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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 W.W. II Period¹

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The United States immigration and intercountry adoption policies and practice are compared with those of Canada and New Zealand. In the post World War II period, both the United States and Canada have been significant as receiving countries for intercountry adoptees, while New Zealand has proportionately been one of the least significant receiving countries in the West. Intercountry adoptions were addressed in legislation and incorporated into immigration criteria and procedures in the immediate post war period in response to the displaced children of Europe. The early immigration legislation for the migration of children for adoption tended to be reactive and temporary. By the 1970s, there was an increased demand for intercountry adoption, and permanent provisions were established in immigration legislation and criteria. Despite the endorsement of this practice through immigration policy, no national policy corollary that addressed the welfare of these children emerged in the United States or Canada. In contrast, in New Zealand, immigration policy and criteria has been shaped by a national policy on intercountry adoption as a practice since the 1960s. This article traces the development of immigration policy and intercountry adoption policy and practice in all three countries. It is argued that ultimately, with respect to policy priorities and practice, all three countries have prioritized national needs and well being over the 'needs and welfare' of child migrants for adoption.

The practice of intercountry adoption as a solution for children needing families and material security emerged in the post World War II period (Weil,

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1984; McRoy, 1991). Initially, recipient societies responded to the displaced children of Europe both during and in the war aftermath. From the 1950s to the present, the migration of children for adoption to First World nations became an established practice. The availability of children for intercountry adoption has been shaped by political upheaval, civil wars, natural disasters and domestic family policies in the Third World; notably in Korea, Cuba, Vietnam, Cambodia, Latin America, and more recently in Romania, the former Soviet Union and The People's Republic of China.

Historically the practice of intercountry adoption in the post World War II period can be conceptualized as having occurred in two waves (Westhues and Cohen, 1994; Alstein and Simon, 1991). The first wave occurred immediately after the war and lasted up until the mid-1970s. This wave has been characterized as a largely humanitarian response to the predicament of children in 'war-torn' countries. The second wave, from the mid-1970s to the present, has also been shaped by humanitarian concerns for children, often in war zones and always living in conditions of poverty. However, unlike the first wave, the second wave has also been driven by falling fertility rates in the West and a decrease in the number of healthy Caucasian infants available for adoption domestically. The two waves might be characterized from the recipient society view as: 1) finding families for children and 2) finding children for families.

This article provides a comparison of intercountry adoption and immigration policy in the United States, Canada and New Zealand in the post World War II period. Documenting and analyzing how recipient societies respond in policy to children migrating for adoption provides an insight into the social context within which the 'humanitarian endeavor' is embedded. The migration of children for adoption currently involves approximately 20,000 children a year. Of these, approximately 10,000 migrate to the United States, 2,500 to Canada and 500 to New Zealand (Weil, 1984; Sobol and Daly, 1995; New Zealand Citizenship, 1997).

All three countries share points of commonality with respect to their migration and immigration histories. As settler capitalist societies colonized by a predominantly British population, all three countries were incorporated into the world economy as semi-dependent producers of primary products and have been dependent on immigration to supply labor for expanding labor markets. All three countries have at various times employed discriminatory immigration policies on the basis of country of origin and race and all addressed these policies in the post war period (Ongley and Pearson,

1995:765).² Child migration, specifically child migration for adoption, has occurred within this context and has been shaped by these more general societal similarities and immigration concerns.

THE RELATIONSHIP BETWEEN IMMIGRATION AND INTER-COUNTRY ADOPTION POLICY

The relationship between immigration policy and intercountry adoption practice is not only highly dependent, it has, over time, in all three countries changed in response to national and international realities and social pressure in the post-war period. This article considers comparatively two main policy arenas: 1) immigration policy and 2) intercountry adoption policy. While obviously these two policy arenas overlap and are interrelated, it is argued that intercountry adoption and immigration policies and criteria are shaped by quite disparate overriding concerns.

Generally, immigration policy stresses and is guided by the welfare of the state/nation and society. Here the control of immigration is motivated by a nation's concern with self-preservation and enhancement. Immigration must not threaten nor undermine the functioning or continuance of a nation. The potential of immigrants from different nations, with differing cultural and social values, to enhance or undermine societal well-being has been central to immigration policy formation in all three societies and has impacted on child migration for adoption policy and practice (Hawkins, 1991; Edmonston and Passel, 1994; Ongley and Pearson, 1995).

With respect to intercountry adoption, the welfare of the child has emerged as the paramount concern. Various international conventions since World War II have stressed that the welfare of the child should be central to intercountry adoption practices and policies. While these two concerns, societal well being and the well being of the child, need not be incompatible or contradictory, it is important not to conflate the two as one and the same. Intercountry adoption can only take place if immigration policy facilitates the practice and, by extension, if the practice is considered to be in keeping with national objectives.

Historically, the adoption of children from some countries was not possible because of immigration criteria, rather than any established policy on intercountry adoption or concerns about the welfare of intercountry

²These points of comparison are applied by Ongley and Pearson (1995) to the immigration policies of Canada, Australia and New Zealand. However, they are equally relevant to a comparison between the United States, Canada and New Zealand.

adoptees. Thus, ultimately, the welfare of the child of a different national origin and location has been secondary to the welfare of the recipient nation/society.

It is necessary to clarify what is meant by 'national concern,' and/or 'national interest,' which are invariably expressed through 'national policy.' It is argued that national concerns or interests encompass those actions that contribute to the functioning of and continuance of the nation. All actions at the macro level are at least in some way measured in terms of whether they will either enhance or undermine societal well being. Thus, nations consider their relation to the international community and how their national objectives and practices shape or impact on international standing, reputation and image. Nations also consider how they will sustain and reproduce themselves and attempt to predict how various policies and practices will enhance or could potentially undermine societal stability. All three nations have regulated their migratory flows in the post World War II period, and this regulation has been shaped by the aforementioned concerns.

The following argument also addresses the actions or practices of nationals/citizens, that is, the prospective and actual adoptive parents of children of another national origin. On the surface it appears that the practice of inter-country adoption is one that is instigated and achieved by individuals who are motivated by individual concerns and needs and that the nations' concerns, as manifest in policy and practice, are somehow separate or different from those of individuals (or nationals). However, it is misleading to conceptualize the needs and concerns of prospective parents as being somehow outside of or separate from the needs and concerns of the nation. Individuals who adopt from abroad do so within a particular domestic/international/political context. Their needs and desires are socially constructed and emerge out of the same domestic/international/political and economic context as the policies that formally address national needs and concerns. Thus, not surprisingly, the interests of individual families have at various times been one and the same as the interests of the nation, and at other times they have been at odds with the interests of the nation. But as we will see, in the post-war period, ultimately, individual family interests seldom stand in stark opposition to national interests, indeed there is a considerable degree of convergence. The actions of individuals (nationals) have often served national ends. For example, the concerns and practices of individuals (nationals) have contributed significantly to national image internationally, have complemented domestic race relations policy, have helped to promote domestic adoption objectives,

and have dampened dissatisfaction with domestic adoption policies and realities. Further, in more recent times national policy and practice has been shaped by the demands and needs of nationals, and it has been in the interest of these nations to address these domestic demands and needs. Ultimately, the nation's needs and the needs of nationals have been prioritized over the well being of the child of a different national origin migrating for adoption in the post World War II period.

AD HOC RESPONSES: THE FIRST WAVE – FINDING FAMILIES FOR CHILDREN

The first wave of migration immediately after World War II involved the placement of orphaned children from Europe. Finding families for children was both a domestic and international issue in the immediate post-war period. However, in all three countries immigration regulations provided an obstacle to the migration of children for adoption.

The United States has been a major receiving country for intercountry adoptees since World War II. Intercountry adoption into the United States constitutes a significant migratory trend. Beginning in 1947, this migration has seen over 200,000 children migrate to the United States for adoption by U.S. citizens or residents (Carlson, 1988:318).

The first provision for intercountry adoption in the United States was President Truman's directive of December 22, 1945, which addressed the needs of displaced persons in Europe and allowed for the migration of refugees and unaccompanied minors.

While a humanitarian gesture, the President's directive did not compromise national objectives. Fears raised about a possible flood of migrants were appeased by retaining existing quotas, and humanitarian objectives were met by giving refugee applicants priority (Forbes and Weiss, 1985). Over 1,300 unaccompanied children entered the United States under these provisions. The children came primarily from Poland, Czechoslovakia, Hungary and Germany. Both federal government and private agencies in this instance shared the responsibility for these children and their care. Some of the younger children amongst this group were adopted by U.S. citizens and represent the beginning of the post World War II trend of children migrating for adoption to the United States (Forbes and Weiss, 1985:9).

All of the early legislative provisions for intercountry adoption in the United States were provided under refugee legislation, which tended to be largely *ad hoc* and reactive to global crises (Forbes and Weiss, 1985). The lack

of continuity in policy in the period 1947–1962 impacted at various times on the entry of both refugees and adoptees (Forbes and Weiss, 1985; Carlson, 1988). Following the President's directive of 1945, Congress enacted the Displaced Persons Act of 1948, which contained a provision for the immigration of 3,000 'displaced orphans' over and above existing quotas (Carlson, 1988:325). However, this provision was not made in terms of any long-term aspirations with respect to intercountry adoption as a practice any more than it was with respect to refugees generally. As Carlson (1988:326) observes, "Its purpose was not to facilitate trans-national adoption for the benefit of United States citizens or for orphan children generally, but to relieve an emergency refugee problem."

