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# Litigation, Legislation, and Lessons: “Operation Babylift” and International Adoption

Cindy Trieu

**H**uynh Thi Anh just wanted her four grandchildren back. She couldn’t understand how or why they were no longer considered hers, but instead the children of strangers. She had never abandoned or neglected her grandchildren, but only done what was in their “best interest.” In *Huynh Thi Anh v. Levi* (1977) and (1978), Anh and the uncle, Dao Thanh Linh, were trying to regain custody of four children from their new Michigan adoptive parents. The foster parents, Dennis and Margaret Arvidson and Jay and Beth Donaldson, had initiated adoption proceedings in local Michigan courts, which were interrupted by this suit. The case was brought up to both the United States District Court of Michigan in 1977 and to the United States Court of Appeals in 1978. Anh claimed that she “mistakenly signed papers releasing the children for adoption, but has never intentionally abandoned or released them.”<sup>1</sup> The plaintiffs wanted to prove the children ineligible for adoption, regain custody, and receive payment of damages totaling \$1,000,000. After being dismissed in the U.S. District Court of Michigan on the basis that federal courts did not have jurisdiction to make a custody determination, *Anh v. Levi* was again dismissed in the Sixth Circuit of the U.S. Court of Appeals. This time, the case was dismissed because plaintiffs “have not exhausted their state remedies,” by addition to the Court’s “lack of jurisdiction,” if viewed as a case of habeas corpus.<sup>2</sup> In other words, the case may be filed in federal court only to challenge previous decisions based in state courts.<sup>3</sup>

At first glance, *Anh v. Levi* appears to be a simple child custody case, but it actually speaks to the larger issues surrounding international adoption and legislation.

1 *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978)

2 *Ibid.*

3 *Huynh Thi Anh v. Levi*, 427 F. Supp. 1281 (S.D. Mich. 1977), *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978), and Maryann George, “Vietnamese Relatives Fight For Custody of ‘Orphans,’” *Ann Arbor Sun*, July 1, 1976.

Operation Babylift, the airlifting of approximately three thousand orphans to the United States at the end of the Vietnam War, resulted in about nearly twenty child custody cases similar in nature to *Anh v. Levi*. Miscommunication and rash decision-making led to the adoption of many children who were in fact not orphans, but still had biological parents who claimed them. These cases were widely reported in newspapers like *The Christian Science Monitor*, the *New York Times* and the *Ann Arbor Sun*. What these articles failed to mention, however, were the ways Operation Babylift and the Babylift court cases raised concerns about the lack of regulation surrounding international adoption. In 1975, there was no international body of law in place that specifically outlined the procedures to follow or the specific issues unique to international adoption. As a result, many problems that arose in the Babylift cases were relegated to state law and U.S. legal statutes that were unfit to deal with these problems. However, the international agreements that came into existence during and after the 1980s, show that Operation Babylift was a watershed in U.S. adoption. It compelled lawmakers to reevaluate and draft new legislation that specifically addressed issues of cultural relativism, documentation, and training in international adoption.

The United States has a long history of adoption that dates back to the founding of the thirteen colonies. English colonists who settled on the coast of North America to form the eventual thirteen colonies, brought with them English traditions, language, and culture. Included in this cultural inheritance were ideas about blood ties, inheritance, and religion. However, what differentiated the colonists from their English counterparts were the unique needs they faced that those living in England did not. English society rested on the foundations of blood kinship; as such, adoption was not desirable and as a result was not legally recognized until 1926. “The desire to

protect the property rights of blood relatives in cases of inheritance, a moral dislike of illegitimacy, and the availability of other quasi-adoptive devices such as apprenticeships and voluntary transfers,” dominated English conceptions of family.<sup>4</sup>

Americans used private means of “adoption” through apprenticeship and indenture, but mainly for economic reasons. In the early part of American history, adoption was achieved through the process of “placing out,” a term used to describe “all-non institutional arrangements to care for dependent children.”<sup>5</sup> This included, but was not limited to, orphan trains, apprenticeship, or indenture. Indenture was the practice in which children lived with families for a number of years in order to learn a trade and work.<sup>6</sup> The first child indentured was in Massachusetts in 1636.<sup>7</sup> There are two types of indenture: one in which agencies paid families to care for their children and another where children worked for their own keep.<sup>8</sup> This form of “instrumental adoption” was useful, especially in cases where a parent’s death or poverty left children without an adequate means of support.<sup>9</sup>

However, portraying children as economic necessities was also dangerous, for it turned them into “readily exchangeable commodities.”<sup>10</sup> One of the most conspicuous examples of this practice was “baby farming.” This form of adoption was very common in late 19<sup>th</sup> and early 20<sup>th</sup> century cities, where infants were boarded for money and transferred and sold for profit. At first baby farming was portrayed as an “informal child care network of single mothers and laboring women.”<sup>11</sup> Mothers who were poor,

unwed, or prostitutes would leave their children in the care of other women at these farms. However, baby farms soon became a business and an example of immorality [for reformers?]. Baby trafficking was protested because babies on these farms [often] died from epidemic diseases and unsanitary conditions. Baby farms became places where profit was placed before the overall worth of a child. In the words of one Chicago baby farmer: “It’s cheaper and easier to buy a baby for \$100.00 than to have one of your own.”<sup>12</sup> Another form of commercial adoption was commercial maternity homes where doctors and midwives made a profit by finding placement homes for children. Adoption ads were another form of commercial adoption and facilitated the formation of families without any public oversight. Though many reformers saw commercial adoption as unethical, others argued that it was only a reflection of the consumer culture and the rights that private individuals had in forming their own families.<sup>13</sup>

In the early 19<sup>th</sup> century, orphan asylums emerged as a primary way of caring for children from poor families.<sup>14</sup> This marked a transition period between the types of childcare that served economic needs to one that emphasized the welfare of the child. For those who ran these institutions, the main concern was to prepare a child for his/her departure from the asylum by ensuring their safety and moral development. After a few years, these children were either returned to their original families, where they might be indentured, or they were placed with adoptive families. However, at this time legal documentation for all child placements was still done through indenture contracts, so the safety of the child was not necessarily guaranteed by adoption.<sup>15</sup>

The use of orphan trains to transport children from eastern cities to midwestern cities was another common form of “placing out” that did not necessarily guarantee the welfare of the child. Between 1853 and 1929, over 250,000 children were transported on these trains. By transporting children from urban cities to midwestern towns, those involved hoped to foster American values and religious morality while

4 E. Wayne Carp, ed., *Adoption in America: Historical Perspectives*, (Ann Arbor: The University of Michigan Press, 2002), 3.

5 Ellen Herman, *Kinship By Design: A History of Adoption in the modern United States* (Chicago: The University of Chicago Press, 2008), 23.

6 Eve P. Smith and Lisa A. Merkel-Holguin ed., *A History of Child Welfare* (New Brunswick: Transaction Publishers, 1995), 156.

7 Lorain County Children’s Services, “A Brief History of Child Welfare in the United States,” <http://www.library.georgetown.edu/tutorials/research-guides/turabian-footnote-guide#websites>, Accessed January 19, 2014.

8 Herman, *Kinship By*, 23.

9 Barbara Melosh, *Strangers and Kin: The American Way of Adoption* (Cambridge: Harvard University Press, 2002), 13, 15.

10 Ibid., 13.

11 Herman, *Kinship By*, 32.

12 Ibid., 36.

13 Ibid., 31, 33-34, and 39.

14 Smith and Merkel-Holguin, *A History of Child Welfare*, 156.

15 Carp, *Adoption in America*, 39.

also reducing urban crime and poverty.<sup>16</sup> In *The Great Arizona Orphan Abduction* (2001), Linda Gordon details the 1904 events surrounding the orphan trains that brought forty Irish orphans from New York to two Arizona mining camps. The nuns belonging to the Sisters of Charity were primarily concerned with placing these orphans in good Catholic families and only did minor research into their background and socioeconomic status. Many of the families who were to adopt these children turned out to be Mexican Catholic families. Racial tension already existed between the Mexicans and the Anglo community in the Clifton and Morenci mining camps. It was so strong that organized vigilante groups and angry white mothers forcefully took back orphans placed in Mexican families. They argued that the Mexicans were morally unfit to raise a white child and that the best interests of the child would be with a white family.<sup>17</sup> The relationship between race and perceptions of child welfare continued to emerge later throughout the history of adoption, both domestically and internationally.

Despite the private means of child transfer, state legislatures passed adoption laws in the mid-19<sup>th</sup> century in order to, “ease the legislative burden caused by private adoption acts and to clarify inheritance rights.”<sup>18</sup> The first actual adoption law was passed in Mississippi in 1846, followed by Texas in 1850. However, these laws outlined only the legal procedures needed to authenticate and publicize records of private adoption agreements. The first modern adoption statute was passed by the Massachusetts legislature in 1851 titled, “An Act to Provide for the Adoption of Children.” It preceded countries like France, which did not pass adoption legislation until 1923, Scotland in 1930, and Ireland in 1952.<sup>19</sup>

The Massachusetts Adoption Act of 1851 is often considered the first modern adoption law in history because it helped to shape modern conceptions of adoption. For example, legal ties between the child and its biological parents were officially severed so that any obligations owed to the parents were considered obsolete. In addition, the welfare of the child

was considered of utmost importance and judges were now required to decide whether prospective adoptive parents were “fit and proper” to adopt.<sup>20</sup> The definition of family was not defined by blood ties, but on the mutual relationship created by positive interactions between parent and child. These new regulations served to alleviate the fears of children being placed with unsuitable parents. The old child-placing mechanisms of the 19<sup>th</sup> century, which bypassed comprehension and control of adoptive families, was replaced by a more systematic and orderly way of ensuring the success of adoption.

