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## **The Importance of Family and the Deficiency of Residential Institutions**

By: Katherine Taylor<sup>1</sup>

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<sup>1</sup> J.D. Candidate, Harvard Law School; B.S., University of Kentucky (2014). The author would like to thank Elizabeth Bartholet and Scott FitzGibbon for their comments and suggestions.

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## **Abstract**

This paper compares the ways in which institutional residential care, foster care, and adoption affect children. It uses scientific research studies to show the effects each method of caregiving has on a child's growth, development, and life-long success. It argues that either domestic or international adoption are the best approaches to serving orphans and other children in need.

## I. Introduction

There are at least eight million children living in institutions throughout the world, and likely many more (there are large gaps in the available information).<sup>2</sup> When people describe institutions they often talk about the bland white walls that make the rooms feel more prison-like than homey and the lack of toys for the children to play with. They talk about the small rooms stacked full of innumerable mattresses and the way the kids all wear clothes full of holes. While these deplorable conditions exist in many institutions, they aren't the heart of the issue.

Volunteers can slap some primary colors on the walls, donate toys and new clothes, and build extra bedrooms. These would all be welcome and needed improvements for the children. But these things wouldn't fix institutions. The problem with institutions runs much deeper than anything additional funding and volunteer efforts can repair.

The heart of the problem is the structure of a residential institution itself. R.B. Mitchell in his autobiography *Castaway Kid*, wrote about his childhood growing up in an institution in the United States. In the book he wrote about his desperate desire, and the desire of the other kids in the institution, to have some sort of family, any family: "But even at age seven I could see that kids preferred poverty if they were loved, rags if they were cared for, and homelessness if someone wanted them. We were willing to suffer much if we could only be part of our own families."<sup>3</sup> Institutions cannot fulfill that desire in a child because institutions are so drastically different than families. Children who are reared in institutions have no one to really care for them or love them. Sure there are workers who clock in and clock out, and there may even be

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<sup>2</sup> [Report of the Independent Expert for the United Nations Study on Violence against Children, United Nations \(Aug. 29, 2006\) 16, https://www.unicef.org/violencestudy/reports/SG\\_violencestudy\\_en.pdf](https://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf) (last visited Feb. 19, 2017). [Corinna Csáky, \*Keeping Children Out of Harmful Institutions: Why We Should Be Investing in Family Based Care\*, Save the Children \(2009\) 3, https://www.savethechildren.org.uk/sites/default/files/docs/Keeping\\_Children\\_Out\\_of\\_Harmful\\_Institutions\\_Final\\_20.11.09\\_1.pdf](https://www.savethechildren.org.uk/sites/default/files/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09_1.pdf) (last visited Jan. 30, 2017).

<sup>3</sup> R. B. Mitchell, *CASTAWAY KID: ONE MAN'S SEARCH FOR HOPE AND HOME* 26 (2007).

some really devoted workers who care a lot. But the workers aren't there 24/7. They don't care about the kids the same way they care about their own kids. It has often been said that babies learn to stop crying when they live in institutions. Not because their needs are met but because they give up after they learn that no one will answer their cries. Kids need parents – they were designed to be cared for and loved. And institutions simply won't cut it.

This paper seeks to expose the deep, structural problems with residential child care institutions and offers alternatives to child welfare systems dependent on such institutions. For the purposes of this paper, institutions are defined as any type of living arrangement where an organization's employees, or a government's employees, raise groups of children. This paper describes extensive scientific research outlining the negative impacts institutions have on childhood development. It then provides a general overview of three alternatives to institutional care: foster care, domestic adoption, and international adoption. Although this paper does not provide an in-depth analysis of any of the three alternatives, it does provide basic information that is helpful when comparing the placement options. This paper briefly discusses the differences between the three alternatives and argues that foster care is better than institutional rearing, but that either type of adoption is better yet. It further argues that because of poverty, racial biases, and the complex needs of special needs children, international adoption is absolutely necessary in order to change the current landscape of child welfare and help institutionalized children.

## **II. The Impact of Institutions on Children**

Although institutions are generally developed with good intentions, the effects institutions actually have on vulnerable children are completely devastating. Countless research studies have concluded the same thing about institutions: institutions harm children. For instance one highly

esteemed study, the Bucharest Early Intervention Project, discussed in detail below, concluded “[w]ith very few exceptions, we demonstrated compromises in virtually every aspect of development among institutionalized children. From the level of molecular structures to the level of complex social interactions, from brain structure to brain function, these children are unquestionably disadvantaged.”<sup>4</sup> Specifically, institutions impair children’s physical growth as well as their language, cognitive, and brain development. Institutionalization of children can contribute to lower IQ scores, problems with executive functioning, and abnormal attachment relationships. Institutions themselves also can expose children to serious forms of abuse and even sexual trafficking. Furthermore, children who age out of institutions without family connections continue to struggle throughout their adult lives.

Although there is virtually no debate that institutions are bad for children, it is extremely important for policymakers to understand *exactly* how bad institutions are for children. Many child advocates today are pushing forward policies that are forcing children to stay in institutions longer.<sup>5</sup> It is important for advocates to understand what the practical implications of their paper policies are on the lives of vulnerable children. It is important for lawmakers to see the urgency of this situation and to make educated, informed decisions based on all of the evidence. This is why it is crucial to understand just how detrimental institutional rearing is for children.

#### **a. Methodology**

This portion of the paper highlights research showing the negative effects of institutions on childhood development and the potential for healing with intervention. This section particularly

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<sup>4</sup> Charles A. Nelson, Nathan A. Fox & Charles H. Zeanah, ROMANIA’S ABANDONED CHILDREN: DEPRIVATION, BRAIN DEVELOPMENT, AND THE STRUGGLE FOR RECOVERY 304 (2014).

<sup>5</sup> See Richard Carlson, *Seeking the Better Interests of Children with a New International Law of Adoption*, 55 N.Y.L. Sch. L. Rev. 733, 777-78 (2010-11); Elizabeth Bartholet, *International Adoption: A Way Forward*, 55 N.Y.L. Sch. L. Rev. 687, 696-97 (2010-11).

focuses on one study known as the Bucharest Early Intervention Project (hereinafter “BEIP”). Charles A. Nelson, Nathan A. Fox, and Charles H. Zeanah conducted this gold standard scientific study with Romanian children beginning in 2001.<sup>6</sup> It remains one of the most well-respected studies in this field. One of the reasons the study is held in such high esteem, and one of the reasons I so heavily cite this study, is that it is a randomized study. Randomized studies, such as the BEIP, are rare in this field while observational studies are much more prevalent. However, randomized studies produce better evidence than observational studies because they use experimental procedures to control the influence of outside factors and to eliminate major sources of selection bias, while observational studies merely recount situations that naturally occur.

Through its randomized process, the BEIP compared high quality foster care to institutional care.<sup>7</sup> It is important to understand that the foster care system implemented in the BEIP is a very high quality foster care system when compared to typical government run foster care systems. For instance, the social workers only had a full caseload of 18-20 cases versus a typical caseload of 80-100 for Romanian social workers at the time.<sup>8</sup> Additionally, BEIP’s foster care program focused heavily on forming attachment relationships between the children and their foster parents while typical foster care programs almost encourage the opposite.<sup>9</sup>

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<sup>6</sup> Nelson, *supra* note 4, at 23.

<sup>7</sup> The BEIP selected 136 children between the ages of six and thirty one months who had lived in Romanian institutions for over fifty percent of their lives. *Id.* at 27. The researchers randomly selected 68 of these children and placed them in high-quality foster care while the other 68 children remained in the institutions. *Id.* at 31. The researchers also followed a control group of 72 children living in the community who remained with their families of origin. *Id.* at 31. Throughout the study, the BEIP followed an “intent-to-treat” approach, meaning that the government was free to move the children from the institutions or foster care as they normally would (i.e. the government could send a child back home to his or her biological family). *Id.* at 30. This approach led the BEIP to report conservative results, meaning that the study’s design erred on the side of under reporting harm rather than over reporting it. *Id.*

<sup>8</sup> *Id.* at 323.

<sup>9</sup> *Id.*

While this paper argues that it is best to rear abandoned children in adoptive homes, rather than in institutions or foster care, the BEIP's research regarding children's success in foster care versus their success in institutions is extremely illuminating. The BEIP's research shows that long term, high quality, foster care damages children far less than institutional rearing. In section IV, this paper will discuss research showing that children are more successful in adoptive homes than in long term foster homes. Thus we should expect the children to be even more successful in adoptive placements than they were in the BEIP's foster homes.

This section also includes research and data from other studies. I have tried to choose studies that are representative of the research on any particular issue. Although most of the studies focus on institutions in one country, their conclusions can be enlightening for institutions throughout the world, because although there are variations between institutions and between countries, many of the fundamental characteristics shaping an institution exist in institutions everywhere.

## **b. Harms Imposed by Institutions**

### *Physical Growth and Development*

The time children spend in institutional care stunts their height, stunts their weight, and leads to smaller head circumferences, all which negatively impact their general physical development. A shorter height, a lower weight or a smaller head circumference could indicate that a child is failing to thrive. One study of 146 children in ten different Nigerian institutions found that 36% of the children in the institutions were underweight and 75.7% of the children had stunted height.<sup>10</sup> A study in Kazakhstan found that 37% of children living in Baby Houses (a type of institution) had stunted height and 31.5% of the babies were underweight as compared to only 10% of their noninstitutionalized peers whose height was stunted and only 5% that were

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<sup>10</sup> D. U. Nwaneri & V. O. Omuemu, *Intestinal Helminthiasis and Nutritional Status of Children Living in Orphanages in Benin City, Nigeria*, 16(2) Nigerian Journal of Clinical Practice 243, 247 (April, 2013).



underweight.<sup>11</sup> Some studies suggest that for every three to five months in an institution a child loses about one month's worth of linear growth or height.<sup>12</sup> A study of Chinese children concluded that for every 2.86 months in an institution a child loses one month of linear growth.<sup>13</sup>

The BEIP concluded that a control group of children who had never been institutionalized were noticeably taller, weighed more, and had larger head circumferences than the children who were institutionalized at any point.<sup>14</sup> However, after one year, children who were removed from the institution and placed into foster care were able to catch up in both height and weight.<sup>15</sup> On the other hand, removing the children to foster care did not impact their head circumference,<sup>16</sup> a fact which is especially disconcerting because an abnormally small head circumference is associated with, among other things, delayed intellectual development, epilepsy, cerebral palsy, and delayed language development.<sup>17</sup> Children reared in institutions will likely be shorter, underweight, and have smaller head circumferences. Removing these children to family-like settings will improve the first two problems but not the latter one.

### *Language Development*

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<sup>11</sup> Mary O. Hearst et al., *Growth, Nutritional, and Developmental Status of Young Children Living in Orphanages in Kazakhstan*, 35(2) *Infant Mental Health Journal* 94, 95-6 & 98 (Mar. 12, 2014).

<sup>12</sup> Nelson, *supra* note 4, at 213.

<sup>13</sup> Laurie C. Miller & Nancy W. Hendrie, *Health of Children Adopted From China*, 105(6) *Pediatrics* 1, 2 (June 2000).

<sup>14</sup> Nelson, *supra* note 4, at 214.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 304.

<sup>17</sup> S. R. Harris, *Measuring Head Circumference: Update on Infant Microcephaly*, 61(8) *Canadian Family Physician* 680, 680 (2015).