However, only a decade later, in the United States the motivations for adopting children from abroad began to change. The adoption of children from Europe occurred at a time when domestically there were plenty of children available for adoption (Alstein and Simon, 1991; McRoy, 1991). By the 1950s, the demand for children, specifically healthy Caucasian infants, began to exceed the numbers of infants available domestically. Prospective adoptive parents increasingly saw intercountry adoption as a solution to the domestic shortage, but there were no legislative provisions to facilitate this (Forbes and Weiss, 1985; Carlson, 1988).

The earliest provisions for intercountry adoption were shaped by United States military involvement in Europe. By the 1950s, military involvement in Asia prompted further provisions. Specifically, special provisions were instituted in 1953 to enable military and government employees stationed in Korea to adopt Korean orphans. This provision created a precedent for interracial intercountry adoption and informed the next legislative move (Carlson, 1988).

The Refugee Act of 1953 addressed individuals fleeing Eastern Bloc countries and also allowed 4,000 special non-quota visas for orphans (Forbes and Weiss, 1985:10). Unlike previous legislation, this Act contained an explicit adoption-orientated definition and addressed the demands of prospective parents domestically (Forbes and Weiss, 1985:10). The Act provided for the first time a nonrestrictive intercountry adoption immigration policy that could be used by all prospective parents in the United States. The 1953 legislation marks the beginning of a trend, and when it expired in 1956 there was a 'clamor of would-be adoptive parents,' demanding further legislation to facilitate intercountry adoption (Pettis, 1958). Between 1954 and 1958 it is estimated that approximately 10,000 foreign children were adopt-

ed into American families. A significant number of these children were from Germany, Japan and Korea and were adopted by American military personnel stationed in those countries (Pettis, 1958:27).

Emerging out of more general refugee migration, intercountry adoption was viewed as first and foremost a migratory phenomenon. Issues and concerns connected with the emergency mass migration of adults from both traditional and nontraditional source countries shaped opinion and policy on the migration of unaccompanied minors for adoption (Forbes and Weiss, 1985). The earliest discussions which focused on this form of migration addressed concerns about possible chain migration, backdoor migration, and the possible influence that these migrants would have on American citizens. In the more extreme, discussions focused on whether these children, as nationals of countries with which the United States had been at war, would present a threat to national security or would serve as a drain on resources and whether or not they could potentially have a 'bad influence' on their American peers (Forbes and Weiss, 1985). These national concerns were central to debates that led to immigration policy formation on the migration of unaccompanied minors between 1939 and the mid-1950s. While the response to these children and their welfare needs might well be characterized as humanitarian, it was very much shaped by national concerns and needs. Ultimately, domestic political concerns took priority over humanitarian concern for foreign orphaned children.

By the 1950s, the migration of children for adoption became increasingly prevalent, and it was the domestic adoption laws that effectively dealt with general immigration concerns. Specifically, domestic adoption laws stipulated that all biological ties were severed on adoption, hence chain migration was not possible if the adoption was finalized in the United States. Concerns about backdoor migration and the character of these child migrants were allayed by age and quota restrictions and qualifying criteria for adoptive parents.

In 1956, agencies involved in intercountry adoption became concerned about the increasing number of adoptions that were finalized by proxy. With the adoptions finalized abroad, the screening of adoptive parents, which was standard practice for domestic adoptions, was not possible. A number of these adoptions had been detrimental to the welfare of the child (Pettis, 1958; Di Virgillio, 1956; Graham, 1957; Valk, 1957). As a consequence, an amendment in legislation in 1957 prohibited proxy adoptions. However, discrepancies between domestic and international adoption practices continued to emerge.

The lack of policy on intercountry adoption meant that the process had emerged and developed without regulation, and in the process the welfare needs peculiar to the child migrant for adoption were often overlooked. Parents wishing to adopt domestically at this time were subject to home evaluations; those who adopted abroad were not always subject to this scrutiny. Prospective parents who could not meet domestic qualifying criteria – for example, age, religious affiliation, marital status – increasingly turned to intercountry adoption, where the criteria in relinquishing societies varied considerably and in many instances was less restrictive. Intercountry adoption to the United States had also increasingly become interracial adoption at a time when interracial adoption domestically was not common practice. At this time there was an abundance of children of ‘mixed race’ available for adoption domestically and for whom welfare practitioners found it very difficult to find families and homes. However, while prospective parents would contemplate interracial adoption from abroad, many would not contemplate a domestic interracial adoption.

In 1957, the responsibility for implementing the Orphans program shifted from the Department of State to the Immigration and Naturalization Service of the Department of Justice. This change had a number of significant procedural implications. Prior to 1957, the issuing of immigration visas for children migrating for adoption depended on the recommendation of a recognized national, state or local child welfare agency. Under the 1957 provisions, these recommendations became supplementary to the INS’s own investigations of the prospective adoptive parents and their homes (Pettis, 1958:29). Many in child welfare circles were critical of this change and argued that INS staff lacked the qualifications to make these assessments. And while this was undoubtedly the case, this change clearly reveals the prioritizing of national concerns over and above child welfare concerns. This change in policy and procedure signals that the state considered the assessment of the suitability of these children for migration and the suitability of the adoptive families as primarily an immigration concern. As an immigration concern, the state considered the INS the most appropriate body to assess whether the migration and placement for adoption should or could take place.

The 1957 Act was followed by two more temporary acts that extended the orphan provisions. In congressional hearings in 1959, it was clear that provisions for intercountry adoption would be made permanent in the United States basic immigration law (Carlson, 1988; Weil, 1984). Intercountry adoption had become an accepted migratory practice; it was also by this time meeting a national need.

The Canadian response to intercountry adoption in the post World War II period was shaped by other wartime initiatives. With the outbreak of World War II, Canada, as with other British colonies, responded to the needs of child evacuees from Britain. In total, 4,000 children came to Canada from Britain during the period of the war (Wagner, 1982). This program was an emergency response, and adoption was not the intended outcome. Rather, these children were repatriated and reunited with their families after the war (Pask, 1990). However, it was this program which prompted a number of requests by 'ethnic' (Canadians who were not of British origin) groups to allow the entry of other children, for fostering and adoption, in the post-war period. This evacuee program represents the beginning of a trend whereby Canada offered the opportunity of migration and support to children in war-torn countries.

Thus, in response to requests from Canadian citizens in the war aftermath, Canada made a number of provisions for the orphaned children of Europe. The orphans were granted entry through Orders-In-Council, rather than through permanent provisions in immigration policy. In this period, Canada granted entry to 1,086 Jewish children, all of whom had to be 'full' orphans (*i.e.*, both biological parents had to be deceased) (Dirks, 1977). However, while granting entry was a humanitarian gesture, it was subject to a number of conditions, all of which ensured no cost to the state. The children were brought to Canada under the auspices of the Canadian Jewish Congress, the Congress accepted the responsibility of both financing and managing the program. The Canadian government required the Congress to guarantee that these children would not become dependent on the state. In the same period, an Order-In-Council granted entry to 1,000 Roman Catholic children orphaned due to the war. The placement of these children was overseen by provincial child welfare departments and recognized Catholic children's societies and was subject to similar conditions (Dirks, 1977:167).

An *ad hoc* and conservative response typified Canada's stance with respect to child migrants for adoption, and this at least in part was shaped by domestic child welfare concerns. Canada had an abundance of children available for adoption domestically, and there was little demand for children from abroad. Canada itself relinquished children for international adoption in this period (Bagley, 1991). Interracial adoption was not practiced and the placement of First Nations' children, and sending illegitimate Catholic children abroad was part of adoption practice in this period (Bagley, 1991, Personal Communication, Social Work Practitioner, Quebec, 1997). In comparison with the United States, the number of children migrating to Canada for adoption was

small, and all were of European origin. The migration of children for adoption from Asia, an emerging relinquishing region in this period, was not possible due to race criteria in the immigration regulations and would not become a feature of intercountry adoption in Canada until the 1960s.

As with Canada, the migration of children for adoption in New Zealand in this period was more conservative than was the case in the United States. The New Zealand government supported only group schemes and only under special circumstances considered granting entry permits for individual intercountry adoptions up until the 1970s. Prior to and during World War II, New Zealand granted entry to a number of child-evacuees. Among those granted entry in this period were a group of Polish children. Initially it was intended that these children would be repatriated after the war, and while some were, the vast majority remained in New Zealand. Some of the children who stayed in New Zealand were adopted into New Zealand families (Minister of Immigration, 1973, Appendix C:1-5).

However, by far the most significant migration of children for adoption involved children from Britain. During the war, as with Canada, the focus in New Zealand was on evacuees. Significantly, though, not all allied children in war zones were provided for. The arrangement was exclusively with Britain, and it was made clear that provisions would not be extended to allied child refugees or colored children (Wagner, 1982:251). The pre-war and the war-time initiatives between New Zealand and Britain provided a precedent for post-war efforts. In 1949, the Child Migration Scheme between New Zealand and Britain was launched. By the time the scheme ended in 1952, over 500 children had migrated for adoption or fostering to New Zealand (Wagner, 1982:251).

