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Illegal Adoptions

The adoption of a child can be a very joyful occasion. Similar to a child-like fairytale, a hero will arrive to save the day whenever a person needs help. No matter what problems the characters may face along the way, there exists the reassurance that the adventure will have a happy ending. Many American families believed that they were living in a storybook fairytale when they adopted their international child. The parents narrated themselves as the hero to their adopted child's sad story of abandonment. After 2004, the original story of adoption that involved abandonment was given a plot twist that shocked the whole world. The dark side of adoptions revealed scandalous stories of corruption, bribes, human smuggling, and the illegal purchasing of babies. The voices of birth parents crying out for their lost babies to come back home created a major dilemma. Since the United States Department of Homeland Security did not count illegal adoptions as human trafficking, there lacked protection or preventative measures for such situations. All of a sudden, the heroes of the story had become the antagonist.

China is disproportionately represented in international adoption data. Pew Research Center conducted a study of International Adoptions that reported an increase of male adoptions as opposed to female adoptions (Budiman, Abby, and Lopez). The data also showed that in 1999 the United States adopted 267,098 orphans from around the world (Budiman, Abby, and Lopez). From that total, 78,257 of those children were Chinese orphans (Budiman, Abby, and Lopez). China along with Russia, Guatemala, South Korea, and Ethiopia were the top countries that the

United States would adopt from (Budiman, Abby, and Lopez). The rate of adoptions continued to increase until the numbers peaked in 2004 (Budiman, Abby, and Lopez). In 2008, China represented about 25% of adoptions (U.S. Department of State). In 2018, China represented approximately 30% of adoptions (U.S. Department of State). Even while the rate of overall international adoptions decreased after 2004, the percentage of adoption for Chinese orphans continued to increase.

As the demand for Chinese orphans increase, how are adoption agencies supplying the orphans? There exists a troublesome problem. In order to keep the prices consistent or within reason, the supply of orphans should match the demand. There was a huge influx of Chinese orphans due to China's One Child policy. When the Two Child Policy was enacted, the rate of orphans did not fluctuate as expected. This discrepancy led many to speculate where the source of orphans was originating. Some adoptions are processed illegally where there lacks consent by the child's birth parents. These illegal adoptions are completed for monetary gain and are difficult to prevent. Due to this revelation, the rate of international adoptions began to drop after 2004 and have continued to decrease as of 2018 (Budiman, Abby, and Lopez). Could this decline mean that adoptions are being handled more carefully? Even if that is true, this decline could also affect the future of real orphans who need loving families.

A policy needs to be implemented that will protect all parties of an adoption process while still encouraging healthy adoptions. As of now, the Homeland Security's legal definition for human trafficking does not include the forced taking or buying of children for the purpose of adoption. By including illegal adoptions within the definition of human trafficking, the Department of Homeland Security can protect children, birth parents, and adoptive parents from those who monetize from illegal adoptions. It should also punish those who take advantage of

worn-torn countries or vulnerable families. This paper will assess the positive and negative outcomes that may occur if Homeland Security were to change its policy to include illegal adoptions. Although this policy change could have negative effects such as discouraging all international adoptions and criminalizing adoption agencies, it should be changed in order to investigate, account, and criminalize illegal adoptions.

If Homeland Security changed their human trafficking definition, the United States would investigate adoption fraud more closely if it jeopardized its Tier Status. The United States created a tier system of labeling countries based on how they handle their human trafficking cases. The standards are separated between action and intentions (United States Department of State). A country needs to demonstrate an intention to prosecute offenders and protect victims of human trafficking (United States Department of State). The country must also have accurate reports that demonstrate their actions match their intentions (United States Department of State). Following both procedures will earn that specific country the label of Tier 1 (United States Department of State). If a country is labeled Tier 2, they are not following all the regulations of human trafficking but are actively trying to fix that problem (United States Department of State). If a country is labeled Tier 3, they are not following all the regulations of human trafficking and are not actively trying to fix that problem (United States Department of State).