It is widely known that institutions have detrimental effects on the language development of children,<sup>18</sup> especially young children.<sup>19</sup> Institutions affect both receptive and expressive language development. Receptive language is how a person understands language they hear through words or see through gestures.<sup>20</sup> Expressive language is a person's ability to express themselves to others.<sup>21</sup> The BEIP found that children who were removed from institutions and placed into foster care by fifteen months old performed identically to the community control group of their peers on both receptive and expressive language categories when tested at three and a half years old.<sup>22</sup> The expressive and receptive language skills of children that were placed into foster homes between the ages of fifteen months and two years improved significantly, but these children did not completely recover like the children placed before fifteen months old did.<sup>23</sup> Children removed from institutions after they were two years old continued to struggle with language skills in both categories even after being integrated into quality foster homes.<sup>24</sup>

**Figure 1:**

<b>Age of Child When Removed from Institution to Foster Care</b>	Less than 15 months old	15-24 months old	Greater than 24 months old
<b>Amount of Recovery of the Child's Language Development</b>	Full recovery	Significant, but not full, recovery	Little recovery

<sup>18</sup> See Nim Tottenham, *Risk and Developmental Heterogeneity in Previously Institutionalized Children*, 51(2) *Journal of Adolescent Health* S29 (Aug. 2012); Susan D. Hough & Louise Kaczmarek, *Language and Reading Outcomes in Young Children Adopted from Eastern European Orphanages*, 33(1) *Journal of Early Intervention* 51, 64 (Mar. 2011); Michelle M. Loman et al., *Postinstitutionalized Children's Development: Growth, Cognitive, and Language Outcomes*, 30(5) *Journal of Development and Behavioral Pediatrics* 426 (Oct. 2009).

<sup>19</sup> Nelson, *supra* note 4, at 154.

<sup>20</sup> Gretchen Olson, *Expressive vs. Receptive Language*, North Shore Pediatric Therapy (Mar. 15, 2012) [nspt4kids.com/parenting/expressive-vs-receptive-language/](http://nspt4kids.com/parenting/expressive-vs-receptive-language/) (last visited Feb. 12, 2017).

<sup>21</sup> *Id.*

<sup>22</sup> Nelson, *supra* note 4, at 178-79.

<sup>23</sup> *Id.* at 179.

<sup>24</sup> *Id.*

Therefore, it is crucial that children be removed from institutions before fifteen months of age in order to promote full recovery in regards to language development.

### *Cognitive Development*

Cognitive development can be defined as “the construction of thought processes, including remembering, problem solving, and decision making.”<sup>25</sup> The cognitive abilities of young children decline when they are in institutions.<sup>26</sup> The longer a child remains in the institution, the greater their cognitive ability declines.<sup>27</sup> For this reason institutions are said to have a “dose-dependent effect” on the cognitive abilities of children, meaning that the longer a child spends in an institution the more the child’s cognitive abilities will be damaged.<sup>28</sup> One study concluded that cognitive impairments are particularly prevalent in children adopted from institutions after the age of six months.<sup>29</sup> The BEIP found that the cognitive abilities of children removed from institutions into foster care before the age of two years resembled the superior cognitive abilities of the never institutionalized control group.<sup>30</sup> However, the cognitive abilities of the children who were not removed from the institutions until after age two more nearly resembled the lower cognitive abilities of the children who continuously remained in the institutions.<sup>31</sup> This research clearly suggests that removing a child from an institution can rehabilitate a child’s cognitive abilities, but only if the removal happens very early in the child’s life.

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<sup>25</sup> *Cognitive Development*, Encyclopedia of Children’s Health, [www.healthofchildren.com/C/Cognitive-Development.html](http://www.healthofchildren.com/C/Cognitive-Development.html) (last visited Sept. 25, 2016).

<sup>26</sup> Nelson, *supra* note 4, at 154; Vladimir M. Sloutsky, *Institutional Care and Developmental Outcomes of 6- and 7-year-old Children: A Contextualist Perspective*, 20(1) *International Journal of Behavioral Development* 131, 148 (Feb. 1997); Loman, *supra* note 23.

<sup>27</sup> Nelson, *supra* note 4, at 179.

<sup>28</sup> Amanda S. Hodel et al., *Duration of Early Adversity and Structural Brain Development in Post-Institutionalized Adolescents*, 105 *NeuroImage* 113 (Jan. 15, 2015).

<sup>29</sup> Tottenham, *supra* note 23, at S30.

<sup>30</sup> Nelson, *supra* note 4, at 160.

<sup>31</sup> *Id.*

### *Brain Development*

Institutional rearing can change the very structure and functioning of a child's brain.<sup>32</sup> For example institutionalized children have lower levels of brain power than their non-institutionalized peers. The BEIP used EEG tests to measure the children's level of brain activity.<sup>33</sup> They tested the children at age eight and found that the children who remained in institutions or were placed into foster care after two years of age had significantly lower levels of brain power than children who were never institutionalized.<sup>34</sup> On the other hand, children who were randomly removed from institutions into foster care before they turned two had the same amount of brain power as children who never lived in institutions.<sup>35</sup>

Researchers have also concluded that institutions can decrease the physical growth of a child's brain. One study that compared 31 adopted children who were previously institutionalized with a control group of 30 never institutionalized children discovered that the previously institutionalized children's brains had developed smaller left and right superior-posterior lobe volumes.<sup>36</sup> These lower brain volumes affect the children's cognition.<sup>37</sup> Specifically, the left superior-posterior lobe affects a person's visual spatial memory and the right superior-posterior lobe affects executive functioning abilities.<sup>38</sup>

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<sup>32</sup> See Amanda R. Tarullo, Melissa C. Garvin & Megan R. Gunnar, *Atypical EEG Power Correlates with Indiscriminately Friendly Behavior in Internationally Adopted Children*, 47(2) *Developmental Psychology* 417, 427 (Mar. 1, 2011).

<sup>33</sup> Nelson, *supra* note 4, at 191-92.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Patrick M. Bauer et al., *Cerebellar Volume and Cognitive Functioning in Children Who Experienced Early Deprivation*, 66(12) *Biological Psychiatry* 1100, 1101 & 1104 (Dec. 15, 2009).

<sup>37</sup> *Id.* at 1104.

<sup>38</sup> *Id.*

The BEIP also found that children living in institutions had smaller brains with smaller amounts of both white and grey matter when compared to never institutionalized children.<sup>39</sup> When children were placed into foster care the amount of white matter in their brains greatly increased, although the amount of grey matter in their brains did not.<sup>40</sup> Grey matter is important because it is full of cell bodies and contains “neurons that serve as the brain’s functional units.”<sup>41</sup> Regions of the brain that affect “thinking, memory, and voluntary behavior, as well as the regulation of motor behavior” are made up of grey matter.<sup>42</sup> White matter, on the other hand, is important because it connects different regions of the brain, enabling them to quickly communicate with one another.<sup>43</sup> Therefore, removing a child from an institution at the age of one year and ten months or before,<sup>44</sup> will likely lead to repair of the child’s brain’s communication and processing speed but will unlikely result in the repair of the brain’s more substantive functioning. Placing a child in an institution at any point seems to damage both sorts of function.

Institutions also affect how a child’s amygdala responds to different stimuli. The amygdala is a part of the brain that controls a person’s motivations and emotions.<sup>45</sup> An experiment conducted by Nim Tottenham, a psychology professor at the University of California, Los Angeles, and her team found that never institutionalized “youth showed an amygdala response that clearly discriminated mother versus stranger stimuli. Previously institutionalized youths, by

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<sup>39</sup> *Id.* at 209; *see also* Hodel, *supra* note 33, at 116 (institutionalized children had lower volumes of gray matter).

<sup>40</sup> Nelson, *supra* note 4, at 209.

<sup>41</sup> Eric A. Zillmer, Mary V. Spiers & William C. Culbertson, *PRINCIPLES OF NEUROPSYCHOLOGY* 157 (2d ed. 2007).

<sup>42</sup> *Id.* at 147.

<sup>43</sup> *Id.* at 99.

<sup>44</sup> Nelson, *supra* note 4, at 193.

<sup>45</sup> Anthony Wright, *The Limbic System: Amygdala* § 6.1, Neuroscience Online: An Electronic Textbook for the Neurosciences (McGovern Medical School, University of Texas), <http://neuroscience.uth.tmc.edu/s4/chapter06.html> (last visited Feb. 12, 2017).

contrast, exhibited reduced amygdala discrimination between mothers and strangers.”<sup>46</sup> This suggests that institutions may change the way a child’s amygdala processes and responds to information. If a child’s amygdala is damaged in an institution, the child will have a more difficult time experiencing and regulating everyday emotions and motivations.

### *IQ*

Children who spend time in institutions tend to have lower IQ scores than their peers.<sup>47</sup> One meta-analysis covering 75 different studies and 19 different countries concluded that the IQ of institutionalized children was on average 20 points lower than the IQ of their family-raised peers.<sup>48</sup> A study of adolescents between the ages of 11 and 17 in northwest India compared the IQ scores of 504 institutionalized adolescents with 570 never institutionalized adolescents.<sup>49</sup> The study found that 53.98% of institutionalized boys, and 53.60% of institutionalized girls had an IQ score below 70 (a low IQ score) in comparison to 21.10% of never institutionalized boys and 21.72% of never institutionalized girls.<sup>50</sup>

The BEIP conducted a longitudinal study of IQ and found that the IQ of children who remained in an institution until age eight continually decreased with time, suggesting that the longer a child lives in an institution, the lower their IQ score will be.<sup>51</sup> The BEIP also

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<sup>46</sup> Aviva K. Olsavsky et al., *Indiscriminate Amygdala Response to Mothers and Strangers After Early Maternal Deprivation*, 74(11) *Biological Psychiatry* 853, 853 (2013).

<sup>47</sup> See Celia Beckett et al., *Do the Effects of Early Severe Deprivation on Cognition Persist into Early Adolescence? Findings from the English and Romanian Adoptees Study*, 77(3) *Child Development* 696, 705 (2006).

<sup>48</sup> Marinus H. van IJzendoorn, Maartje P. C. M. Luijk & Femmie Juffer, *IQ of Children Growing Up in Children’s Homes: A Meta-Analysis on IQ Delays in Orphanages*, 54(3) *Merrill-Palmer Quarterly* 341, 355-56 (July 2008). See Jedd Medefind, *Ancient Commitment, Modern Trend: The History, Hazards and Hope of Today’s Christian Orphan Care Movement*, in *THE INTERCOUNTRY ADOPTION DEBATE: DIALOGUES ACROSS DISCIPLINES* 417, 438 (Robert L. Ballard, Naomi H. Goodno, Robert F. Cochran & Jay A. Milbrandt eds., 2015).

<sup>49</sup> Gijinder Kaur, *Impact of Institutionalization on IQ in Adolescents of North-West India*, 1(1) *Human Biology Review* 57, 60 (2012).

<sup>50</sup> *Id.* at 61-62.

<sup>51</sup> Nelson, *supra* note 4, at 164.

discovered that the children removed from institutions to foster care had higher IQ scores than the children who continued to live in the institutions, but they continued to have lower IQ scores than their never institutionalized peers.<sup>52</sup> Institutions seem to lower children's IQ scores and removing children from institutions seems to partially rehabilitate this loss.

### *Executive Functioning*

Institutionalized children generally have poor executive functioning skills. This is especially disconcerting because executive functioning is extremely important in everyday life. Executive functioning skills can be defined as “complex cognitions, such as solving novel problems, modifying behavior in the light of new information, generating strategies or sequencing complex actions.”<sup>53</sup> Coordination, goal orientation, and control are the three main elements of executive functioning.<sup>54</sup> The research and studies completed in this area unambiguously support the conclusion that children who spend time in institutions generally perform poorer on tests measuring their executive functioning abilities than children who never spend time in institutions.<sup>55</sup>

One study tested the executive functioning abilities of previously institutionalized children between the ages of two and a half and four years old at a time one year after they were adopted.<sup>56</sup> The researchers concluded that these children performed significantly worse in

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<sup>52</sup> *Id.* at 159.

<sup>53</sup> Rebecca Elliott, *Executive Functions and Their Disorders*, 65 *British Medical Bulletin* 49, 50 (2003).

<sup>54</sup> *Id.*

<sup>55</sup> Nelson, *supra* note 4, at 165; Emma Colvert et al., *Do Theory of Mind and Executive Function Deficits Underlie the Adverse Outcomes Associated with Profound Early Deprivation?: Findings from the English and Romanian Adoptees Study*, 36(7) *Journal of Abnormal Child Psychology* 1057, 1065 (Oct. 2008).

<sup>56</sup> Camelia E. Hostinar et al., *Associations between Early Life Adversity and Executive Function in Children Adopted Internationally from Orphanages*, *Proceedings of the National Academy of Sciences of the United States of America* 109(2) 17208, 17209 (Oct. 16, 2012).

executive functioning scores than their never institutionalized peers.<sup>57</sup> This shows that even when children are very young, institutions negatively impact their executive functioning.