These children represent the largest group of children migrating for fostering and adoption to New Zealand in the post World War II period. Unlike later schemes, not all of these children would be adopted; rather, many were fostered until they were old enough to work. The scheme was optimistically embraced by both nations and was considered to be mutually beneficial. For Britain, it provided a means by which they could address the needs of the children of the urban poor in Britain. Sending these children to New Zealand, it was argued, would provide them with the opportunity of a 'better life.' These child migrants conformed to New Zealand immigration criteria at the time. That is, New Zealand stood to gain young migrants from a traditional source country, who were of an 'appropriate' ethnicity, and who would ultimately satisfy the nation's labor requirements. However, it is now

clear that the welfare of these children was at best a secondary concern. Many of the children were unaware that they had been relinquished for adoption, some of the biological parents had not consented to their migration nor adoption, and many of the adoptions were clearly not in the interests of the child (Wagner, 1982:257, MacDonald, 1994). Ultimately, New Zealand's response to these children was measured according to immigration criteria and perceived national needs and obligations to Britain. It was assumed that because these needs and requirements were being met that the migration and settlement of these children would be unproblematic. This was not the case; for many of these children the migration, placement, and adoption/fostering experience was problematic, and insufficient attention was given to placement and post-placement follow-up (MacDonald, 1994:31). That is, the well being of the child was ultimately a secondary consideration.

In New Zealand, immigration concerns about intercountry adoption did not become an issue until the 1960s, when the proposed adoptions were from nontraditional source countries and would in almost all instances be interracial and involve the migration of children for adoption from Asia.

In all three countries, immigration regulations initially presented an obstacle to intercountry adoption, and by the late 1950s welfare concerns began to be incorporated into immigration criteria. However, intercountry adoption, in all three countries, was taken to be first and foremost a migration issue, and ultimately national concerns shaped which children would be allowed entry for adoption. So while there were many children needing families internationally, only those children that could meet immigration criteria had the opportunity of finding families in these recipient societies. Concerns about national security; concerns about how the adoptees might influence child nationals; domestic child welfare concerns; race relations policy, in particular attitudes toward migrants from Asia; and potential state dependency – these were all factors which constrained the migration of children for adoption in the immediate post-war years. It was also in this period that the first discrepancies between domestic and intercountry adoption practice emerged. However, with the exception of proxy adoptions, these discrepancies were not addressed legislatively nor in policy on intercountry adoption.

INTERNATIONAL POLICY AND PRACTICE

In the United States, under the Immigration and Nationality Act of 1961, permanent provisions for the immigration of children for adoption were made (Carlson, 1988:330). The endorsement of this migration coincided

with an international conference on intercountry adoption. While no attempts had been made to establish standards for intercountry adoption nationally, internationally the establishment of standards occurred relatively early. In January 1957, a group of experts met to study the problems encountered in the intercountry adoption of children from European countries. As a consequence of this meeting a seminar was held in May 1960 in Leysin, Switzerland.³ Following this meeting a report, "European Seminar on Intercountry Adoption," made a number of recommendations, and the twelve principles outlined in this report became known as the Leysin Principles (ICWR, 1961).

It was envisaged at the time that the twelve principles would be followed in adoption and would serve as a guide for caseworkers engaged in inquiries prior to adoption. It was hoped that eventually a convention would be established on intercountry adoption, simplified procedures would be introduced, and ultimately national legislation would be amended in accordance with the principles. In essence, the report and principles emphasized that the child should be the focus in adoption, that is, the needs of the child should be paramount. Significantly, the principles and overall report did not endorse intercountry adoption. Rather, it was argued, intercountry adoption should only be considered after all other options within the child's country of origin had been explored and found to be unworkable. The non-endorsement of intercountry adoption as a practice remained central to subsequent international conventions and guidelines until 1993.

While the guidelines and principles were published and it seems highly likely that many social work practitioners were aware of the Leysin Principles, they did not find their way into any national legislation nor did they lead to any national policy on intercountry adoption in the United States or Canada. As with many international conventions and guidelines, the principles were not enforceable, and it appears at least at the national level, for these two recipient societies, they had little effect. In contrast to both the United States and Canada, New Zealand implemented the principles and recommendations into domestic/national policy on intercountry adoption. From this point onwards international conventions were to have a more persuasive influence on practice and policy formation in New Zealand and would to a large extent inform New Zealand's more conservative approach to intercountry adoption as a practice for the next 30 years.

³The seminar was attended by 80 adoption workers, administrators and legal experts from 15 European countries. Also in attendance were representatives from the United Nations, International Social Services and the International Union of Child Welfare, the Council to Europe and the Hague Conference on Private International Law.

ASIA EMERGES AS A SIGNIFICANT RELINQUISHING REGION

By the late 1950s and early 1960s, Asia had emerged as a significant relinquishing region. Between 1953 and 1962, approximately 15,000 foreign-born children were adopted into American families. Between 1966 and 1976, a further 32,000 children were adopted by U.S. citizens, and approximately 60 percent of these children came from Asia (Alstein and Simon, 1991:3). In 1963, the United States established the I-600 program for the migration of children for adoption. This program allowed for the issuing of a standard visa for a child who had been approved for adoption from abroad. Between 1963 and the present, the program has undergone a number of revisions, all of which have liberalized qualifying criteria and removed restrictions on this type of migration and family formation (Weil, 1984; Alstein and Simon, 1991).

However, while Americans had been adopting children from Japan, Korea and Hong Kong since the 1950s, in Canada immigration criteria served as a barrier to the intercountry adoption of children of non-European origin. By the late 1950s and early 1960s, a number of changes globally impacted on Canada's White Policy (Hawkins, 1991). As certain British Commonwealth countries gained independence in this period, pressure and condemnation of restrictions based on non-white immigration practices mounted (JIASC, 1963:6). It was during this period that some concessions were made for both adult and child migrants on humanitarian grounds. With World Refugee Year (1959–1960), many nations, including Canada, made efforts to demonstrate their humanitarian concern and commitment to the predicament of refugees and began to make exceptions for individuals and groups (Citizenship and Immigration, 1961–62). As was the case in the United States, provisions for children for adoption emerged out of these refugee provisions (Dirks, 1977:228).

In July 1962, as a result of proposals submitted to the government by the Canadian Welfare Council, Prime Minister John Diefenbaker announced that the government had created a policy with respect to the admission of orphan refugee children for adoption (JIASC, 1963:6). This policy dealt only with the adoption of specific, individual orphan children, not with any anonymous groups of children or any unspecified child. In order to qualify under this program, the child had to be a full orphan. The child also had to have refugee status, that is, it had to be demonstrated that the child had been rendered homeless or displaced from its country of nationality or citizenship by reason of war and political unrest and could not be permanently resettled

in his/her country of permanent residence. Under this policy, prospective adoptive parents had to apply for the admission of such a child, and this application was subject to a number of further provisions. Principally, the Provincial Child Welfare Council had to certify that there were no suitable children available for adoption for the prospective parents in their province of domicile. They had to approve the suitability of the applicants as adoptive parents and approve the placement of the 'orphan refugee child' in the home on arrival in Canada (JIASC, 1963:6). This rather restrictive policy did not attract widespread interest. The stipulation that the child be both a full orphan and refugee could rarely be met, and domestically there was an abundance of children available for adoption (JAISC, 1964). By the late 1960s, a total of 67 children came to Canada from Hong Kong, while smaller numbers from Korea also gained entry under this criteria (Hong Kong Department of Social Welfare, 1958–1969; Westhues and Cohen, 1991).

In 1963, the Canadian Welfare Council addressed Canada's relative lack of participation in assisting orphans from abroad (JIASC, 1964). The policy initiative and response in Canada was compared directly with that of the United States, and it is clear that those involved in the process were concerned that Canada had not done as much as the United States. Canada's image with respect to humanitarian endeavors and the possible national good that might result from this policy initiative were equally important to those who supported the program. Some suggested that intercountry and interracial adoption might help with the domestic problem of placing children of mixed race. Whether or not it was ethical to 'use' intercountry adoptees as a means to raise awareness of the plight of mixed race children available for adoption domestically was not questioned at the time. The consequent national good which would result was the measure used to gauge the value of the program (JIASC, 1962, 1964). The concerns raised with respect to this policy mirrored those which have been attributed to the abandonment of the White Canada policy in this period (Hawkins, 1991:39). That is, interracial, intercountry adoption from countries previously discriminated against became possible in 1962 because Canada sought to conform to the practices of other Western nations. Canada had also become sensitive to criticisms of their White Canada policy and the possible impact on their international standing. Canada wanted to demonstrate humanitarian concern and, finally, Canada could identify possible national good that would result from this form of migration.

In 1963, New Zealand's second group scheme since the war was initiated, and for the first time entry was granted for adoptees from Asia. As a con-

sequence of representations made by the National Council of Churches and the Society of St. Vincent de Paul, the Minister of Immigration using Ministerial discretion allowed entry permits to be issued to 50 children from Hong Kong. Ministerial discretion was necessary as the Immigration Act did not allow or have any provision for adoption from nontraditional source countries. Indicative of the government's position with respect to immigration from Asia at the time, requests on the part of church organizations to admit refugee families from China were unsuccessful (Brash, 1963). In 1966, following representations by the Society of St. Vincent de Paul, immigration permission was granted for a further twelve orphans from Hong Kong (Brash, 1963, Minister of Immigration, 1973, Appendix C:1-5).