The beginning of the 20<sup>th</sup> century was characterized by an emphasis on regulation in adoption that included management and specialized knowledge. The U.S. Children’s Bureau (USCB), a federal agency established in 1912, and the Child Welfare League of America (CWLA), a nonprofit private organization were two of the main policymakers behind the push for increased regulation and standardization of adoption practices.<sup>21</sup> These organizations hoped to make adoption “a process over which state laws had much greater jurisdiction than in the past.”<sup>22</sup> Attempts at regulation were made through “orderly-information gathering, investigation, supervision, and probation.”<sup>23</sup> Child welfare reformers believed that creating families could be done through a public systematic process instead of a private one.<sup>24</sup>

Legislation also played an important role in the regulation of domestic adoption at this time. The 1917 Children’s Code of Minnesota made it “the first state to require an investigation to determine whether a proposed adoptive home was suitable for a child.”<sup>25</sup> It required that children in a new adoptive household undergo a six-month probationary period and led to the privatization of adoption records. These new changes in adoption history paralleled those in the Progressive and New Deal era that brought a new awareness to social welfare issues, as well as more governmental regulation of citizens’ private lives. A child was no longer valued by his/her economic potential but was seen as an object of public welfare that was

16 Herman, *Kinship By*, 24.

17 Linda Gordon, *The Great Arizona Orphan Abduction* (Cambridge: Harvard University Press, 2001).

18 Carp, *Adoption in America*, 5.

19 Ibid., 3, 5-6 and Herman, *Kinship By*, 8.

20 Carp, *Adoption in America*, 5-6.

21 Ibid., 9.

22 Herman, *Kinship By*, 2.

23 Ibid., 55.

24 Ibid.

25 Carp, *Adoption in America*, 8.

to be regulated publicly. Record keeping also made adoption traceable, whereas before it was invisible and based on private agreements.<sup>26</sup>

Three other reforms mark the Progressive Era as one of the most important in adoption history. In order to protect children from condemnation due to their adoption, many states required that the word *illegitimate* be removed from birth certificates. Adoption records were also sealed from the public, but not from those involved and the courts. Children were also not to be removed from their biological families for “light and transient reasons.”<sup>27</sup> The Great Depression of 1929 also brought about an expansion of child welfare programs, including existing adoption programs. This new support for child welfare was such that by 1937, forty-four states had either enacted new adoption statutes or revised old ones. In addition, the Children’s Welfare League of America (CWLA) made attempts to reform existing structures like commercial adoption agencies and maternity homes that did not follow standard adoption practices and that “provided inadequate safeguards” for those involved in the adoption.<sup>28</sup> One of their biggest achievements was the publication of their first set of adoption standards in 1938, which outlined safeguards for children, adoptive parents, and the state.<sup>29</sup>

The culmination of World War II marked another huge turning point in the history of adoption, both domestically and internationally. War brought with it postwar affluence, an increase in the number of children available for adoption, less stringent requirements on the “adoptable child,” and more liberal attitudes about race. The term postwar affluence refers to the general wealth shared by all Americans after the end of World War II. Paired with postwar affluence was a high increase in birth rates, especially illegitimate births, which increased the number of babies available for adoption. Media glorification of motherhood also compelled many infertile couples to fulfill the duties of parenthood through adoption. The results of this can be seen in the fact that between 1937 and 1945, adoptions had increased threefold, from 16,000 to 50,000 annually. These numbers

continued to increase, doubling to 93,000 in 1955 and 142,000 by 1963.<sup>30</sup>

The definition of the “adoptable child” also broadened from those without any physical or mental handicaps to “any child...who needs a family and who can develop in it, and for whom a family can be found that can accept the child with its physical or mental capacities.”<sup>31</sup> This new definition also included minority and foreign born children who came to be adopted through transracial and international adoption. Though most states did not explicitly mention or refer to race in their adoption laws, it was always implied that white babies were the preference of white adoptive families. Matching was a common practice through which social workers or experts determined which combination of family members and children would ensure the creation of a successful family.<sup>32</sup> The purpose of matching was “the duplication of [the child’s] natural biological environment,” by placing them “with adoptive parents who could have naturally parented [them].”<sup>33</sup> But the practice itself was controversial because it ended up privileging certain children over others based on intelligence, sex, religion, and race.<sup>34</sup>

This partially changed when Americans started adopting internationally, beginning with the adoption of European children at the end of World War II. The Displaced Persons Act of 1948 made it possible to categorize “orphan immigrants” as a special category of refugee such that 4,065 orphans entered the United States under it.<sup>35</sup> The Refugee Acts of 1953 enabled 1,800-orphaned children to enter as “refugees.”<sup>36</sup> Japanese children were also adopted from 1948 to 1953 as a result of these laws. The second phase of international adoption began in the 1950s, this time with Korean children.<sup>37</sup> Pearl S. Buck and Henry Holt were two huge advocates of international adoption in Asian countries. Buck was the founder of Pearl S. Buck’s Welcome House

26 Ibid., and Herman, *Kinship By*, 80.

27 Carp, *Adoption in America*, 8.

28 Ibid., 11.

29 Ibid., 8, 10, and 11.

30 Ibid., 12-13.

31 Ibid., 14.

32 Melosh, *Strangers and Kin*, 51.

33 Rita J. Simon, Howard Alstein, and Marygold S. Melli, *The Case For Transracial Adoption* (Washington D.C.: The American University Press, 1994), 16.

34 Melosh, *Strangers and Kin*, 324.

35 Simon, Alstein and Melli, *The Case For*, 8-9.

36 Ibid.

37 Ibid., 9.

founded in 1949 that placed about five thousand Amerasian children with American adoptive parents. Buck herself was an adoptive parent of seven children. Holt, the father of an adopted child, established Holt International, which facilitated international adoptions in Korea and other countries.<sup>38</sup> One of the biggest issues brought about by international adoption was adoption finalized by proxy. The adoption of a child could be finalized by another country without the child ever having met the parent. The usual requirements for domestic adoption, such as screening of the parents or the probationary period were bypassed, such that the general welfare of the child was effectively put at risk. In response, an amendment was passed in 1957 that prohibited such proxies.<sup>39</sup> International adoption continued to expand during the 1970s in response to changes in domestic adoption. The reduced stigma on unwed mothers, in addition to a high infertility rate and the legalization of abortion produced longer waiting periods for those who wished to adopt.<sup>40</sup> As a result, more and more families began to broaden their requirements for the adoptable child. In addition to fulfilling their own maternal needs, women turned to international adoption as a gesture of American altruism.

Despite the various changes and developments in U.S. adoption history, it was not until the late 20<sup>th</sup> century that historians began to explore adoption as a research topic. E. Wayne Carp, in his book *Adoption in America: Historical Perspectives* (2002), notes the lack of a comprehensive history of adoption in the United States, which he attributed to the difficulty in accessing adoption records. Carp's book is an attempt to create a historic overview of American adoption through a collection of various short essays written by scholars on the subject of adoption. These essays are ordered chronologically, beginning with Susan L. Porter's essay "A Good Home: Indenture and Adoption in Nineteenth-Century Orphan-

ages," which examined the use of orphanages as a transitional phase between indenture and adoption. Porter examined four private nonsectarian Protestant orphan asylums between 1800 and 1820 and the motivations of the female managers who ran them. The managers who ran these orphanages placed the children's welfare first in their effort to educate and find good placements for them. Seeing themselves as "surrogate mothers," they concluded that adoption was not the best solution but that when possible, returning these children to their original families was in the child's best interests. In addition to looking at these asylums, Porter also looked at demographics of adopted children and adoptive parents that supported the managers' views.<sup>41</sup>

In "Building a Nation, Building a Family," Carol J. Singley, a professor of English, looks at thirty adoption narratives written between 1850 and 1877. This literature reflects not only the culture and society of the time but also paints a picture of American attitudes and perceptions about children and family. Singley states that writers at this time portrayed adoption as a sentimental venture, reflective of Americans' benevolence. Coupled with these themes are the religious and moral undertones included in the stories that were meant to influence young children. This shows how the focus of adoption changed from religious meanings of charity and salvation to one more concentrated on economic values of labor and money.<sup>42</sup>

Julie Berebitsky's essay "Rescue a Child and Save the Nation," highlights two important themes of adoption: adoption as rescue and as a female-oriented endeavor. Her essay focuses on a campaign held by a women's magazine called the *Delineator* to match up the nation's homeless children with families. The readers who responded to the campaign fit into the category of those who not only wanted to help the children out of a sense of social responsibility but also those whose participation was a personal matter. The *Delineator's* campaign also helped to bring the issue of homeless children and adoption to a very public and visible level in the early twentieth century, thereby also transforming public perceptions of adoption

38 Melosh, *Strangers and Kin*, 192.

39 Kirsten Lovelock, "Intercountry Adoption as a Migratory Practice: A Comparative Analysis Of Intercountry Adoption and Immigration Policy and Practice in the United States, Canada and New Zealand in the Post World War II Period," *International Migration Review* 34, no. 6 (Autumn 2000), <http://www.jstor.org/stable/2675949> (accessed December 17, 2013), 913.

40 Melosh, *Strangers and Kin*, 192.

41 Carp, *Adoption in America*.

42 Carol J. Singley, "Building a Nation, Building a Family," in *Adoption in America: Historical Perspectives*, ed. E. Wayne Carp (Ann Arbor: The University of Michigan Press, 2002).

and the personal experience of motherhood. Another essay in this book includes “Adoption Agencies and the Search for the Ideal Family, 1918-1965” by Brian Paul Gill, which discusses the increasing role of social workers in selecting and creating the best adoptive families. “When in Doubt, Count: World War II as a Watershed in the History of Adoption” by E. Wayne Carp and Anna Leon-Guerrero was also included, which uses case records from the Children’s Home Society of Washington (CHSW) from 1895 to 1973. This essay shows that World War II was indeed a turning point in the history of adoption because it changed Americans’ social values and expectations, as well as the U.S. role in foreign affairs.<sup>43</sup>

Historian Barbara Melosh, whose essay “Adoption Stories: Autobiographical Narrative and the Politics of Identity,” was also included in Carp’s book, gives her own historical overview of adoption in *Strangers and Kin: The American Way of Adoption* (2002). Like Carp, Melosh characterizes adoption as a very American institution, concentrating on how adoption closely reflects changes in American society and purely “American” values. She draws upon a rich collection of adoption records from the Children’s Bureau of Delaware (CBD) to illuminate and color her discussion of adoption. Like adoption itself, Melosh touches on both the public and the private. The first chapter of her book talks about the older forms of child exchange that existed before adoption, such as apprenticeships and indenture, that focused more on the child’s economic value than on their sentimental value. Melosh also discusses the careful practices that the CBD put into place in order to regulate adoption, such as intelligence testing, observation, and home study that were used to reduce the risks of adoption. The next two chapters talk about how child welfare experts designed ways to assess both the “fitness” and “fit” of both children and prospective adopters. Matching, which meant matching adults with children in such a way that others would believe that the child was the natural child of the family, was one way in which a “fit” was achieved. Creating

families that looked natural was the goal of adoption in the mid early to mid-twentieth century, such that families indicated a certain sex or race of the child as preferences for adoption.<sup>44</sup>

