

SALVE REGINA UNIVERSITY

AN ETHICAL ASSESSMENT OF INTERCOUNTRY ADOPTION:

ROMANIA TO THE UNITED STATES

1990-2003

A DISSERTATION SUBMITTED TO
THE FACULTY OF
THE DEPARTMENT OF HUMANITIES
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

BY

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PREVIEW

ABSTRACT

This dissertation examines the following question: Was the intercountry adoption of Romanian children by Americans during the period of 1990-2003 ethically justified? Stated formally, its thesis is: *Utilizing developed ethical theories, specifically deontological ethics, an ethic of care, and utilitarianism, this dissertation assesses qualitatively intercountry adoption from Romania to the United States.*

The assessment begins by examining the internationally approved documents relating to intercountry adoption. These reports help produce a quasi-global consensus for the three main “value views” of intercountry adoption. These value views are then examined against the frameworks of deontological (Kantian) ethics, utilitarianism, and an ethic of care (grounded by *phronesis* or practical wisdom) to produce an “ethical model” of intercountry adoption. The Romanian/American situation is then compared against this “model.” The assessment demonstrates that during this period, intercountry adoption from Romania *was* ethical and should continue to be supported by citizens of a globalized world.

ILLUSTRATIONS

Table
Page

1.	A Global Ethical Model for Intercountry Adoption.....	166
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ABBREVIATIONS

AFCARS	Adoption and Foster Care Analysis and Reporting System
ANPCA	National Authority for Child Protection and Adoption
BBC	British Broadcasting Corporation
BCIS	Bureau of Citizenship and Immigration Services <i>see also</i> CIS
CIS	Citizenship and Immigration Services <i>see also</i> BCIS
CRC	United Nations Convention on the Rights of the Child <i>see also</i> UNCRC
CWLA	Child Welfare League of America
DCP	Department for Child Protection
DOS	Department of State
EC	European Commission
ECHR	European Court of Human Rights <i>see also</i> European Court
EO	Emergency Ordinance
EP	European Parliament
EU	European Union

European Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms
Hague Convention	Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption
European Court	European Court of Human Rights <i>see also</i> ECHR
GDP	gross domestic product
IAA	Intercountry Adoption Act of 2000
ICA	intercountry adoption, international adoption, and transnational adoption
ICWA	Indian Child Welfare Act
IGIAA	Independent Group for International Adoption Analysis
INS	Immigration and Naturalization Service
ISS	International Social Service
MEP	Member of the European Parliament
MEPA	Howard M. Metzenbaum Multiethnic Placement Act of 1994
MEPA II	Removal of Barriers to Interethnic Adoption
NABSW	National Association of Black Social Workers
NATO	North Atlantic Treaty Organization
NGO	nongovernmental organization
RAC	Romanian Committee on Adoption
RWP	Romanian Workers Party

SSPs	Strange Situation Procedures
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child <i>see also</i> CRC
UNFPA	United Nations Fund for Population
UNICEF	United Nations Children's Fund
U.S.	United States of America
USAID	United States Agency for International Development

CONTENTS

ACKNOWLEDGEMENTS AND DEDICATION	iii
ABSTRACT.....	v
LIST OF ILLUSTRATIONS	vi
LIST OF ABBREVIATIONS	vii
Chapter	
INTRODUCTION.....	1
Background	
Research Methodology	
Description of Chapters	
The Role of Technology	
The Role of the Humanities	
Implications and Benefit	
Conclusion	
1. OVERVIEW OF INTERCOUNTRY ADOPTION	19
Introduction	
Historical Overview of Adoption	
Antecedents in World History	
The Development of Adoption in the United States	
The Rise of Intercountry Adoption and the United States	
Empirical Overview	