The Hong Kong orphans were the largest group of children allowed immigration entry to New Zealand from a nontraditional source country, where adoption was the intended goal and outcome. It was also the first scheme where the majority of the adoptions would be interracial. The public response toward these children was overwhelming. In contrast, as was the case in the United States and Canada, interracial adoption was still relatively rare in New Zealand in the 1960s. Indeed, domestic children of color, available for adoption, were recognized as being 'hard to place' by welfare practitioners (Minister of Immigration, 1973, Appendix C:1-5). As a consequence, New Zealand was both a recipient and relinquishing country for child migrants for adoption up until the 1970s. As in the United States and Canada, prospective parents in New Zealand would contemplate an interracial adoption from abroad, but they were reluctant to seek interracial adoptions domestically.

Intercountry adoption became more prevalent in the 1960s and by the 1970s had increasingly become a means by which to form a family. With a decline in the number of healthy Caucasian infants available for adoption and an availability of infants of color, welfare practitioners in all three countries made concerted efforts to promote and encourage interracial adoption. However, by the mid 1970s a statement released by the National Association of Black Social Workers in the United States, which described interracial adoption as another form of genocide, led to a reconsideration of interracial placements domestically. These criticisms prompted international debate and consequently impacted on the practice of interracial placements in both Canada and New Zealand. By the late 1970s domestic interracial adoption was increasingly discouraged in all three countries (Hoksbergen, 1986:8).

However, while caution was being exercised with respect to domestic interracial placements, by the late 1970s, intercountry adoptions continued

to increase and the vast majority of these adoptions were interracial (Tristeliotis, 1991). In this period, representatives of relinquishing countries raised objections which were similar to those raised by black activists in the United States, but the placement of interracial children from abroad continued unabated (McRoy, 1991; Ngabonziza, 1991)

Interracial placements ceased domestically because of the domestic implications of this practice. Race relations had emerged as a significant national issue for all three countries in this period, and it appears more general concerns about 'racial harmony' shaped the response to criticisms of interracial placements domestically. Interestingly, similar critiques and censure from representatives of relinquishing countries did not appear to have the same impact on intercountry interracial adoptions. The migratory aspect of this form of adoption undoubtedly protected the practice from critique, where common sense understandings of migration informed the evaluation of this practice. That is, the children from poorer nations (as with many migrants) were migrating for a 'better life'; their ethnicity or racial identity was a secondary concern. Ultimately, however, the issues surrounding ethnic identity and racial identification, which had raised concerns with domestic interracial adoptions, were not addressed for intercountry interracial adoptees, despite being equally pertinent. A double standard now existed where ethnic identity for child nationals available for adoption was an issue, but ethnic identity for children migrating for adoption was not. Further, these adoptions were now meeting a national need, and it appears that the needs and desires of prospective adoptive parents also shaped the emergent double standard.

VIETNAM: CONTROVERSIAL ADOPTION PRACTICES AND REVISITING POLICY

Operation Baby Lift – An Anomaly?

While there was a steady 'trickle' of adoptions from Vietnam occurring through to the late 1970s, a large scale program to adopt children was initiated by the United States in 1975. Known as Operation Baby Lift, this program saw 1,945 children airlifted to the United States for adoption. This airlift was portrayed as an emergency humanitarian response to children in a war zone. It is important when considering this airlift to remember intercountry adoptions from Vietnam had begun in 1963 and that the practice was already established with respect to individual adoptions from Vietnam. Furthermore, intercountry adoption was increasingly meeting a domestic need in North America.

The motivations behind Operation Baby Lift and the actions on the part of the United States became very controversial. From the outset, the program encountered a number of problems. For example, one of the first 'helicopter lifts' ended in tragedy when the helicopter crashed and all of the children and assisting personnel on board died. The processing of these children for adoption was carried out within a very tight time frame, and it appears that personnel did not research the backgrounds of these children very thoroughly. Some of the children classified 'orphans' were in fact not orphans, but were instead children who had been separated from their families due to the war (Forbes and Weiss, 1985).

The airlift, in contrast to previous adoption endeavors, met with considerable opposition in North America. Many Americans believed that the airlift was a cynical attempt on the part of the U.S. government and the government of South Vietnam to gain sympathy for the war. This cynicism was not unwarranted; the press releases of communications between the Minister of Welfare of the government of South Vietnam and the U.S. embassy revealed that these suspicions were well founded (Forbes and Weiss, 1985).

This airlift has been described as anomalous for this period and more reminiscent of responses to refugee crises of the past (Weil, 1984). However, we need to ask: What was normative for this period? And, in what respect was the airlift anomalous? This migration of children for adoption to North America was unusual in that it involved transporting a group of children and the use of military resources. This contrasted with the more typical private transportation of individual children for adoption in this period. But arguably this is where the anomaly ends. The migration of these children for adoption was shaped by national needs and concerns, specifically the U.S. involvement in the war and domestic political concerns about waning support for the war effort. The problems in processing the children, the practice of proxy adoption, and the complete disregard for international guidelines for intercountry adoption, namely the Leysin Principles of 1961, was not anomalous in this period – rather it was normative. The prioritizing of national needs over the needs of the child has always been a feature of intercountry adoption as a practice. Operation Baby Lift merely provides a very dramatic and clear demonstration of this reality.

Revisiting Policy

The military involvement and presence of the United States in Asia had shaped the earliest intercountry adoptions from this region. All three coun-

tries' involvement in the Vietnam War had prompted general initiatives to adopt children. In the United States, 3,267 children were adopted between 1963 and 1976, and in Canada approximately 700 children were adopted in the same period (Weil, 1984; Gravel and Roberge, 1984 *cited in* Westhues and Cohen, 1994). The Canadian adoptions were facilitated by a change in immigration regulations that allowed entry to children whose adoptions had been finalized in their countries of origin (Gravel and Roberge, 1984 *cited in* Westhues and Cohen, 1994; *Montreal Gazette*, 1974). In New Zealand, attempts were made to initiate two group schemes in 1968 and 1973, respectively. However, both schemes were unsuccessful (Minister of Immigration, 1973, Appendix C).⁴

The failure of the New Zealand group schemes to materialize was due to a number of factors. The New Zealand government was advised by International Social Services that the numbers of prospective parents had exceeded the number of children available for international adoption in Vietnam and the South Vietnamese government had expressed opposition toward group schemes. The South Vietnamese government had requested that all adoptions be completed in Vietnam, and in almost all instances this would have involved adoption by proxy (Minister of Immigration, 1973, Appendix C). The New Zealand Department of Social Welfare policy on intercountry adoption, in accordance with the Leysin Principles of 1961, prohibited proxy adoptions and allowed only group schemes. Therefore, the Vietnamese adoption scheme could not take place without contravening policy on intercountry adoption and the international recommendations. Interestingly, both the United States and Canada ignored the international recommendations regarding proxy adoptions, and in the case of the United States they also ignored the 1957 amendment which prohibited proxy adoptions. The non-observance of warnings about proxy adoptions in effect meant that North American prospective parents could and did secure children for adoption from Vietnam. While national policy ensured that New Zealand could not proceed, it is also clear that by the time New Zealand entered into negotiations about possible intercountry adoption from Vietnam, the demand for children had exceeded the supply (Minister of Immigration, 1973, Appendix C).

The failure of the Vietnamese group schemes and emergent intercountry adoption trends prompted a review of policy in New Zealand in 1973. The

⁴It should be noted, that while the official schemes did not materialize, some unaccompanied Vietnamese children did migrate to New Zealand and some were adopted by New Zealand citizens. Problems later emerged with respect to their assumed 'orphan' status (Personal Communication, Welfare Practitioner, 1997).

review recommended that new criteria be approved for individual adoptions for New Zealand residents and that provisions for group schemes be formalized. Under the new provisions for individual adoptions, it was stipulated the child for adoption had to be known to the prospective parents and proxy adoptions would not be permitted. Within these parameters, allowances were made for the first time for infertile couples and couples wishing to adopt intraracially. The stipulation that the child must be known to the prospective parents contrasted markedly with intercountry adoption practice in both the United States and Canada. In both countries, interracial/independent/stranger adoptions represented the majority of intercountry adoptions in this period. Whereas, in New Zealand independent adoptions were rare, and the intercountry adoption of unknown children was only possible through the provisions for group schemes.

While the New Zealand criteria do appear to be comparatively very restrictive, it was formulated in response to the New Zealand context. That is, the number of prospective parents attempting to adopt from abroad due to infertility and/or same ethnicity needs remained small. In New Zealand, historically, the most prevalent form of intercountry adoption involved the adoption of children who were known to prospective parents. Intercountry adoptees from traditional source countries (principally the United Kingdom) adopted by known adoptive parents was normative in this period.⁵ With increasing adult migration in the 1970s from nations in the Pacific, the origins of adoptees began to change. Specifically, by the mid-1970s, adult migration from Western Samoa led to a steady flow of intercountry adoptees from Western Samoa (Minister of Immigration, 1973, Appendix C:4). In all instances, the adoptions were either kin adoptions or adoptions whereby the adoptee and parents had a long-standing relationship. The policy for individual adoptions was an attempt to address, formally, this reality. While welfare policy was sympathetic to kin adoptions from Western Samoa, some of these adoptions were used to circumvent immigration policy, and the immigration department at this time introduced policy changes to prevent this circumvention (Minister of Immigration, 1973, Appendix C:4). From the 1970s to the present, legitimate intercountry adoptions from Western Samoa, represent the dominant form of intercountry adoption to New Zealand.

