiles on the transaction as a good deed. It is only when the adoption intermediaries make clear that they are systematically in the business of purchasing babies that the adoption community becomes squeamish, but even then there is a tendency to perceive the transaction as a mere technical violation of the rules, rather than an exploitative act.

From the birth mother’s perspective, it’s exploitation, not mercy

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It would be helpful for the reader at this point in the Article to imagine herself in a situation of such deep poverty, struggling to provide for herself and her children, but, due to a crisis, temporarily short of the bare means of subsistence. If someone of ample means came to you, refusing to provide even the pittance it would take to help you keep your child (under $50)— but willing to buy your child from you—would you consider this an act of mercy or an act of exploitation?

Think Again about Adoption: We need to put the birth family first and stop exploiting the poor

Prof. David Smolin 2007. (an adoptive father; also Professor of Law, Cumberland School of Law, Samford University; Director, Center for Biotechnology, Law and Ethics; J.D. 1986, University of Cincinnati College of Law; B.A. 1980 New College of the University of South Florida) 2007 VERMONT LAW REVIEW, CHILD LAUNDERING AS EXPLOITATION: APPLYING ANTI-TRAFFICKING NORMS TO INTERCOUNTRY ADOPTION UNDER THE COMING HAGUE REGIME <http://www.humantrafficking.org/uploads/publications/Smolinadoption.exploitationend.doc>

It takes blinders not to see such systematic and lucrative efforts to obtain the children of the poor and vulnerable for adoption as an act of exploitation. Those blinders have existed thus far in the deeply held moral intuition that adoption is an overriding good; such blinders can be removed only by an act of moral imagination that perceives the birth family as a unit of worth and dignity and the child as a part of that family.

Impact: We’ve lost our moral compass on adoption

Ken Watson in an article copyrighted 2007. **(** professional social worker in the field of child welfare for over forty-five years. Over this time he has presented over 650 workshops and seminars, has had faculty appointments at four university graduate schools of social work, and has published more than 45 books, monographs, and articles on adoption and related child welfare issues. At the end of 1994, he retired as the Assistant Director of the Chicago Child Care Society) published by American Adoption Congress, “Who Cares If People Are Exploited by Adoption?” <http://www.americanadoptioncongress.org/practices_watson_article.php>

The wide variation in agency adoption fees is based less on the quality of the service than on the fiscal base of an agency and how it calculates its fees. Whatever the agency charges, adoptive parents are not deceived. They know they are paying for a child. Some agencies involved in international placements make this clear. At their initial meeting with prospective adoptive parents, they circulate their fee schedule. Children are listed in categories by race and sex with a different cost for the adoption of the children in each category. The highest cost is for a white female and the lowest for a black male. The sad truth is that we have lost our way in adoption. We are being driven by greed. There are no certain legal signposts, and we have misplaced our moral compass. We have all become victims of commercial exploitation-children, birthparents and siblings, adoptive parents, and those of us who tolerate this situation.