History of Intercountry Adoption Legislation

Background Issues

United Nations Convention on the Rights of the Child

Hague Convention on Protection of Children and

Co-operation in Respect of Intercountry Adoption

Related Issues in American Domestic Transracial Adoption

Race, Ethnicity, and Culture in Adoption

The Indian Child Welfare Act

The Howard M. Metzenbaum Multiethnic Placement Act of 1994

The Process of Intercountry Adoption

State, Federal, and Foreign Requirements

The Process: Problematic Issues

Conclusion

2. AN ANALYSIS OF ETHICS IN INTERCOUNTRY ADOPTION.....73

Introduction

Value Views of Intercountry Adoption

Abolitionists

Promoters

Pragmatist

Intercountry Adoption and Ethical Theory

Overview

Rights Based Theories: Nurture as a Right

Utilitarian Ethics

	Deontological (Kantian) Ethics	
	An Ethic of Care	
	Virtue-Based Frameworks	
	Core Policy Components of Global Intercountry Adoption	
	The Best Interest of the Child	
	The Subsidiarity Principle	
	Definition of Orphan (and Why It Matters)	
	Conclusion	
3.	DEVELOPMENT OF A GLOBAL ETHICAL MODEL FOR INTERCOUNTRY ADOPTION	128
	The Need for a Global Ethical Model	
	Globalization and Intercountry Adoption	
	What is Globalization?	
	Globalization's Backdrop: Changing Perceptions of World Order	
	Globalization, Citizenship, and Intercountry Adoption	
	Ethics and Surrogate Decision-Making	
	A Global Ethical Model for Intercountry Adoption	
	Review of the Ethical Model: Element One (Underlying Ethical Values)	
	Fundamental/first principle the best interest of the child (as a person)	
	Nurture as a basic human right	
	Welfare of children as a global responsibility	
	Ethical theory: an ethic of care, grounded by <i>phronesis</i>	
	(practical wisdom)	

Value view: pragmatic

Review of the Ethical Model: Element Two (Guidance Principles)

Best interest: 1) What would promote the maximum well-being of the child? and ii) What would maximize the ability of the child to become a self-determining adult?

Substituted judgment: what would the child choose, were the child a competent adult able to choose for him/herself?

Review of the Ethical Model: Element Three (Authority Principles)

Review of the Ethical Model: Element Four (Intervention Principles)

Appeal possibilities

Consequences of illegal behavior

Analysis of Ethical Issues

Introduction

Overview of Issues

Baby-selling, child-trafficking, and abduction

Market forces

Lack of or misleading information

Organ theft rumors

Race and national origin

Parallels with assisted reproduction

Exploitation of human capital

Toward a more ethical system

Conclusion	
4. ROMANIA-TO-UNITED STATES INTERCOUNTRY ADOPTION.....	190
Introduction	
Historical and Political Overview	
Pre-1947	
1947-1989	
1990-1996	
1997-2000	
2001-2003	
Overview of Intercountry Adoption Legislation	
1990-1996	
1997-2000	
2001-2003	
Baroness Emma Nicholson of Winterbourne	
Related Issues	
Minority Issues	
Judicial Issues	
Corruption	
The Role of the Social Worker	
Conclusion	
5. AN ASSESSMENT OF THE ETHICS OF ROMANIA-TO-UNITED STATES INTERCOUNTRY ADOPTION 1990-2003	247
Introduction	

Romanian Cultural and Social Issues: The “Mindset”

The Marxist-Based Ethical Framework

The Mindset: The Impact on Society Overall

The Mindset: The Impact on Child Welfare

The European Convention for the Protection of Human Rights
and Fundamental Freedoms 1950 (European Convention)

Empirical Outcomes of Romania-to-United States Intercountry Adoptions

Empirical Outcomes: Overview

Empirical Outcomes: Attachment

Assessment of Ethical Model Criteria

Prerequisite: Were the children free for adoption?

Element One: Underlying Ethical Criteria

Was the fundamental/first principle the best interest of the child
(as a person)?

Was nurture treated as a basic human right?

Was the welfare of children seen as a global responsibility?

Were adoptions compatible with an ethic of care, grounded by
phronesis (practical wisdom)?

Was the value view pragmatic?

Element Two: Guidance Principles

Best interest: Was the maximum well-being of the child promoted
and the ability of the child to become a self-determining adult
maximized?

Was substituted judgment utilized?

Element Three: Authority Principles: Were decisions in the hands of
a clearly established and regulated party on each side?

Element Four: Intervention Principles

Were there possibilities for appeal?

Were there consequences for illegal behavior?

Conclusion

CONCLUSION303

Findings of the Dissertation

Tentative Methods for Managing the Problematic Ethical Issues

Revealed by the Study

The Hague Convention

National Identity Concerns

Possible Avenues for Further Study

Final Conclusion

SELECTED BIBLIOGRAPHY316

INTRODUCTION

And tell me truly first, for I should know,
who are you, where do you hail from, where's your home
and family?

Homer, *The Odyssey*

As a parent who has adopted twice from Romania, this author can state with conviction that the decision to adopt internationally is generally not taken lightly. Problems leading to the decision, setbacks during the process itself, and adjustment issues afterwards are common and to be expected. However, from a starting point at least, the attempt is generally seen as legally, ethically, and morally good. Therefore, those who adopt may be surprised to find themselves feeling uneasy and uncomfortable throughout the process. Certain decisions have to be made, or steps taken, that just do not feel quite *right*. The assumption, then, that intercountry adoption is ethical may be “begging the question” or assuming to be true what still needs to be proven, but this perspective seems appropriate as a starting point for research

Further, even if intercountry adoption in general is seen as good, within this process many particular components will still require hard scrutiny. In fact, although the final goal may indeed be defensible, some of the means required to achieve that end may not be. First, since an international adoption most likely involves a developing,

undeveloped, or war-scarred nation, extreme care must be taken to ensure that impoverished and desperate people are not exploited or harmed.