Chapter Four, “Redrawing the Boundaries: Transracial and International Adoption,” analyzes the transition to international adoption through transracial adoption, more specifically of African American children by white families and the personal as well as public manifestations of this change. For example, a Mr. P felt uncomfortable upon learning that his son had been born to a white woman. If it had been reversed, Mr. P stated he would have felt less uncomfortable about it. His discomfort stems from society’s stigma towards interracial liaisons, especially between white women and black men. Publicly, the National Urban League, a non-profit organization committed to advancing the rights of African Americans and other minorities, made plans to launch a national adoption program to help with the plight of black orphans who were unwanted by white adoptive parents and who suffered from a lack of black adopters. On the other end were those such as the National Association of Black Social Workers, who felt that black children should only be placed with black families. They argued that this type of placement was necessary because “African American children could develop healthy self-concepts and a positive sense of racial identity only within racially matched families.”<sup>45</sup>

The second part of the chapter transitions to international adoption that transcends both racial and territorial boundaries. Melosh discusses important players in international adoption such as Pearl S. Buck and her organization, Pearl S. Buck’s Welcome House. Henry Holt and Holt International were equally, if not more, important in facilitating the adoption of Korean children which would become the most common inter-country adoption until 1991. Melosh’s discussion fits into the context of controversial issues that compares international adoption to imperialism or characterize it as “rescue and save.” The last two chapters of the book end with the more negative changes towards issues of disclosure and the negative effects of adoption. Questions such as how and when the parents should tell the child that they are

43 Julie Berebitsky, “Rescue a Child and Save the Nation,” Brian Paul Gill “Adoption Agencies and the Search for the Ideal Family, 1918-1965” and E. Wayne Carp and Anna Leon-Guerrero “When in Doubt, Count: World War II as a Watershed in the History of Adoption” in *Adoption in America: Historical Perspectives*, ed. E. Wayne Carp (Ann Arbor: The University of Michigan Press, 2002).

44 Melosh, *Strangers and Kin*.

45 Ibid.

adopted, to issues of trauma, stress, and identity are analyzed in detail to conclude the book.<sup>46</sup>

Following Melosh is Ellen Herman, whose book *Kinship By Design: A History of Adoption in Modern America* (2008) provides another historical overview of U.S. adoption. Herman uses a thematic approach to show how adoption is as much an attempt to avoid chance or uncertainty, as it is the creation of a natural looking family. She applies this paradigm into the four themes of regulation, interpretation, standardization, and naturalization. Each theme reflects four different periods in U.S. history and shows how they came to change adoption.

Her book is divided into three main sections. The first section is titled “Regulation and Interpretation As Forces in Adoption, 1900-1945,” that discuss child-placing mechanisms such as baby farms and maternity homes to organizations such as the Child Welfare League of America (CWLA). Issues such as matching and empirical research on adoptees reemerge in Herman’s second section titled “Standardization and Naturalization, 1930-1960.” The last part of the book called “Difference and Damage, 1945-1975” addresses problems faced by adopters, such as what type of children are acceptable to adopt. Chapter 6 focuses on the adoption of minority children, children with disabilities, and inter-country adoption. Chapter 7 is specifically about the issue of domestic transracial adoption that has plagued U.S. domestic adoption, especially when it comes to matching. The book *Damaged Children, Therapeutic Lives*, concludes by speaking about the risks for both parents and children who are involved in adoption, such as the difficulties with feelings of attachment and loss, as well as disclosure that Melosh spoke about in her book.<sup>47</sup>

Writing on adoption has not been limited to that of a historic nature. In response to the public and pervasive nature of adoption in the United States, many authors have written how-to guides on adoption that address domestic, transracial, and international adoption. It is not surprising that such books exist considering the increased risks associated with adopting a child. Books with titles like *Yes, You Can Adopt! A Comprehensive Guide To Adoption* by Richard Mintzer (2003) attempt to portray adoption as

something any person can do, simply by following a handbook such as *The Adoption Resource Book* by Lois Gilman in 1984. One of the main advocates of international adoption, Henry Holt and Co., is the publisher of a book titled *The International Adoption Handbook: How to Make an Overseas Adoption Work for You*, by Myra Alperson (1997). This, coupled with guides like *Inside Transracial Adoption* by Gail Steinberg and Beth Hall (2000), help couples who want to adopt either internationally or transracially and provide advice on how to reconcile differences in culture and identity. These differences are more readily visible and more important to foster in these families. Ironically, these guides continue to portray adoption as a type of scientific formula or equation to be figured out instead of a genuine interaction between parent and child, human to human. However, for the majority of history, adoption has always been approached in this way, as the methodological attempt at creating the “as if begotten” family.<sup>48</sup>

The December 30, 1976 edition of *The Washington Post* includes an in-depth window on adoption through a story titled “Life With A Large Family: The Seeleys’ 10 Children.” The article details the story of Jim Seeley, 39, and Jo Seeley, 38 and their experiences as a racially mixed and “as if begotten family.” The Seeleys have four children of their own, but they adopted six domestically and internationally. When asked how they felt about adoption, “They didn’t make a big deal out of it. It was just something they wanted to do.” They characterized the adoption process as “trouble-free” and “easy as their decision had been.” The writer describes the Seeleys’ lives as similar to the lives of any other American family. Jenny Lynn, 12, plays piano and loves soccer, Cindy, 11, plays the violin while the other children are described smiling, happy children. As with any family, there is the potential for sibling rivalry, but the Seeleys’ make sure to take “about 15 minutes with each child getting him or her ready for bed,” as well as making sure each one gets time to go shopping with mom. Mrs.

48 Richard Mintzer, *Yes, You Can Adopt! A Comprehensive Guide To Adoption* (New York: Carroll & Graf, 2003), Lois Gilman *The Adoption Resource Book* (New York: Harper & Row, 1984), Mayra Alperson, *The International Adoption Handbook: How to Make an Overseas Adoption Work For You* (New York: Henry Holt and Co., 1997), Gail Steinberg and Beth Hall, *Inside Transracial Adoption* (Indianapolis: Perspectives Press, 2000) and Melosh, *Strangers and Kin*, 104.

46 Ibid.

47 Herman, *Kinship By*.



Seeley said matter-of-factly that “the others never get jealous because they know their time will come.” The article is a commentary on how raising an interracial adopted family has its challenges, but that they are also like those any other family would have. It also portrays an adopted family as being potentially more rewarding because the children get attention and the Seeleys can still enjoy the luxuries of life, like going on a three-weekend vacation once a year while one child babysits.<sup>49</sup>

Despite the article’s optimistic tone, the Seeleys do acknowledge the many issues that come with adoption. Mrs. Seeley recalls an instance where a little girl was mean to their daughter Gretchen. She states that, “Apparently her mother and father just don’t think black children belong in white families.” Jim says that Gretchen was called ‘chocolate face’ by another child but partially dismisses it by saying “Kids sometimes use bad words when they don’t even know yet what they mean.” However Gretchen’s experience points to the larger issue of society’s difficulty with accepting transracial adoption. For the Seeleys’, transracial adoption was never an issue. They adopted Christopher from Korea in December 1974 at the age of 4 or 5 and Todd, the child of a black American serviceman and Vietnamese woman. Todd was one of the many Amerasian children who were airlifted out of Vietnam through Operation Babylift in April 1975. He arrived at the Seeleys in May 1975 after another family rejected him due to his “emotional problems.” According to one of his sisters, Todd one day jumped into a bush when a helicopter flew over their house. The Seeleys say that Todd doesn’t talk about Vietnam but he remembers it. Todd’s story is only one of the many stories coming out of Operation Babylift.<sup>50</sup>

Operation Babylift itself was a product of what historian George Herring calls, “America’s longest war,” the Vietnam War (1949-1950).<sup>51</sup> After World War II, Japan’s economy was suffering terribly and needed a way to recover. U.S. involvement in Vietnam began with their interest in Indochina as a region rich

in raw materials such as tin, oil, rice, rubber, and markets. Japan tried to conquer that region between 1931 and 1945 and U.S. officials feared that Japan would turn to the Communists for help if the region was not available to them. At that time, France controlled Indochina, which was put in danger, due to nationalists’ efforts, like that of Ho Chi Minh, who requested help from the United States in securing Vietnamese independence eight times, but never got a response. Instead, the country that was supposed to make the world safe for democracy backed their Western allies, the French. The United States needed France as an ally to build the North Atlantic Treaty Organization (NATO) and to rebuild Germany. Between 1950 and 1954, four billion in aid was given to France by the United States while Ho was labeled a Communist.<sup>52</sup>

On May 7, 1954, the French were defeated at the battle of Dien Bien Phu. Peace negotiations were settled upon at the Geneva Conference held in Geneva, Switzerland. Two agreements were made under the Geneva accords. In the first agreement, both sides agreed to a cease-fire and Vietnam was temporarily divided along the 17th parallel. The French forces moved south of the line while the Vietminh (the forces fighting under Ho Chi Minh) moved to the north. The second agreement said that neither North nor South Vietnam could “join a military alliance or allow foreign bases.”<sup>53</sup> To reunite Vietnam, general elections would be held in 1956 and the neighboring countries of Laos and Cambodia were to be neutral.<sup>54</sup>

However, the U.S. was not satisfied with the Geneva Accords or Vietnamese independence. In addition to not signing the Accords, President Dwight D. Eisenhower and Secretary of State John Foster Dulles installed their own political presence in South Vietnam. The Geneva Agreements stipulated that elections held in Vietnam in 1956 were to reunite Vietnam. However, President Dwight D. Eisenhower, “...to block the election of Ho Chi Minh and the reunification of Vietnam, sabotaged the 1956 elections mandated by the Geneva agreements.”<sup>55</sup> Instead, in 1955, the Government of the Republic of Vietnam

49 Marlene Cmons, “Life With A Large Family: The Seeleys’ 10 Children,” *The Washington Post*, Dec. 30, 1976, accessed February 12, 2014.

50 Cmons, “Life With A Large Family...”

51 Walter Lafeber, *The American Age: United States Foreign Policy at Home and Abroad Since 1750* (New York: W.W. Norton & Company, 1989), 630.