There seems to exist a bias to the Tier System that was created by the United States. Due to recent reports, the United States have labeled China as a Tier 3 country (U.S. Mission - China). This is due in part to China's faulty numbers concerning their reporting of human trafficking cases (U.S. Mission - China). Other countries are labeled as a lower tier, whereas the United States rank themselves as a Tier 1 Country. This creates a discrepancy as the definition of human trafficking between the United States and China differ. According to the U.S. Embassy

and Consulates of China, China's definition of human trafficking may include "human smuggling, child abduction, forced marriage, and fraudulent [illegal] adoptions" (U.S. Mission - China). Since China's definition of human trafficking is broader, then China will have to monitor and report more cases. Whereas the United State defines humans trafficking as "a form of modern-day slavery, and involves the use of force, fraud, or coercion to exploit human beings for some type of labor or commercial sex purpose" (Department of Homeland Security). Based on this definition, the United States only reports cases involving illegal sex or labor trade. Cases such as forced marriages and illegal adoptions are not counted as human trafficking. If the definition of Homeland Security were to include those missing terms, the results of the Tier system may turn out differently.

By redefining the human trafficking definition, many suspicious adoptions would be added to the numbers in the Homeland Security database. The Department of State releases an annual report on how many international adoptions were made with the United States (U.S. Department of State). Every country that U.S. citizens adopted from are listed within this report (U.S. Department of State). The specific adoption fees, total amount of adoptions, U.S. States that participate in adoption, the countries that participate in adoption, and the rejected children are recorded every year (U.S. Department of State). From 2008-2018, I compiled the raw data from the reports into a simple line graph. Figure A depicts the decrease of adoption after 2009-2010. Out of all the countries, U.S. citizens adopt from China the most (U.S. Department of State). A rough estimate of 25-30% of International Adoptions consist of Chinese children (U.S. Department of State).

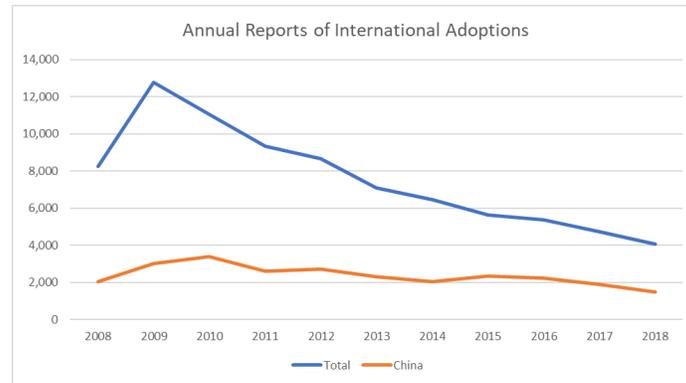


Figure A

Of all of these adoptions that were reported, how many of them were done legally? Many adoptions have occurred before 2008, but the U.S. State Department have only published reports starting in 2008. China introduced a One Child Policy in 1979 to help control the overpopulation the country was experiencing in the rural areas during a time of famine and government mismanagement (Zeng, Yi, and Hesketh). There did exist allowances such as if a family had a daughter, they may try again for a boy. Some families could request having two children and ethnic minorities could have more than one child (Zeng, Yi, and Hesketh). China opens its doors to international adoptions in the 1990s (Johnson). This caused a huge influx of international adoptions from America (Johnson).

Shockingly, the “numbers of international adoptions grew rapidly from less than 100 in 1991 to more than 6,000 by the end of the decade” (Johnson). Many orphanages were becoming overcrowded due to the strict domestic adoptions rules and the One-Child Policy (Johnson). When the Two-Child Policy was implemented in 2015, the rate of international adoptions was expected to slow down (Zeng, Yi, and Hesketh). Now that Chinese families were allowed to have more than one child, the rate of abandonment and international adoptions should have decreased. Even though overall adoptions decreased in 2018, about 36% of those children were still being adopted from Chinese (U.S. Department of State).