With the exception of the passing of the New Zealand Citizenship Act of 1977 which ensured that intercountry adoptees were only subject to immi-

⁵The exception to this norm was the children who migrated from Britain under the Child Migration Scheme 1949–1952. In almost all instances, these children were unknown to both foster and adoptive parents.

gration requirements if New Zealand citizenship could not be established, intercountry adoption practice and policy remained unchanged until the 1980s.

Canada also addressed intercountry adoption concerns in the early 1970s. In 1973, a federal-provincial committee for intercountry adoption was established in response to a perceived lack of coordination in intercountry adoptions. The function of this committee was to discuss international adoption policy. In 1975, in response to the committee's recommendations, the Adoption Desk was established within Health and Welfare and, with the exception of Quebec, all provinces chose to participate and utilize the services provided by the Desk (Lipman, 1984:37 cited in McDade, 1991:30).

The services and functions of the Adoption Desk include the negotiation of agreements with governments and approved agencies in other countries, the coordination of individual international adoption cases through provincial/territorial adoption authorities, and the coordination of federal responsibilities relating to adoption. However, the Desk does not have the authority to unilaterally establish international adoption policy. Jurisdictional responsibility for international adoptions rests with the Federal Department of Employment and Immigration, and they, along with other federal departments, provide direction to the Adoption Desk (Canada National Adoption Desk, 1988 cited in McDade, 1991:30) Thus, intercountry adoption remains primarily an immigration issue, advice with respect to adoption is sought from the Desk, but ultimately it is the federal department responsible for immigration policy which has jurisdictional responsibility.

While the coordination of intercountry adoption was a concern by the mid-1970s, the role of the Adoption Desk has always been constrained by the dominant form of intercountry adoption practiced by Canadian citizens (Bowen, 1992; Daly and Sobol, 1993; Sobol and Daly, 1995). With the most prevalent form of adoption being adoptions completed abroad, the Desk's role has and continues to be largely restricted to coordinating the minority of adoptions completed domestically (McDade, 1991:30). By the late 1970s, intercountry adoptees were catered for under the family class of migrant criteria in Canada. As with the United States, intercountry adoption had become both a legitimate and normalized method of family formation. The Canadian immigration criteria and response to intercountry adoption in practice and policy was to remain unchanged until 1993 (Immigration and Citizenship, 1997, Press Release).

THE SECOND WAVE – SUPPLY TO DEMAND DRIVEN ADOPTIONS

By the mid-1970s, Latin America had emerged as a significant relinquishing region for adoptions to North America. The adoptions from Latin America represent the turning point from the first wave of migration of children for adoption to the second wave. In contrast to previous intercountry adoptions, the motivations for adopting from Latin America were not associated with U.S. military involvement nor any international conflict. The primary motivation for adoptive parents in these cases was infertility and the difficulties encountered in attempting to adopt domestically. The vast majority of these adoptions were interracial, and the children were unknown to the adoptive parents (Hoksbergen, 1986).

Along with increasing numbers of intercountry adoptions, a number of parental organizations had been established in the United States and Canada. These associations provided support for parents who had adopted interracially and from abroad and advice for prospective adoptive parents wishing to adopt internationally. These groups would become very effective lobby groups with respect to policy on intercountry adoption in both countries. In contrast, New Zealand did not have any associations for adoptive parents in this period, and infertility and a domestic shortage of children for adoption was only just beginning to have an impact in New Zealand.

In the United States in the post war period, the lifting of restrictions on intercountry adoption by the federal government signified federal endorsement of this form of adoption as a legitimate means of satisfying the needs of its own citizens, as well as the needs of homeless children in foreign lands (Carlson, 1988:334). While federal immigration regulations facilitate intercountry adoption into the United States, the various states' control over the adoption process facilitates adoptions completed in the United States. State adoption law is very diverse, but the vast majority of states do not deal directly with intercountry adoption within their adoption laws. Rather, the majority of states rely on legislation intended for domestic adoption. When special legislation has addressed intercountry adoption, in most cases such provisions resulted from questions raised about the lawfulness of some intercountry adoptions and/or were measures aimed at easing the intercountry adoption process for residents of these states (Carlson, 1988:334). Ultimately, legislative provisions for intercountry adoption have been in the interests of U.S. citizens already engaged in the practice of intercountry adoption. None of the state measures have addressed the wider ethical, moral and practical con-

siderations that could potentially be addressed through a national policy on intercountry adoption as a practice.

Canada, like the United States, had also given federal endorsement of intercountry adoption through its immigration criteria, and like the United States it did not have any policy which addressed the welfare of intercountry adoptees at a federal level. As with the United States, there was considerable variability in how provinces responded to this practice. Most provinces relied on legislation intended for domestic adoptions. Further, the responses to federal requirements have been variable. This variability is evidenced by the consistent use of Minister's Permits for adoptee entry into Canada (McDade, 1991). In short, Canadian residents increasingly sought intercountry adoption as a means to form families, but despite the increasing incidence of this practice, the welfare of the child was not addressed legislatively nor had any consistent form of federal regulation emerged.

In this period, two international conventions emerged which dealt with intercountry adoption – the 1986 UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children and the 1989 UN Convention on the Rights of the Child (UNCROC). However, as with previous conventions, they were not enforceable and were largely unsuccessful. UNCROC signaled clearly at an international level that further action in the intercountry adoption area was necessary. Yet despite the emphasis on the welfare of the child, which is central to these conventions, and despite the fact that none of these conventions endorsed intercountry adoption, no policy emerged at a national level in either the United States or Canada.

Since World War II, the lack of regulation nationally and internationally, and in particular the lack of enforcement of international conventions, has meant that abuse has always been a feature of this practice. It has been observed that in the United States, in this period, the state tended to overlook the methods used to obtain children and that this was because the Department of State considered international adoptions to be “private matters” within the country where the child resided (Carro, 1994:143). This understanding was shaped by the fact that the majority of intercountry adoptions by United States citizens are completed in the child's country of origin. Thus, the United States role has been very much limited to that of the Immigration and Naturalization Service (Carro, 1994:143). The INS, in most instances, then deal with a *fait accompli*. The reluctance to ‘interfere’ with the process in another country is understandable. However, it creates a situation whereby the procurement of children by less than legitimate means can remain ‘private.’

Asia and Latin America continued to be significant relinquishing regions in the late 1980s and early 1990s. With increasing demand for children came increased corruption on the part of intermediaries who managed the supply. Black markets were common, and increasingly large sums of money were being paid for children by adoptive parents to intermediaries. In Peru, Brazil, Honduras and Sri Lanka the sale of children, the emergence of baby farms, and the pressuring of poor women to relinquish their children occurred in this period. All of the respective governments responded by attempting to regulate adoptions and at times banned intercountry adoption until such measures were taken.

Children for adoption in these instances were being treated as commodities and in all of these instances their welfare needs were at best a secondary concern. Intercountry adoption, by this time, also involved a far greater number of countries. It had become a global practice, but a practice that was not being regulated at a global level.

It would be erroneous to suggest that the United States did not act on known abuses. At various times federal measures have been undertaken to address or circumvent abuses in intercountry adoption practice. However, not all of these measures have been successful (Carro, 1994:143). For example, with respect to adoptions from Latin America to the United States, the Organization of American States attempted to introduce some uniformity into adoptions from Latin America. The 1984 Inter-American Convention on Conflicts of Laws Concerning the Adoption of Minors attempted to define questions of applicable law and jurisdiction (Carro, 1994:153). In 1994, the Inter-American Convention on International Traffic in Minors attempted to reconcile regional laws on adoption with international conventions on the international protection of minors and was a response to satisfying the requirements of the UN Convention of the Rights of the Child adopted by the UN General Assembly in November of 1989 (Carro, 1994:153). Yet while all of these measures addressed abuse, abuse continued to take place. The abuse itself is also evidence of the increased need for intercountry adoption and the lengths that some prospective adoptive parents were and are prepared to go to secure a child as their own. In both the United States and Canada, abuse has tended to be more prevalent with independent adoptions, the most prevalent form of intercountry adoption in both countries. Because of New Zealand's restrictive policy, which prohibited independent adoptions, abuses were considerably less common.

By the early 1990s, Asia had once again emerged as the dominant relinquishing region for international adoptions to North America. With China formalizing their adoption law with respect to intercountry adoption in 1991, China became an increasingly important relinquishing country for children for adoption to the United States in the mid-1990s, as too did the former Soviet Union. In 1995, 2,130 children were adopted from China and 1,896 from Russia, representing the top two relinquishing countries to the United States (INS, 1997). A statistical breakdown is not available for Canada, but it appears that these countries have also become dominant in the last decade (personal communication, Welfare Practitioner, Canada, 1997). New Zealand continued to hold to its policy on individual adoptions, but the New Zealand Department of Social Welfare, which administered this policy, was increasingly coming under pressure from prospective adoptive parents who now more commonly, for reasons of infertility, sought to adopt from abroad.

THE LATE 1980s AND EARLY 1990s: THE GLOBALIZATION OF ADOPTION AND INTERNATIONAL REGULATION

By the early 1990s, political changes in the former Soviet Union and Romania saw Eastern Europe emerge as a significant relinquishing region. The political and economic situation in Romania led to the international adoption of a large number of Romanian children. The United States became a major recipient society for Romanian children, and for Canada and New Zealand these adoptions represented the largest group of children to be adopted since Vietnam and Hong Kong, respectively. The Romanian adoptions were to become controversial and sparked renewed interest in international policy on intercountry adoption.

