
ORIGINAL ARTICLE

Cold war maternalism: The ideological legacy of *Operation Babylift* and intercountry adoption law

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Abstract

By examining the ideological legacy of Operation Babylift, this article explores the interplay of ideology, power, and intercountry adoption law. Operation Babylift, a U.S. military humanitarian mission in April 1975, airlifted 2,547 children from Vietnam for adoption abroad. Among these adoptees, approximately 1,000 had no valid parental consent or proper documentation. *Nguyen v. Kissinger*—a class action on behalf of the Operation Babylift adoptees and dozens of lawsuits by some adoptees' mothers were brought in American courts for the adoptees' reunification with their mothers and families. The article recounts the rise of Cold War maternalism that laid the ideological and political groundwork for Operation Babylift. Tracing the legislative and policy changes intercountry adoption laws in both South Vietnam and the United States, the article demonstrates how Cold War maternalism eroded legal protections for Vietnamese parents and children American adoption from Vietnam. Through analyses of the reunification cases stemmed from Operation Babylift, the article illustrates the tension and struggles between Cold War maternalism and American courts' commitment and limitations in protecting the Vietnamese mothers' parental rights. The article concludes that intercountry adoption law must move away from separating the child's wellbeing from their mother's rights to effectively prevent systemic injustice.

KEYWORDS

adoption, adoption history, adoption law history, adoption law reform, critical adoption, intercountry adoption, intercountry adoption law, *Nguyen v. Kissinger*, *Operation Babylift*, reproductive justice, *Stanley v. Illinois*, transracial adoption

Key points for the family court community

- The family court community faces the challenge of reforming the laws intended to protect children who are separated, or at risk of being separated, from their parents and families.
- The current intercountry adoption legal framework has not been effective in preventing abuse and exploitation of adoptees and their parents.
- Intercountry adoption is in crisis. In recent years, several major sending countries have severely restricted or ended intercountry adoption due to widespread abuse and exploitation. Some receiving countries ended or suspended their intercountry adoption programs in 2024 because of the trauma and abuse experienced by adoptees.
- Intercountry adoption law has historically conceptualized a child's best interests as separate from the rights and well-being of their parents.
- There has been growing recognition in family law of the importance of protecting family integrity and harmonizing a child's best interests with parents' right to raise their own child and family well-being.

INTRODUCTION

Humanitarian rescue mission or mass kidnapping?¹ Americans asked, as a U.S. military humanitarian operation, dubbed “*Operation Babylift*,” airlifted 2547 “war orphans already in the process of adoption” from Saigon to the United States in April 1975, just days before the North Vietnamese army captured the city.²

Operation Babylift's humanitarian claims quickly came under scrutiny. On April 8, 1975, approximately 15–20 Vietnamese children, who were airlifted to California's Presidio Camp, reported having living parents and some even

¹Maryann George, “*Operation Babylift*”: Mass Kidnapping? Vietnamese Relatives Fight for Custody of “Orphans,” *ANN ARBOR SUN*, Jul. 1, 1976, at 28; Edward Zigler, A *Developmental Psychologist's View of Operation Babylift*, 31 *AM. PSYCH.* 329, 330 (1976); *Rescuing Vietnam Orphans: Mixed Motives*, 92 *THE CHRISTIAN CENTURY* 374, 374 (1975).

²Gerald R. Ford, *Opening Statement at Press Conference at San Diego, California*, (1975); USAID, *Operation Babylift Report: Emergency Movement of Vietnamese and Cambodian Orphans for Intercountry Adoption* (April–June 1975) at 54.

carried letters addressed to relatives already in the U.S.³ These revelations suggested that some children had only been temporarily separated from their parents amidst wartime chaos and thus were not adoptable. Legal challenges soon followed. On April 29, 1975, a legal team led by Tom Miller and Nancy Stearns filed a class action, *Nguyen Da Yen, Nguyen Da Vuong, Nguyen Da Tuyen, et al. v. Henry Kissinger, et al.* (hereafter “*Nguyen v. Kissinger*”), in the U.S. District Court for the District of Northern California. The class action sought to verify *Operation Babylift* adoptees’ identities, assess their orphan status, and reunite non-orphaned children with their families.⁴ Within months, the U.S. Ninth Circuit Court of Appeals discovered that “some of the 2,700 children airlifted were brought to here improperly” as the limited records produced by the Immigration and Naturalization Services (INS) showed that the documentation accompanying some of the children was insufficient on its face to establish their identity, adoptive status, or eligibility for admission into the U.S. under immigration law.⁵ Further discovery ordered by the Ninth Circuit exposed the shocking scope of the irregularities in *Operation Babylift*: of the 2547 children brought to the U.S., only about 570 had proper documentation of identity and adoption releases.⁶ Among these 570 children, 533 were released for adoption during the chaotic final weeks of war, raising serious questions about the validity of the releases.⁷ Despite these patent illegalities, Judge Spencer Williams dismissed *Nguyen v. Kissinger*, and declined to consider returning any *Operation Babylift* adoptees to their families:

It is not necessary to ruminate too extensively to imagine many situations where, for emotional, psychological, medical, or other reasons, a [Vietnamese] child would be better off remaining with the [American] adoptive parents.⁸

The decision foreclosed any meaningful opportunity to reunite any *Operation Babylift* adoptees with their families in Vietnam. To this day, the identities of about 1000 adoptees remain unknown.⁹

While *Nguyen v. Kissinger* was pending, some *Operation Babylift* adoptees’ mothers arrived in the U.S. as refugees. Approximately 20 Vietnamese refugee mothers filed *habeas* petitions in state courts to reclaim their children after adoptive parents refused to voluntarily return the adoptees to their mothers.¹⁰ After protracted litigation, the state courts eventually reunited the adoptees with their mothers.¹¹ These reunions were statistically negligible relative to *Operation Babylift*’s scale and only came after lengthy and costly litigation.

Vietnamese families searched for lost children in Vietnam and the U.S. as soon as the fighting stopped. Catholic newspapers based in Saigon published the photos and physical descriptions of missing children. Parents and relatives wrote to adoption agencies, begging for the return of their children as “the danger is over.”¹² More than 48 years later, through DNA testing, Nguyen Da Yen, Nguyen Da Vuong, and Nguyen Da Tuyen, the named plaintiffs in *Nguyen v. Kissinger*, finally reunited with their younger brother, who was brought to the U.S. as an infant through

³Interview with Tom Miller by Rong Kohtz (March 31, 2023), recording on file with author.; Muoi McConnell, *Affidavit in Support of Motion to Be Appointed Guardian Ad Litem by Muoi McConnell*, 2 (1975); Katy Butler, *The Tragic End to Operation Babylift*, THE S.F. BAY GUARDIAN, Feb. 20, 1976; Richard Flaste, *Controversy Is Growing: Airlift of Vietnamese Children Evokes Emotional Debate in U.S.*, N.Y. TIMES, Apr. 9, 1975, at 89; Allison Varzally, *Children of Reunion: Vietnamese Adoptions and the Politics of Family Migrations*, 54–55 (The Univ. N. Car. Press 2017).

⁴Tom Miller was an attorney and a former consultant of UNICEF in Vietnam. He mobilized support and led the legal efforts in the *Babylift* class action. Nancy Stearns was an attorney at the Center for Constitutional Rights. *Suit Seeks to Block Adoptions of Many Vietnamese Children*, N.Y. TIMES, May 1, 1975, at 21; Complaint, *Nguyen Da Yen, et al. v. Henry Kissinger, et al.*, (N.D. Cal. 1975) (No. 75-X-28); Nancy Stearns, *Nancy Stearns Interview*, (2023); Miller, *supra* note 3.

⁵*Nguyen Da Yen v. Kissinger*, 528 F. 2d 1194, 1197 (9th Cir. 1975).

⁶Brief for Martin Guggenheim & Nancy Stearns as Amicus Curiae, *Hao Thi Popp v. Richard Lucas, et al.*, (Conn. 1979) (No. 162774).

⁷Brief for Nancy Stearns et al. Supporting Plaintiffs-Appellants at 9, *Nguye Da Yen, Et Al., v. Henry Kissinger, et al.* (9th Cir. 1976) (No. 76–1833); Stearns, *supra* note 2.