52 Ibid., 493-494.

53 Ibid., 523.

54 Ibid., 522 and 523.

55 Bernardine Dohrn, “Of Defeat and Victory,” *New York Times*, Apr. 18, 1975, accessed November 1, 2013.

was created with tons of U.S. military, political, and financial aid. Ngo Dinh Diem, an anti-Communist and Roman Catholic was elected the following year as President of the GVN.<sup>56</sup> In addition, Eisenhower created the Southeast Asia Treaty Organization or SEATO in September 1954. SEATO included the United States, Britain, France, New Zealand, and the Asian countries of the Philippines, Thailand, and Pakistan. Members of SEATO agreed that “in case of an armed attack against a Southeast Asia state or territory, it would respond ‘in accordance with its constitutional processes.’”<sup>57</sup> In other words, SEATO was created by Eisenhower as a way to justify “unilateral” U.S. involvement in Vietnam.<sup>58</sup>

However in 1961, after \$1 billion in U.S. aid and 658 U.S. advisors sent to Vietnam, Diem’s government could only be described as failing. President Kennedy tried to improve the situation in South Vietnam by gaining control of Laos,, which was supposed to be neutral. It also contained the Ho Chi Minh Trail, used by the Vietcong or Communist forces to send both people and supplies from the north to the south.<sup>59</sup> Despite his efforts in Laos, by the end of Kennedy’s presidency, Diem controlled only 40% of South Vietnam. Ho and his forces, the National Liberation Front or Vietcong “began organizing revolts against Diem.”<sup>60</sup> Kennedy sent in his special forces or the “Green Berets” to fight the revolutionaries and 500 additional advisors to help the failing government. This broke the 1954 Geneva agreement, which stated that no more than 658 advisors could be sent to South Vietnam. On November 1, 1963, South Vietnamese generals overthrew Diem’s government. They captured and killed Diem and his brother Ngo Dinh Nhu with seemingly no resistance from the United States. That is not surprising, for at this time there were already 10,000 troops in Vietnam which did nothing to stop the riots, protests, and voluntary self-immolation of Buddhist monks.<sup>61</sup>

After the assassination of Kennedy in 1963, President Lyndon B. Johnson now took on the responsibility

56 Lafeber, *The American Age*, 523 and Robert K. Brigham, “Battlefield Vietnam: A Brief History,” PBS, <http://www.pbs.org/battlefieldvietnam/history/>, accessed April 8, 2014.

57 Lafeber, *The American Age*, 523-524.

58 Ibid.

59 Ibid., 525 and 561.

60 Ibid., 562.

61 Ibid., 562-563 and 563-565.

of handling the conflict in Vietnam. In his desire to act rapidly, Johnson ordered airstrikes against North Vietnam in 1965. He also dispatched two U.S. Marine combat units and put forth a 1 billion dollar aid program. However at the same time Johnson was increasing U.S. commitment to Vietnam, the discontent and displeasure with the war was also growing at home. At the end of 1965, there were 160,000 troops in Vietnam yet the South Vietnamese government was still unstable under the new President Nguyen Van Thieu. College students were protesting at rallies and “teach-ins.” The violence of the war and its destructiveness was also mentioned in negative terms. For example, “After the village of Ben Tre was burned, a U.S. officer declared, ‘It became necessary to destroy the town in order to save it.’”<sup>62</sup> Even leaders such as George Kennan and General Matthew Ridgway (of the Korean war) seriously began to doubt whether the viability of the war.<sup>63</sup> The turn of the war occurred on January 1968 during the Lunar New Year or Tet Offensive. It was expected that during this time no major fighting would occur due to the celebration of the New Year. However, the Communists took the opportunity to launch a massive offensive. Though both sides suffered massive losses, Ho’s troops were repelled two times. General Westmoreland claimed this as a massive victory but “news...leaked that he had asked the president for 206,000 more U.S. troops.”<sup>64</sup>

When Nixon became president, he decided to withdraw from Vietnam through Vietnamization and the Nixon Doctrine (1969). Through Vietnamization, U.S. forces slowly withdrew and were replaced by “well-supplied Vietnamese.”<sup>65</sup> The Nixon Doctrine stated that, “in the future the United States would aid allies but would be the only nation to defend militarily and financially all the other nations of the world.”<sup>66</sup> In other words, the United States wanted to prevent another Vietnam. While stating his intent to withdraw, Nixon also began a massive bombing campaign in Vietnam that lasted from 1969-1973. Attempts at peace negotiations failed in 1972 but an agreement was finally reached between Kissinger and the North Vietnamese representative Le Duc Tho in

62 Ibid., 583.

63 Ibid., 578-583.

64 Ibid., 584-585.

65 Ibid., 605.

66 Ibid.

1973. The agreement stipulated a ceasefire on both sides, the withdrawal of all U.S. combat forces in sixty days, and the Communist withdrawal from Laos and Cambodia. All U.S. prisoners were also to be released and the U.S. was to recognize the unity and independence of Vietnam. Thieu's government was also to remain in power until an election where the Communists could participate as well.<sup>67</sup>

By March 1974, all U.S. combat troops had left Vietnam. In total 58,015 Americans died and 150,300 were wounded. The Vietnamese suffered massive losses with 2 million dead and 4 million wounded. Within a year after U.S. troops had left, the South Vietnamese government fell on April 30, 1975.<sup>68</sup> North Vietnamese troops attacked Ban Me Thuot in the Central Highlands of South Vietnam. The South Vietnamese had not bothered to defend the town even though it lay near the Ho Chi Minh Trail, a very important "network of supply lines that the North Vietnamese had built over the past three decades."<sup>69</sup> This provided a secret route through which about thirty thousand North Vietnamese troops entered the South defended by just a measly four thousand South Vietnamese soldiers. In two days Saigon fell, and with it, the sanity and order of its citizens. The South Vietnamese president, Nguyen Van Thieu, withdrew all his troops from the north in an effort to consolidate them for a last ditch effort. However, many Vietnamese read this as a sign of defeat and fled in large numbers, soldiers and civilians alike.<sup>70</sup>

Freddy Nguyen, an Ameriasian who eventually settled in the U.S., remembers waking up to people shouting, "The Communists are coming! The Communists are coming!" He remembers running to the river where rumors of U.S. ships were heard to have been.<sup>71</sup> He and his family were only a few of the hundreds of thousands of refugees fleeing at this time. Refugees desperate to escape tried to board U.S. helicopters leaving from the U.S. Embassy while many others tried to escape aboard Vietnamese

and U.S. Navy ships with as many as 30,000 people total.<sup>72</sup> Within a few days "Highway 7, a narrow, barely usable mountain pass, had filled with half a million people surging towards the coast."<sup>73</sup> Like many people, Freddy and his family took everything. He describes the chaos surrounding his escape, with people everywhere, on top of each other and ships so tightly packed that there was no room to move. Ships stank of human waste and dead people lined the streets.<sup>74</sup> Ironically what many Vietnamese were worried about was not the reality that surrounded them in the streets, but the fate of their children.

Vietnamese mothers and foreigners feared for the safety of Ameriasians because rumors were circulating that threatened their safety. During the war, relationships between American servicemen and local Vietnamese women often led to children.<sup>75</sup> These children were called Ameriasians or con lai.<sup>76</sup> According to some, the "Communists [especially] hated the con lai and they would kill these children when they took over the country."<sup>77</sup> There were also rumors that "whoever had a mixed-race child would have their stomach opened up and their eyes and heart taken out."<sup>78</sup> Adding to these rumors were even more horrific stories coming out of Vietnam. One such story noted that mixed race girls were being raped and killed because they were not a hundred percent Vietnamese.<sup>79</sup> Ameri-asians were supposedly harshly discriminated against because "the dark-skinned, stocky kid, the blonde child, the girl with the Afro, [or] the boy with blue eyes," often served as ugly reminders of the American involvement in a war that would have rather been forgotten.<sup>80</sup> In addition to an Ameriasian's conspicuous appearance and the threats received against them, most of these children were

67 Ibid., 606 and 630-633.

68 Ibid., 633-634.

69 Dana Sachs, *The Life We Were Given: Operation Babylift, International Adoption and the Children of War in Vietnam* (Boston: Beacon Press, 2010), 4.

70 Sachs, *The Life We*, 3-4.

71 Joanna Scott, *Indochina's Refugees: Oral Histories from Laos, Cambodia, and Vietnam* (Jefferson: McFarland and Company, 1989), 23.

72 Edward Marolda, *By Sea, Air and Land*, Department of the Navy-Navy Historical Center, <http://www.history.navy.mil/seairland/index.html>, accessed October 22, 2013.

73 Sachs, *The Life We*, 4.

74 Scott, *Indochina's Refugees*, 24.

75 James Dao, "Vietnam Legacy: Finding G.I. Fathers, and Children Left Behind," *New York Times*, Sept. 15, 2013, [http://www.nytimes.com/2013/09/16/us/vietnam-legacy-finding-gi-fathers-and-children-left-behind.html?\\_r=1&](http://www.nytimes.com/2013/09/16/us/vietnam-legacy-finding-gi-fathers-and-children-left-behind.html?_r=1&), accessed March 15, 2014.

76 Sachs, *The Life We*, 12.

77 Ibid.

78 Ibid., 214.

79 Ibid., 61.

80 Ibid., 12 and Dao "Vietnam Legacy..."

also left without fathers. Many of the American servicemen who had fathered these children had left or were leaving at the end of the Vietnam War.<sup>81</sup>

While the danger Amerasians faced by staying in Vietnam was used to justify Operation Babylift, only 20 percent of the Babylift children were racially mixed.<sup>82</sup> In the *Christian Science Monitor* Catholic Archbishop of Saigon, Nguyen Van Binh explained, “Instead of sending these orphans overseas, the foreign governments and benefactors should aid these poor children in their own country.”<sup>83</sup> In her book Dana Sachs shows that while staying in Vietnam as an Amerasian was dangerous, it did not guarantee death or poverty. Phung is an Amerasian whose mother had decided to keep him in Vietnam. People had tried to persuade her to send Phung away but she refused. However, she felt fearful for her son because she had heard the rumors and burned any records that showed evidence that Phung’s father was an American soldier. Phung’s family was poor but he married into a financially stable family. Him and his wife are currently trying to emigrate to the U.S. under the Amerasian Act that accepts Amerasians of the Vietnam War.<sup>84</sup>

In comparison, Thuy was an Amerasian woman who stayed in Vietnam. Her mother sent her to relatives in Danang to care for her but no one did. She could not remember who took care of her until the age of eight. At that age, Thuy took care of herself working as a maid in several households. She had very negative memories of her childhood and stated that she was not on the Babylift because “no one cared enough to sign her up.” Her husband was a man whom no one wanted to marry because he was deaf and mute, so Thuy did so in the hopes of starting a family. They eventually had three children but lived in poverty as scavengers, picking up bottles and trash for resale. Thuy and her family were also trying to immigrate to the United States in the hopes of a better life.<sup>85</sup> It is difficult to say if staying in Vietnam

would have benefited the majority of Amerasians or orphans of the Babylift. However, it is clear that the mothers of these children had a very difficult choice to make.