The BEIP, similarly, concluded that children who spent time in institutions had poorer executive functioning skills than their peers.<sup>58</sup> The BEIP also concluded that, regrettably, removing institutionalized children to foster care (at the average age of one year and ten months) did not have any impact on their general executive functioning abilities.<sup>59</sup> However, the BEIP study did not measure whether removing a child from an institution at an earlier age could allow their general executive functioning abilities to improve.

The BEIP did find that removing children from institutions and placing them in foster care improved the specific executive functioning skill of inhibitory control.<sup>60</sup> Inhibitory control skills are a subset of executive functioning skills that includes the ability to resist distractions, to give more considered and well thought out responses, and to avoid acting on one's initial impulse or reaction to a situation.<sup>61</sup> The researchers in the BEIP played many rounds of a game similar to Simon Says with the children in the study when they were four-and-a-half years old in order to test their inhibitory control.<sup>62</sup> This test concluded that the children who always resided in institutions had the least amount of inhibitory control and the children who never lived in institutions had the greatest amount of inhibitory control.<sup>63</sup> The children who had been removed from institutions and placed into foster care fell somewhere in between, a consistent trend the

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<sup>57</sup> *Id.*

<sup>58</sup> Nelson, *supra* note 4, at 175.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *National Survey of Child and Adolescent Well-Being: No. 1: Inhibitory Control Abilities Among Young Children in the Child Welfare System*, Administration for Children and Families 1, [http://www.acf.hhs.gov/sites/default/files/opre/inhibitory\\_control.pdf](http://www.acf.hhs.gov/sites/default/files/opre/inhibitory_control.pdf) (last visited Feb. 12, 2017).

<sup>62</sup> Nelson, *supra* note 4, at 167.

<sup>63</sup> *Id.* at 168.



BEIP recorded across most of the areas of childhood development they studied.<sup>64</sup> The BEIP also noted that the longer a child had spent in an institution the less inhibitory control the child showed.<sup>65</sup> Thus, it is clear that institutions damage inhibitory control, and this damage can only be reversed to a limited extent.

### *Attachment*

The way in which a child develops attachment behaviors greatly affects the child's ability to navigate social situations. The first attachment a child develops often foreshadows the child's ability to form attachments and develop relationships later in life. "We have known for many years that nurturing relationships with adults, beginning at birth, provide an important foundation upon which all subsequent relationships are built."<sup>66</sup> When a child establishes strong bonds and healthy attachment behaviors the child is much more likely to have "a strong sense of self, positive social skills, successful intimate relationships later in life, and a sophisticated understanding of emotions."<sup>67</sup> Without such a foundation a child is likely to struggle to develop and maintain healthy relationships throughout life. Unfortunately, an infant's need to develop healthy, strong attachments with caregivers early in life is generally not met in institutions where their caregivers change in shifts and children's cries go unanswered.

One sign that a child has not formed healthy attachment behaviors is that the child shows indiscriminate friendliness. An indiscriminately friendly child is overly friendly to anyone he or she comes into contact with, not distinguishing between stranger and friend.<sup>68</sup> When people visit institutions they often come home with stories about how friendly the children are and how

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 11.

<sup>67</sup> *Id.*

<sup>68</sup> Mark Wheeler, *Kids Whose Bond with Mother was Disrupted Early in Life Show Changes in Brain*, 33(1) Child Law Practice Newsletter 12 (Jan. 2014).

eager they are to be held and touched.<sup>69</sup> Although at first glance this may not seem problematic or may even seem endearing, it is actually a sign that a child has attachment problems.<sup>70</sup>

Children with good, secure attachments are naturally more cautious, or even afraid, when around strangers.<sup>71</sup> This “indiscriminate behavior is one of the most frequent abnormalities in children adopted out of institutions, remaining evident for years after adoption in some cases.”<sup>72</sup> Michael Rutter and his colleagues conducted a study of children that had been adopted in the United Kingdom from Romania.<sup>73</sup> In this study they found that when children were older than six months of age when adopted, the children exhibited indiscriminate friendliness.<sup>74</sup> The BEIP also had caregivers and parents observe children’s behavior until age eight and through this process discovered that the children in the community had the fewest signs of indiscriminate friendliness, the children placed into foster care fell somewhere in between, and the children who continued living in institutions showed the most signs of indiscriminate behavior.<sup>75</sup> These studies, as well as countless anecdotes from visitors to institutions, suggest that children in institutions have much higher rates of indiscriminate behavior which is symptomatic of attachment problems.<sup>76</sup>

Attachment behaviors can be classified into many different attachment styles but there are two main types: secure and insecure attachments. Children who have secure attachments with a parent at the age of one are more likely “to be confident, cooperative, caring, and able to manage

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<sup>69</sup> John Williamson & Aaron Greenberg, *Families, Not Orphanages*, Better Care Network (Sept. 2010) 6, [http://www.thinkchildsafe.org/thinkbeforevisiting/resources/Families\\_Not\\_Orphanages\\_J\\_Williamson.pdf](http://www.thinkchildsafe.org/thinkbeforevisiting/resources/Families_Not_Orphanages_J_Williamson.pdf) (last visited Feb. 12, 2017).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Nelson, *supra* note 4, at 248.

<sup>73</sup> *Id.* at 137.

<sup>74</sup> *Id.* at 145-46.

<sup>75</sup> *Id.* at 253.

<sup>76</sup> *See also* Tarullo, *supra* note 37, at 427.

their emotions and impulses in an acceptable way” later in life.<sup>77</sup> Children with insecure attachment styles are more likely to have both social and emotional problems.<sup>78</sup> A unique study conducted in Greece compared 86 infants raised in institutions with 41 infants raised in two parent families but cared for in daycare facilities for an average of seven hours a day.<sup>79</sup> The study found that only 24% of the institutionalized children had secure attachments to their caregivers while 41% of the non-institutionalized children were securely attached to them.<sup>80</sup> The number of non-institutionalized children who had developed any secure attachment at all, whether with a daycare worker, father, grandparent or other adult, is likely even higher because this study only tested the children’s attachment to their caregivers. Nonetheless, this comparison between institutionalized children and children who spend a significant amount of time in daycare each day is particularly interesting. It indicates that even the difference between part-time and full-time institutional care can be critical. The children raised in families had a much greater chance of developing a secure attachment style than the children raised entirely in institutions.

The BEIP also recorded the attachment styles of the children in their study. They observed that at three and a half years of age 65% of the children in the community control group, 49% of the children in the foster care group, and only 18% of the children who continued to live in institutions had secure attachments.<sup>81</sup> Additionally, the BEIP found that children were much

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<sup>77</sup> Marti Erickson, *Good Enough Moms & Dads: Separating Fact from Fiction about Parent-Child Attachment*, University of Minnesota Center for Early Education and Development, <http://www.cehd.umn.edu/ceed/publications/tipsheets/ericksontipsheets/attachmentfactorfiction.pdf> (last visited Feb. 12, 2017).

<sup>78</sup> Saul McLeod, *Mary Ainsworth*, Simply Psychology -(2008, last updated 2016), <http://www.simplypsychology.org/mary-ainsworth.html> (last visited Feb. 12, 2017).

<sup>79</sup> Panayiota Vorría et al., *Early Experiences and Attachment Relationships of Greek Infants Raised in Residential Group Care*, 44(8) *Journal of Child Psychology and Psychiatry* 1208, 1211 & 1216 (Nov. 2003).

<sup>80</sup> *Id.* at 1216.

<sup>81</sup> Nelson, *supra* note 4, at 251.

more likely to develop secure attachments if they were removed from institutions and placed into foster care before the age of two.<sup>82</sup> This suggests that a sensitive period exists affecting the ability of children to form secure attachments. Children in institutions are much less likely to have secure attachments and therefore will likely struggle with interpersonal relationships more than children reared in families.<sup>83</sup>

### **c. Abuse in Institutions and Sexual Trafficking of Children Who Do Not Have a Family's Protection**

Children reared in institutions suffer from disproportionately high rates of abuse within the institutions themselves. This abuse ranges from forced sex to violent beatings. Alarming abuse rates have been discovered in institutions across the globe. In 2000 almost half of a group of 3,164 children living in Romanian institutions asserted that beatings were routinely used as punishment and over 33.3% of these children asserted that they knew of other children who were forced to have sex.<sup>84</sup> A 2009 study found that between 1914 and 2000, 1,090 children who lived in institutions in Ireland were physically and sexually abused.<sup>85</sup> In 2007 the Indian government discovered that 56.37% of a group of 2,245 children living in Indian institutions had suffered physical abuse and beatings.<sup>86</sup> A study of children in 13 states within the United States concluded that 5.1% of children living in institutions suffer from abuse or neglect as compared

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<sup>82</sup> *Id.*

<sup>83</sup> See also Rebecca Johnson, Kevin Browne & Catherine Hamilton-Giachritsis, *Young Children in Institutional Care at Risk of Harm*, 7(1) *Trauma, Violence, & Abuse* 34, 41-42 (Jan. 2006).

<sup>84</sup> *Survey on Child Abuse in Residential Care Institutions in Romania* (Ecatarina Stativă, coordinator, 2000), [https://www.unicef.org/ceecis/Survey\\_ChildAbuse\\_ResidentialCare\\_Romania1.pdf](https://www.unicef.org/ceecis/Survey_ChildAbuse_ResidentialCare_Romania1.pdf) (last visited Feb. 12, 2017). The data is presented in the Executive Summary:”

<sup>85</sup> Commission to Enquire into Child Abuse, *Report on the Commission to Enquire into Child Abuse*, Ireland, 12 (2009), <http://www.childabusecommission.ie/rpt/pdfs/CICA-Executive%20Summary.pdf> (last visited Feb. 12, 2017).

<sup>86</sup> Dr. Loveleen Kacker, Srinivas Varadan & Pravesh Kumar, *Study on Child Abuse: India 2007*, 55 (2007), <http://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf> (last visited Feb. 12, 2017).

with 2.2% of children residing in foster care placements.<sup>87</sup> These statistics clearly show the elevated danger of abuse which institutionalized children face.

Additionally, children who live in institutions or in foster care situations are more likely to be taken from their residences to be trafficked and exploited for sex than other children. In Moldova, children who live in institutions are 10 times more likely to be -trafficked than their peers.<sup>88</sup> In New York, 75% of the children who had been prostituted for commercial purposes were foster children<sup>89</sup> and in Florida the rate was similarly 70%.<sup>90</sup> This suggests that both institutions and foster care are incapable of fully protecting these already vulnerable children.

#### **d. Problems Children Face When Entering Adult Life Without the Support of a Family**

Not only do institutionalized children face difficult developmental delays and problems during childhood, they are also much more likely to face significant challenges after they age out of the institutions and have to navigate adult life on their own. This is devastating for the children themselves as well as destructive for society as a whole. The Russian Procuracy General has reported that out of 15,000 children leaving the state's care in any given year, several years later 33.3% will be unemployed, 40% will be homeless, 20% will have been convicted of crimes, and 10% will have committed suicide.<sup>91</sup> --In general, children who age

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<sup>87</sup> Eve P. Smith, *Bring Back the Orphanages? What Policymakers of Today Can Learn from the Past*, 74(1) Child Welfare 115 (Jan. 1995).

<sup>88</sup> *Rebuilding a Life: A Young Girl Struggles to Overcome the Trauma of Trafficking*, UNICEF (Nov. 16, 2004), [https://www.unicef.org/infobycountry/moldova\\_24121.html](https://www.unicef.org/infobycountry/moldova_24121.html) (last visited Feb. 12, 2017).

<sup>89</sup> Cassi Feldman, *Report Finds 2,000 of State's Children Are Sexually Exploited, Many in New York City*, The New York Times (Apr. 24, 2007), <http://www.nytimes.com/2007/04/24/nyregion/24child.html> (last visited Feb. 12, 2017).