⁸*Nguyen v. Kissinger*, 70 F.R.D. 656, 667 (N. D. Cal. 1976).

⁹Stearns et al., *supra* note 7 at 10.

¹⁰Interview with Tom Miller, *supra* note 3; Guggenheim and Stearns, *supra* note 6 at 1274; Betty Jean Lifton, *Orphans in Limbo*, THE SATURDAY REV., May 1976, at 20; Tracy Johnston, *Torment over the Viet Non-Orphans: Non-Orphans*, N.Y. TIMES, May 9, 1976, at 176.

¹¹*Hao Thi Popp v. Lucas*, 182 Conn. 545, 551 (Conn. 1980); *Stanley v. Illinois*, 405 U.S. 645 (1971).

¹²Varzally, *supra* note 3 at 60–62.

Operation Babylift under another child's identify.¹³ Tragically, Nguyen Da Yen and their mother passed away only months after the reunion.¹⁴

Operation Babylift left a legacy of separation, loss, and displacement.¹⁵ What began as a humanitarian mission became a legal and ethical catastrophe. How that happened is the story recounted here. Part I of this article offers a brief overview of the lawlessness in *Operation Babylift*. Part II examines *Cold War maternalism*, a racialized, gendered ideological framework underpinning the exponential increase in American adoptions from Vietnam at the end of the Vietnam War. Cold War maternalism framed the adoption of children from regions perceived to be at risk of communist takeover as a patriotic, anti-communist act to win the Cold War. In the context of the Vietnam War, Cold War maternalism portrayed Vietnamese mothers as highly sexualized, racialized, disgraced, and fundamentally unfit to protect their children from poverty, war, and communism. It called upon American women to intervene by adopting Vietnamese children, especially those fathered by American servicemen, thereby “rescuing” them from their own mothers' purported failings.¹⁶ In doing so, Cold War maternalism laid the ideological and political groundwork for *Operation Babylift*, a mass removal of Vietnamese children through adoption. Part III analyses how in both South Vietnam and the United States, the hegemonic Cold War maternalism defeated a nascent adoption legal framework that aimed to balance the interests of adoptive parents, natural parents, and the children, instead of serving adopters only. The result of the defeat was the collapse of law and widespread impunity in *Operation Babylift*. Part IV examines the legal discourse that exposed the tension between Cold War maternalism and American courts' commitment to due process and equal protection of vulnerable parents' rights to raise their children in American courts. It underscores the law's limits in redressing individual injustice and systemic inequality in intercountry adoption when the child's best interests are conceptualized as separate from their mother's rights and interests.

Building on feminist inquiries into stranger adoption, legal scholars have examined intercountry adoption as a legal institution that has systemized transfer of children from vulnerable mothers to privileged women without addressing the root cause of their loss.¹⁷ However, the ideological architecture of intercountry adoption law remains largely unexplored. By contrast, critical and historical studies have fruitfully explored intercountry adoption's ideological foundations. Critical adoption scholars, working within the reproductive justice paradigm and through a post-colonial lens, have analyzed the social production of unequal motherhood that legitimizes intercountry adoption.¹⁸ Historians have shown that intercountry adoptions have served the dual function of satisfying the reproductive desires of affluent families and furthering geopolitical agendas of the West, particularly the United States.¹⁹ They traced the nexus between maternalism and intercountry adoption, and revealed how maternalism operated as a political strategy to extoll privileged women's motherhood at the expense of the mothers from colonized or occupied

¹³CHRIS AND YEJI, *Found My Family After DNA Test!*, (YouTube, Apr. 30, 2024) <https://www.youtube.com/watch?v=yaEoYQq8Pg> [<https://perma.cc/9BG3-FX2R>]; CHRIS AND YEJI, *First Family Phone Call After DNA Test*, (YouTube, May 1, 2024), <https://www.youtube.com/watch?v=pU89tQIAJ-w> [<https://perma.cc/LJA8-TZQM>]; CHRIS AND YEJI, *Meet My Mom for First Time after DNA Test*, (YouTube, May 11, 2024), <https://www.youtube.com/watch?v=yD0ceYfF98Q> [<https://perma.cc/KN6D-ZNX8>].

¹⁴Personal correspondence with Tom Miller, Nhu Miller (née Trần Tương Như), and Nguyen Da Yen on file with the author.

¹⁵Kevin Minh Allen, *Operation Babylift: An Adoptee's Perspective*, 69 THE HUMANIST, (Jun. 2009), at 21; DAUGHTER FROM DANANG, (Gail Dolgin 2002); Antoinette Antonio, *Man Reflects on Operation Babylift, Reunion with Birth Mother*, WCVB (Apr. 30, 2025), <https://www.wcvb.com/article/operation-babylift-reunion-david-nguyen/64636824> [<https://perma.cc/S68E-NYR8>]; Cath Turner, *After Four Decades, a Vietnamese Woman Reunites with the Daughter Airlifted to America*, REUTERS, (Nov. 25, 2019), <https://www.reuters.com/article/lifestyle/after-four-decades-a-vietnamese-woman-reunites-with-the-daughter-airlifted-to-a-idUSKBN1XZ17B/> [<https://perma.cc/NWT6-QAUN>].

¹⁶Shawyn Cho Hee Lee, *Mother America: Cold War Maternalism and the Institutionalization of Intercountry Adoption from Postwar South Korea, 1953–1961* (2016) (Ph.D. dissertation, University of Minnesota). Lee defined “Cold War maternalism” as an ideology and a movement to replace South Korea with the United States as the best “mother” for mixed-race Korean children through adoption.

¹⁷Twila L. Perry, *Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory*, 10 YALE J. OF L. AND FEMINISM, 106; Nancy E. Dowd, *A Feminist Analysis of Adoption Book Review*, 107 HARV. L. REV. 913, 928, 931 (1993); Naomi R. Cahn, *Family Issues Book Review*, 61 U. CHI. L. REV. 325, 329–330 (1994); Malinda L. Seymore, *Adoption as Substitute for Abortion?*, 95 U. COLO. L. REV. 1089 (2024).

¹⁸Kimberly McKee, *Adoption as a Reproductive Justice Issue*, 6 ADOPTION & CULTURE 74 (2018); Riitta Högbäck, *Intercountry Adoption and the Social Production of Abandonment*, 62 INT'L SOC. WORK 271 (2019); Emily Hipchen, *Introduction: Belonging*, in THE ROUTLEDGE CRITICAL ADOPTION STUD. READER (2023); Silvia Salvatici, *Humanitarianism in the Age of Decolonization: A View from Southern Europe*, 46 THE INT'L HIST. REV. 707 (2024).

¹⁹Varzally, *supra* note 3; McKee, *supra* note 18 at 78–79; Ingvill Stuvøy & Lene Myong, *The Biopolitics of Parental Access: Cross-Readings of Transnational Adoption and Surrogacy in Denmark and Norway*, 30 SOC. POLS.: INT'L STUD. IN GENDER, STATE & SOC'Y 1089 (2023); Laura Briggs, *Taking Children: A History of American Terror* (First Edition ed. 2020); Susie Woo, *Framed by War Korean Children and Women at the Crossroads of Us Empire* (2020).

spaces.²⁰ Weaving together feminist legal scholarship, critical inquiry, and the ideological history of intercountry adoption, this article illustrates the dynamic interplay of ideology, power, and law in the early history of intercountry adoption. Through this historical account, it identifies a maternalist premise that has long been embedded in intercountry adoption law: the notion that a child's best interests are inherently separate from their mother's rights and well-being.

OPERATION BABYLIFT: A RESCUE OR MASS ABDUCTION?