In 2017, the United Nations Human Rights Council had their 34th session in March (United Nations Human Rights). The main topic for this session was the recent concern for illegal adoptions. It is hard to discern between a legal adoption and an adoption that just looks “legal”. The meeting did address the seriousness of illegal adoption and how the rights of children were being violated (United Nations Human Rights). It seems that the only way to know if an adoption process can be considered as illegal is when “the purpose of an adoption is to find a child for adoptive parents rather than a family for the child,” (United Nations Human Rights) It is illegal to adopt a child from an agency or facility that uses tactics such as abduction, trafficking of children, fraud, coercion, falsification of document, lack of proper consent to obtain the children (United Nations Human Rights).

If Homeland Security changed their definition, it would criminalize the participation of illegal adoptions and create a deterrence of such actions. This will result in punishment to the offenders. As compared to the United States, the crime for illegal adoptions is punished by China differently. In 2006, a Chinese orphanage director along with 10 unnamed people were brought to trial for charges of buying kidnapped children (Kuhn). About 6 orphanages were discovered to have been participating in the buying of kidnapped babies (York). If a person brought to the orphanage director an “abandoned child”, the director would pay them a certain amount for each child (Kuhn). According to The Globe and Mail, “since 2002...78 abducted children in 2005 alone. The traffickers bought infants from Guangdong province and sold them to the orphanages for the equivalent of \$460 to \$615 each” (York).

In 2005, Americans adopted about 8,000 Chinese babies who are usually priced at \$3,000 each (Kuhn). Geoffrey York estimates that the maximum price was \$3,500 (York). There would also be an “additional U.S. \$1,000-2,000 in other fees” which would total in about a U.S. \$5,500-

6,000 dollar donation for each child adopted from an international couple (Johnson). XE is the third largest money transfer business in the world and post on their website a currency converter (XE). According to XE, \$5,500 USD translates to ¥38,870.30 CNY (XE). This is worrisome as this system made international adoptions profitable. It also discouraged domestic adoptions as local Chinese families could not afford the prices that U.S. citizens were willing to pay.

According to a news article *The Marketplace*, “six orphanages were found to have been buying babies who were then adopted by families from other countries,” (Tong). The people responsible for the trafficking were given several charges. One man who was charged, Duan, was being payed by orphanages \$120 dollars for each child (Tong). That price increased to \$500 by 2005 (Tong). Duan and his family would transport babies from Guangdong Province to Hunan Province which is 600 miles apart (Tong). In 2005, the family was arrested and convicted with trafficking charges. The man received 5 years, his wife 8 years, and his sister 15 years. The *The Globe and Mail* reported that the orphanage directors from the Hunan Scandal was sentenced to a minimum of 15 years of imprisonment (York). Other local officials were either given a year of prison or were fired from their positions (York).

As for the United States, they do not punish offenders if they do not label such adoptions as illegal. The United States needs to know which child was obtained illegally before they can give a punishment. Unfortunately, many states “do not have laws aimed specifically at punishing adoption fraud. Instead, these states punish it as a felony charge of theft by deception -- punishable by fines or jail time (up to 20 years in prison in some states.)” (Find Law). An example of this can be presented in a news article by *NPR*. Paul Peterson, who was a Maricopa County Assessor and an adoption lawyer, was charged in 2019 for “smuggling, money laundering and visa fraud charges” (Allyn). The U.S. attorney of state for the western district of

Arkansas even stated, "Make no mistake: this case is the purest form of human trafficking" (Allyn). Yet, Peterson was not indicted with human trafficking but theft, fraud, and forgery charges (Allyn). Peterson flew in pregnant women from Marshall Islands to Arizona and sold their babies for \$30,000 to \$40,000 (Allyn). Even after this occurred, Peterson was not charged with adoption fraud and the birth parents kept their adoptive children (Allyn). If adoption fraud was included in the human trafficking definition, Peterson would have received a more serious sentence.