<sup>90</sup> Jessica Vander Velde, *FBI Agent Leads Task Force Targeting Pimps in Child Prostitution*, Tampa Bay Times (Oct. 3, 2010), <http://www.tampabay.com/news/publicsafety/crime/fbi-agent-leads-task-force-targeting-pimps-in-child-prostitution/1125800> (last visited Feb. 12, 2017).

<sup>91</sup> *Abandoned to the State: Cruelty and Neglect in Russian Orphanages*, Human Rights Watch 198 (1998), <https://www.hrw.org/sites/default/files/reports/russ98d.pdf> (last visited Feb. 12, 2017).

out of institutions are more likely to depend on welfare benefits from their governments or other organizations in order to survive.<sup>92</sup>

### **III. Increasing the Quality of Care in Institutions Cannot Mitigate All of an Institution's Harmful Effects**

After reviewing the research showing the detrimental effects that institutions have on children, some policymakers and non-governmental organizations have endeavored to improve the quality of care in institutions in order to fix the problem. Non-profits have begun creating new “good” institutions to counter what they see as “bad” government run institutions. But are there really such things as “good” institutions? How much does the quality of care in an institution matter?

Although there has been very little research on this issue, there is one study, the St. Petersburg Orphanage Intervention Project (hereinafter “St. Petersburg Project”), conducted in Russia, which sought to discover whether improving an institutional environment could benefit the children in the institution. This quasi-experimental project followed children in three different baby homes (a type of institution) in each of which the researchers provided a differing

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<sup>92</sup> [Corinna Csáky, \*Keeping Children Out of Harmful Institutions: Why We Should Be Investing in Family-Based Care\*, Save the Children \(2009\) 9.](https://www.savethechildren.org.uk/sites/default/files/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09_1.pdf) [https://www.savethechildren.org.uk/sites/default/files/docs/Keeping\\_Children\\_Out\\_of\\_Harmful\\_Institutions\\_Final\\_20.11.09\\_1.pdf](https://www.savethechildren.org.uk/sites/default/files/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09_1.pdf) (last visited Jan. 30, 2017). [Csáky, \*supra\* note 2, at 9.](#) Studies showing poor outcomes for children who age out of the foster care system in the United States also provide indirect evidence for these conclusions. One study following foster youth who were never adopted found that by the time they reached their mid-20s less than 50% were employed, 74.2% of the males and 42.8% of the females had spent time incarcerated, -and 67.8% of the females and 41.8% of the males were surviving on food stamps. Mark E. Courtney et al, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26*, Chapin Hall at the University of Chicago 28, 44 & 92 (2011), [https://www.chapinhall.org/sites/default/files/Midwest%20Evaluation\\_Report\\_4\\_10\\_12.pdf](https://www.chapinhall.org/sites/default/files/Midwest%20Evaluation_Report_4_10_12.pdf) (last visited Feb. 12, 2017).

level of intervention.<sup>93</sup> One baby home continued to care for the children in its usual manner.<sup>94</sup> The staff members of the second baby home received training in order to “teach caregivers to be more socially responsive in their interactions” with the children.<sup>95</sup> The staff members of the third baby home received the same training as in the second home, and in addition structural improvements were implemented there, including a decrease in the number of children grouped together, the assignment of the same caregiver to the same group of children each shift to develop consistent relationships, and the implementation of a program to ensure that caregivers and children spent at least two hours each day interacting with one another.<sup>96</sup>

In general, across the different fields of childhood development, the children in the baby home in which staff received training and structural adjustments were made, improved the most and the children in the baby home that received no interventions improved the least.<sup>97</sup> The children in the baby home in which the staff training was offered but no structural improvements were made fell somewhere in between.<sup>98</sup> It is unclear how the childhood development of any of these children compared to the childhood development of their never institutionalized peers because the St. Petersburg Project did not document a control group of children living outside of institutions.

Nonetheless, the St. Petersburg Project did show that specific improvements in an institution can impact a child’s development. The success of the St. Petersburg intervention “seems to be in

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<sup>93</sup> *The Effects of Early Social-Emotional and Relationship Experience on the Development of Young Orphanage Children, The St. Petersburg-USA Orphanage Research Team*, 73(3) *Monographs of the Society for Research in Child Development* 1, 20 (2008), author manuscript at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2702123/> (last visited Feb. 12, 2017).

<sup>94</sup> *Id.* at 21.

<sup>95</sup> *Id.* at 21, 26.

<sup>96</sup> *Id.* at 21, 31.

<sup>97</sup> *Id.* at 108.

<sup>98</sup> *Id.*

its ability to transform the ‘institutional’ culture into one that is more ‘family-like.’”<sup>99</sup> Children seem to have a natural need for family. This intuitively makes sense since children are inextricably linked to their mothers even before birth and must depend on adults for survival during the early years of their lives. Institutions are problematic because their structures are not like those of families. The only “parent” figures that institutionalized children have are actually employees of the institution and generally rotate shifts rather than care for the children full-time.<sup>100</sup> It does appear, from the St. Petersburg study and as a matter of common sense, that if institutions have a higher quality of care, and an emphasis on forming supportive relationships between the children and their caregivers, then they will serve children better than lower quality institutions. However, this research shows that the more family like the institution is, the better it is for children. The improvements most successful in institutions are those that make the institution much more like a family and much less like an institution. This suggests that rather than spending efforts to try to turn institutions into families, the global community should simply find families to care for these children, whether through foster care or adoption.

#### **IV. A Comparison of Foster Care and Adoption**

The research identified earlier in this paper shows that institutionalized children suffer greater harm than children living in foster care. It is important to emphasize again that the foster care system described in the BEIP study was of a much higher quality than typical government-run foster care programs (the social workers had much smaller caseloads, there was an emphasis on forming attachment relationships between the foster parents and children, etc.).<sup>101</sup> Child welfare systems across the globe should utilize high quality foster care rather than institutions.

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<sup>99</sup> Tottenham, *supra* note 23, at S30.

<sup>100</sup> *Id.* at S29.

<sup>101</sup> See Nelson, *supra* note 4, at 323.



However, to stop there would be an injustice. Because although foster care does damage children less than institutions, children reared in foster care still lag behind their adopted peers. Therefore, child welfare systems should prioritize finding adoptive homes for children in need. This should include encouraging and supporting international adoptions, for reasons discussed later in this paper. In order to pressure governments and NGOs to prioritize both domestic and international adoption over foster care, it is necessary to understand the different impacts foster care and adoption have on children.

Children raised in foster care typically have greater behavioral and cognitive problems than children raised through adoption. Michael Bohman and Soren Sigvardsson followed approximately 600 infants in Stockholm that had been removed from their homes in the 1950s. 208 of these infants returned to live with their birth families, 203 were raised in long-term foster care, and 168 were adopted. Information about the children's educational and behavioral development was tracked when they were 11 years old and 15 years old. The male children were also tracked at age 18 when they were conscripted for the purpose of military service. At every checkpoint the children who had been adopted had better behavioral development than the children in long-term foster care. The children in foster care at age 15 had two to three times more behavioral problems than the adopted children.<sup>102</sup> Beginning in 2010 Barth and Lloyd conducted a study of 353 children in the United States who had been removed from their homes before the age of 13 months.<sup>103</sup> One group of the children returned home, one group was adopted, and one group lived in foster care.<sup>104</sup> Sixty six months later, the researchers found that

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<sup>102</sup> Michael Bohman & Soren Sigvardsson, *Negative Social Heritage*, 101(3) *Adoption & Fostering* 25, 28 (Oct. 1, 1980).

<sup>103</sup> E. Christopher Lloyd & Richard P. Barth, *Developmental Outcomes After Five Years for Foster Children Returned Home, Remaining in Care, or Adopted*, 33 *Child and Youth Services Review* 1383, 1385 (2011).

<sup>104</sup> *Id.*

the adopted children had developed better cognitive and language skills than the fostered children.<sup>105</sup> Fostered children tend to struggle behaviorally and cognitively when compared to their adopted counterparts.

Children in long-term foster care also perform worse in school than adopted children. At every checkpoint in Bohman and Sigvardsson's Swedish study the children who had been adopted were also more successful educationally than the children in long-term foster care. In fact, the adopted children at age 15 performed the same in school as a control group of their peers from the community and the adopted boys at age 18 performed the same as their community peers on intelligence tests. In contrast, the children in foster care at age 15 performed poorly in school and at age 18 the boys in foster care performed much worse on intelligence tests than their community peers or the adopted children.<sup>106</sup> Annick Dumaret also conducted a study that showed educational deficits in foster children when compared to adopted children. Dumaret studied 102 French children. At a young age, 21 of these children were placed in foster care, 35 were adopted, and the remaining 46 remained in the homes of their birth families. Overall, throughout primary and secondary school the study found that only 17.1% of the adopted children were classified as "school failures" while 100% of the foster children were considered "school failures."<sup>107</sup> Additionally, an analysis of the National School Register in Sweden concluded that the average attrition rates for Swedish students was 2.4% among children that were neither adopted nor fostered, while the attrition rate for adopted children was 4.3%, and

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<sup>105</sup> *Id.*

<sup>106</sup> Bohman, *supra* note 115.

<sup>107</sup> Annick Dumaret, *IQ, Scholastic Performance and Behaviour of -Sibs Raised in Contrasting Environments*, 26(4) *Journal of Child Psychology and Psychiatry* 553 (July 1985).

the attrition rate for fostered children was 13.4%.<sup>108</sup> Thus, it seems clear that foster children lag behind their adopted peers in school.

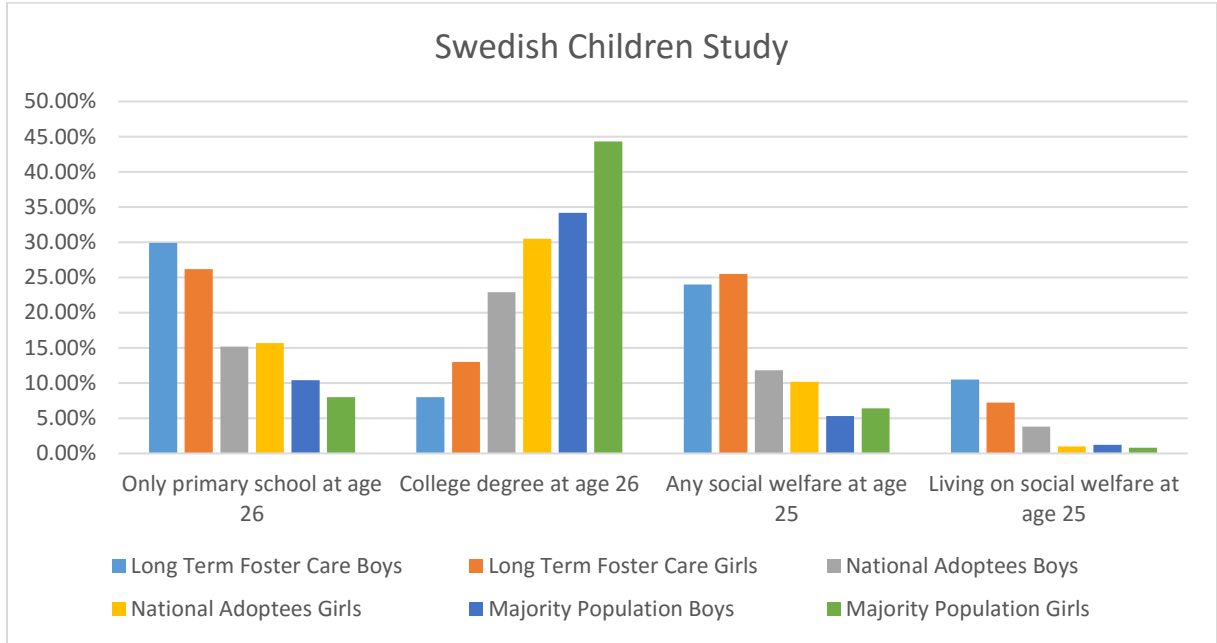
In another prominent Swedish study Bo Vinnerljung and Anders Hjern found astounding results when they compared adoption and long-term foster care. The study followed three groups of children: adopted children, children in long-term foster care, and the majority population (children who were raised at home). The study followed all Swedish children born between 1972 and 1981 (with the exception of those excluded from the study because of unique situations), which resulted in a group of 899 adopted children, 3,062 children in long-term foster care, and 900,418 children in the majority population.<sup>109</sup> The results of the study are set forth in Figure 2 below:

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<sup>108</sup> Bo Vinnerljung & Anders Hjern, *Cognitive, Educational and Self-Support Outcomes of Long-Term Foster Care Versus Adoption. A Swedish National Cohort Study* 33(10), *Children and Youth Services Review* 1902, 1904-5 (Oct. 2011).