Operation Babylift was sharply criticized globally, including by the Red Cross and the Vatican.²¹ The fiercest condemnation came from Hanoi, which called *Operation Babylift* an “abominable” and “criminal act” that was committed at the very moment when Vietnam finally achieved independence and unification.²² In the U.S., the initial favorable public response to *Operation Babylift* quickly turned negative as *Nguyen v. Kissinger* began to reveal evidence of wrongful removals of non-orphaned children.²³ Some Americans condemned the Ford administration for “kidnapping ... children who are the future of Vietnam.”²⁴

Court-ordered discovery in *Nguyen v. Kissinger* revealed the shocking impropriety: of the 2547 adoptees, only about 570 had adequate documentation of their identity and parental consent to adoption.²⁵ As of September 1975, when INS Commissioner Leonard F. Chapman briefed Congress, the INS had confirmed that 1444 children were eligible for adoption, 233 were ineligible, and the status of 545 remained unclear.²⁶ When the INS concluded its investigation, the identities of 978 children could not be verified due to a lack of documentation.²⁷

At a Congressional hearing on October 8, 1975, Leonard F. Chapman, Jr. testified that adoption agencies had provided “a large number of false documents.”²⁸ INS inspector Gregory Kowalski testified, in a Michigan court in 1976, that many children were identified by “baby formulas, numbers, crib names, given names,” and “names were made up on the spot when they were found abandoned in the streets.”²⁹ An American volunteer, Betty Tisdale, admitted that she used blank birth certificates to falsify the birth certificates of the 196 Vietnamese children sponsored by the Pearl S. Buck Foundation for adoption through *Operation Babylift*.³⁰ The INS accepted birth certificates falsified by Tisdale as a matter of “formalities.”³¹ Friends for All Children (FFAC), a Colorado-based adoption agency in Saigon, brought 64 children aboard *Operation Babylift* Flight 233 on April 26, 1975. Among these 64 children, none had a recorded date of birth, and one was listed as having “no name.” Only 10 were identified with full Vietnamese names. Thirty had non-Vietnamese last names, and 33 were identified only by first names, some common, such as “Richard” and “Salee,” and others unusual or bizarre, including “Snowdrop,” “Ut. Em,” “Desparation (sic),” and “Pardon.”³² Decades later the director of FFAC, Rosemary Taylor, admitted that FFAC struggled with identifying children and tagged them with nursery names, formula brands, names of places, or something that made no sense.³³ The staff

²⁰Margaret D. Jacobs, *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880–1940* 122 (2009); Linda Gordon, *The Great Arizona Orphan Abduction*, 160 (1999); Lee, *supra* note 16 at 61–63.

²¹*The Orphans: Saved or Lost?*, 105 TIME MAG. 10, 12 (1975).

²²Agence France-Presse, *Hanoi Condemns U.S. on Children: Premier Says Big Airlift Is a “Criminal Action” Hails Events in South Hanoi Condemns U.S. on Children*, N.Y. TIMES, Apr. 7, 1975, at 63.

²³Zigler, *supra* note 1 at 332.

²⁴*Rescuing Vietnam Orphans*, *supra* note 1 at 374.

²⁵Brief for Martin Guggenheim & Nancy Stearns as Amicus Curiae, *Hao Thi Popp v. Richard Lucas*, et al., Sup. Ct. Conn. 4 (1979) (No. 162774).

²⁶*Refugees from Indochina: Hearing Regarding Indochina Refugees (Evacuation, Reception and Resettlement of Indochina Refugees)*, I 415 (1975), <https://heinsonline.org/HOL/P?h=hein.cbhear/reindochinc0001&i=1>. [<https://perma.cc/33HF-VFPV>].

²⁷Stearns et al., *supra* note 7 at 9.

²⁸*Refugees from Indochina*, *supra* note 26 at 415.

²⁹Hugh McDiarmid, *Judge Wants to Hear Viet Boy's Tale, Viet Boy to Meet with Judge*, 146 DETROIT FREE PRESS, Jun. 18, 1976, at 11-A.

³⁰Betty Tisdale (HALO), *The Angel of Saigon*, (YouTube, May 8, 2014), <https://www.youtube.com/watch?v=5UJRkng9YBw>.

³¹USAID, *supra* note 2 at 8.

³²MAC Flight C-141233 Manifest, *Friends For All Children*, April 26, 1975, OPERATION BABY LIFT (1975), <https://www.operationbabylift.org/files>. [<https://perma.cc/X3GJ-7RN4>].

³³Rosemary Taylor & Wende Grant, *Orphans of War: Work with the Abandoned Children of Vietnam 1967–1975*, 183, 189–190 (1988).

of another Colorado-based adoption agency, Friends of Children of Vietnam (FCVN), could not properly identify each child before their departure and eventually resorted to assigning random names to children, sometimes tagging boys with girls' names like "Sue."³⁴

The human cost of *Operation Babylift* was devastating: 1056 children were permanently separated from their families, including 78 who perished in the crash of the first *Operation Babylift* flight and 978 who remained unidentified after INS investigations.³⁵

COLD WAR MATERNALISM AND INTERCOUNTRY ADOPTION IN VIETNAM

Confronted with the evidence that *Operation Babylift* had wrongfully removed approximately 1000 children, the American public remained sharply divided. As *Saturday Review* observed on the first anniversary of the operation: "For those who favored the program, something noble had finally come out of this ignoble war; for those opposed, removing children from their homeland and their heritage was the most ignoble act of all."³⁶ The division reflects the enormous influence of Cold War maternalism—an ideology that denigrated Vietnamese mothers as unwilling and unable to care for their own children while elevating American women's adoption of Vietnamese children as a noble, patriotic act of humanitarianism.

Cold war maternalism

"Why do Americans want to adopt Vietnamese children?" The *New York Times* posed the question in a 1972 article about Americans' increasing interest in adopting Vietnamese children. The *Times* answered the question with a direct quote from Pearl S. Buck:

"We Americans must take up our responsibility because we helped bring these children into the world."³⁷

A celebrated literary giant, philanthropist, and cultural icon, Pearl S. Buck had long been one of the most effective advocates for intercountry adoption of Amerasian children.³⁸ American adoptions of Vietnamese children were not isolated incidents, but part of an ongoing humanitarian project aimed to address the "Amerasian issue"—the situation of children who were fathered by U.S. servicemen and left with their mothers in U.S.-occupied regions in Asia.³⁹ Since the 1950s, Buck and like-minded humanitarians have called on Americans to adopt unwanted "American children" fathered by American soldiers in Asia.⁴⁰ They contended that tens of thousands of Amerasian children were "wasted" in Japan, Korea, and other U.S.-occupied regions in Asia—abandoned by their fathers, unsupported by their mothers, and rejected by Asian societies.⁴¹ They asked Americans to fulfill their moral responsibility to

³⁴Cherie Clark, *After Sorrow Comes Joy*, 195 (2000).

³⁵USAID, *supra* note 2 at 1, 11; Stearns et al., *supra* note 7 at 10.

³⁶Lifton, *supra* note 10 at 20.

³⁷Winthrop A. Rockwell, *Efforts Grow to Bring Here Babies That G.I.'s Left in Vietnam*, N.Y. TIMES, Jan. 3, 1972, at 22.

³⁸Sabrina Thomas, *Scars of War: The Politics of Paternity and Responsibility for the Amerasians of Vietnam*, 49–52 (2021); Emily Cheng, *Pearl S. Buck's "American Children": US Democracy, Adoption of the Amerasian Child, and the Occupation of Japan in The Hidden Flower*, 35 FRONTIERS: A J. OF WOMEN STUD. 181 (2014); Christina Klein, *Cold War ORIENTALISM: Asia in the Middlebrow Imagination, 1945–1961* (2003); Kori A. Graves, *A War Born Family: African American Adoption in the Wake of the Korean War* (2020).

³⁹Thomas, *supra* note 38 at 6–11; Rachel Rains Winslow, *The Best Possible Immigrants: International Adoption and the American Family*, 217 (2017); Varzally, *supra* note 3 at 16–17.

⁴⁰Pearl S. Buck, *American Children: Alien by Birth*, 81 LADIES' HOME JOURNAL, Nov. 1964, at 36.

⁴¹Pearl S. Buck, *A Certain Wisdom: Pearl Buck and the Neglected Children of Asia*, WOMAN'S DAY, Jul. 1968, at 40–41, 78, 87.