This dissertation proposes to answer the following question: Was the intercountry adoption of Romanian children by Americans during the period of 1990-2003 ethically justified? Stated formally, the thesis here is: *Utilizing developed ethical theories, specifically deontological ethics, an ethic of care, and utilitarianism, this dissertation assesses qualitatively intercountry adoption from Romania to the United States.* In so doing, it demonstrates that during this period intercountry adoption from Romania was ethical and should continue to be supported by citizens of a globalized world.

Background

Judt points out that, “by every measure, Romania is at the bottom of the European heap” (2001, www). To improve its dreadful economic status, it needs and “passionately wants to belong” to commercial Europe and the global world community (Vulliamy 1998, 52). To that end, as the previous millennium drew to a close, Romania began its attempts to join both the European Union (EU) and the North American Treaty Organization (NATO). In a peculiar twist, the intercountry adoption of Romanian children (an issue that on the surface had nothing to do with either organization) proved to be a major stumbling block in both applications.

Romania’s situation is unique in that the plight of its children is the result of a planned surge in births (the “pronatalist shock” of 1966-1989) (Zamfir and Zamfir 1996, 19). During this period, its communist dictator (Nicolae Ceausescu) considered “substantial population growth crucial for the economic, political, and even military

status of the country” (Ibid., 20). In a “brutal, almost Orwellian manner” (Ibid.), legislation required women between puberty and their mid-forties to undergo monthly gynecological exams designed to ensure their fertility (although Romania’s health care system was so poor at that time, it is doubtful that this requirement was fully enforced). The directives “roughly meant that all actively employed women between the ages of 16 and 45 were to be examined to determine whether they were pregnant or suffered from any condition that might negatively affect a pregnancy” (Kligman 1998, 89). Kligman notes “the Western press exaggerated the extent and frequency of these exams Indeed, the organization that would have been needed to manage such an undertaking on a national scale precluded such a possibility The farther from Bucharest, the less rigid the system. The exams were indeed ordered; how they were carried out is quite another matter” (1998, 293n. 44).

As an unintended consequence, the high birth rate “led to a sharp rise in the number of unwanted children, children born incidentally outside a family setting, and abandoned children” (Zamfir and Zamfir 1996, 26). Romania “relied almost exclusively on institutionalization even in cases where adoption, foster care, and other methods of family placement might have been more effective and efficient” (Ibid., 28). As recently as 2002, nearly 90,000 children (an estimated two percent of the child population of six million) were in the care of the Romanian child protection system (IGIAA 2002, 46; National Authority for Child Protection and Adoption <<http://www.copii.ro/decembrie2002en.xls>> Accessed February 29, 2004).

In contrast, the number of children in foster care in the United States in 2001 stood at approximately 542,000 (National Clearinghouse on Child Abuse and Neglect

Information <<http://www.calib.com/nccanch>> Accessed February 29, 2004) However, with a turn-of-the-millennium population for children under 18 of over 70 million, this figure is quite small (less than one percent) in comparison (Population Reference Bureau <http://www.ameristat.org/Content/NavigationMenu/Ameristat/Topics1/Estimates__Projections/U_S__Population__The_Basics.htm> Accessed February 29, 2004).

From 1956 until August 1, 1990, Romanian presidential approval was required for a foreign citizen to adopt a child from this country. This requirement resulted in very few intercountry adoptions (Zugravescu and Iacovescu 1995, 41). However, after the 1989 revolution and execution of Ceausescu, the approval of Law 11/1990 returned this process to Romania's judicial system. The unintended result of this decision for a country still reeling from the turmoil of its communist overthrow, was that "intercountry adoptions operated without any conditions or restrictions" (Ibid., 42).

Reflecting on this "free-for-all" (Gailey 2000, 302) adoption environment, Patricia Herman describes her experience working as an early childhood consultant to UNICEF in Romania in the early 1990s: "At that time, potential adoptive parents were able to go into orphanages and pick out which child they wanted to take home. I experienced a strong sense of discomfort in the face of this practice, seeing it as diminishing the dignity of the individual child" (1999, 43-44). This depersonalization of children in Romanian intercountry adoption at that time is evident in the following description given by Corrinne Neufeld of her sister-in-law's farewell as she left for Romania to adopt her (as yet unselected) daughter: "Leaving for the boarding room, Roxie called out, 'Get a good one!' and I couldn't help but laugh" (2000, 24).