<sup>109</sup> *Id.*

**Figure 2:**



Data from: Bo Vinnerljung & Anders Hjern, *Cognitive, Educational and Self-Support Outcomes of Long-Term Foster Care Versus Adoption. A Swedish National Cohort Study*, 33(10), Children and Youth Services Review, 1902,1905-1906 (Oct. 2011).

Figure 2 shows that in terms of education (as measured by amount of schooling) and ability to support oneself (as measured by dependence on welfare), children reared in long-term foster care lag behind their adopted peers, who themselves lag behind their peers reared at home without familial disruptions.

Another series of studies, conducted by Triseliotis and his colleagues during the 1980s, took an interesting approach to the issue by analyzing self-evaluations that adults who had either grown up in long-term foster care or who had been adopted filled out. When the adults were asked to rate their ability to cope with current life situations, 90% of the adults who had been adopted rated their coping ability as “good” to “very good” while only 57% of the adults who were fostered rated their ability this way. Ninety percent of the adopted adults rated their feelings of their own well-being as “good” to “very good” while only 35% of the fostered adults

did so. These studies found that adults who were raised in foster care consistently ranked themselves lower than adults raised by adopted families.<sup>110</sup>

After looking at all of the research it seems clear that when children are raised outside of the home, they are generally more successful when adopted than when reared in long-term foster care. There are many different reasons this might be the case. One reason the disparity between fostered and adopted children may exist is because of a lack of security when children are raised in foster care. When a child is raised by a biological family or adopted into a new family, the child generally has a strong sense of belonging and the security that comes from believing that this family will be theirs forever. However, when children remain in foster care they do not have the same sense of security and possess a weaker sense of belonging.

By definition, foster care is not permanent. No matter how “long-term” an organization tries to make foster care sound, foster care is easily severable. The child’s biological parent’s rights are not terminated and at any time the child can be removed from their caretaker to be placed into another foster placement or returned to their biological parents. Children in foster care are considered wards of the state rather than children of their foster parents.<sup>111</sup> Foster children may not receive unconditional love and often face realistic fears that their behavior may affect their ability to continue to stay with their foster family. In contrast adopted children, in the eyes of the law, are the children of their adopted parents<sup>112</sup>. They cannot be removed from their adopted homes to be returned to their biological parents or placed with another caretaker barring extreme

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<sup>110</sup> John Triseliotis, *Long-Term Foster Care or Adoption? The Evidence Examined*, 7(1) Child & Family Social Work 23, 29-30 (2002).

<sup>111</sup> See *Wards of State Guideline*, Washington University in St. Louis, <https://hrpo.wustl.edu/wp-content/uploads/2015/01/8-Enrolling-Wards-of-State.pdf> (last visited Feb. 11, 2017).

<sup>112</sup> See *Adoption Laws*, National Adoption Center, <http://www.adopt.org/adoption-laws> (last visited Feb. 11, 2017).

circumstances.<sup>113</sup> Perhaps these are the reasons children in long-term foster care lag behind their adopted peer; in any event, it is clear that they do lag behind. Therefore, when there is a choice between foster care and adoption, adoption should be the preferred method of child rearing.

## **V. The Shortcomings of Domestic Adoption**

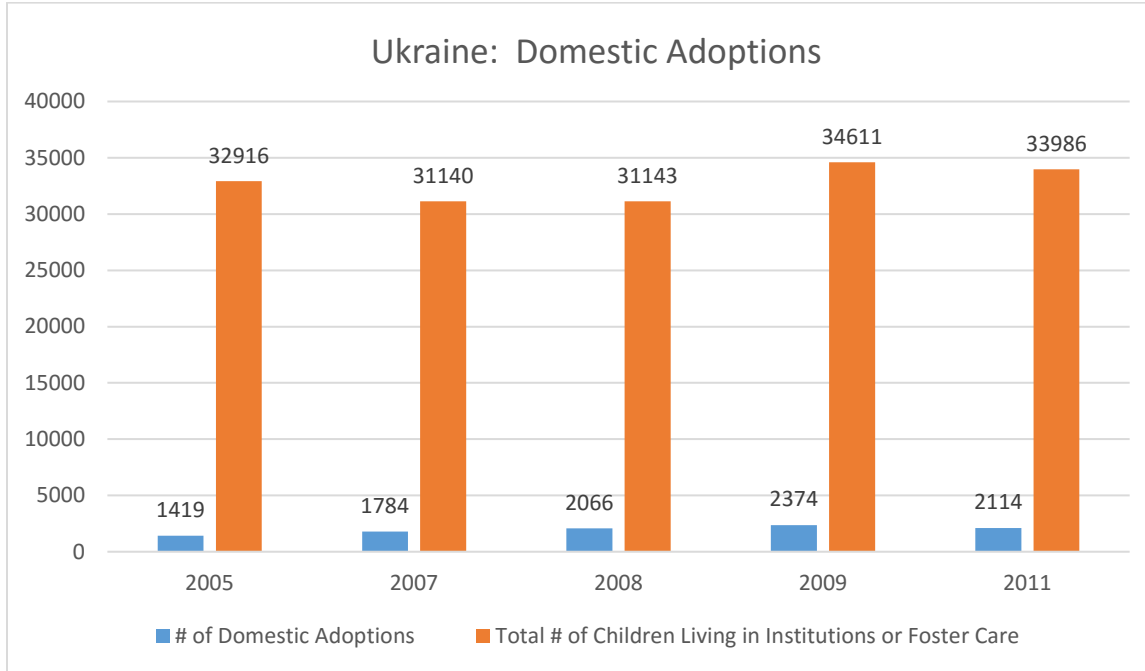
The general trend of the available research clearly shows that when a child can no longer live at home, institutions are the worst option for them and adoption is the best option. Foster care falls somewhere in between. Therefore, adoption should be the priority for children who cannot return home. There are two types of adoption: domestic and international (also commonly referred to as inter-country). Domestic adoption describes the adoption of a child by parents who live in the same country as the child. International adoption describes the adoption of a child by parents who live in a different country than the child. Both types of adoption should be encouraged.

Although many policymakers favor domestic adoption over international adoption, domestic adoption rates tend to be very low in most countries that have high populations of children in need. For instance, figure 3 shows the low rate of domestic adoptions in the Ukraine.

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<sup>113</sup> See *Adoption Myths & Facts*, Adoption Center for Family Building, <https://www.centerforfamily.com/hoping-to-adopt/myths-facts/> (last visited Feb. 11, 2107).

**Figure 3:**



Data from: Victor Groza & Kelley M. Bunkers, *Adoption Policy and Evidence-Based Domestic Adoption Practice: A Comparison of Romania, Ukraine, India, Guatemala, and Ethiopia*, 35(2) *Infant Mental Health Journal* 160, 165 (2014).

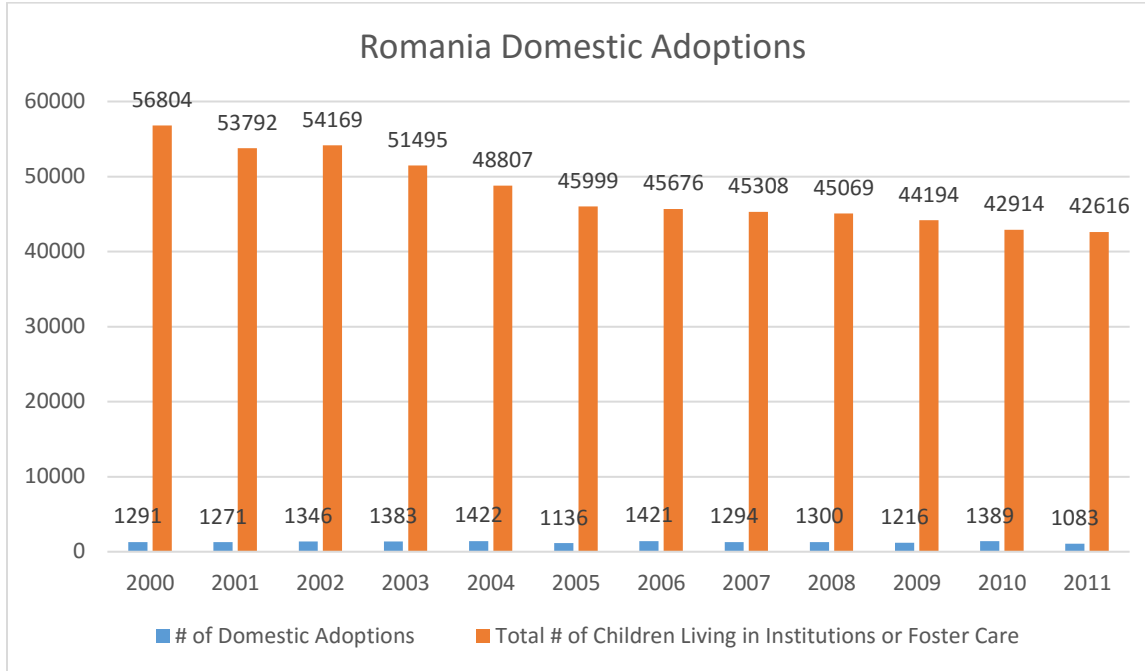
Of the children living in institutions<sup>114</sup> or foster care in the Ukraine only 4% in 2005, 5% in 2007, 7% in 2008, 7% in 2009, and 6% in 2011 were adopted domestically.<sup>115</sup> These numbers are astonishingly low.

Figure 4 shows an even more disheartening pattern in Romania.

<sup>114</sup> These institutions include various sized baby homes, children's homes, "family-type" homes with 5-10 kids each, boarding schools for orphans, and orphanages for special needs children.

<sup>115</sup> Victor Groza & Kelley M. Bunkers, *Adoption Policy and Evidence-Based Domestic Adoption Practice: A Comparison of Romania, Ukraine, India, Guatemala, and Ethiopia*, 35(2) *Infant Mental Health Journal* 160, 165 (2014). Some of these children were also adopted internationally: 2,110 children in 2005, 1,670 children in 2007, 1,587 children in 2008, 1,428 children in 2009, and 970 children in 2011. *Id.*

**Figure 4:**



Data from: Victor Groza & Kelley M. Bunkers, *Adoption Policy and Evidence-Based Domestic Adoption Practice: A Comparison of Romania, Ukraine, India, Guatemala, and Ethiopia*, 35(2) *Infant Mental Health Journal* 160, 163 (2014).

Of the children living in institutions or foster care in Romania only 2% were domestically adopted each year from 2000 – 2002 and in 2005 and only 3% were domestically adopted each year from 2003-2004 and 2006-2011.<sup>116</sup> This data shows that the rates of domestic adoption in Romania were inadequate to care for between 97% and 98% of the children living outside of their homes. In recent years domestic adoption has not merely been inadequate to provide stable homes for the most vulnerable children, it has been wholly incapable of making any sizable dent whatsoever in the children’s needs in many countries.

<sup>116</sup> *Id.* at 163. Some of these children were also adopted internationally: 3,035 children in 2000, 1,521 children in 2001, 407 children in 2002, 279 children in 2003, 25 children in 2004, 2 children in 2005, and 0 children each year from 2006-2011. *Id.*



In India there are around 20,000,000 children who have either been abandoned by their parents or lost both parents,<sup>117</sup> yet domestic adoption rates in India remain low, ranging from 5,964 in 2011-2012 and steadily declining to 3,011 in 2015-2016.<sup>118</sup> Similar results can be found in other countries as well; however, the lack of accurate and complete statistics makes it difficult to determine exactly how many children reside in institutions and exactly how many are adopted from these institutions in each country each year. Nonetheless, the fact that most countries continue to report extremely high numbers of orphaned children shows that domestic adoption has not been able to solve this crisis.<sup>119</sup>

Many different factors impede domestic adoption in other countries including poverty, racial biases, and aversion to caring for children with special needs.