Amerasian children because of their American paternity and racial identity, and persuaded Americans that adopting Amerasian children was a patriotic contribution to winning the Cold War.⁴²

Appealing to white Americans' racial anxiety, Buck beseeched: "It cannot be wise, surely, to allow half-white children, most of them half American, to grow up in Asia as the lowest class of citizen. It cannot add to the prestige of our own people or the white man, if this takes place."⁴³ She told a story of a Korean Amerasian bagger—a boy with "an American face, the eyes dark blue, the skin fair, the tousled hair a reddish brown," "bone-thin," but "of tall, strong build," resembling "the tall, strong American, redhaired and blue-eyed, who had been his father."⁴⁴ "When the child is grown, when he puts his quick mind to unworthy work, when his strong spirit rebels against his fate, the hue and cry will be, 'See what the Americans left behind!' ... For our own sake, shall we Americans do nothing for this child?" Buck asked.⁴⁵

In no uncertain terms, Buck diagnosed that the root cause of Amerasian children's plight was not only their fathers' absence, but also their mothers' abandonment. She depicted Amerasian children's mothers as poor, naïve, uneducated, or sometimes selling sex to survive, unfit, and unwilling to parent their children.⁴⁶ While calling on Americans to take responsibility for "American children," Buck offered no compassion or aid to their mothers.⁴⁷ Adoption activist, Rosemary Taylor, stated more bluntly, Vietnamese women "could not understand the need for better child care" and had "no knowledge of nutrition, hygiene or child development. (sic)"⁴⁸ She dismissed the proposals to care for displaced children through foster care because, she asserted, Vietnamese families were not capable of caring for their own children.⁴⁹ Taylor insisted that Vietnamese children displaced by war ought to be removed from Vietnam, and raised in Western families.⁵⁰

American media amplified the maternalist narrative of the need for saving unwanted American children in Vietnam. Aired in June 1972, NBC's *The Sins of the Fathers* used "touching, sometimes heartbreaking" close-ups of hundreds of children, "from the astonishingly beautiful to the horribly maimed," to stir emotions and build support for Americans' adoption of Vietnamese children.⁵¹ Accompanying the emotionally charged imageries, the documentary's producer and narrator, Robert Northshield, provided a simple, uncomplicated narrative—Amerasian children, especially Black Amerasians, were abandoned by their mothers because:

[T]he Vietnamese are racists. They have always been.⁵²

It was the easiest way for the mothers to handle the shame of their motherhood.⁵³

Juxtaposing the domestic bliss of American adoptive families and the misery in Vietnamese orphanages, Northshield's solution was uncomplicated as well:

[A]doption is the clear solution to a simple problem.⁵⁴

⁴²Klein, *supra* note 38 at 4.

⁴³Pearl S. Buck, *Memorandum on Legislation Regarding the Entry of Mixed-Blood Orphans into the U.S. for Adoption*, 94 *AMA AM. J. DIS. CHILD.* 200 (1957).

⁴⁴Buck, *supra* note 40 at 39.

⁴⁵*Id.*

⁴⁶Buck, *supra* note 41.

⁴⁷*Id.*

⁴⁸Taylor, *supra* note 33, at 22.

⁴⁹Interview With Tom Miller, *Operation Babylift Litigation*, *supra* note 3.

⁵⁰Joy Damousi, *The Humanitarians: Child War Refugees and Australian Humanitarianism in a Transnational World, 1919–1975* 302 (Robert Gerwarth et al. eds., 2022).

⁵¹John J. O'Connor, *TV: Plight of Racially Mixed Children in Vietnam: Report by Northshield Cites War's Legacy "Sins of the Fathers" Is Tough and Moving*, *N.Y. TIMES*, Jun. 20, 1973, at 83.

⁵²NBC Reports: *The Sins of the Fathers*, NBC (Jun. 19, 1973) (on incubator), <https://www.gettyimages.com/detail/video/production-unit-media-assets-media-type-film-media-id-news-footage/1275375637> [<https://perma.cc/NNW6-LGVG>].

⁵³NBC Reports: *The Sins of the Fathers*, (1973) (Go Vap portraits).

⁵⁴*Id.* (on incubator).

To ease concerns about separating children from their families and homeland, *Newsweek* explained: “The feeling that Vietnamese children should be raised in Vietnamese society certainly has merit, but the question is not whether a child will be better off being raised in his own culture. The choice is not there. Many babies in orphanages are simply going to die unless somebody rescues them,” due to the poverty, corruption, and the “Oriental belief” that “people cannot—or will not—assume the extra burden of caring for children who need help.”⁵⁵

Vietnamese, however, viewed American adoptions differently. The Government of South Vietnam (the “GVN”) opposed mass foreign adoptions and had hoped to strengthen child welfare programs centered around families—the traditional provider of social welfare in Vietnamese society.⁵⁶ The director of South Vietnam’s Ministry of Social Affairs, Phan Ngoc Quoi, declared in *The Sins of the Fathers*:

We consider the mixed blood children in Viet Nam Vietnamese children ... the majority of the Vietnamese people think they belong to this country.⁵⁷

Vietnamese women’s perspectives on Vietnamese motherhood and the needs of displaced Vietnamese children differed markedly from those of American adoption activists. Repudiating the maternalist denigration of Vietnamese motherhood, Trần Tương Như wrote: “Foreigners, who see only orphanages and assume the Vietnamese don’t care for their children, do not hear about mothers struggling alone to care for ten children or women caring for children left in their care permanently who would never consider putting them in an orphanage.”⁵⁸ Questioning foreign volunteers’ intentions, a Vietnamese social worker described American adoption workers as someone who “always have causes. Just now, it’s our babies. It could just as easily be de-sexing cats.”⁵⁹

Though united in their commitment to children displaced by the war, Madam Vu Thi Ngai and Betty Tisdale found themselves at odds over the question of adoption. Known as “the Mother of One Thousand Children,” Madam Vu Thi Ngai had housed and cared for about 50,000 displaced children in the An Lac orphanage that she owned and operated for 30 years. She cared for these children until their families found them in An Lac, a well-known place for lost children.⁶⁰ Madam Ngai agreed to evacuate with 196 An Lac children through *Operation Babylift* but objected to their adoptions by Americans.⁶¹ She raised concerns about the irreversible separation of the An Lac children from their families after their adoptions. Tisdale dismissed Madam Ngai’s concerns and objections, remarking that “the Asian mind is a little bit different than Americans as far as adoptions.”⁶²

At a Senate hearing in 1972, Tran Khanh Tuyet, a Vietnamese social worker, delivered a scathing rebuke of the Cold War maternalist narrative that framed adoption as America’s moral duty to “save” Vietnamese Amerasian children. She rejected Americans’ claim to these children: “The children don’t need Americans’ pity, and the children from Vietnam don’t need America’s so-called duty after having their fathers killed or their mothers killed because of the war.” She opposed foreign adoption of Amerasians, whom “Pearl Buck’s group” and others tried to “help save,” because Vietnamese people “don’t consider them possessions” but part of their lives.⁶³ Tran Khanh Tuyet rejected the Cold War logic that South Vietnamese children must be saved from communism. Instead, she attributed the crisis of displaced and orphaned children in Vietnam to the United States’ interference with Vietnam’s struggle for independence and national unification. Challenging the senators, Tran Khanh Tuyet asked: “We always talk about

⁵⁵Loren Jenkins, *Vietnam’s War-Torn Children*, 81 NEWSWEEK, May 24, 1973, at 56.

⁵⁶WAR VICTIMS IN INDOCHINA: REPORTS PREPARED FOR SUBCOMMITTEE TO INVESTIGATE PROBLEMS CONNECTED WITH REFUGEES AND ESCAPEES OF THE COMMITTEE ON THE JUDICIARY, S. COMM. PRINT, 92D, 2D, SESS., 40 (1972).

⁵⁷O’Connor, *supra* note 51.

⁵⁸Varzally, *supra* note 3, at 57.

⁵⁹Indigo A. Williams, *Diversity and Diaspora: Vietnamese Adopted as Children by Non-Asian Families*, 5–6 (2001). [<https://perma.cc/AN24-TRVC>].

⁶⁰Associated Press, *The Viet “Mother of a Thousand,”* SAN FRANCISCO CHRONICLE, May 15, 1975, at 13.

⁶¹Interview by Miae Kim with Betty Tisdale, *Betty Tisdale “Angel of Saigon” Operation Babylift and Helping and Loving Orphans (HALO) – Crossing East Archive*, (Dec. 01, 2004), <https://www.crossingeast.org/crossingeastarchive/2017/05/01/betty-tisdale/> [<https://perma.cc/8EMN-5JMT>].