Amerasians were not the only children who faced danger by staying in Vietnam. By 1975, South Vietnam was home to a total of 134 orphanages that cared for approximately twenty thousand children.<sup>86</sup> Most children ended up in orphanages through unexpected ways. For example, parents sometimes left an unwanted child near the front gate of an orphanage or a “vendor from the market might bring a child she’d found left among the stalls that morning.”<sup>87</sup> Children who were often orphaned by war were also often cared for in these facilities. However, there were some major differences between local orphanages and foreign run orphanages in Vietnam. Vietnamese orphanages were known to be very small facilities in very rural areas that often had too many children to care for with too little resources. These places were often run by a variety of different organizations from local charitable groups, Buddhist communities or the Vietnamese government. These different groups also had different beliefs when it came to raising children. For example, the Buddhists believed in raising the children in Vietnam while the Catholic-run orphanages believed that “the best hope for their children lay in overseas adoption.”<sup>88</sup> As stated by Judith Coburn, a journalist who visited Go Vap Orphanage, the largest orphanage in Saigon, regardless of ideology, these orphanages were too overcrowded and understaffed to take care of such a large amount of children.<sup>89</sup>

In comparison, foreign-run orphanages had more resources because they often received financial support from overseas. The Allambie nursery divided its children into groups of six or eight where each group “has its own room and the same childcare workers assigned. The night-duty ‘mother’ [slept] in the room with the children.” Compared to local orphanages, the death rates in these facilities were much lower.<sup>90</sup> Ironically the two main adoption agencies behind Operation Babylift were Friends For All Children (FFAC), and Friends of the Children of Vietnam

81 Sachs, *The Life We*, 65.

82 Ibid.

83 Daniel Southerland, “Orphans Airlift Stirs Protest in South Vietnam,” *The Christian Science Monitor*, Apr. 23, 1975, accessed November 12, 2013.

84 Sachs, *The Life We*, 214-215 and Department of Homeland and Security, “Definition of Terms,” <https://www.dhs.gov/definition-terms#0>, accessed April 29, 2014.

85 Sachs, *The Life We*, 215.

86 Ibid., 5-6.

87 Ibid., 6.

88 Ibid., 7.

89 Ibid.

90 Ibid.

(FCVN), two foreign run orphanages.<sup>91</sup> Both agencies were very similar; Both were based in Colorado, dependent on donations and volunteers and received their orphans from Catholic-run orphanages.<sup>92</sup> However, the two main figures behind each of the orphanages were unrelated in many ways.

Rosemary Taylor, the in-country director of Friends For All Children (FFAC) located in Saigon, had a long history of working in Vietnam.<sup>93</sup> Taylor, an Australian woman, came to Vietnam in 1967 where she lived for eight years in Phu My, a shelter for the poor in Saigon as an educational social worker.<sup>94</sup> It was here that she began working with abandoned children, helping them to find new homes and adoptive families. In 1968 she began organizing international adoptions, sending a total of a hundred and fifty children abroad. In 1972 Taylor was already considered an authority on adoption policy for U.S. officials in addition to the facilitator of over a thousand overseas adoptions.<sup>95</sup> Taylor eventually joined Friends of the Children of Vietnam in the summer of 1973.<sup>96</sup> However, differences within the organization resulted in its division into Friends of the Children of Vietnam (FCVN) and Friends For All Children (FFAC). The former concentrated more on services provided to children in Vietnam while the latter focused on international adoption.<sup>97</sup> By 1975 Taylor was running four nurseries collectively sponsored by FFAC in Saigon.<sup>98</sup>

Both Taylor and Cherie Clark, the Saigon director of FCVN, had no prior training in international adoption before arriving in Vietnam.<sup>99</sup> However, unlike Taylor, Clark had only arrived in Saigon eleven months before Operation Babylift. Clark's staff was also very small and consisted of a few American volunteers and Vietnamese staff.<sup>100</sup> Taylor's departure had left FCVN in disarray but it still managed to survive. By April 1975 FCVN was in charge of two facilities—one located in the South Vietnamese capital

and one that "housed older children in Thu Duc, on the outskirts of the town."<sup>101</sup> FCVN also ran a foster care system that placed children with local families before they were adopted overseas.<sup>102</sup> Both Clark and Taylor, like the mothers of Amerasian children, had the difficult decision of trying to care for the children in the post-war atmosphere of Vietnam or in their changes abroad.

On April 4, 1975 at 4:15 pm, the first 243 orphans left Tan Son Nhut airport aboard a U.S. Air Force C-5A Galaxy plane, in addition to 44 volunteer escorts and 18 crewmen who would eventually land in Oakland International Airport in California.<sup>103</sup> The orphans that were aboard this flight were Rosemary Taylor's and belonged to FFAC. However, the majority of orphans would not live to see their new adoptive families. As the plan was lifting off from the Saigon airport, "the back-loading door of the Galaxy ripped open at 23,000 feet...and the captain, probably hampered by control problems, failed...to nurse it back to safety."<sup>104</sup> At about 5 pm the plane itself crashed a mile and a half away in a swamp where, depending on various reports, at least 178 children and adults perished.<sup>105</sup>

Despite the tragedy, the humanitarian effort resumed immediately within twenty-four hours. Three hundred and twenty four orphans from FFAC, including those who survived the crash, boarded onto a PanAm flight headed to America.<sup>106</sup> President Ford himself, who strongly supported the Babylift was said to have been "deeply saddened by the crash, [but] said 'Our mission of mercy will continue... This tragedy must not deter us but offer new hope for the living.'"<sup>107</sup> In fact, Ford himself was at the San Francisco International Airport on Saturday April 5 at about 10 p.m. to welcome the orphans on the Pan Am flight.<sup>108</sup> News

91 Ibid., 5 and 9.

92 Ibid., 34.

93 Ibid., 5.

94 Ibid., 5 and 35.

95 Ibid., 35.

96 Ibid., 38.

97 Ibid., 39.

98 Ibid., 5.

99 Ibid., 10-11.

100 Ibid., 41-42.

101 Ibid., 42.

102 Ibid.

103 Ibid., 49, 57 and 73, " 'Operation Babylift' Will Continue Despite Tragedy," *The Irish Times*, Apr. 5, 1975, accessed November 11, 2013 and "Ford Vows To Continue Operation Babylift: Survivors Sought at Crash Scene Near Saigon," *Los Angeles Times*, Apr. 4, 1975, accessed November 11, 2013.

104 " 'Operation Babylift' Will Continue..."

105 Sachs, *The Life We*, 75, " 'Operation Babylift' Will Continue..." and "Ford Vows To Continue..."

106 Sachs, *The Life We*, 90.

107 "Ford Vows To Continue..."

108 Sachs, *The Life We*, 94.

cameras took pictures of Ford carrying a baby from the plane and some accounts state that he “looked close to tears.” (96dana) The children were received for medical treatment at the Presidio while the more critically ill children were placed in ambulances.<sup>109</sup>

The United States wasn’t the only country that airlifted orphans out of Vietnam after the fall of Saigon. In the previous day before the Galaxy crash, the Australian Air Force had evacuated “87 South Vietnamese orphans to Bangkok...and at least 120 more were expected last night.”<sup>110</sup> After hearing Ford’s announcement that he would provide two million dollars and transportation for Operation Babylift, Canada “offered to cover the cost of transportation for the rest of the adoptees destined for Canada,” and Ontario even announced an airlift for 500 orphans.<sup>111</sup> In total, between two thousand and three thousand orphans were airlifted out of Vietnam as a result of Operation Babylift to the United States, Canada, Australia, the United Kingdom, and a few other European countries.<sup>112</sup>

The hasty evacuation of such a large amount of children resulted in many issues, especially with documentation. Many of the children at the orphanages had arrived without any birth information with them. To solve this problem, orphan workers assigned “nursery names” or made up names to the children such as Elizabeth, Roy, or Caesar Chavez. When they ran out of normal names, these children were assigned historical or unique names like Aristotle, Julius Caesar or even Nguoc-Mam, which in Vietnamese means “fish sauce.”<sup>113</sup> Attempts to correctly document information about the children were done in a hasty and inefficient manner. Halfway through a Pan-Am flight to the United States containing about 324 orphans,

“a Red Cross nurse began...trying to fill out a U.S. immigration and Naturalization Service (INS) I-94 form for each child, which would enable them to enter the country without visas or passports.”<sup>114</sup> Many of these I-94 forms were later found to be incorrect.<sup>115</sup> Inaccurate paperwork and information were not the only errors made by those running Operation Babylift. The discovery that many of the children were not orphans was made soon after the children started arriving in the United States.

The first case coming out of Operation Babylift was *Nguyen Da Yen v. Kissinger* (1975), a class-action lawsuit that sought investigation into the status of each individual child and the return of any non-orphans to their biological parents. The plaintiffs of the case—Nguyen Da Yen, Nguyen Da Vuong and Nguyen Da Tuyen—were three siblings who had complained to a Vietnamese nurse, Muoi McConnell that “they wanted to go home.” In the final days of the war they had been separated from their parents due to the ongoing chaos and had ended up in an orphanage where they were eventually flown to the United States.<sup>116</sup> Judge William Spencer in *Yen v. Kissinger* had initially decided in favor of the plaintiffs and ordered an investigation by the Immigration and Naturalization Service (INS) into the status of the Babylift children by checking files, conducting interviews and by developing a plan to reunite any non-orphans with their parents.<sup>117</sup> The results of the INS indicated that of the 1,830 children investigated, 274 were found not eligible for adoption. However, despite this momentary success, in February 1976 Judge Spencer threw the case out on the grounds that it could not be argued as a class-action lawsuit. Spencer said that the problem was in managing an investigation of over two thousand children and instead advised litigants to file cases on an individual basis. As for the three children involved, the International Red Cross tried but failed to contact their parents, making them eligible for adoption.<sup>118</sup>

109 Ibid., 95 and 99.

110 “‘Operation Babylift’ Will Continue...”

111 Veronica Strong-Boag and Rupa Bagga. 2009. “Saving, Kidnapping, or Something of Both? Canada and the Vietnam/Cambodia Babylift, Spring 1975.” *American Review Of Canadian Studies* 39, no. 3 *America: History & Life*, EBSCOhost (accessed March 27, 2014), 276 and Tarah Brookfield, “Maverick Mothers and Mercy Flights: Canada’s Controversial Introduction to International Adoption.” *Journal of the Canadian Historical Association* 19 no. 1 (accessed March 27, 2014), 323-324.