On December 25, 1989, the Romanian President, Nicolae Ceauseau was deposed and executed. The media quickly exposed his pro-natalist policies and the existence of over 100,000 children in state orphanages. The international media coverage created an enormous response and saw Romania almost immediately besieged with prospective parents from the West. While the media focused on the children in the institutions and those who sought to adopt these children, within weeks a black market had emerged. Prospective parents learned that many of the institutionalized children had hepatitis B and/or AIDS and as a consequence sought children from villages who were healthy. The black market was also in part sustained once abortion was legalized and the abandonment of children began to decrease. While prospective parents sought children in the villages, some Romanian parents learned that

with the help of a baby broker they could sell their children. Baby brokers took prospective parents to poor homes rather than the institutions. At this time, some organizations arranged group tours for prospective parents to Romania, where for as little as \$375 per family, discount airline tickets were provided with packages outlining the preferred gifts for local officials (Carro, 1994:139).

In 1990, approximately 3,000 Romanian children were adopted abroad – in the first few months of 1991, 1,300 applications for adoption were in progress. By the end of 1991, 7,014 Romanian children had been adopted abroad; 2,388 of these children migrated to the United States. The majority of these children were infants or new-borns, and approximately half did not come out of the orphanages (Carro, 1994:137).

The Romanian government responded to the global demand for their children and the inability of their bureaucracy to adequately meet and regulate this demand by suspending all intercountry adoptions while they drafted new regulations. In July 1990, a new law was passed for intercountry adoption. This law gave the Romanian courts final authority for intercountry adoptions. However, this law generally failed to protect Romanian children in the intercountry adoption process (Carro, 1994:137). In 1991, after the Romanian media exposed the continued black market for babies, a National Adoption Committee was formed and again intercountry adoptions were suspended until legislation was passed in July of 1991. The new law outlawed private adoptions, and it became possible to impose criminal penalties for baby trafficking on those involved in the process. In 1992, the United States agreed, through a bilateral agreement, to limit the numbers of children migrating for adoption (Carro, 1994).

The recipient societies also responded to the Romanian adoptions. Working on the assumption that closer attention to the procedural delays would address or prevent the various abuses which were occurring, all three countries attempted to facilitate the adoption process for prospective parents. Thus, in 1991 the United States Congress focused on the difficulties encountered by American prospective parents and INS officials at the time. Specifically, the Subcommittee on International Law, Immigration and Refugees hearings addressed delays faced by American couples when dealing with the United States embassy in Bucharest. In response to these situations, the INS exercised the Attorney General's parole authority on humanitarian grounds, which permitted the entry of these adopted children into the United States (Carro, 1994:147). In effect, adoptions from Romania, of which many were

questionable with respect to international conventions and immigration law and criteria, were 'fast tracked.' The children were granted entry on 'humanitarian grounds,' despite the irregularity and questionable practices surrounding some of these adoptions. A similar situation arose in both Canada and New Zealand. Whether this was solely because of the pressure applied on the state by prospective parents is open to question. However, it does seem naive to assume that by addressing the needs of the prospective parents you are at one and the same time addressing the needs and welfare of the child for adoption. While it may well have prevented some dubious adoptions, the bureaucratic process was the focus, rather than the practice of intercountry adoption and the long-term implications for the welfare of these Romanian children.

The intercountry adoption of Romanian children into Canada was the first large-scale movement of adoptees from one country since the Vietnam War. In total, 663 came to Canada between 1989 and 1991. The majority of children from Romania gained entry into Canada on Minister's Permits (McDade, 1991:44). In September of 1990, a visa officer was posted to Bucharest primarily to process visas for children adopted by Canadians. With the adoptions being completed in Romania, the child welfare officials in Canada were not involved in the process. The various abuses and problems which occurred with respect to United States citizens adopting from Romania, also occurred with some adoptions by Canadians. For example, one Canadian woman described the adoption of 'her' daughter in Romania. She and her husband traveled to a village, where a man offered his daughter in exchange for a transistor radio. The exchange was made, but prior to boarding the flight to return to Canada the adoptive mother (now in law) learned that the natural mother had not wanted to relinquish her child and was devastated by what her husband had done. The adoptive mother described feeling moved by this – nonetheless, she boarded the flight to Canada with the little girl (Keyes, 1997).

In Canada, in response to concerns over the process of intercountry adoption from Romania, a federal interdepartmental committee was reactivated to review intercountry adoption policy. This committee comprised representatives of the National Adoption Desk, the Intergovernmental and International Affairs Branch of Health and Welfare Canada, Employment and Immigration Canada and the Department of Justice and External Affairs (McDade, 1991:44). However, no national legislation or policy addressing the welfare of the child migrating for adoption emerged as a consequence of this review.

The Romanian adoptions occurred at a time when intercountry adoption in Canada had been directly linked to demographic concerns. The relationship between immigration policy formation and intercountry adoption policy in Canada had become more explicit in the late 1980s and early 1990s. The focus on intercountry adoption by immigration policy advisors was spurred by concerns about the low fertility rate in Canada and the age imbalance of Canada's population. In 1988 and again in 1990, the Canadian Employment and Immigration Advisory Council recommended that the federal government seriously consider making intercountry adoptions easier as a means to increase the proportion of younger persons in the total Canadian immigration intake (Canada Employment and Immigration Advisory Council, 1988:13, 1990:3 cited in McDade, 1991:1).

Thus, in the late 1980s the role of immigration in facilitating the practice of intercountry adoption was not only based on humanitarian concern, but also on domestic demographic concerns. It is now accepted that intercountry adoption would do little to alter the current demographic ratio. However, domestic demographic concerns were central to debates in Canada from the mid 1980s to the early 1990s (McDade, 1991:2).

Intercountry adoption has become more common in Canada since the 1980s. The increase in the number of children adopted abroad and migrating to Canada is related to a combination of factors, all of which are common to all three recipient societies. For example, rising infertility rates, reliable contraception and abortion, and changing family forms have all impacted on the availability of children – in particular infants available for adoption domestically. But as is the case in the United States, it is inaccurate to claim that no children are available for adoption. It is the lack of availability of infants that has led to an increased demand for intercountry adoptees. The Canadian Adoption Council recently revealed that there are currently 40,000 children in foster care in Canada, of whom a large number are in need of adoptive homes. Most of these children are older children and have 'special needs,' but older children with special needs are not sought by many prospective adoptive parents (*Vancouver Sun*, August 12, 1997). However, while some of these parents go abroad to adopt younger children, they are mistaken if they assume that they will be avoiding adopting a child with special needs. As others have observed, many (if not all) children adopted from abroad, irrespective of age, also have 'special needs' (Ames, 1997:6).

In 1990, Canada became a signatory to UNCROC and in 1991 ratified this convention. Yet, despite supporting declarations which urged govern-

ments to pass laws, establish structures to protect children and combat improper financial gain by intermediaries, and to set out a framework for enforcement, no action was taken domestically in Canada (Black, 1994:254).

Over the last decade, prospective parents seeking children overseas have emerged as a pressure group. As a group, they have asserted pressure on government to stimulate the flow of international adoptees in Canada and have requested that the government address procedural delays. The pressure on government in Canada is now largely a consequence of the frustration experienced by prospective parents who face long waiting lists for infants and cumbersome bureaucratic procedures domestically (McDade, 1991:46).

As with the United States and Canada, the Romanian crisis prompted a deluge of inquiries from prospective parents in New Zealand. A number of New Zealanders traveled to Romania in the hope of adopting a child. On September 24, the Prime Minister announced that he had sent a representative to Romania to "offer the Government's support" to the couples who were trying to adopt orphan Romanian children. With the assistance of the Minister of Social Welfare, a parental support group was formed to assist those who adopted from Romania (Else, 1990:22). Between 1990 and 1996, 179 Romanian children were adopted by New Zealanders, representing the second largest group of children intercountry adopted by non-kin in New Zealand in the post World War II period (Department of Internal Affairs, 1997).

The Romanian adoptions represent a turning point in New Zealand's policy stance. Not all of the adoptions conformed to policy and criteria that had been ratified by government. However, as with the United States and Canada, some of the prospective parents adopting from Romania were prepared to go to any lengths to secure a child, and the New Zealand response to this was to attempt to facilitate the adoptions and thus prevent abuses occurring. It appears that the relaxation of policy, which occurred in New Zealand, was largely a consequence of pressure from prospective parents. For the first time in New Zealand, prospective parents were represented by an association, Intercountry Adoption New Zealand (ICANZ), which promoted and supported those who had or wished to adopt from abroad. This organization was very active in representing the interests of prospective parents in Romania, despite not having the authority to process adoptions for New Zealanders. This organization had sought a partnership with the New Zealand Department of Social Welfare (the only body authorized to process intercountry adoptions). However, the Department rejected the proposed

partnership, arguing that it would represent a conflict of interest whereby it would be difficult to maintain a child- focused stance with respect to intercountry adoption if in partnership with an organization that represented the interests of prospective parents.