⁶²*Id.*

⁶³*Vietnam Children’s Care Agency: Hearing Before the Comm. on Foreign Rels., United States Senate, Ninety-Second Congress, Second Session, S. 2497, April 5, 1972*, 85 (1972). [<https://perma.cc/F6YU-ZXJX>].

orphans in the South. We forget that in North Vietnam, we have 100,000 of them too. ... As long as Americans refuse to accept the unification of Vietnam, I wonder how much you could truly help the children ... or victims of the war?"⁶⁴

Ignoring Vietnamese voices but answering the call to assume the maternal duty for Vietnamese children, a group of American women, mostly left-leaning, anti-war activists, emerged as the driving force behind adoption in South Vietnam. With little to no training in medicine, social work, or law, and foreign to Vietnamese language and people, they started what historian Joy Damousi called "humanitarian activism"—mixing complex intercountry adoption work with advocacy.⁶⁵ American adoption activists adopted Vietnamese children, raised funds, and volunteered in Saigon, sometimes even bringing their own children with them.⁶⁶ With conviction and devotion, they cared for Vietnamese children as their own—nursed them back to health and mourned when they died.⁶⁷ As the North Vietnamese army approached Saigon, they feared for the children left behind—particularly Amerasians, who carried "the blood of the enemy."⁶⁸ Betty Tisdale, for one, was determined: "There is no way that I would allow my children to grow up under communism."⁶⁹ Hailed as "the Angel of Saigon" and "Saigon's Savior," Tisdale brought 196 children from Saigon to the U.S. without their mothers' consent.⁷⁰ I told the children that their biological mothers were their "Mother Number 1," Madam Ngai (the orphanage owner) was their "Mother Number 2," I was their "Mother Number 3," and their adoptive mothers were their "Mother Number 4 and their real mothers now," Tisdale recalled.⁷¹ Tisdale and her fellow adoption activists believed that Vietnamese children would find "real mothers" in America.

The cold war humanitarian politics

Cold War maternalism aligned with the U.S. foreign policy agenda when the U.S. increased its investment in humanitarian programs as a strategic foreign policy response to restore its global leadership badly damaged by the Vietnam War.⁷² As the U.S. shifted from military intervention to humanitarian diplomacy in Vietnam, the adoption of Vietnamese "war orphans" by white American families became a small but significant component of U.S. foreign policy.⁷³

Intercountry advocates had long lobbied the U.S. government to ease the legal barriers to American adoption of Amerasian children. In the 1950s, Pearl Buck cautioned Congress that if Amerasian children were left in Japan or Korea, they would grow into "displaced adults" who would inevitably "become centers of rebellion and revolution," as "their hatred will turn inevitably to those who have brought them into being and then rejected them."⁷⁴ She warned that Amerasian teenagers were already "banding together in groups led by militant, antigovernment leftists" in Japan.⁷⁵ These warnings were well received in the U.S. Congress. Senator Ted Kennedy believed that the U.S.-controlled humanitarian programs were instrumental in stabilizing Vietnam and pacifying anti-American sentiment,

⁶⁴*Id.*

⁶⁵Damousi, *supra* note 50 at 299–302, 309–315; DANA SACHS, *THE LIFE WE WERE GIVEN: OPERATION BABYLIFT, INTERNATIONAL ADOPTION, AND THE CHILDREN OF WAR IN VIETNAM* 10 (2010).

⁶⁶Clark, *supra* note 3; Eleanor Blau, *They Adopted Vietnamese Children, Now Help Others Do Same*, N.Y. TIMES, April 27, 1974, at 14.

⁶⁷*Id.*

⁶⁸Andrea Warren, *Escape from Saigon: How a Vietnam War Orphan Became an American Boy* (1st ed. 2012).

⁶⁹*The Angel of Saigon*, *supra* note 30.

⁷⁰Betty Tisdale, *HALO Reunion*, EVENING MAG., (YouTube, Feb. 13, 2014) (<https://www.youtube.com/watch?v=DeY0aAL-2Fc>) [<https://perma.cc/85VL-ZVWV>].

⁷¹OPERATION BABYLIFT: THE LOST CHILDREN OF VIETNAM, DVD (Against the Grain Productions 2009).

⁷²Edward M. Kennedy, *International Humanitarian Assistance: Proposals for Action*, 12 VA. J. INT'L L. 299, 301 (1971).

⁷³Winslow, *supra* note 39 at 217; Woo, *supra* note 19; Briggs, *supra* note 19; Laura Briggs, *Mother, Child, Race, Nation: The Visual Iconography of Rescue and the Politics of Transnational and Transracial Adoption*, 15 GENDER & HIST. 179 (2003); Laura Briggs, *Somebody's Children: The Politics of Transracial and Transnational Adoption* (2012).

⁷⁴Pearl S. Buck, *Letters to The Times: Entry for Orphans Urged Delay in Action on Bills Admitting Mixed-Blood Children Queried Soviet Paper Quoted Juries in Contempt Cases Basic Issue in Trials in Area of Civil Rights Discussed*, Jun. 9, 1957.

⁷⁵Buck, *supra* note 40.

and championed financial and political support for American adoption efforts as part of the broader U.S. foreign policy strategy.⁷⁶

USAID experts, however, urged Congress to respect Vietnam's national dignity, family traditions, and desire to retain its children.⁷⁷ They impressed on Congress that Vietnamese people were determined to prevent a large-scale exodus of their children to other countries because of their tradition of a strong familial support network, as well as their national pride and suspicion of foreign interference.⁷⁸ In 1974, USAID Assistant Administrator Robert H. Nooter briefed Congress that Amerasian children's mothers and families "would want to keep their children, for obvious reasons."⁷⁹

USAID also informed Congress that there were not thousands of Amerasian orphans waiting for adoption by Americans because most Amerasian children were cared for by their mothers, grandparents, older siblings, and extended families.⁸⁰ By USAID's account, there were a total of about 5400 mixed-race children in South Vietnam and 320 racially mixed children in orphanages in 1971; however, not all of these children were fathered by Americans.⁸¹ In 1974, 1200 mixed-race Vietnamese children were housed in orphanages, of whom about 600 were black.⁸² In 1975, the GVN classified more than 1.2 million children as "war orphans." Among them, approximately 800,000 were children of South Vietnamese servicemen, who were living with their mothers and extended families and receiving financial support from the South Vietnamese government. Another 372,000 so-called "war orphans" were living with their mothers or relatives. Of the remaining children, 17,055 resided in registered orphanages, and approximately 5000 either lived in unregistered orphanages or were classified as "homeless."⁸³

The GVN, the U.S. government, and the American adoption agencies all knew that over half the children housed in so-called "orphanages"—residential institutions—were not "true orphans."⁸⁴ Vietnamese residential childcare institutions were not "orphanages" in the usual sense. Commonly in nearly every village, they functioned as emergency childcare centers where families temporarily placed their children and visited them regularly.⁸⁵ Most children in these residential institutions remained emotionally and legally attached to their parents, grandparents, and extended families.⁸⁶ During the war, as Madam Ngai had explained, "orphanages," like her An Loc orphanage, were long-term childcare facilities for wartime emergencies rather than Western-style orphanages.⁸⁷ The U.S. government was well aware that more than half of the children in Vietnamese residential childcare institutions had at least one parent living and had been placed there temporarily by their families.⁸⁸

Despite clear evidence that most Amerasian children, including those in Vietnamese residential childcare institutions, were not orphans, the U.S. Congress embraced Cold War maternalist ideology and promoted intercountry adoption as it considered a new Indochina aid package in 1973. Rather than supporting Vietnamese families to meet childcare needs and preserve family integrity, Congress resisted South Vietnam's efforts to secure funding for domestic childcare programs that could have served as alternatives to intercountry adoption, and ignored USAID's assessment that American adoption was "only an alternative for relatively few."⁸⁹ Congressman Edward Roybal

⁷⁶*Foreign Economic Assistance: Hearing on S. 1711 and S. 2026 Before the Comm. On Foreign Rel.*, 93rd Cong. 340–44 (1973) Remarks by Mr. Kennedy Stating His Intention to Propose Amendment No. 255 to S. 1711, S11754 (1973); Kennedy, *supra* note 72 at 308.

⁷⁷Vietnam Children's Care Agency: Hearing Before the Committee on Foreign Relations, U.S. Senate, Ninety-Second Congress, Second Session, S. 2497, April 5, 1972., 20–21 (1972).