**a. Poverty is a Barrier to Domestic Adoption**

Poverty is a major factor inhibiting the growth of domestic adoption in many developing countries. Poor families simply cannot care for another child when they are already struggling to care and provide for their own children. In countries with high poverty rates this can drastically decrease the pool of potential adoptive families for children in need. According to one poll conducted in Russia, more than 80% of Russians would never consider adopting a child “due to insufficient income, a lack of government support and poor housing conditions.”<sup>120</sup> Widespread

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<sup>117</sup> *India Now Home to 20 Million Orphans, Study Finds*, SOS Children’s Villages Canada (July 26, 2011), <https://www.soschildrensvillages.ca/india-now-home-20-million-orphans-study-finds> (last visited Feb. 12, 2017).

<sup>118</sup> *Adoption Statistics*, Government of India, Ministry of Women & Child Development, Central Adoption Resource Authority, <http://www.cara.nic.in/InnerContent.aspx?Id=90#Adoption Statistics> (last visited Feb. 12, 2017).

<sup>119</sup> *See Movements*, World Without Orphans, <http://www.worldwithoutorphans.org/movements> (last visited Feb. 12, 2017).

<sup>120</sup> Gabrielle Tétrault-Farber, *Few Russians Would Consider Adoption, Poll Says*, The Moscow Times (Nov. 14, 2013), <http://www.themoscowtimes.com/news/article/few-russians-would-consider-adoption-poll-says/489545.html> (last visited Feb. 10, 2017).

poverty is also a barrier to domestic adoption in Guatemala.<sup>121</sup> Poverty continues to play a huge role in keeping rates of domestic adoption low, not only in Russia and Guatemala, but also in many other countries around the world.

#### **b. Racial Biases are Barriers to Domestic Adoptions**

Deeply entrenched racial biases also limit the number of domestic adoptions in many countries. For example, prejudice against Roma children in Romania has stopped some Romanian families from choosing to foster these children.<sup>122</sup> This obstacle would likewise be difficult to overcome for domestic adoptions. However, the role that this factor plays in limiting the number of domestic adoptions is likely to vary greatly from one country to another and even among different races and cultures within a single country. For example, in Guatemala ethnicity does not seem to be a huge factor preventing adoptions. A Guatemalan newspaper, *Prensa Libre*, conducted a poll of 842 adults which concluded that 92.6% of these adults said it would worry them “almost not at all” if their adopted child were an Indigenous child (even though the Indigenous population in Guatemala has been marginalized historically) while only 5% said it would worry them “somewhat or a great deal.”<sup>123</sup> Although ethnic and racial prejudices may not drastically limit the number of domestic adoptions in every country, it is certainly true that these prejudices do have an impact on domestic adoptions in some countries.

#### **c. Domestic Adoption’s Unavailability for Children With Special Needs**

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<sup>121</sup> Judith L. Gibbons, Ana Gabriele González-Olivia & Kostas Mylonas, *Ethnic and Adoption Attitudes Among Guatemalan University Students* 4:785 SpringerPlus (Dec. 18, 2015), 2, <http://doi.org/10.1186/s40064-015-1578-2> (last visited Feb. 10, 2017).

<sup>122</sup> Nelson, *supra* note 4, at 96.

<sup>123</sup> Gibbons, *supra* note 135, at 2.

Domestic adoptions rates are also low because many people are unwilling to adopt children with any type of special needs. For example, in general both Russians<sup>124</sup> and Indians<sup>125</sup> are wary of adopting children with special needs. This prohibits a high percentage of children in need from receiving stable homes. This is especially problematic because merely spending time in an institution, as described earlier in this paper, often impedes normal development and therefore increases the likelihood that the child will be viewed as having special needs.

## **VI. The Need for International Adoption**

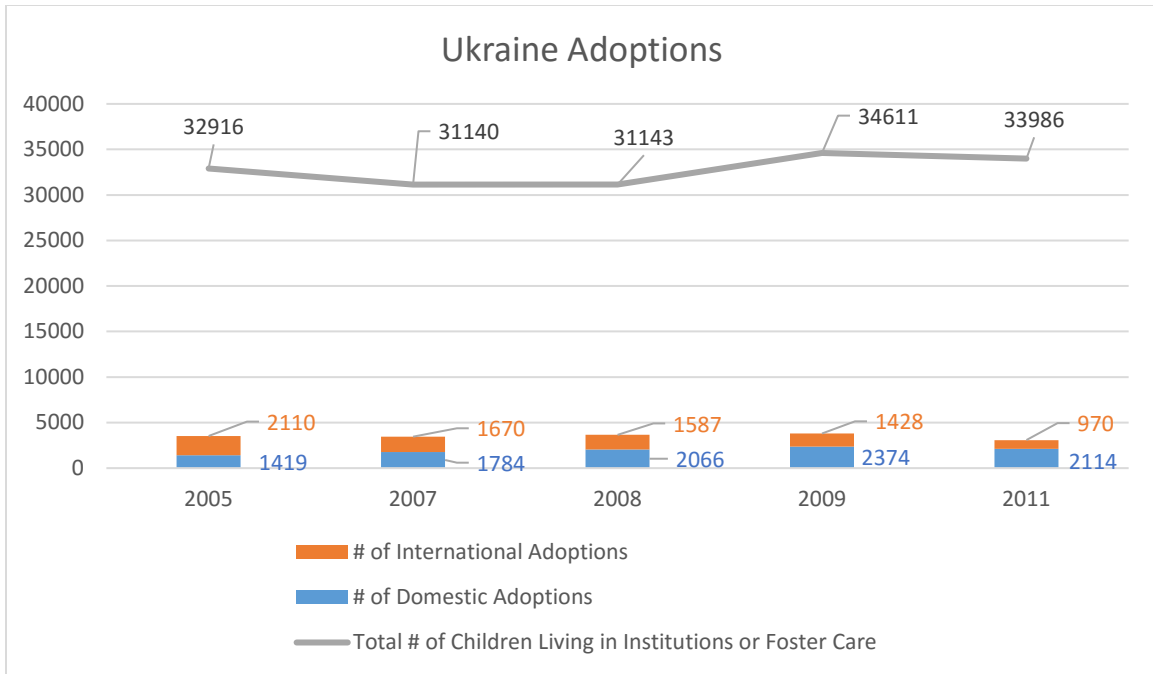
As discussed above, the rates of domestic adoption are simply inadequate to address the need of vulnerable, abandoned children in most countries throughout the world. That is why there is a need for international adoption, not to replace or try to limit domestic adoption in any way, but simply to help care for the large population of children left alone in institutions.

### **Figure 5:**

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<sup>124</sup> Lyubov Chizhova, Tatyana Voltskaya & Claire Bigg, *Two Years After Russian Ban, 'Taboo' Hangs Over Children Denied U.S. Adoption*, Radio Free Europe Radio Liberty (Dec. 31, 2014), <http://www.rferl.org/content/russia-united-states-adoptions-orphans-taboo-ban/26771310.html> (last visited Feb. 10, 2017).

<sup>125</sup> Rosy Sequeira, *Indians Don't Want to Adopt Kids with Special Needs: Bombay HC*, The Times of India (Jun. 30, 2015), <http://timesofindia.indiatimes.com/india/Indians-dont-want-to-adopt-kids-with-special-needs-Bombay-HC/articleshow/47873197.cms> (last visited Feb. 10, 2017).

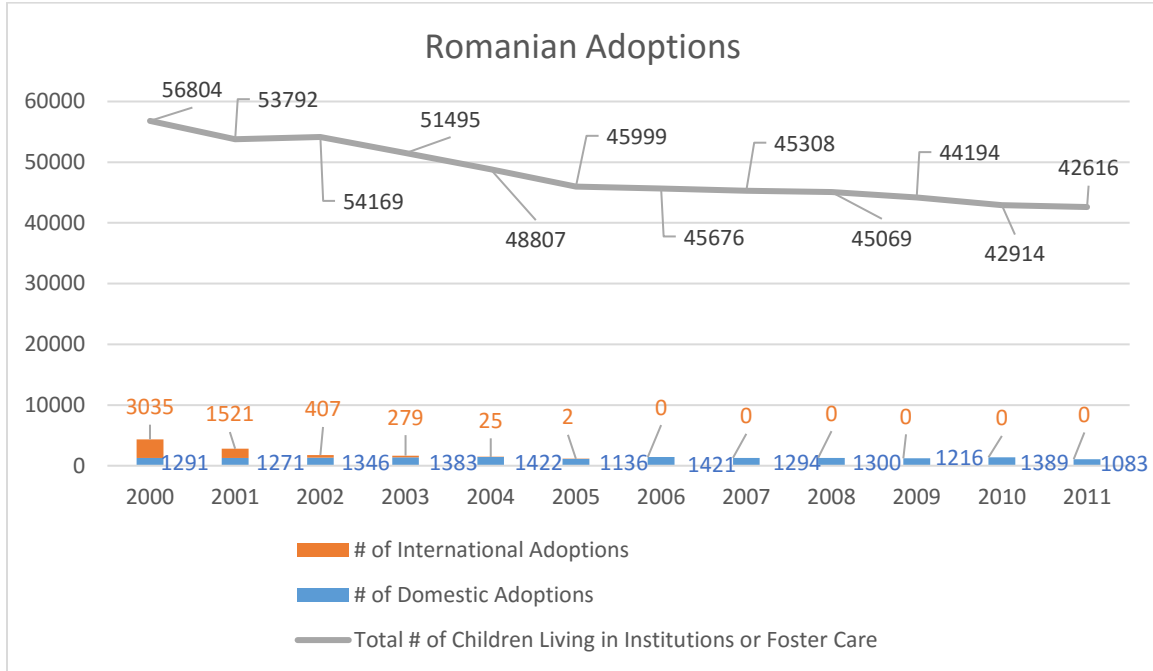


Data from: Victor Groza & Kelley M. Bunkers, *Adoption Policy and Evidence-Based Domestic Adoption Practice: A Comparison of Romania, Ukraine, India, Guatemala, and Ethiopia*, 35(2) *Infant Mental Health Journal* 160, 165 (2014).

Figure 5 displays the total number of adoptions, separated into domestic and international adoptions, in comparison to the total number of children living in institutions<sup>126</sup> or foster care for five different years in Ukraine. This shows the huge gap between the number of children adopted and the number of children in need of adoption. Figure 5 also shows the decline in international adoptions in Ukraine over the years. These statistics suggest that there is plenty of room for the growth of international adoption.

<sup>126</sup> These institutions include various sized baby homes, children’s homes, “family-type” homes with 5-10 kids each, boarding schools for orphans, and orphanages for special needs children.

**Figure 6:**



Data from: Victor Groza & Kelley M. Bunkers, *Adoption Policy and Evidence-Based Domestic Adoption Practice: A Comparison of Romania, Ukraine, India, Guatemala, and Ethiopia*, 35(2) *Infant Mental Health Journal* 160, 163 (2014).

Figure 6 shows a similar pattern for adoptions in Romania. Romania is a particularly interesting country to analyze adoption rates in because Romania permanently banned international adoption in 2005.<sup>127</sup> After international adoptions were banned the number of domestic adoptions did not spike; in fact the rates of domestic adoption in 2006, 2010, and 2011 were actually lower than the rates in 2000 when 3,035 international adoptions occurred. This shows that prohibiting international adoptions does not always increase domestic adoptions but may only serve to lower the number of total adoptions. Therefore arguments that international adoption impedes domestic adoption are not always well grounded in the facts.<sup>128</sup> Furthermore,

<sup>127</sup> Nelson, *supra* note 4, at 324.

<sup>128</sup> See David M. Smolin, *The Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals*, 35 *Seton Hall L. Rev.* 403, 474 (2005); see also Benyam D. Mezmur, *Intercountry Adoption as a Measure of Last Resort in Africa: Advancing the Rights of a Child Rather than a Right to a Child*, 6(10) *Sur Revista Internacional de Derechos Humanos*, 82, 87 (2009) (arguing that international adoption impedes the development of other domestic alternatives such as foster care).