Until this time in New Zealand, intercountry adoption was largely not endorsed by the state. This non-endorsement reflected a commitment to various international conventions. However, by the late 1980s, in response to a number of factors, New Zealand's commitment was tested and a gradual softening of policy occurred. The key factors mirrored those that had already occurred in Canada and the United States. New Zealand faced a shortage of infants available for adoption domestically. In response to this shortage, greater numbers of prospective parents were now attempting to adopt from abroad. Prospective parents had formed and were supported by an organization representing their interests and which promoted intercountry adoption as a practice. And, more generally, all of these changes occurred in a context where, internationally, intercountry adoption had become more prevalent and was increasingly accepted as a 'viable' means by which to create a family (Report to Minister, No. 600/91, 11/10/91).

The changes in policy, however, were approached with some reluctance by welfare officials at the time. The initial changes acknowledged that intercountry adoption was a means to help children in situations of poverty, but prospective parents were encouraged to find alternative ways of helping disadvantaged children abroad. These changes conformed to the UN Declaration on Social and Legal Principles Relating to the Protection of Welfare of Children, of which New Zealand was a signatory. Interracial adoption had been discouraged in New Zealand, but by 1990 the criteria addressing interracial adoption were revisited.

Prior to 1990, parents were required to either share the same race or demonstrate cultural competence, that is, knowledge of the prospective adoptee's cultural heritage. But, the Department of Social Welfare came under increasing pressure to remove this requirement and as a consequence the same-race requirement was deleted in 1990. It was estimated that the removal of this requirement would lead to a 400 percent increase in intercountry adoptions. In 1996, the cultural competence criteria was also removed from the Intercountry Adoption Policy and Criteria. In part, this clause was removed because it was at odds with domestic adoption policy and criteria and did not conform to UNCROC requirements. This clause also did not conform to the Hague Convention (1993) to which New Zealand

intended to become a signatory (Report to Minister, 2/2/96). But as importantly, it was acknowledged that this clause was serving as an impediment for New Zealanders who wished to adopt from abroad. Furthermore, at this time the Department had a number of children available for adoption from abroad and could not facilitate these adoptions under the existing criteria (Report to the Minister, No. 600/91, 11/10/90; Paper SEQ(90)M19/4, 18/7/90; Paper SEQ(90)63, 16/7/90; Circular Memo, 19/9/90; NZCYPs, Feb. 1996; Report to Minister, 22/2/96, 23/2/96, 8/5/96).

In New Zealand, unlike in the United States and Canada, the Immigration Department took its lead from the Department of Social Welfare (or as it was more latterly known The Children and Young Persons Service). The early formation of a national policy on intercountry adoption largely predicated the nature of the relationship between the two state organizations. The liberalization of intercountry adoption policy did raise immigration concerns, particularly with respect to the absence of an age limit for these migrants. Consequently, these concerns were addressed and an age limit of 14 years was instituted in 1992 (Report to the Minister, 23/11/92).

The controversial Romanian adoptions revealed clearly the inequitable relation between prospective adoptive parents in the West and relinquishing parents in Romania. The prospective parents not only had the capital but also the resources and organization to arrange these adoptions. Furthermore, the abuses that occurred, both on the part of the prospective parents and brokers in Romania, revealed clearly that the welfare of the child was at best a secondary consideration. The response on the part of recipient societies was shaped by the assumption that the interests and needs of the prospective parents and the children were complementary or one and the same. While, undoubtedly, bureaucratic delays do impact on the welfare of the child, in the long term there are many other factors that impact on these child migrants for adoption. These factors can and have been overlooked when the aim is to facilitate the process rather than investigate the practice. In effect, in all three countries, speeding up the migration became a priority, and in the process the procurement of children was overlooked and ultimately, too, the long-term welfare and interests of the children were to become a retrospective concern (Ames, 1997).

In all three countries, abuses occurred and retrospectively it has been argued that the bureaucratic process – in particular the difficulties encountered in obtaining a child from Romania – led parents to seek less orthodox methods of securing a child for adoption. While this may well have been the

case, accepting this argument also means accepting that prospective parents have an *a priori* right to adopt from abroad. All three countries faced considerable pressure from their nationals wishing to adopt from Romania, and all three countries responded to their nationals' demands and chose to facilitate these adoptions. In making this choice, the wider ethical and moral questions which lie at the heart of the very practice of intercountry adoption were effectively side-stepped, and the assumed right to adopt from abroad was endorsed. All of the international conventions stressed that the welfare of the child should be the paramount concern, and none of these conventions endorsed the practice of intercountry adoption at this time.

THE HAGUE CONVENTION (1993) – INTERNATIONAL ENDORSEMENT OF INTERCOUNTRY ADOPTION

The endorsement of intercountry adoption through immigration criteria in North America occurred after the war, but no policy corollary focusing on the welfare of the children with legislative implications emerged. Until 1993, international conventions addressing the welfare of the child and the practice of intercountry adoption typically emphasized the need to seek alternative care within the child's country of origin and did not endorse intercountry adoption as a practice. Indeed, the relation between immigration criteria, international policy, and practice became increasingly contradictory in the period 1945–1993.

Of the three countries, only New Zealand incorporated international convention recommendations into a national policy on intercountry adoption, and as a consequence their practice was considerably more conservative than that of the United States and Canada. However, by the late 1980s, similar demographic issues had emerged in New Zealand and increasingly the state came under pressure to endorse intercountry adoption as a legitimate means of family formation. Indeed, by the mid 1990s New Zealand initiated bilateral agreements, and permission was given to nongovernmental organizations to act on behalf of New Zealanders wishing to adopt from countries governed by bilateral agreements (March 2, 1994, Cabinet Paper).

By the late 1980s, all receiving countries were aware of the increasing prevalence of intercountry adoption as a means of family formation, instances of abuse – in particular the sale and trafficking of children – and the lack of international regulation and protection afforded to those involved in the process. These issues and concerns were addressed and ultimately embodied in the Hague Convention on the Protection of Children and Co-operation in

Respect to Intercountry Adoption (1993). This Convention addressed the contradiction between immigration criteria and practice and previous international conventions, that is, this Convention endorsed intercountry adoption as a practice. Unlike UNCROC (1989), the Hague Convention (1993) represents the first intergovernmental endorsement of intercountry adoption as a practice, and for the first time intercountry adoption is elevated as a practice over and above institutional or foster care in the child's country of origin (Duncan, 1993; Pfund, 1994:56; Black, 1994:313).

The United States became a signatory on March 31, 1994, Canada became a signatory in April, 1994, and by late 1994 it was clear that New Zealand would also accede to the Convention (Pfund, 1994:55; Citizenship and Immigration Canada, 1994, 24/11/94 Report to Minister). Sixty-six states, with approximately half of these relinquishing countries, participated in the preparation of this Convention (Pfund, 1994:54). The United States and Canada are both Member States of the Hague Conference. New Zealand is not a member of the Hague Convention and as a nonmember did not participate in the formulation of this Convention (Report to the Minister of Social Welfare, 20/11/92). For the United States, Canada and New Zealand, deciding to become a signatory state was shaped in part because of acknowledged concerns about the welfare of children migrating for adoption and the increasing prevalence of intercountry adoption as a means of family formation for their nationals. However, the decision was also shaped by the recognition that to not become party to this Convention could jeopardize the ability of American, Canadian and New Zealand citizens to adopt from those countries of origin who were party to the Convention. The potential impact of non-signatory status on the supply of children for adoption was acknowledged by all three countries and, given the pressure that prospective parents applied post 1970, the inability to adopt from signatory states would undoubtedly have had domestic/political implications in all three countries (Pfund, 1994; Black, 1994; Report to the Minister of Social Welfare, October 1994).

The Hague Convention (1993) establishes minimum standards for Contracting States to maintain and is framed by three main objectives. The first objective is to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law. The second objective is to establish a system of cooperation among Contracting States to assure that the agreements made by them are respected and thereby prevent the sale of or

traffic in children. The third objective is to secure recognition in Contracting States of adoptions made in accordance with the Convention (Chapter I, Article 1).

Chapter II of the Convention (Articles 4–5) outlines the requirements for intercountry adoptions. The fundamental provisions that apply to all adoptions covered in the agreement include the provision that “competent authorities” must determine whether a child is suitable for adoption. Further, that consent must be freely given and must not have been induced by payment or compensation of any kind. Until these provisions are met, no contact between prospective parents and the child’s parents or child’s caregivers is permitted (the exception would be in cases of intrafamily adoption). The adoption can also only take place after “competent authorities” of the receiving state have determined that the prospective parents are “eligible and suited to adopt” and authorization has been given for the child to “enter and reside” permanently in the receiving state.

The mechanics for regulating intercountry adoptions are outlined in Chapters III and IV of the Convention and hinge on the creation of Central Authorities and Accredited Bodies. Here, each Contracting State is to create a Central Authority who will discharge the various duties imposed by the Convention. The duties include an obligation to prevent “improper financial gain” in connection with the adoption and to deter all practices contrary to the objects of the Convention. Central Authorities (which are intended to be the administrative agencies for intercountry adoptions) in both States must verify that there is no bar to adoption in either State and must ensure that the transfer of the child takes place “in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective parents” (Kennard, 1994:633).

The Central Authorities can license various agencies and agents within their own countries to perform the various functions outlined in Article 9 and in accordance with Articles 10 and 11. The accredited bodies must pursue only “non-profit objectives.” Under Article 22, independent agents or agencies that do not qualify for accreditation are still permitted to operate. These independent agents or agencies are not subject to the Requirements For Intercountry Adoptions outlined in Chapter II; however, they are obligated to follow the General Provisions outlined in Chapter VI. These General Provisions (in Articles 28–42) specify and reiterate the regulations considered crucial by the Special Commission, and overall these provisions are aimed at the ongoing regulation of the Convention. Article 32 under the General Provisions

makes it clear that no one shall derive “improper financial gain” and that only “reasonable” professional fees may be charged.