By incorporating illegal adoption into the Homeland Security definition for human trafficking, a person or agency who is involved with illegal adoptions would be given the same sentence. The U.S. Department of Justice specify what the standard punishment is for those convicted of human trafficking (U.S. Department of Justice). The Trafficking Victims Protection Act (TVPA) ensures that traffickers are given more severe sentences (U.S. Department of Justice). Sex traffickers who handle underage children of around 14 year of age are given a 15 minimum and a maximum of life (U.S. Department of Justice). Sex traffickers handling children of 14-18 have a minimum of 10 years and a maximum of life (U.S. Department of Justice). Forced labor crimes do not have a specific minimum and maximum sentencing, there does exist a maximum penalty of up to 20 years and possibly life if there exists enough aggravating factors (U.S. Department of Justice). If a person is going to involve themselves in illegal adoptions, that person should be charged with illegal adoptions. The proper punishment of offenders would create a much-needed deterrence of such actions.

Some people do not believe that illegal adoptions qualify as human trafficking. Amber Moffett wrote an article on the human trafficking website in which she differentiates illegal adoption and child trafficking. The similarities involve it usually occurs after a conflict (war),

differences of wealth in the two countries involved, and corruption within the governments (Moffett). Human Trafficking has three major criteria which are Act, Means, and Purpose (Moffett). Unfortunately, Moffett claims that “illegal and fraudulent adoption only has the first two of these three required elements. Though there definitely can be individual instances found in which all three qualifications apply, generally the child is not considered to be exploited” (Moffett). Instead of redefining the legal definition of Homeland’s Security’s human trafficking, Moffit advocates going through sources such as Convention on the Rights of the Child and Hague Convention (Moffett). Changing the definition of human trafficking to include illegal adoptions will only discourage adoptions and criminalize agencies.

The Hague Convention was created to offer enough protections for children and parents during international adoptions. The U.S. Citizenship and Immigration Services explains that the creation of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption will ensure the protection of prospective families from international scandal concerning adoptions (USCIS). On April 1st, 2008, the Hague Convention created a treaty that creates safety measures for children, birth parents, and prospective parents who wish to adopt (USCIS.) The Convention was ratified by the United States through the Intercountry Adoption Act of 2000 (Alexander, pg. 725).

Due to IAA, the Department of State was appointed to be the “Central Authority” for “adoption, a designation required under the Convention” (Alexander, pg. 725). Adoption agencies, adoption attorneys, and adoption countries must be considered Hague approved before a prospective parent continues the adoption process (USCIS). The parents must apply to the United States Citizenship and Immigration Services before being approved to adopt and obtain citizenship for that child (USCIS). The Hague Convention creates a basic filter that protects the

adoptive parent from receiving an illegal child. It also protects the potential adoptee from being sent to a family that is not a United States citizen.

This treaty prevents the trafficking of children, but there are still many issues that it does not address. Jessica Alexander wrote in the *Houston Journal of International Law* a paper titled “Why the United States Should Define Illegal Adoption Practices as Human Trafficking”. The first issue is the one-way process. The IAA only screens the parents to ensure that they are a healthy fit for the child (Alexander, pg. 276). The IAA does not screen the child to ensure the orphan was not obtained illegally (Alexander, pg. 276). The second issue is that Hague approved agencies in America can continue to adopt children from non-Hague approved countries (Alexander, pg. 276). This creates a double standard as those countries do not have to abide by Hague regulations while the American agencies do (Alexander, pg. 276). The third issue would be the lack of oversight by the “Central Authority” (Alexander, pg. 276). The adoption agencies of each state are required to send their cases to each State Department to be approved (Alexander, pg. 276). If an agency has a favorable review of the parent, it is not likely that the State Department will strictly overview the file (Alexander, pg. 276). This is due to so many cases that each State Department must overlook (Alexander, pg. 276). The overload of cases causes the State department to prioritize, which leads to corruption and mistakes. Parents can pass screenings easily, whether they are a fit for child placement or not (Alexander, pg. 276).