Figure 6 again shows a gap between adoption rates as they currently are and those as they should be. This gap should lead policymakers to encourage and support international adoptions as well as domestic adoptions.

As previously discussed, poverty, racial biases, and an aversion to adopting children with special needs depress domestic adoption rates in many countries. However, these factors may not similarly affect international adoption rates. First, international adoption allows families who have resources to care for abandoned children from regions where poverty prevents their countrymen from adopting them themselves. Second, international adoption attracts a larger and more diverse pool of families, which creates a greater opportunity for finding families who are interested in adopting children despite common racial biases. Families from abroad may not even be aware of some of the racial biases that exist in a particular country, and may be willing to adopt children of a race that is looked down upon in the child's country of origin. Third, families that adopt internationally, unlike families who adopt domestically, have shown a great willingness to adopt children with special needs. For instance, people in the United States have adopted special needs children for many years.<sup>129</sup> Not only does the United States have many adoptive families willing to adopt special needs children, it also has the medical facilities and doctors necessary to properly treat and care for these children's conditions. Thus, the children who would otherwise struggle to find adoptive homes in their own countries can find hope in adoptive families internationally.

Statistics aside, many critics of international adoption attack the practice on moral and political grounds. While this paper will not explain all critiques of international adoption, this

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<sup>129</sup> Elizabeth Bartholet, *NOBODY'S CHILDREN* 180-181 (1999); David M. Smolin, *The Corrupting Influence of the United States on a Vulnerable Intercountry Adoption System: A Guide for Stakeholders, Hague and Non-Hague Nations, NGOs, and Concerned Parties*, 4(15) *Utah L. Rev.* 1065, 1120 (2013).

section will provide a brief overview of some common critiques. One of the most popularly cited arguments against international adoption is that this type of adoption is fraught with baby buying. Save the Children, an established children's rights organization, supports this argument, stating that "[s]ome poor families are coerced into giving up their children in exchange for money by unscrupulous institutions and adoption agencies hoping to profit from either the residence or trafficking of children"<sup>130</sup> to internationally adopting families. Both critics and proponents of international adoption agree that this type of activity is wrong. However, policymakers disagree on how to address this problem. Baby buying scandals have caused some to encourage a full ban of all international adoptions.<sup>131</sup> But bans on international adoption are not the appropriate reaction to instances of baby buying and they are certainly not necessary to address the problem.

Compare the situation of baby buying in relation to international adoption with the situation of illegal prescription drug use in relation to prescription drug use generally. Many people take prescription drugs as prescribed by their doctors, for necessary and important reasons. Others illegally obtain the drugs, without a prescription from dealers on the street. In response to this problem no government has suggested a complete ban on prescription drugs; all governments recognize that many people need them and obtain them in the right manner. Rather, governments, such as the U.S. government, generally uphold laws banning the illegal sale and purchase of the drugs without a prescription. Completely banning international adoption because baby buying does sometimes occur would be just like completely banning any use of prescription drugs because sometimes they are illegally sold, purchased, and abused. Such reactions to these

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<sup>130</sup> Csáky, *supra* note 92, at 5.

<sup>131</sup> See Richard M. Lee, *The Transracial Adoption Paradox: History, Research, and Counseling Implications of Cultural Socialization*, 31(6) *Counseling Psychology* 711, 713 (Nov. 2003).

problems do not make sense. There are other effective options to regulate the unwanted behaviors while still allowing the wanted behaviors -- ones which are extremely beneficial for society.

Governments should enact and enforce strict laws to prohibit anyone from giving any amount of money to a parent in exchange for their child. Any instances of such behavior should be harshly punished in order to deter baby buying. Such strict regulations would help to decrease the risk of baby buying while still allowing the millions of institutionalized children who are truly in need to find necessary homes through international adoption.

Another concern about international adoption is based on history. The history of rich, white nations enslaving, colonizing, and abusing poorer, blacker nations complicates the story of international adoption. Often parents who adopt internationally do come from richer, whiter nations, and tend to adopt children from poorer, blacker nations. While this backdrop of history is hard to ignore, the current story of international adoption should be viewed as the story of reconciliation, rather than some twisted continuation of a past we all regret. Rich, white, adoptive parents do not choose to adopt these abandoned children to enslave them, colonize them or abuse them. These parents adopt the children to give them a better life, a family that loves them, and hope for a better future. While it is important to remember the past, it is also important to understand that the intermingling of races and cultures into blended families who love and support one another is a much different story than that of the egregious events that occurred during the era of colonization.

Some government officials dislike international adoption because they believe that their country's children are the future of their country and they want to hold on to these precious



resources.<sup>132</sup> This argument is unreasonable. Yes, children are the future of a country. However, children that are raised in institutions come out of those places damaged and beaten down. This paper highlights just some of the research showing the troubles that institutionalized children face. Institutions damage children to such an extent that they will hardly be able to survive on their own and make their way in the world at the time that they reach majority, let alone shoulder the weight of leading their countries into a brighter future. Placing children in institutions will not strengthen a government or provide a better future for a country.

Critics of international adoption also worry about the impact that a new language and a new culture will have on children.<sup>133</sup> However, young children are able to learn new languages quickly and with ease.<sup>134</sup> In contrast, for reasons described earlier in this paper, children who have long been institutionalized may struggle to learn any language at all. For a child who has been removed early from an institution and who is still relatively young, learning a new language will likely not be too difficult. The child will likely also adapt to their new culture with ease. Today most adoptive families work hard to integrate their child's birth culture into their new life<sup>135</sup>, which allows the child to keep parts of the old culture even as they acquire new aspects of another culture. Regardless, these two considerations – the barriers of language and culture – while important, pale in comparison to the child's need for a family and the child's ability to thrive within a family, even one with a new language and culture.<sup>136</sup>

## **VII. Financial Considerations**

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<sup>132</sup> See Curtis Kleem, *Airplane Trips and Organ Banks: Random Events and the Hague Convention on Intercountry Adoptions*, 28 Ga. J. Int'l. & Comp. L. 319, 325-6 (2000).

<sup>133</sup> See Johanna Oreskovic & Trish Maskew, *Red Thread or Slender Reed: Deconstructing Prof. Bartholet's Mythology of International Adoption*, 14 Buff. Hum. Rts. L. Rev. 71, 122 (2008).

<sup>134</sup> Nelson, *supra* note 4, at 141.

<sup>135</sup> See Lee, *supra* note 131, at 718; Myrna L. Friedlander et al., *Bicultural Identification: Experiences of Internationally Adopted Children and Their Parents*, 47(2) Journal of Counseling Psychology 187, 192 (2000).

<sup>136</sup> See Lee, *supra* note 145, at 718.

Although the well-being of the child should ideally be prioritized over a government's budget concerns, it is important to consider the costs associated with caring for children in need because governments, especially in developing nations, do face real financial limitations. Luckily, in this situation the research shows that it is actually cheaper to do what is truly in the children's best interests. A study focused on Romania, Ukraine, Moldova, and Russia found that caring for children in institutions costs three times more than caring for children through professional foster care placements.<sup>137</sup> The World Bank calculated similar savings when they discovered that in Romania the average cost per month for each child in an institution is between \$201-\$280 U.S. dollars versus the average cost per month for each child in professional foster care which is \$91 U.S. dollars.<sup>138</sup> Caring for a child in an institution in Tanzania costs about \$1,000 U.S. dollars each year while foster care for the year would cost one-sixth that amount.<sup>139</sup> In South Africa, foster care costs up to a quarter less than the cost of caring for a child in an institution.<sup>140</sup> Although the initial costs of switching an entire child welfare system from institutions to foster care may delay the realization of the savings, in the long run the savings will be huge.<sup>141</sup>

Further, international adoption is even cheaper for a government than foster care (or institutionalization). International adoption is generally free, or close to free, to the country of the child's origin because the adopting parents pay any expenses. Not only is the adoption itself

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<sup>137</sup> Csáky, *supra* note 92, at 12.

<sup>138</sup> David Tobis, *Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe and the Former Soviet Union*, The World Bank 30 <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172671461088/MovingFromResTobis.pdf> (last visited Feb. 11, 2017). See Williamson, *supra* note 75, at 7 (for conversions into U.S. dollars).

<sup>139</sup> Williamson, *supra* note 75, at 7, 24.

<sup>140</sup> Chris Desmond & Jeff Gow, *The Cost-Effectiveness of Six Models of Care for Orphan and Vulnerable Children in South Africa* (2001), [https://www.unicef.org/evaldatabase/files/SAF\\_01-801.pdf](https://www.unicef.org/evaldatabase/files/SAF_01-801.pdf) (last visited Feb. 11, 2017); Williamson, *supra* note 75, at 7.

<sup>141</sup> Csáky, *supra* note 92, at 12.

free, international adoptions tend to encourage the adoptive parents to invest considerable amounts of money into the country from which their child is adopted. This is only natural. When adoptive parents travel to their child's home country to pick up their new family member they are often shocked by the situations they see in institutions. From then on, they have good reason to bear in mind that every orphaned or abandoned child is so much more than a statistic to be ignored. One example of the charitable giving that results can be seen through the lives of eleven Christian families, each of which adopted children from Ethiopia; together they raised \$600,000 to support family preservation and other methods of caring for orphaned children in Ethiopia.<sup>142</sup> These families also found sponsors for 400 children in Ethiopia, each of whom gave \$19 every month to pay for children's schooling and nutritional needs.<sup>143</sup> Therefore, not only do international adoptions free up a government's financial resources, they also tend to increase the amount of international aid a developing country receives.

However, some countries are hesitant to get rid of child care institutions because such institutions are a stable business that employ a large number of workers. For example, in Romania 70,000 workers were employed by child care institutions and in some more rural communities the institution was the biggest part of the local economy.<sup>144</sup> Although it is important for a government to encourage employment opportunities, it is not appropriate for a government to abandon large numbers of children to institutions in order to create jobs and stimulate the economy.

Additionally, as described in earlier sections of this paper, many children who are raised in institutions end up living on welfare or incarcerated during their adult years. Governments that

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<sup>142</sup> Medefind, *supra* note 54, at 429.

<sup>143</sup> *Id.*

<sup>144</sup> Nelson, *supra* note 4, at 63.

stop relying on institutions to care for these children will likely see a decrease in the need to support these children on welfare or to incarcerate these children when they grow up. The savings a government may realize through decreased rates of incarceration and decreased welfare could be immense. Thus, it makes financial sense for a government to encourage international adoptions and to discourage the use of institutions.

### **VIII. Policy Recommendations**

After analyzing the statistics, studies, research, and information available about the impact of institutions, foster care, and adoption on children, it seems clear that adoption is the best option for children who cannot live in their biological homes. This conclusion should have ramifications for governmental policies across the world. I recommend three policy changes that if implemented, could drastically improve the futures of many of these vulnerable children: (1) child care institutions should be abolished; (2) children should be freed up for adoption as soon as possible; and (3) international adoption should be allowed and encouraged.

#### **a. Child Care Institutions Should be Abolished**

This paper has outlined the detrimental effects child care institutions have on children. Because of these effects, child care institutions should be abolished. I do understand that this statement is drawing a hard black line and that on rare occasions institutional care may be the best or only option for certain children. But I think it is important to emphasize that these occasions are rare and in general such institutions are very destructive. Countries should work to eliminate their use of such institutions and should replace institutional care with policies and procedures that help children find adoptive homes quickly. In the interim, while children wait to be adopted, they should reside with high quality foster families which the government supports.

Although foster care is not ideal, it is a better alternative than forcing the children to wait in institutions.

I understand that the abolition of all child care institutions immediately is not practical and would likely have disastrous consequences for children who would be forced out into the streets. I do not recommend that every such institution close its doors tomorrow. However, I do recommend that the government in every country work to reform its child welfare system so as to diminish the role of such institutions, and that as foster care and adoption systems are developed and supported in any particular country, child care institutions there should shut down. This will have to be a gradual process to ensure that no child falls through the cracks. But with cooperation and determination the process should move forward smoothly. The children, and society as a whole, will reap the benefits.