Overall, there is considerable emphasis placed on the role of the Central Authorities in regulating the process, curtailing the sale and/or traffic of children, and curtailing improper financial gain by adoption agencies and agents (Kennard, 1994:633).

The Convention, while certainly addressing the key issues surrounding the practice of intercountry adoption, does have a number of shortcomings. The issue of independent adoptions is interesting. The United States’ acceptance of this Convention hinged on the issue of independent adoptions, not surprisingly, given that independent adoptions are the main form of intercountry adoption practice for the United States. Inclusion of independent adoptions was controversial, with some experts from other countries and members of international organizations expressing reservations. These reservations were based on the observation that the sale of and trafficking of children usually occurred with independent adoptions. As a major recipient society, the United States managed to secure the main form of adoption practiced by United States nationals, despite the reservations that were based on known abuses connected to independent adoptions. Regulating independent agents and ensuring that they are not engaging in improper practices will be problematic and will rely on thorough reporting and auditing within contracting states (Kennard, 1994:648). By and large, this reporting and auditing will rely on the will of the State to carry out such procedures and hinges on the provisions which stipulate that “competent authorities” are responsible for independent adoption agents and agencies (Kennard, 1994:637). The problem here is that the “competent authorities” are not defined in the Convention (Kennard, 1994:637). Further, the Convention does not penalize independent agents/agencies who engage in the sale and trafficking of children. Rather, it requires that such activities be reported to the Central Authorities, but it is unclear from the Convention to whom the Central Authorities are then accountable (Kennard, 1994:638). The lack of definition and clarity with respect to accountability is problematic. Indeed, it appears that ultimately it is up to the will of the State to define, regulate, and act on irregularities.

More generally, within the Convention itself, many of the key terms are left undefined. For example, the Convention does not define what constitutes “reasonable compensation,” nor does it define what constitutes “non-profit objectives,” nor does it define “adoptability.” With respect to “reasonable

compensation,” the Convention does not address how “reasonable compensation” should be decided and by whom. And despite the emphasis placed on eliminating baby selling as a profit-making activity, the failure to define “improper financial gain” anywhere in the text allows potentially for a myriad of definitions which could be applied at any one time (Kennard, 1994:644). The same lack of definition for “non-profit objectives” also creates some ambiguity. That is, provisions are made for covering costs and expenses, as too are allowances made for reasonable professional fees; however, it is not clear what constitutes “profit” and what constitutes “proper remuneration” and therefore it is possible that even “non-profit” fees could become excessive (Kennard, 1994:643). Finally, the issue of what constitutes “adoptability” is problematic. The Convention requires the State of origin to ensure that the child is adoptable (Article 4), that is, the definition of adoptability is left to the State of origin. There have been instances (in South Korea, Chile, Romania, Russia) where the definition of adoptability has varied widely and instances where adoptability has been determined by demand and unscrupulous assumptions about what should happen to children born in poverty (Kennard, 1994; Carro, 1994). The lack of a standard definition of what constitutes adoptability means that this variability will quite possibly continue (Kennard, 1994:641–44).

It has been observed that the Convention does lay an adequate foundation for addressing abuses in the adoption process, however, and perhaps most importantly, the completion of the structure is left to the political will of the implementing countries (Black, 1994; Kennard, 1994). Given the history of intercountry adoption, responses to international conventions in the past, and the practice of intercountry adoption today, it seems reasonable to question the potential implications of this reliance on ‘political will.’ The will of any Contracting Nation is going to be shaped by domestic and international political realities and the ongoing realities that shape the demand for intercountry adoption. It seems likely that there will be an increasing demand for intercountry adoption and that poorer nations will continue to relinquish children for adoption abroad. It is also clear that intercountry adoption now occurs within an established industry, both within receiving and relinquishing countries. Independent operators in North America have already voiced concerns about the Hague Convention and the creation and role of Central Authorities. In particular, members of the industry argue that Central Authorities could create the potential for large agencies to ‘monopolize the market’ and thereby impact on the share of the market currently held by small

agencies (Bisignaro, 1994:145–146). With respect to relinquishing countries, intercountry adoption has been a means of attracting substantial sums of hard currency while at the same time addressing in an immediate way ‘child welfare concerns’ (Kennard, 1994:626). It cannot be assumed that these interests alongside an increasing demand for intercountry adoptees will not shape the ‘political will’ of Contracting States and ultimately the regulation of intercountry adoption as a practice.

The Convention has been referred to by Black (1994) as “GATT for kids.” It is an attempt to regulate the market, but the lack of definition given to the key features of the market means that the regulation can only be soft at best. Without clear definitions, the key features of this market can quite conceivably be left unregulated, and indeed regulation can only occur if the Contracting States choose to address these weaknesses through domestic legislation.

Finally, the Convention only covers Contracting States, children of non-contracting states are not protected. It is possible that prospective parents may turn to countries that are not party to the Convention because they think the requirements will be less demanding. Given that historically this happened when various relinquishing countries introduced controls (for example the shift from Romania to Russia in 1992), it is cause for concern that a shift may happen toward noncontracting countries as sources of children for adoption. The United States, Canada and New Zealand all adopt children from noncontracting states. In the case of New Zealand, Samoa is a noncontracting state, and, in 1996, 77 percent of New Zealand intercountry adoptees were from Samoa. Samoa has not indicated it will accede to the Convention, and while domestic legislation in New Zealand does afford these children some protection, it is largely inadequate and does not offer the same protection afforded to children from countries party to the Hague Convention (Couchman, 1997:443). In sum, while the Convention provides the fundamental framework, ultimately it is up to the political will of the Contracting State to ensure that definitions and related mechanisms are put in place to protect the welfare of children migrating for adoption. It remains to be seen what factors will shape this political will in these three countries.

SUMMARY

Since World War II, the migration of children for adoption has become an established migratory trend. The numbers of states involved in intercountry adoption, both relinquishing and recipient, has grown substantially in this period. The first wave of adoptions in the immediate post World War II peri-

od up until the early 1970s were typically responses to children in need and where the adoptive parents seldom sought adoption because of infertility or an inability to adopt domestically. The practice can be characterized as finding families for children. From the 1970s, changing domestic demographic realities prompted increasing numbers of prospective adoptive parents to seek infants from abroad. Increasingly, intercountry adoption became demand driven, where prospective parents attempted to find children for families.

While there are differences in terms of motivations between the first and second waves, both waves have been shaped by broader socio/political/economic realities. Concerns about the suitability of child migrants for adoption were central to the first wave, where their migration was taken to be the primary issue and concern. Accessibility and the process of intercountry adoption became a central concern with the second wave of adoptions, and here, meeting the needs of nationals seeking children abroad ultimately became the primary concern.

The comparative description and analysis reveals points of commonality and difference. All three countries share similar migration and immigration histories, and child migration for adoption has been shaped and constrained by immigration criteria and policy in the post World War II period. Immigration policy and criteria in all three countries reflect national concerns, interests and priorities. Initially, intercountry adoption was constrained by these concerns and priorities. The facilitation of intercountry adoption through immigration criteria occurred alongside increasing domestic demand, but in Canada and the United States no policy emerged which addressed the welfare of the child migrating for adoption nor, until 1993, the recommendations of international conventions. In contrast, New Zealand implemented international recommendations and criteria, and the response to intercountry adoption was consequently conservative in the 1945–1993 period. However, once the interests and needs of New Zealand nationals paralleled those of nationals in Canada and the United States, the New Zealand response became increasingly convergent.

It has been demonstrated that ultimately all three countries have prioritized the needs of their own citizens and domestic/international/political concerns over the needs and well being of the child migrant for adoption. All three countries have acknowledged the abuses that have occurred and have acknowledged the need for international regulation for what has become an international practice. Yet, while the concerns about abuse and the need for regulation are justified, all three countries have chosen to focus on the proce-

dures and problems associated with the process, rather than focusing on the wider moral and ethical questions which lie at the heart of this process. In choosing to focus on regulating the process, the inequities which predicate intercountry adoption as a practice are not being challenged or addressed. Rather, intercountry adoption is presented as a solution for the needs of Third World children and a solution for rising infertility rates in the West. The relation between adoptive parents and Third World children is presented as complementary. Nationals in all three countries are now no longer urged to invest in child-care services in the child's country. The international endorsement of intercountry adoption also potentially mitigates against any serious intergovernmental action which might address the needs of all Third World children (Black, 1994).

Ultimately, all three recipient societies have, with respect to the first wave of migration, given primacy to national needs and concerns. And with respect to the second wave of migration, primacy has been given to the needs of their nationals to form families. With respect to the Hague Convention (1993), the key features of the 'market' are not defined, and ultimately it left to the 'political will' of the Contracting States to address the loopholes and ambiguities in the Convention. While all three countries were concerned about the well being of children involved in corrupt and unethical intercountry adoptions, it must be stressed that the decision to become a Contracting State, for all three countries, was clearly shaped by the need to secure access to children for adoption by their citizens. Ultimately, with respect to policy priorities and practices, national needs and well being have been prioritized over the needs and welfare of child migrants for adoption in the post World War II period.

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