⁷⁸Relief and Rehabilitation of War Victims in Indochina, i 88–89 (1973).

⁷⁹*Foreign Assistance and Related Agencies Appropriations for 1975*, *supra* note 76, at 1451–1454, 1456.

⁸⁰Relief and Rehabilitation of War Victims in Indochina, *supra* note 78.

⁸¹WAR VICTIMS IN INDOCHINA: REPORTS PREPARED FOR SUBCOMMITTEE TO INVESTIGATE PROBLEMS CONNECTED WITH REFUGEES AND ESCAPEES OF THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, NINETY-SECOND CONGRESS, SECOND SESSION., *supra* note 56 at 41., REP. ON WAR VICTIMS IN INDOCHINA 41 (1972).

⁸²*Foreign Assistance and Related Agencies Appropriations for 1975*, [i] 1451–1454, 1456 (1974), <https://heinonline.org/HOL/P?h=hein.cbhear/foasragi0001&i=994>, [<https://perma.cc/NUG3-SZW3>].

⁸³USAID, *supra* note 2 at 13.

⁸⁴*Meeting on Placement and Adoption of Vietnamese Children in American Homes*, 119 CONGRESSIONAL RECORD 42,737, 42,741 (1973).

⁸⁵McConnell, *supra* note 3 at 2; VARZALLY, *supra* note 3 at 55–57.

⁸⁶Sabine Lee, Heide Glaesmer & Barbara Stelzl-Marx, *Children Born of War: Past, Present and Future*, 124 (1st ed. ed. 2021).

⁸⁷Associated Press, *supra* note 60.

⁸⁸General Accounting Office, *supra* note 23, 40.

⁸⁹Rachel Rains Winslow, *The Best Possible Immigrants: International Adoption and the American Family* (1st ed. 2017); *Humanitarian Problems in Indochina*, i (1974).

argued that “the same stereotyped programs ... orphanages, foster care programs, and daycare centers” could not solve the “orphan problem” in Vietnam.⁹⁰ At a House hearing on July 10, 1973, he pressed USAID Assistant Administrator Robert Nooter to implement recommendations from *The Sins of the Fathers* and expedite intercountry adoptions of Vietnamese children, particularly Black Amerasians. Nooter warned that 90%–95% of Amerasian children lived with their Vietnamese families and there were 1200, not hundreds of thousands, Amerasian children in orphanages.⁹¹ Roybal angrily responded, “Not according to the film we saw.”⁹² At the Senate hearing on the aid package, Senator Charlese H. Percy expressed his distrust in Vietnam's ability to care for its own children: “I would just say, off hand, if someone asks me to whom would you want to contribute if I had \$1,000 available at the end of the year to contribute to someone, would you want to make that contribution for the benefit of orphaned children to the Saigon Government or to the Pearl Buck Foundation or the Shoeshine Boys Foundation...—I wouldn't hesitate to give it to the latter rather than the former.”⁹³ In 1973, Congress approved a \$20 million humanitarian relief package for Indochina, allocating \$5 million to childcare and American adoption efforts in South Vietnam.⁹⁴ The bill mandated preferential adoption consideration for children fathered by U.S. citizens.⁹⁵ In 1974, Congress awarded \$469,000 grants to American adoption agencies.⁹⁶

On April 3, 1975, President Gerald Ford launched *Operation Babylift* to airlift “2,000 South Vietnamese orphans” that were “all in the process of being adopted by American families” from Vietnam to the U.S.⁹⁷ Images of *Operation Babylift* babies cradling in American soldiers' arms indeed helped rehabilitate the U.S.'s reputation. Dr. Alex Stalcup, chief pediatrician for *Operation Babylift*, initially believed the initiative was politically motivated.⁹⁸ By the end of the operation, he expressed gratitude to the servicemen who had cared for the children: “So many times my left-biased mind was boggled by the sight of a military man resting quietly with a toddler sleeping peacefully on each arm. ... With you and your men Colonel, I am given hope that the children have a chance.”⁹⁹ In promoting the maternalist rescue narrative of adoption, the U.S. government successfully shifted the blame for Vietnamese children's homelessness, displacement, and poverty onto their mothers, who were themselves victims of the war.

The baby business

For many Americans, adopting Amerasian children fulfilled a sense of patriotic and humanitarian duty.¹⁰⁰ Media images, reports, TV shows, and personal narratives generated a “tremendous outpouring of public concern over the fate of Vietnamese war orphans.” Senator Charles Mathias told Congress on April 8, 1975, “we are not a people who will simply walk away from a crisis, especially one partly of our own making, without regard for the consequences likely to befall those who are left behind.”¹⁰¹ The local press celebrated American couples, who adopted mixed-race Vietnamese children. Among them were Patricia and Edward Cole of Paxton of rural Massachusetts. Touched by the “plight of racially mixed children in Vietnam,” the couple immediately applied to adopt a Vietnamese child after watching *The Sins of Our Fathers*. *Operation Babylift* brought them a daughter 2 years later.¹⁰²

⁹⁰Foreign Assistance and Related Agencies Appropriations for 1973, 395–396 (1972).

⁹¹Foreign Assistance and Related Agencies Supplemental Appropriations for 1974, 1456 (1973).

⁹²*Id.* at 1455.

⁹³Vietnam Children's Care Agency Hearing, *supra* note 63 at 22.

⁹⁴House Consideration and Agreement to the Conference Report on S. 1443, December 4, 1973, Pp. H10547-54 Debate: 119 Congressional Record (Daily Edition) 93rd Congress, 1st Session (1973): Document No. 75, 5 LEGISLATIVE HISTORY OF THE FOREIGN ASSISTANCE ACT OF 1973, P.L. 93-189 H10547 (1973).

⁹⁵*Id.*

⁹⁶Taylor, *supra* note 33 at 106; Foreign Assistance and Related Agencies Appropriations for 1975, *supra* note 82 at 994.

⁹⁷Ford, *supra* note 2 at 2.

⁹⁸Douglas E. Kneeland, *Many Children Found Ill on Arrival from Vietnam: Many Children Found to Be Ill on Their Arrival from Vietnam*, NEW YORK TIMES, Apr. 7, 1975, at 1.

⁹⁹Alex Stalcup, *Letter from S. Alex Stalcup, MD to Colonel R. Kane*, (1975).

¹⁰⁰Klein, *supra* note 38.

¹⁰¹Indochina evacuation and refugee problems. Part I, *Operation Babylift – Humanitarian Needs*: hearing before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Committee on the Judiciary, U.S. Senate, Ninety-fourth Congress, first session, April 8, 1975., 3 (1975), <https://www.govinfo.gov/app/details/CHRG-94shrg54427p1> [<https://perma.cc/V4QR-32ZF>] (last visited Sep 29, 2024).

¹⁰²Dolores Courtemanche, *Gazette Staff Telegram, Adoptees Thriving in U.S.*, May 02, 1995.

Yet, adoption primarily served the adopters, supplying children to help them fulfill an ideal vision of family life that would provide satisfaction in social status, domestic intimacy, and leisure pursuits.¹⁰³ Some Americans sought international adoption after being unable to adopt domestically. In late 1974, the Michigan Department of Social Services suspended foreign adoptions, requiring that children already in state care (often older or with special needs) be prioritized in adoption. Prospective adopters in Michigan protested the policy, arguing that they were not financially or emotionally equipped to “take a handicapped child or do without any.”¹⁰⁴ Others viewed intercountry adoption as a form of cultural enrichment and a unique life experience.¹⁰⁵ “What fun it is to be an adopted family,” suggested Dr. May Reynolds Sherwin, a child psychologist, who adopted four children from different countries.¹⁰⁶ Catering to its affluent readership, *Vogue* magazine’s first issue in 1972 featured war photography of Vietnamese “orphans” alongside glossy ads for luxury family vacations in Jamaica, Beverly Hills, and Vermont, inviting readers to consume both.¹⁰⁷

Operation Babylift delivered thousands of much-wanted young children across the U.S. On April 5, 1975, at LaGuardia Airport in New York City, three sets of adoptive parents received their new children from Vietnam. The Kolinskys, who wanted a daughter after having three sons, welcomed a 3-year-old girl. Unable to adopt additional children domestically after adopting three children, Mr. and Mrs. Flanigan greeted their fourth adoptive child, delivered by *Operation Babylift* from Vietnam. Unmarried and living with her mother, a dog groomer from Long Island was not qualified for domestic adoption. She finally received a healthy child through *Operation Babylift*.¹⁰⁸