112 Sachs, *The Life We*, vii. and Strong-Boag, “Saving, Kidnapping, 271).

113 Ibid., 62-63.

114 Ibid., 92.

115 Ibid., 93.

116 Ibid., 190-191 and *Nguyen Da Yen v. Kissinger*, 528 F.2d 1194 (9th Circ. 1975).

117 Center For Constitutional Rights, “*Nguyen Da Yen, et al. v. Kissinger*,” <https://ccrjustice.org/ourcases/past-cases/nguyen-da-yen,-et-al.-v.-kissinger> (accessed January 20, 2014).

118 Sachs, *The Life We*, 208-209.

From its beginning, international adoption advocates sought to bypass the standardized procedures that those wishing to adopt domestically had to follow. One example was adoption “finalized by proxy,” where an adoption could be completed without the child ever having met the parent. Adoption by proxy was eventually prohibited through legislation in 1957.<sup>119</sup> By the time the first Babylift case, *Nguyen Da Yen v. Kissinger* (1975) was being contested in the courts, there did exist a semblance of an international law that addressed the issue of adoption and the custody of alien children called the Hague Convention. Despite the existence of the Hague Convention, there was not an international body of law in place that specifically outlined the procedures to follow and the specific issues unique to international adoption. As a result, many problems that arose in the Babylift cases were relegated to state law and U.S. legal statutes that were unfit to deal with these problems. However, the international agreements that came into existence during and after the 1980s show how Operation Babylift compelled lawmakers to reevaluate and draft new legislation that partially addressed the issues surrounding international adoption.

Vietnamese refugees in the Babylift cases could not use existing international legislation because they were incompatible with the U.S. legal system. In *Anh v. Levi* (1977) and (1978), the plaintiffs referred to many different international treaties like the Hague Convention (1971), the Geneva Convention (1949), the Convention Relating to the Status of Refugees (1967), and the United Nations Declaration of Human Rights (1948) to address issues of choice of law, parental rights, and child custody in general.<sup>120</sup> The Hague Convention (1971), was a modification of the 1902 Hague Convention which states that “a child’s status is governed by the law of its nationality or its parents’ nationality,” adding that the law of the child’s “habitual residence” be taken into account as well.<sup>121</sup> There were two problems with the application of the Hague Convention to Anh’s case, the first being that the United States had not ratified either Convention<sup>122</sup> because it conflicted with U.S. legal principles. For example, U.S. law states that in cases concerning adoption, state law is applied and that “Anglo-Ameri-

can law...disfavors choice-of-law principles based on nationality.”<sup>123</sup> Because of their inability to apply the Hague Convention to the case, the court also disqualified the use of Vietnamese law to a case involving a Vietnamese plaintiff and child. The same theory applied to Article 24 and 49 of the Geneva Convention (1949), which states that “education of children separated from parents by war should be entrusted to ‘persons of a similar cultural tradition,’ which could not be used either, because neither the Geneva Convention nor the UN Declaration of Human Rights was ratified in the United States at the time.”<sup>124</sup>

Even if the documents had been ratified by the United States, the language of these documents was criticized for being too “ambiguous,” “general,” or not clear enough to “...answer the custody question.”<sup>125</sup> However, one could argue that the problem lay less in the language of the document than in its expressed purpose. The legislation that was used by plaintiffs was meant to apply to children separated by war and not to children who might be eligible for international adoption. For example, Article 24 of the Geneva Convention states that,

The Parties to the conflict shall ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance...and their education are facilitated in all circumstances.<sup>126</sup>

What is meant by “not left to their own resources?” When children of the Babylift were orphaned or separated as a result of war, parents in the United States adopted them. That was one way in which the children were not left to their own resources and that their education was fulfilled. However, this guideline could also have been fulfilled by the return of the orphan to their natural parents. Therefore, even if the Geneva Convention or the other laws had been rati-

<sup>119</sup> Lovelock, “Intercountry Adoption...,” 913.

<sup>120</sup> *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978)

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid. and International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, available at: <http://www.refworld.org/docid/3ae6b36d2.html> [accessed 28 March 2014] and *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978).

<sup>125</sup> *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978)

<sup>126</sup> Red Cross, Geneva Convention Relative To The...

fied in the United States, their language renders them useless in these cases.

Rather than entirely depending on the criteria of the child's "best interests," the international context from which Operation Babylift originated also compelled U.S. courts to also consider aspects of Vietnamese law and tradition that they would have otherwise ignored. The court opinion of *Anh v. Levi* stated that there was evidence that in 1972, South Vietnam adopted a law that gave relatives (for example grandparents) the same rights as that of a parent in the United States.<sup>127</sup> The other court cases similarly referenced Vietnamese law and its relation to the case at hand. For example in *Hao Thi Popp v. Lucas* (1980), the trial court found that the agreement signed by Popp was not revocable under Vietnamese law.<sup>128</sup> To make such a claim, the court would have had to know what the law was in Vietnam at the time. Article 250 of the Civil Code of the Republic of Vietnam was also brought up in *Yen v. Kissinger* that questioned the validity of Vietnamese release forms.<sup>129</sup> The United States Court of Appeals, in its assessment of the *Yen v. Kissinger* case, considered plaintiffs' assertions that some children "were merely left in orphanages for safekeeping [and that] Vietnamese orphanages allegedly serve some of the functions of day care centers." They also stated "the Vietnamese do not understand the Western concept of being an orphan"<sup>130</sup> and other possible instances of misunderstanding where children "were allegedly released with the understanding that the parents would be reunited with the child."<sup>131</sup>

Despite the fact that Vietnamese law and tradition were introduced into these proceedings, the impact they made was minute at best. As stated before, the U.S. legal system disfavors choice of law based on a child's nationality, such that any consideration of different legal standards or cultural traditions remain merely a consideration.<sup>132</sup> The *Anh v. Levi* court

opinion of 1978 stated that even if the law of nationality was considered, the court was "uncertain what the law of the Republic of South Vietnam is or was at the time of its conquest by the North."<sup>133</sup> In addition to their ignorance of Vietnamese law, they are also unsure about the existence of the extended family as either a temporary measure or something deeply embedded within Vietnamese tradition<sup>134</sup>(5anh2). In the 1977 court opinion of *Anh v. Levi*, it was stated that Vietnamese tradition placed special importance on the children of a mother's first-born son, in this case, the four grandchildren involved. However, the Court acknowledged that some defendants may take this statement as "more argumentative than factual."<sup>135</sup> In the *Yen v. Kissinger* case, the impact of Vietnamese releases on child custody will "...ultimately be for the court to determine."<sup>136</sup> Rather than leading to a further investigation to either confirm or deny such claims, they ended up not being used at all.

In dealing with domestic issues such as adoption, the United States generally refer to the states involved. As was mentioned earlier, every state has different laws that apply to adoption and child custody. In cases of domestic adoption, the parties involved were most likely long time residents of that state and justly subject to the laws of that state. However, in cases of international adoption, particularly cases involving children from Operation Babylift, the plaintiffs are those who were subject to the laws of Vietnam and not the United States. Why should they be subject to the laws of a foreign country of which they are not even residents? What is even more problematic is the fact that the outcome of a case was dependent on the state the case was brought up in. Instead of subjecting such individuals to laws under which they have no knowledge of, international legislation that applies to all such cases involving parties of different countries should apply and therefore simplify an unnecessarily complex and controversial issue.

In *Popp v. Lucas*, Hao Thi Popp signed a relinquishment document on April 15, 1975 that effectively terminated her parental rights. The English transla-

127 *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978)

128 *Hao Thi Popp v. Lucas*, 182 Conn. 545 (S.C. 1980).

129 *Nguyen Da Yen v. Kissinger*, 528 F. 2d 1194 (9th Circ. 1975)

130 Ibid. and Center For Constitutional Rights, "*Nguyen Da Yen, et al. v. Kissinger*," <https://ccrjustice.org/ourcases/past-cases/nguyen-da-yen,-et-al.-v.-kissinger> (accessed January 20, 2014).

131 *Nguyen Da Yen v. Kissinger*, 528 F. 2d 1194 (9th Circ. 1975)

132 *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978)

133 Ibid.

134 Ibid.

135 *Huynh Thi Anh v. Levi*, 427 F. Supp. 1281 (S.D. Mich. 1977).

136 *Nguyen Da Yen v. Kissinger*, 528 F. 2d 1194 (9th Circ. 1975).



tion of the document clearly states that “I, the undersigned...relinquish all my parental rights and custody of the said child to Friends For All Children, Saigon...I hereby waive any rights which I now have as a mother to the child.”<sup>137</sup> Ms. Popp, described as an “English-speaking Catholic,” most likely understood most of the document.<sup>138</sup> This does not justify the external circumstances that could have compelled her to sign the document nor does it hint at the extent that she understood it. However, under Connecticut law, this document was deemed invalid because “the termination of parental rights cannot be effected through private contractual agreements.”<sup>139</sup> Ms. Popp was fortunate to have that benefit of Connecticut law, but it does not discount that problems with translation or documentation could have been prevented with a consistent and uniform method of practicing international adoption.

The case of Doan Thi Hoang Anh versus adoptive parents Johnny and Bonnie Nelson is another example of the problem with deciding custody in state courts. Doan Thi Hoang Anh, the mother of seven children, appealed to the Iowa District Court to regain custody of her son Binh. In March 1976, the court found in her favor but the child’s adoptive parents, Johnny and Bonnie Nelson, refused to give the child back. They appealed all the way to the Iowa Supreme Court, who six months later affirmed the district court’s decision. The court’s decision was based on an earlier court’s definition of “abandonment.” The definition of abandonment was defined as “both the intention to abandon and the external act by which the intention is carried into effect.” The court found that even though Hoang Anh had given her children to the Friends of the Children of Vietnam (FCVN), this does not indicate that she abandoned them. Instead, her search for them after she reached the United States indicates the exact opposite. In all, it took 18 months for Hoang Anh to regain custody of her son.<sup>140</sup>

*Duong Bich Van v. Dempsey* (1976) and *Le Thi Sang v. Levi* (1977) were cases that resulted in a favorable rul-

ing for the biological mother. Like the other Babylift cases, both Van and Sang were advised to appeal their cases to state courts. In both cases the judges decided to use the “best interests” of the child as the criteria for deciding child custody. Both Judge Richard Kuhn of the Sixth Judicial Circuit Court and Judge Dozier of the Superior Court of California ruled in favor of Vietnamese plaintiffs because they found that the best interests of the child were with the biological mother. In domestic adoption, the “best interests” of a child were? commonly used as criteria to determine child custody. It is assumed that what is best for a child is something that can be universally agreed upon. However, the judges of these cases employed different methods to determine whether the best interests of the children would lie with their biological or adoptive parents. This is problematic because what a judge decides is in the best interest of a child can be subjective and can change depending on what method the judge chooses to employ. Such variability further provides support for a need to have an international piece of legislation that specifically outlines what methods can be used to determine a child’s best interests, such as a background check of parents or a home study.