#### **b. Children Should be Freed Up for Adoption as Soon as Possible**

This paper has discussed sensitive periods in the lives of children and the importance of removing children from institutions while they are still very young. Because of this it is extremely important to free children up for adoption quickly. However, many countries (including the United States) attempt to reunite children with their biological parents over and over again.<sup>145</sup> These failed attempts pile up as the child ages with no real place or family to call home. Although, it may seem right to give biological parents second, third, and fourth chances, it is not right for the children involved. It is important that -children who have been removed from their homes -quickly -find stability, security, and permanency.

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<sup>145</sup> Although there are few statistics available tracking how many times individual children re-enter foster care following failed reunification attempts, there are statistics showing that a significant number of children do re-enter foster care at least once. See Sara E. Kimberlin, Elizabeth K. Anthony & Michael J. Austin, *Re-entering Foster Care: Trends, Evidence, and Implications*, 31 Children and Youth Services Review 471, 472 (2009).

This is not to say that adoption should generally be preferred over returning a child to his or her biological parents. This section is not addressed to the situation in which that is a viable option immediately. This section does address the situation in which a child might either be adopted promptly or obliged to await some indeterminate date on which he or she might return to his or her biological parents. This section argues that in such situations, children should be freed up for adoption after a reasonable waiting period has elapsed and the possibility of return to the biological parents has not emerged.

While each situation is different, a good policy would require every child to be legally eligible for adoption within six months of the time they were removed from their biological home if they are still living in an institution or foster care at that time. This would give biological families some time to work towards bringing their child home but would also allow children to find a positive alternative to their biological home quickly and with less disruption. Although using a much longer timeframe, the United States did enact a similarly motivated provision in the Adoption and Safe Families Act (hereinafter “ASFA”) in 1997. In the United States, if a child has lived in foster care for fifteen of the previous twenty-two months, the state with wardship of the child must petition to terminate the parental rights of the child’s biological parents.<sup>146</sup> Although ASFA’s fifteen month time limit is much longer than the six month time limit I recommend, ASFA’s use of a time limit at all is unique and beneficial to children. Nonetheless, it is important to encourage countries to implement shorter time limits, such as a six month timeframe, in order to minimize the lasting damage inflicted upon children from institutions or foster care.

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<sup>146</sup> 42 U.S.C.A. §675 (5)(E).

This recommendation would require countries to abolish certain laws that interfere with a child's ability to be adopted. For example, Ukraine has multiple laws that prohibit quick adoptions. First, children must be registered with the central adoption authority for one year before they are eligible for adoption.<sup>147</sup> This significantly slows down the process of adoption because not only must these children wait until a governmental employee decides they should be adopted, they must also wait another year after that point in order to meet the law's requirements. Additionally, Ukrainian children cannot be adopted, internationally or domestically, until they are five years old or older, unless they have special needs or are a part of a sibling group where one sibling is at least five years old.<sup>148</sup> This law is extremely problematic because it almost guarantees that either institutions or foster care will have negatively affected all of these children before they can be adopted. Five years is an excessive amount of time to force a child to wait. And furthermore adoptive families are often much more interested in adopting younger children, which would decrease the hope that many of these children would ever be adopted. Countries should repeal any laws that they currently have that are either similar to Ukraine's laws or are different yet achieve the same effect of unnecessarily delaying adoptions.

Not only do laws that limit adoption need to change, countries need to implement new laws that encourage adoptions. Most countries don't have systems in place to proactively find the biological parents of abandoned children or to terminate parental rights for children who have not seen their biological parents in years. For example, in Romania, there is no push to establish who has legal rights to a child.<sup>149</sup> No Romanian agency is pushing to terminate parental rights or

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<sup>147</sup> Tina Traster, *Ukraine is America's New Adoption Mecca*, The Daily Beast (February 1, 2014), <http://www.thedailybeast.com/articles/2014/02/01/ukraine-is-america-s-new-adoption-mecca.html> (last visited Feb. 12, 2017).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

establish custody for children that have been abandoned to institutions.<sup>150</sup> Other countries require exhaustive searches for a child's biological parents before they can be eligible for adoption. This is also problematic because these searches could truly last forever, especially in poorer countries where family records and death certificates are not always kept or for countries in the throes of violent wars. Countries may spend years trying to determine whether a child's biological parents are still alive.<sup>151</sup>

While it is a laudable goal to find and possibly reunite a child with their biological parents, the toll it takes on a waiting child must be considered. The situation of these waiting, institutionalized children can be compared to the Lost Boys of Sudan. These boys, ages six to ten, escaped to Kenya during the Sudanese civil war but were ineligible for adoption (or emigration) until authorities could establish whether or not their biological parents were still alive.<sup>152</sup> Most of these boys grew up in this eternal limbo and became legal adults before the authorities concluded their searches.<sup>153</sup> They were told to wait for 10 to 12 years. Requiring a child's biological parents to be found at all costs, no matter the circumstances, can relegate children to institutions for life with no hope of adoption.

At the moment a child enters an institution or foster home, someone, a social worker, lawyer or government official needs to get involved. They need to determine who has legal rights to the child and what steps need to be taken to either quickly reconnect the child with their biological family or to terminate their biological parent's parental rights and find them an appropriate adoptive placement, whether domestically or abroad. It is not acceptable for a country to simply

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<sup>150</sup> Nelson, *supra* note 4, at 102.

<sup>151</sup> Heidi Schwarzwald, Elizabeth Montgomery Collins, Susan Gillespie & Adiaha I.A. Spinks-Franklin, *INTERNATIONAL ADOPTION AND CLINICAL PRACTICE* 69 (2015).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*



throw these children into institutions to live out the rest of their days with legal rights attached to some biological parent they no longer know. These children need to be tracked and progress needs to be made quickly to establish safe and secure homes for the children.

### **c. International Adoption Should be Allowed and Encouraged**

This paper has discussed the need for international adoption and has also addressed many of the reasons people are critical of it. Currently some countries ban international adoption completely while others have lesser moratoriums in place that limit it. For example, Guatemala<sup>154</sup> and Kenya<sup>155</sup> have banned all international adoptions. Russia has banned international adoptions to the United States.<sup>156</sup> Any country that currently bans international adoption should remove the ban.

It is worth noting that encouraging and allowing international adoptions will likely not diminish or decrease the number of domestic adoptions. As evidenced by Figure 5 and Figure 6 the number of domestic and international adoptions combined, in Ukraine and Romania, is incredibly far below the number of children in need of adoption in those countries. Unfortunately this tends to hold true in most countries. The statistics are straightforward – if we hope to ever make a dent in the number of children forced to grow up without families we must allow international adoptions. Families seeking to adopt domestically are not competing with families seeking to adopt internationally; there simply are way too many children in need of adoptive homes for that to be the case. If a country were ever to establish rates of domestic

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<sup>154</sup> *Guatemala*, Intercountry Adoption, Bureau of Consular Affairs, U.S. Department of State (Nov. 8, 2016), <https://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notice/guatemala10-08-271.html> (last visited Feb. 11, 2017).

<sup>155</sup> *Kenya*, Intercountry Adoption, Bureau of Consular Affairs, U.S. Department of State (Nov. 28, 2014), <https://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notice/kenya-5.html> (last visited Feb. 11, 2017).

<sup>156</sup> David M. Herszenhorn & Erik Eckholm, *Putin Signs Bill that Bars U.S. Adoptions, Upending Families*, The New York Times (December 27, 2012), [http://www.nytimes.com/2012/12/28/world/europe/putin-to-sign-ban-on-us-adoptions-of-russian-children.html?\\_r=0](http://www.nytimes.com/2012/12/28/world/europe/putin-to-sign-ban-on-us-adoptions-of-russian-children.html?_r=0) (last visited Feb. 12, 2017).

adoption that equaled the number of children in need of adoption, I would have no problem with the country banning international adoption. However, no country in the world is even close to such an ideal situation. The current situation is that eight million children across the world live in institutions and many more live in foster care or under other temporary arrangements. The sheer number of children in need of adoptive homes calls for policies that support and allow international adoption – not to replace domestic adoption but to supplement it.

Domestic adoptions should not be prioritized over international adoptions.<sup>157</sup> The prioritization of domestic options over international ones is problematic because it delays adoption. The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (hereinafter “Hague Convention”)<sup>158</sup>, which has been signed by almost 100 countries<sup>159</sup>, is an extremely powerful international convention that provides for the prioritization of domestic placements over international ones. The Hague Convention requires countries to give “due consideration” to domestic placements for a child before the child can be adopted internationally.<sup>160</sup> Although the intent behind this provision is not necessarily wrong, the provision nonetheless has had problematic consequences. Children can be held in their home countries for indefinite periods of time while their government is trying to give “due consideration” to domestic placements. Sometimes countries will spend years searching for a domestic placement for a child and not allow international adoption to be considered until they are sure there is no domestic option available.<sup>161</sup> This simply delays the process and requires the

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<sup>157</sup> Except in the currently unrealized situation of a country in which -all the children in need are being promptly adopted domestically.

<sup>158</sup> 1870 U.N.T.S. 167, -entered into force May 1, 1995, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> (last visited Feb. 17, 2017).

<sup>159</sup> *Convention Countries*, Bureau of Consular Affairs U.S. Department of State <https://travel.state.gov/content/adoptionabroad/en/hague-convention/convention-countries.html> (last visited Feb. 12, 2017).

<sup>160</sup> *Hague Convention*, *supra* note 158, Article 4(b).

<sup>161</sup> Schwarzwald, *supra* note 165, at 68-9.

child, in the meantime, to suffer the trauma and damage imposed by child care institutions or, to a lesser but still significant degree, foster care. In this respect the Hague Convention is detrimental to children. International adoption should not be considered a second-tier option, but should be encouraged and considered from the moment a child is identified as in need.

If a country still insists on creating some sort of scheme to favor domestic adoptions, they should consider a system such as the concurrent planning proposal developed by Harvard Law School Professor Elizabeth Bartholet. Bartholet's concurrent planning strategy involves simultaneously planning for a domestic and an international placement and giving preference to the domestic placement only if that choice would not cause any delay in the child's placement. Bartholet explains that such a concurrent planning tool would even fulfill the requirements of the Hague Convention.<sup>162</sup> The adoption of such a plan could truly protect the child's best interests while giving each country some latitude to choose between domestic and international adoption.

## **IX. Conclusion**

Children in institutions long for families. R.B. Mitchell, in his autobiography about living in an institution, writes, "We all wanted to believe it. We all wanted to think that soon we would get to dream of going to a home where we were wanted and loved. The older kids seemed to give up that dream eventually, reaching a silent acceptance of their lot in life. But for us younger ones, it was more difficult."<sup>163</sup> Recently it seems like we, the global community, also have come to a reluctant acceptance similar to that of the older kids Mitchell describes. We are not happy that eight million children live in institutions without families. We are not happy with the state of the child welfare system globally. But eventually we compromise enough and convince

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<sup>162</sup> Elizabeth Bartholet, *The Hague Convention: Pros, Cons and Potential*, Sept. 5, 2013, <http://www.law.harvard.edu/faculty/bartholet/PepperdineBkHagueTrack9-5-13.pdf> (last visited Feb 12, 2017).

<sup>163</sup> Mitchell, *supra* note 3, at 26-27.

ourselves to be somewhat satisfied with the status quo. However, we should never settle for the status quo. When the kids in the institutions can no longer hold on to their dream of family, we need to pursue that dream for them, on their behalf. Because the truth is institutions do not have to be the backbone of the child welfare systems of so many nations. There are other feasible options. These options can provide children with improved care and even the thing they long for the most: family.

This paper has outlined the ways institutions damage children and has explored alternatives to institutional care. It has shown that children in foster care outperform children in institutions. It has further argued that the security and permanence of adoption benefits children more than transitory foster care. This paper has briefly explored both domestic and international adoption, emphasizing that both are necessary in order to work towards an effective solution for the massive number of children in need. My hope is that one day institutionalized children will be freed to taste the love and support a family brings. My prayer is that the scale of this problem, and the political tensions involved in a solution, will not paralyze the international community. Because the world's children deserve better.