Supplying healthy, young children to American adopters was undeniably lucrative, even if money might not have been the primary motive. A Vietnamese social worker observed that an adoption agency “doesn’t seem to (make money from collecting orphans for adoption) ...but someone must be paying her way—so many people are making money out of babies.”¹⁰⁹ *Operation Babylift* proved a profitable venture for American adoption agencies, who charged “processing fees” that ranged from \$350 to \$1500 per child, plus transportation.¹¹⁰ Rosemary Taylor’s FFAC charged \$350 to \$825 per child in adoption fees for *Operation Babylift* adoptees.¹¹¹ Although the U.S. government provided free transportation, FFAC withheld the children and demanded an additional \$750 transportation fee for each child from adoptive parents in France.¹¹² In total, 2547 children were evacuated during *Operation Babylift*. Even using the lowest fee estimate (\$350), American adoption agencies collected at least \$891,450—the equivalent of \$5.2 million today—in processing fees. FFAC’s fees were so exorbitant that some adoptive parents protested and brought their grievance to the U.S. Congress.¹¹³

Through the fierce advocacy of American adoption activists in South Vietnam, Cold War maternalism came to dominate public opinion. By aligning with U.S. foreign policy objectives and responding to domestic demand for adoptable children, this ideology achieved hegemonic influence over policymaking and legal discourse surrounding

¹⁰³Elaine T. May, *Barren in the Promised Land: Childless Americans and the Pursuit of Happiness*, 235 (1997); Richard A. Posner, *The Regulation of the Market in Adoptions*, 67 B.U. L. REV. 59 (1987); Viviana A. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children*, (Reprint edition, 1994); Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (4th edition, 2017); Barbara Melosh, *Strangers and Kin: The American Way of Adoption*, 12 (2002).

¹⁰⁴Strozier, *DSS Stops Help in Foreign Adoptions*, 144 DETROIT FREE PRESS (Feb. 18, 1975), at 20.

¹⁰⁵Kim Park Nelson, *Shopping for Children in the International Market Place*, in *OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION* 89, 93–94 (Jame Jeong Trenka, Julia Chinyere Oparah, & Sun Yung Shin eds., 2021); Elisabeth M. Landes & Richard A. Posner, *The Economics of the Baby Shortage*, 7 J. LEGAL STUD. 323 (1978); Posner, *supra* note 103; Zelizer, *supra* note 103.

¹⁰⁶Sherwin Reynolds, *If You Want to Adopt a Child: Where Do You Find One? How Long Does It Take? Possible Cost? Hazards to Avoid? Here Are Answers*, 34 PARENTS’ MAGAZINE & FAMILY HOME GUIDE (1959).

¹⁰⁷Gloria Emerson & Grace Mirabella, *Features: An American Woman’s Vietnam Diary*, 159 VOGUE, 1972, at 74.

¹⁰⁸James Feron, *3 Orphans Land Here Amid Grief Over Saigon Crash: Orphans Land Amid Grief Over Crash*, N. Y. TIMES, Apr. 5, 1975, at 61.

¹⁰⁹Indigo A. Williams, *Diversity and Diaspora: Vietnamese Adopted as Children by Non-Asian Families*, 5–6 (2001).

¹¹⁰USAID, *supra* note 2 at 57–58.

¹¹¹*Id.* at 57.

¹¹²S. Alex Stalcup, *Orphan’s Airlift Memorandum to the White House, Attn: Dr. Marrs, Special Assistant to the President, in Regard to the Matter of the Vietnamese Orphans*, (Undated).

¹¹³Memorandum from Rosemary Taylor, *The Evacuation, Friends For All Children*, (1975), <https://www.operationbabylift.org/files.https://perma.cc/X3GJ-7RN4>.

the adoption of Vietnamese children during the final years of American involvement in Vietnam. The hegemony of Cold War maternalism culminated in the profound legal and ethical failures of Operation Babylift.

COLLAPSE OF LAW

“I in no way disparage the efforts of the various adoptive agencies in Vietnam, but it seems to me that when a person is going to be a good Samaritan he owes a duty to the person he’s saving to do so with skill and competence and, when that fails, I think a tragic result occurs,” Judge James J. Delaney commented pointedly at a hearing in a Colorado court, where Hao Thi Popp a Vietnamese refugee mother sought the return of her son from his adopters.¹¹⁴ Judge Delaney questioned how FFAC, purportedly a humanitarian agency, could engage in practices that “would offend our sensibilities, and would certainly violate all our concepts of civil rights of persons ...”¹¹⁵

During the final years of the Vietnam War, precisely when law and order were most needed, intercountry adoption activists focused their advocacy on attacking the legal system and institutional structures that had constrained maternalist impulses, commercial opportunism, and political exploitation in intercountry adoption between South Vietnam and the U.S. Embracing the maternalist ideology of intercountry adoption, both federal and state lawmakers attempted to dismantle laws designed to protect birthparents and children in the intercountry adoption of Vietnamese children by Americans. Under the U.S. government’s pressure, the GVN changed its adoption laws to meet Americans’ demand for Vietnamese children. Eventually, in *Operation Babylift*, the legal protections designed to protect vulnerable parents and children collapsed under political pressure, and the actions that Judge Delaney found so offensive were ensured.

In South Vietnam

“Foreign adoption is an alien and repugnant notion to the Vietnamese,” Trần Tường Như told the court in her affidavit submitted in *Nguyen v. Kissinger*.¹¹⁶ In Vietnamese society, the parent–child bond is sacred and unbreakable. Traditional adoption served primarily to provide male heirs by bringing a child from within the kinship clan—typically a sibling’s child—into the family. Consequently, adopted children usually remained within the same extended family.¹¹⁷ Although the GVN permitted adoption by non-family members, including foreigners, its adoption law reflected a culturally distinct concept of adoption rooted in Vietnamese family and kinship structures and communal childcare practices. For instance, because of Vietnamese people’s strong belief that children maintain unbreakable emotional and legal ties to their parents, South Vietnamese law not only mandated parental consent for adoption but also allowed parents to revoke consent or annul adoptions under certain circumstances.¹¹⁸ In addition, the GVN was determined to prevent a large exodus of Vietnamese children through foreign adoptions. Thus, South Vietnamese law provided stringent eligibility criteria for adoptive parents, requiring adopters to be a married couple for at least 10 years, childless, and with at least one partner over age 30.¹¹⁹ It also required an exit visa for each adoptee’s departure from South Vietnam.¹²⁰

Following several incidents where Vietnamese children had been adopted abroad without parental consent, South Vietnamese courts strengthened its scrutiny over foreign adoptions.¹²¹ Prospective adopters who failed to

¹¹⁴In the Interest of Le Thanh Tung (District Court of Adam County, State of Colorado 1977).

¹¹⁵*Id.* at 5.

¹¹⁶Varzally, *supra* note 3 at 57.

¹¹⁷Insun Yu, *Bilateral Social Pattern and the Status of Women in Traditional Vietnam*, 7 S. E. ASIA RSCH. 215, 225 (1999).

¹¹⁸Lee, Glaesmer, and Stelzl-Marx, *supra* note 86 at 124; Ta Van Tai, *Memorandum on Inter-Country Adoption in South Vietnam, Plaintiff’s Exhibit #42*, October Term, 1980 in Hao Thi Popp v. Richard Lucas, ET AL. A, A-88-89 (1980).

¹¹⁹Relief and Rehabilitation of War Victims in Indochina, *supra* note 78 at 87.

¹²⁰Tai, *supra* note 118 at A-85.