In the closing days of the Vietnam War, Ms. Van had heard rumors that the Communists would kill English-speaking Catholics. Ms. Van, an English-speaking Catholic, was afraid, not only for herself but for her child, Duong Quoc Tuan. She had a visa, but her son did not, so Ms. Van was faced with a dilemma. Either she could place Tuan in an orphanage, knowing that he would be evacuated in the Babylift and risk being separated from him or she could risk both their lives trying to escape on the U.S. evacuation ships.<sup>141</sup> What she was trying to make clear in court was that she never intended for him to be adopted and she never signed a release. Three affidavits were produced, one unsigned, to get Tuan out of Vietnam but they were not eligible releases for adoption. The Friends of the Children of Vietnam (FCVN), a Denver-based adoption agency, placed Tuan in an adoptive home with Mr. and Mrs. Pederson. Meanwhile Ms. Van, under the sponsorship of the Catholic Social Services, made it to the United States where she began searching for her son, in places like San Francisco, California; Green Bay, Wisconsin; and

<sup>137</sup> *Hao Thi Popp v. Lucas*, 182 Conn. 545 (S.C. 1980).

<sup>138</sup> Maryann George, “Vietnamese Relatives Fight For Custody of ‘Orphans,’” *Ann Arbor Sun*, July 1, 1976, accessed March 1, 2014.

<sup>139</sup> *Hao Thi Popp v. Lucas*, 182 Conn. 545 (S.C. 1980).

<sup>140</sup> Sachs, *The Life We*, 203-204.

<sup>141</sup> “Vietnamese Relatives Fight...”

Denver, Colorado. FCVN told Ms. Van that they did not know where her child was but nevertheless pressured her to sign a release for his adoption. She finally found Tuan at the Pedersons and proceeded to file a suit to regain custody in the Oakland County Circuit Court. At this time, the Tuan's would-be adoptive parents were already in the process of filing for adoption in the Oakland County Probate Court. The first showcase hearing to decide if Ms. Van's case should take precedence over the Pederson's adoption proceedings in the probate courts took place on June 15, 1975.<sup>142</sup>

The court did find in favor of Ms. Van and trial proceedings began on June 21, 1975. In *Duong Bich Van v. Dempsey*, Judge Richard D. Kuhn of the Sixth Judicial Circuit Court in Oakland County specifically concentrated on the question of the child's best interest. Lawyers for both the plaintiff and the defendant made similar arguments about the child's best interest, either for or against the biological mother. Henry Baskin of the American Civil Liberties Union and lawyer for the Ms. Van argued that even though the Pedersons did not know of Tuan's true identity or Ms. Van until recently, why did they continue to go on with the adoption if they knew of her desire to regain her son? In a sense he was saying a child's best interest is with their natural parent, especially if the parent did not abandon the child. James Elsmann, a Democratic candidate for the U.S. Senate in Michigan, on the other hand, argued that relocation now would be psychologically damaging for Tuan, or Matthew, as he would be renamed. Elsmann said, "Why, after he has found love and affection, should they press the issue of relocation?"<sup>143</sup> Not only did Tuan have bad memories of Vietnam, but he also "spit at pictures of his mother."<sup>144</sup> Elsmann was suggesting that Tuan himself would rather stay with his adoptive parents instead of his biological mother.

Ironically, Elsmann's advice to the Pedersons was what cost them the case. Even though they had no release, the Pedersons were advised to keep arguing and delaying in the hopes that doing so would complicate the case. The case was not decided until a year later in June 1976, with custody being awarded to Ms. Van. Judge Kuhn asked, "Who really was concerned with

the child in question in this case?" He wrote that if the Pedersons were really concerned with the best interests of the child they have "brought the case to the court for a quick decision instead of 'stonewalling'."<sup>145</sup>

In comparison *Le Thi Sang v. Levi* and the best interests of the child was determined in only a matter of months. Le Thi Sang had worked for her son's would-be adoptive parents, William and Elizabeth Knight in Vietnam. Tuan Anh or "Dean" as the Knights called him, was Ameriasian. Rumors were circulating in Vietnam that the Communists especially hated Ameriasians and would kill them when they took over the country. Sang, like many other mothers, feared for her child, so she handed him over to the Knights who she believed could save him. However, the Knights believed that Sang had given her son to them for adoption. Both Sang and Tuan Anh got to the United States at around the same time and Sang immediately located the Knights and asked for her son back. However, the adoptive parents and the boy refused.<sup>146</sup>

Sang's first attempt to regain custody of her child was in *Le Thi Sang v. Levi* (1977) in the United States District Court of California. With the assistance of Thomas R. Miller and Neil Gotanda, lawyers of the California Rural Legal Assistance of Oakland, California, Sang filed a petition for writ of habeas corpus. The plaintiff "seeks to have the defendants deliver custody of the minor child Le Tuan Anh from their custody to the custody of the plaintiff."<sup>147</sup> The fact that Anh was born to Sang and her husband, an American soldier, raised questions about his Ameriasian status. The Court found that the child, "may or may not be an alien subject to the jurisdiction of the Immigration and Naturalization service (INS)" and may be an American citizen.<sup>148</sup>

The court found that the child was in the territorial jurisdiction of the court and subject to the court's ruling. However, the federal court stated that they, "do not exercise jurisdiction in child custody contests" because domestic issues are reserved to the state courts.<sup>149</sup> Issues of state law and jurisdiction were also applied to this case. The court did find that

<sup>145</sup> Sachs, *The Life We*, 201-202.

<sup>146</sup> *Le Thi Sang v. Levi*, 426 F. Supp. 971 (E.D. Calif. 1977)

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

Anh's custody was consistent with state law acceptable to the INS and recommended that they bring the case to the Superior Court of the State of California for the County of San Joaquin, the county of the child's current residence.<sup>150</sup> In *Le Thi Sang v. William Knight and Elizabeth Knight* (1977), Judge Bill Dozier of the Superior Court of California devised a creative way of determining the best interests of the eight-year old Tuan Anh. He sent him to live with his biological mother in Ohio for three months. Dozier would award Sang custody if she could prove in that time that her son was better off with her. The court opinion stated:

The first six weeks of the visit were a shambles. Tuan Anh talked to his mother only through his aunt, informed her that he hated her, and kicked the walk [sic] or threw tantrums whenever his mother thwarted his wishes. The mother was faced with the formidable task of reestablishing her mother-son relationship with the boy and also setting the limits to his behavior despite repeated threats to "tell the judge" or run away to the Knights.

In this guerilla war, the mother LOST 14 pounds in the first two months. Significant as an insight into Tuan Anh is the fact that he GAINED six. Though some magic elixir of patience, resilience, and mother love, plus an inner need in the 8-year-old boy not therefore perceptible, the mother won the battle. He began to communicate with his mother, call her "Mom," and appreciate how hard she was working, how tired she was, and how much she loved him.<sup>151</sup>

Though things worked out for Ms. Sang, the three-month period that the judge allotted her might not have been adequate to prove that the boy's interest would be with his mother. Dozier described the boy as "handsome and likeable but clever, materialistic, self-willed, and...a management problem to any parent." If he had not shown affection to his mother, it would speak more to his personality, which, "has a flattened capacity for affection," rather than to Sang's

ability as a mother.<sup>152</sup> The case might have turned out differently because the term "best interests" can be a matter of subjectivity as much as it attempts to be a term of objectivity.

The United States legal system made it difficult not only to contest custody state to state but also in applying jurisdiction over a large class of individuals. Operation Babylift consisted of almost three thousand orphans who were questionably eligible for adoption. The division of the United States Federal Circuit into thirteen circuit courts, each of which only has jurisdiction over certain states, makes it difficult for all the plaintiffs of a class action to reap the benefits of a decision if they fall outside of the court's jurisdiction.<sup>153</sup> For example, California is part of the 9<sup>th</sup> circuit that has jurisdiction over the states of Washington, Nevada, Oregon, Idaho, Montana, Alaska, Arizona and Hawaii.<sup>154</sup> Of the four Babylift cases examined in this paper, all four appealed to a U.S. Court of Appeals. For example, in *Nguyen v. Kissinger*, the 9<sup>th</sup> circuit made a decision to conduct an investigation into the children's status. However, they could only do so with the children under the court's jurisdiction that included only nine states on the West Coast. This was helpful because most of the orphans from the Babylift were "processed through the Northern District of California" and were in the court's jurisdiction when the complaint was filed. However many orphans now lived in states in the Midwest or East, so they would be exempt from the Court's decision.<sup>155</sup> Afterwards, Judge Spencer decided the case could not be tried as a class action; any decision regarding the orphans could only be made on an individual-to-individual basis.<sup>156</sup> Therefore, cases that could benefit from the overarching reach of a class action, like Operation Babylift, were instead relegated to a slow process of cases tried state by state, individual by individual.

International legislation, beginning in the 1980s, began to address international adoption, first by ad-

<sup>150</sup> Ibid.

<sup>151</sup> Sachs, *The Life We*, 202-203.

<sup>152</sup> Ibid., 203.

<sup>153</sup> "Court Jurisdiction," United States Court of Appeals for the Federal Circuit, <http://www.cafc.uscourts.gov/the-court/court-jurisdiction.html>, accessed March 22, 2014.

<sup>154</sup> "Court Locator," United States Courts, [http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx), accessed March 20, 2014.

<sup>155</sup> *Nguyen Da Yen v. Kissinger*, 528 F. 2d 1194 (9th Circ. 1975)

<sup>156</sup> Sachs, *The Life We*, 208.

addressing the issues raised by Operation Babylift. The first issue that was addressed was the large number of orphans that were displaced (almost three thousand and possibly more) as a result of the Vietnam War. On December 3, 1986, the United Nations completed the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, With Special Reference to Foster Placement and Adoption Nationally and Internationally.<sup>157</sup> The written text of the document states that one of the reasons for its drafting was the “large number of children who are abandoned or become orphans owing to violence, internal disturbance, armed conflict ... or social problems.”<sup>158</sup> This document was the first step in acknowledging that the number of children affected daily by war and violence is enough of a reason to have some type of protocol in place to help them in an effective way.