Just because there exists a negative narration of adoption, the positive story should not be overlooked. There still exists orphans who need families who will love them unconditionally. If the United States is going to continue adopting children from other countries, they need to protect the positive story of adoption. Orphans should still find love at the end of the story. For us to truly become the heroes for orphans, we need to acknowledge that they are vulnerable to

exploitation. Orphans are subject to people's selfish desires and have to suffer the consequences of people's greed. Only by recognizing that there exists a problem, can we as people start to fix the error of our ways. Even though the Hague Policy would mostly protect adoptive child from corrupt adoptive parents, adoptive parents would still not know if their adoptive child was obtained legally by the orphanage. By redefining the human trafficking definition, Homeland Security would investigate, account, and punish more cases of illegal adoptions.

Citation

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Evaluation of Policy Paper

The assignment given to us was a proposition of policy which is defined as “statements that urge that an action be taken or discontinued” (Herrick, pg. 26). In my policy paper, I argue that the department of Homeland Security needs to redefine their definition of human trafficking to include illegal adoptions. This definition should be changed because Homeland Security will be more likely to investigate, account, and punish more cases of illegal adoptions. The first part of the paper provides evidence to showcase the existence of a major problem. I outline the consequences of not having protections set in place. The final parts of the paper outline how the changing of the definition would affect the situation. I showcase three benefits that could result if the human trafficking definition was changed.

I begin my paper narrating a general story of fairytales to engage the audience. I end my conclusion referring back to the narration to maintain consistency. I also wanted to parallel a fairytale story due to the topic involving children. The well-known tropes of “heroes” and “villains” is easy to understand so that it applies to most of my audience. I wrote about this particular topic due to my personal background as a Chinese Adoptee. Due to this fact, I acknowledge that there may exist some bias due to personal opinion and experience.

To combat this issue, I advance my argument with research and credible sources. I also attempt to include conflicting opinions while maintaining respect to all individuals that I cited.

Within the overall argument, I attempt to keep my claims and facts as honest and truthful as possible. Unfortunately, I only used one statistical source from the United States Department of State. The sample was the total of international adoptions accounted for in the United States. The samples size consisted of the total of Chinese adoptions. This statistical evidence was used to show how the percentage of Chinese adoptions was increasing while the overall rate of international adoptions was decreasing.

I did have issues maintain linguistic consistency. Some papers would use the term “illegal adoption” while other terms would use “fraudulent adoptions”. I attempted to keep the term “illegal adoptions” and clarified the word “fraudulent adoption” whenever it would appear. I cited and created a reference page to ensure readers had access to the evidence presented. Many of my sources are from government agencies which will reassure readers of the credibility of my evidence. These sources have a date range of 2006-2020 which is relatively recent.

There does exist a source that may come into question. These questionable sources were derived from different news outlets. Three of them were focused on the trafficking of children in China. The last one was focused on the trafficking of China in America. I used these articles to contrast how the two different countries handled the same crime. In one of the news articles that focused on the Chinese story, there were issues concerning a testimony. The speaker was a lay witness which is when a person “report[s] of [a] personal observation, experience, or opinion on a topic not requiring special expertise (Herrick, pg. 131). This source was to evoke a sense of ethos to the readers of the illegal adoption situation in China. Reliability of the witness should not have any issues of credibility as the witness did not give a biased testimony. This is due in part that the witness was already given a criminal sentence. Their confession did not lighten their sentence nor increase it as it was *ex post facto*.

The argument is pretty sound with only a few minor areas that could be improved. Such problems were presented in areas such as credibility for the news sources and a bias due to personal experience. Other than these issues, the argument is quite sound. Most of the sources were from scholarly articles from credible sources. Statistical data was used honestly, and all sources were easily accessible. Opposing opinions were presented to allow the readers an option. I do regret that it is difficult to attest for the quality of this research due to personal bias. I also do not have any way to observe what the negative impacts of redefining the term may cause. This policy argument is generally sound but could be refined. These corrections could best be improved by someone who does not hold a bias towards the topic.

Citation

Herrick, James A. *Argumentation: Understanding and Shaping Arguments*. 6th ed., Strata Publishing, Inc., 2019.