Following this wave of wide-open intercountry adoptions, the year between August 1, 1990 and July 16, 1991 has since been called by some critics the “black period of Romanian adoptions,” during which approximately 100,000 children left the country (Zugravescu and Iacovescu 1995, 42-50). In 1991 alone, the United States State Department issued 2,594 visas to Romanian orphans coming into the U.S. (28% of the 9,050 United States total) (United States Department of State <<http://travel.state.gov/orphans-numbers.html>> Accessed March 22, 2002).

Embarrassed by the world’s reaction to the wretched condition of many of the children coming from its orphanages and responding to allegations of corruption, Romania amended Law 11/1990, substantially limiting the intercountry adoption system by making such adoptions much more difficult. Gradually, however, over the next ten years, numbers would begin to rise.

In May 2001, the European Parliament’s special rapporteur on Romania, Baroness Emma Nicholson, recommended that negotiations on Romania’s accession to the EU be “suspended until the situation of institutionalized children was solved” (*Mediafax* 2002, www). She condemned the practice of intercountry adoption as “profitable trade in child trafficking” (McAleer and Hightower 2002, 24). As a result, “at the EU summit in Helsinki in December 1999, child welfare reform was made an essential requirement for [Romania’s] admission” (Dickens 2002, 80).

In June 2001, the Romanian Government issued an actual moratorium on intercountry adoptions; essentially, Romania *had* to shut down this practice in order to continue in its effort to join the European Union. The Independent Group for International Adoption Analysis (the IGIAA, a group appointed by the Prime Minister of

Romania to evaluate and report on the situation) then recommended that this moratorium be extended to November 2002 (2002, 48). Further, Romania's President, Ion Iliescu, publicly confirmed that this report "will be the basis for all future activities" (*Ziua* 2002, www).

The IGIAA report stated that "requirements are now met to rebuild the child protection system on modern grounds, in compliance with *morality* and legislation and with consistent public and *international support*" (IGIAA 2002, 32, emphasis added). The implication was that prior practices, including international adoption, were inherently *immoral*, or at best, *amoral*. Implied, too, was that any changes would be dependent on support from the global community. As Romania moved through the European Union's accession process, this position would harden into one in which intercountry adoption would be allowed only by biological grandparents, essentially eliminating it as a child welfare option.

However, the situation was more complicated than Romanian officials conceded. As the *Financial Times* (London) reported: "U.S. diplomats are warning that Congress could hamper Romania's bid to join the NATO military alliance if it continues with a ban on international adoptions of its children" (McAleer and Hightower 2002, 24). The *official* policy of the United States regarding Romanian international adoption did indeed support adoption, albeit with reform:

The U.S. Government places great importance on resolving the issue so that children can be placed in loving homes. We will continue to press for prompt completion of the new adoption law that is needed before international adoptions can resume. This will remain a high priority until the moratorium is lifted. (<http://www.travel.state.gov/adoption_romania.html> Accessed March 22, 2002)

Romania thus found itself in a no-win situation: Either it had to *stop* international adoptions in order to join the EU, or allow them to *resume* so as to join NATO.

Facing this external pressure between opposing goals, Romania for a time seemed to be straddling the fence. However, this stance proved to be politically unworkable. Adjustment “causes distress to many people, usually including potentially influential constituents to politicians. It is difficult to force adjustment quickly; hence barriers that reduce the pressure, or slow down the process, are often politically welcome” (Keohane and Nye 2000, 6). In this case, a moratorium seemed the most politically expedient solution.

However, after the September 11, 2001 World Trade Center terrorist attacks, Romania began to be seen by the United States in military terms “as one of the crucial countries in Europe,” due to its proximity to the Middle East (Fisher 2003, A1). On November 21, 2002, nearly seventeen months into the moratorium on intercountry adoption, Romania was finally formally invited to begin NATO accession talks. At that point, without actually coming out and banning it permanently, officially, Romania wanted intercountry adoption to be considered as a last resort: “International adoptions will only be considered as the very last protection means, after all other domestic options have proven unsuccessful” (Nastase 2002, www). The government was also maintaining a stance in line with what it perceived the European Union to want, that is, foster care *within* Romania was to be considered superior to permanent adoption elsewhere.

However, as Elizabeth Bartholet and others have argued, foster care is not necessarily the best solution. American foster care, she notes, erred by placing children in