This document also takes another step forward in acknowledging the alternatives available to children other than adoption. Western concepts of childcare often hold that if a parent is not able to care for their child, adoption by a [nuclear?] relative or a stranger is often the best option. However, an alternative for children in many countries was the extended family. In Vietnam, children were viewed as a member of both the nuclear and extended family. Many children were kept off the streets because when one family member was unable to care for a child, another relative or grandparent usually took the child in. Article 27 of the Vietnam Marriage and Family Law of 1986 states “Grandparents shall be bound to support and educate under-age grandchildren if they become orphans.”<sup>159</sup> Just as grandparents cared for children in times of need, children were expected to care for their parents and/or grandparents after they reach a certain age. Children are very important in Vietnamese society because they also contribute to the family economically. Article 23 of the Vietnam

and Family Law of 1986 states that, “Children under the age of 16 or over living with their parents shall contribute to the family’s livelihood, and contribute part of their earnings to meet the family’s needs.”<sup>160</sup> Vietnamese society is all about the duty each family member has to each other, so much so that people in Vietnam often use kinship references such as *anh*, *chi* or *em* more often than names when speaking to one another.

Article 4 of the Declaration on Social and Legal Principles acknowledges the extended family, stating that if a child can not be raised by their natural parent, “care by relatives of the child’s parents, by another substitute—foster or adoptive—...[or] by another appropriate institution, should be considered.”<sup>161</sup> Article 5 of the United Nations Convention on the Rights of the Child (1989) also states that State Parties shall respect the rights and responsibilities of not only parents but also of members of the extended family as applicable by “local custom.”<sup>162</sup> In *Anh v. Levi*, Ms. Anh was probably viewed as the parental equal of her four grandchildren, whereas in U.S. courts, her parental rights and the role the extended family played in Vietnamese society was questioned.<sup>163</sup> Under the UN Convention of the Rights of the Child, Ms. Anh’s rights as a grandmother of the four children would have been viewed more seriously when considering the important role relatives play in the Vietnamese family.

The Hague Adoption Convention, completed on May 29, 1993 and active in the United States in April 2008, was drafted to prevent many of the issues that occurred not only with Operation Babylift, but also with international adoption in general.<sup>164</sup> The purpose of the Convention was to “create rules and guidelines for countries to follow when processing in-

157 United Nations General Assembly, “United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,” Dec. 3, 1986, <http://www.un.org/documents/ga/res/41/a41r085.htm>, accessed March 2, 2014.

158 Ibid.

159 United Nations High Commissioner for Refugees, “Vietnam Marriage and Family Law,” Dec. 29, 1986, <http://www.refworld.org/docid/3ae6b54dc.html>, accessed February 15, 2014.

160 Ibid.

161 United Nations, “United Nations Declaration on Social...,”

162 United Nations Office of the High Commissioner for Human Rights, “United Nations Convention on the Rights of the Child,” Nov. 20, 1989, <http://www.ohchr.org/en/professional-interest/pages/crc.aspx>, accessed March 3, 2014.

163 *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978).

164 Elizabeth Long, “Where Are They Coming From, Where Are They Going: Demanding Accountability in International Adoption,” [http://www.cardozolawandgender.com/uploads/2/7/7/6/2776881/long\\_formatted.pdf](http://www.cardozolawandgender.com/uploads/2/7/7/6/2776881/long_formatted.pdf), accessed November 2, 2014, 828.

ternational adoptions, so there can be legal uniformity and consistency” and to “...assure parents that their child was not a victim of unscrupulous adoption practices but was a child eligible for adoption.”<sup>165</sup> As shown in the court cases mentioned before, adoption of a child who was not an orphan was one of the biggest issues raised by international adoption. Operation Babylift was only one example of a situation that led to the adoption of non-orphans. The high demand for adoption in the United States has also resulted in baby trafficking, false promises, and misrepresentations of the effects of adoption to both biological and adoptive parents.<sup>166</sup>

The Hague Convention acknowledges the complex nature of international adoption by ensuring the specialization of Convention workers, the background of the child, and communication between the countries involved. Both Rosemary Taylor and Cherie Clark, two important figures behind the organization of Operation Babylift, had no professional training in international adoption. At that time “professionals” in the field were not expected to have any type of training.<sup>167</sup> All staff members of the Convention are required to hold a Masters degree in Social Work.<sup>168</sup> The importance of the consent and the culture of the receiving country are also outlined in the Convention. Article 16, subsection B states that, “due consideration [is given] to the child’s upbringing and to his or her ethnic, religious and cultural background.”<sup>169</sup> In a similar way, Article 17, subsection C indicates that in order for an adoption to go through, both countries have to consent.<sup>170</sup> In Operation Babylift, orphans were taken without the consent of the Vietnamese government.

Recent legislation clarified not only the role of the extended family but also what conditions qualify as abandonment. Operation Babylift raised questions about the function of orphanages in Vietnam and about the validity of relinquishment documents, among other things. In 2002, the Department of

Homeland Security’s definition of abandonment addressed both issues, stating that abandonment does not occur if the parent only intends to place the child temporarily in an orphanage while retaining the parent-child relationship, but when “the parent(s) entrust[s] the child permanently and unconditionally to an orphanage.”<sup>171</sup> Legislation that attempts to clear up any confusion or misunderstanding when it comes to the signing of documentation relinquishing parental rights was also a huge step in the increased regulation of international adoption. The Department of Homeland Security thoroughly addresses the issue of using documentation to prove abandonment, stating that:

If any written document signed by the parent(s) is presented to prove abandonment, the document must specify whether the parent(s) who signed the document was (were) able to read and understand the language in which the document is written.<sup>172</sup>

If the parent is not able to read or understand the language in which the document is written, then the document is not valid unless the document is accompanied by a declaration, signed by an identified individual, establishing that that identified individual is competent to translate the language in the document into a language that the parent understands and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the document to the parent in a language that the parent understands. The declaration must also indicate the language used to provide this explanation.... Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.<sup>172</sup>

In *Anh v. Levi*, problems with documentation caused a lot of confusion because relinquishment documents for the four children were signed by the director of an orphanage in Vietnam without the knowledge of the grandmother and were later found to be invalid.<sup>173</sup> In *Popp v. Lucas*, the document signed clearly stated that the plaintiff would be terminating all her rights

<sup>165</sup> Ibid.

<sup>166</sup> Ibid. 831.

<sup>167</sup> Sachs, *The Life We*, 10-11.

<sup>168</sup> Long, “Where Are They Coming From...,” 847.

<sup>169</sup> “The Hague Convention on Protection of Children and Co-Operation In Respect of Intercountry Adoption,” May 29, 1993, [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69), accessed February 22, 2014.

<sup>170</sup> Ibid.

<sup>171</sup> Department of Homeland Security, “Definitions,” <http://cfr.vlex.com/vid/204-301-definitions-286271915>, accessed March 2, 2014.

<sup>172</sup> Ibid.

<sup>173</sup> *Huynh Thi Anh v. Levi*, 586 F. 2d 625 (6th Circ. 1978)

and custody as a parent,” yet she argues that the document was signed under duress and was revocable under Vietnamese law. This definition addresses this issue in very specific language and renders a document valid only if both parties understand the terms, whether through translation or in some cases, counseling. Article 15 says that counseling should be provided to the biological parents, the adoptive parents, and the child’s parents when considering adoption.<sup>174</sup> In this way, nothing is done without the knowledge of the other party and the child’s best interests is the primary concern.

As can be seen through the personal stories, court cases, and newspaper articles included in this paper, Operation Babylift and international adoption were both professional and personal processes that needed regulation. Operation Babylift was a product of the longest war in American history, the Vietnam War. The existence of Amerasians and the displacement of large numbers of adults and children created a unique refugee situation where there was no clear-cut answer.

Vietnamese mothers had to make very important but hasty decisions on whether to hand over their child to adoption agencies such as FFAC or FCVN in order to ensure their safety or risk their lives in an independent but politically divided Vietnam. For adoptive parents in the United States, international adoption was a means of both fulfilling their own maternal wants in addition to ensuring the well being of orphans and Amerasians. However, when faced with the question of custody versus relinquishment of a child to their natural mother, adoption often turned into more of a personal want than a necessary endeavor. Joan Thompson, an adoptive parent stated,

If there were requests from Vietnamese gals, that they really wanted their kids back, that [was] hard. But you know most of us have had our hysterectomies and all and we can’t have any children of our own. The Vietnamese have so many kids—8, 10, 13—and we don’t have any. We want them. We think this is the best country possible—the kids have so much better chance to grow here, be what they

want. In Vietnam they would be a fisherman or dirt farmer.<sup>175</sup>

Others like Wilfred Antonsen, who has a nine-year old Babylift son named Clay, from the Holt Adoption Agency says, “I’m sure the grandmother loved him.” When asked if he found out the grandmother was alive and able to support Clay and wanted him back he said, “Well, I don’t make any human plans for the future...I trust our lives to the Lord Jesus. Whatever He decided, we would do...He would speak to us through the Bible...Over there Clay would probably be Buddhist.”<sup>176</sup>

The disagreements, the controversy, and the public nature of Operation Babylift caused lawmakers to reevaluate whether the type of regulation that existed for domestic adoption should indeed also exist for international adoption. The U.S. legal system and its overall structure were incompatible in dealing with international adoption on a class action basis. On an individual basis, court cases show that state law was too varied to address the overarching scope of international adoption. U.S. law of choice principles rendered cultural and international law inapplicable to what were international cases dealing with citizens of a foreign country. International legislation that was in existence at the time, such as the Universal Declaration of Human Rights and the Convention on the Rights of the Child, were too general and barely addressed the complex concerns that were raised by international adoption. Approximately a decade after Operation Babylift, new laws such as the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children and the Hague Convention emerged that directly addressed such issues. The role of the extended family, the importance of reunification, and the emphasis on mutual understanding between the parents and countries involved show that these laws were put into place in order to avoid another Operation Babylift. Whether by Vietnamese or American standards, it cannot be understated that the existence of such laws will ensure the best interests of all children.

<sup>174</sup> United Nations, “United Nations Declaration on Social...,”

<sup>175</sup> Tracy Johnston, “Torment Over the Viet Non-Orphans: Non-Orphans,” *New York Times*, May 9, 1976.

<sup>176</sup> Ibid.

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