¹²¹Relief and Rehabilitation of War Victims in Indochina, *supra* note 78 at 87; Humanitarian Problems in Indochina, *supra* note 89 at 86.

meet the marriage and childlessness requirements were required to obtain special presidential waivers before starting the adoption process.¹²² In the winter of 1972, the GVN's Ministry of Social Welfare (MSW) took on a more active role in overseeing intercountry adoption. The MSW began auditing foreign adoption agencies' activities through a registration process. The ministry also drafted a new adoption law that was "child centered (*sic*) rather than primarily concerned with the legal rights of adopting parents."¹²³

The GVN's efforts were, however, undermined by foreign powers, particularly the U.S. As the U.S. foreign policy shifted from military intervention to Western humanism, the U.S. government rigorously supported American adoption agencies, who in turn leveraged their political influence to resist the GVN's oversight over foreign adoptions.¹²⁴ American adoption agencies bypassed the MSW's oversight by cultivating "a great working rapport with high-ranking South Vietnamese officials."¹²⁵ The director of FFAC, Rosemary Taylor was exceptionally successful in getting children out of Vietnam for adoption, using "unorthodox but effective" techniques.¹²⁶ Taylor had operated intercountry adoption services informally without authorization from 1968 to 1972.¹²⁷ Finally, in January 1973, the GVN authorities issued an order to expel Taylor due to unauthorized adoption activities.¹²⁸ However, the U.S. embassy interfered on Taylor's behalf and stopped the GVN authorities from enforcing the expulsion order.¹²⁹ The embassy granted Taylor "officially the status of social worker" so that she could meet the registration requirement, although Taylor lacked a social work credential.¹³⁰ With American support, Taylor and her agency not only survived but thrived. In 1973, the U.S. awarded FFAC a \$100,000 (\$725,838 in present value) grant, representing more than 20% of that year's funding for American adoptions in Vietnam.¹³¹

The GVN eventually yielded to the pressure to provide "realistic safeguards" for children adopted by Americans.¹³² In the summer of 1972, the U.S. "persuaded" the GVN to streamline adoption procedures so that children could leave Vietnam for the U.S. before completing legal adoptions in Vietnamese courts.¹³³ As a result, most Vietnamese adoptees were removed from the country within 3 months by late 1972, circumventing Vietnamese courts.¹³⁴

Yet, the GVN remained resolute in preventing the unchecked exodus of Vietnamese children and initially resisted *Operation Babylift*.¹³⁵ They acquiesced only after the U.S. government assured three conditions would be met: First, all children who participated in *Operation Babylift* would meet intercountry adoption criteria and were already approved for adoption to the U.S. Secondly, American adoption agencies would provide proper documentation verifying each child's identity and legal adoptive status. Third, the GVN could "carefully monitor and control" the children's exit.¹³⁶ During the operation, the MSW attempted to verify departing children's adoption decrees and identification documents.¹³⁷ However, as the GVN collapsed, the U.S. government and American adoption agencies operated with impunity. Many children's identities and legal statuses were unverified before their departure from Vietnam.¹³⁸ *Operation Babylift* began as a humanitarian mission but turned into an ethical and legal disaster in the last days of the war.

¹²²Relief and Rehabilitation of War Victims in Indochina, *supra* note 78 at 87.

¹²³One hundred nineteen Cong. Rec. 42,737, 42,740.

¹²⁴Winslow, *supra* note 39 at 120–122.

¹²⁵Clark, *supra* note 34, at 58, 74–76, 110.

¹²⁶Rockwell, *supra* note 37, at 22.

¹²⁷Taylor, *supra* note 33, at 71.

¹²⁸*Id.* at 72.

¹²⁹*Id.*

¹³⁰Damousi, *supra* note 50 at 304.

¹³¹Taylor, *supra* note 33 at 106; Foreign Assistance and Related Agencies Appropriations for 1975, *supra* note 82 at 994.

¹³²Winslow, *supra* note 39 at 147; Relief and Rehabilitation of War Victims in Indochina, *supra* note 78 at 87.

¹³³Meeting on Placement and Adoption of Vietnamese Children in American Homes, *supra* note 84 at 42740.

¹³⁴*Children of G.I.'s Shunned in Vietnam*, N. Y. TIMES, Dec. 24, 1972, at 3.

¹³⁵USAID, *supra* note 2, at 23–26.

¹³⁶*Id.* at 2, 12, 26 (Letter from Phan Quang Dan to Prime Minister (April 2, 1975)).

¹³⁷Clark, *supra* note 34, at 187.

¹³⁸Stearns et al., *supra* note 7; Guggenheim and Stearns, *supra* note 6.

In the United States

From its inception in the mid-19th century to the 1970s, American adoption law had primarily served adopters by facilitating permanent transfers of children.¹³⁹ The legitimacy of adoption rested on a maternalist claim that adoption rescues unwanted babies from mothers in trouble.¹⁴⁰ However, in the 1970s, American adoption laws began shifting away from the adopter-centered framework. New legislation and court decisions that aimed to balance the interests of children, adoptive parents, and natural parents in adoption emerged at the end of the 1960s.¹⁴¹ In 1972, in *Stanley v. Illinois*, the U.S. Supreme Court affirmed natural parents' fundamental right to "the custody, care, and nurture of the child" that is protected under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.¹⁴² While *Stanley* is not an adoption case, it led to major reforms in state adoption law that strengthened the protection of the rights of natural parents.¹⁴³ For instance, following *Stanley*, the Michigan Supreme Court returned a child to her unwed teenage mother from the foster parents who wished to adopt her, finding that the mother's consent to adoption was procured in violation of her due process rights. The Court held that the mother's "moral unfitness or promiscuity" or "delinquency" and "the mere fact that the child was born out of wedlock" were not sufficient grounds for terminating her parental rights and making her daughter available for adoption.¹⁴⁴

Following *Stanley*, federal immigration law and states tightened intercountry adoption laws. After completing the legal procedures in Vietnam, adoptive parents were required to obtain U.S. entry visas to bring their adopted children into the United States and legalize the adoptions under state law.¹⁴⁵ Federal immigration law and state adoption laws mandated proof of proper notice to natural parents, and parental consent to adoption as well as comprehensive pre-adoption child assessments, which typically required a comprehensive history of the adoptee's parentage and custody.¹⁴⁶ The increased safeguards for vulnerable natural parents in adoption proceedings clashed with Cold War maternalism.

As adoptions completed in South Vietnam frequently failed to meet key requirements under U.S. laws, adoption activists pushed for lower standards in intercountry adoption than in domestic cases.¹⁴⁷ They dismissed legal safeguards protecting vulnerable parents in adoption as unrealistic in the Vietnamese context, and argued that notice to and consent from Vietnamese mothers were not necessary because they were incapable of making informed decisions or were simply obstacles to their children's future in the U.S.¹⁴⁸

Providing a clear history of the child's identity and parentage for state-mandated pre-adoption assessments indeed proved difficult.¹⁴⁹ American adoption agencies typically received children from Vietnamese orphanages, which provided sketchy declarations of identity and orphan status without supporting documentation, such as birth certificates.¹⁵⁰ Obtaining children's birth certificates appeared to have been a major problem for American adoption agencies, as orphanages often gave the names of "fictitious mothers" in their declarations.¹⁵¹

¹³⁹Jamil S. Zainaldin, *Emergence of a Modern American Family Law: Child Custody, Adoption, and the Courts, 1796–1851*, 73 NW. U. L. REV. 1038 (1978); Ruth-Arlene W. Howe, *Adoption Practice, Issues, and Laws 1958–1983*, 17 FAM. L. Q. 173 (1983); Solinger, *supra* note 19; Rickie Solinger, *Wake Up Little Susie: Single Pregnancy and Race Before Roe v. Wade* (2013).

¹⁴⁰Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* 271 (1st Ed. 1988).

¹⁴¹Howe, *supra* note 139 at 185.

¹⁴²*Stanley v. Illinois*, 405 US at 651.

¹⁴³Howe, *supra* note 139 at 186.

¹⁴⁴*Doe v. Mitchell*, 244 N.W.2d 827, 849 (Mich. 1976).

¹⁴⁵Friends of Children of Vietnam, *Friends of Children of Vietnam - Adoption Process, 1974–1976*, (1974), <https://www.fordlibrarymuseum.gov/digital-research-room/finding-aids/shirley-peck-barnes-papers-1967-2005> [<https://perma.cc/ES4U-VTC7>]; Paul K. Driessen, *Immigration Laws, Procedures and Impediments Pertaining to Intercountry Adoptions Student Comment*, 4 DENV. J. INT'L L. & POL'Y 257 (1974).

¹⁴⁶Howe, *supra* note 139 at 178.

¹⁴⁷Driessen, *supra* note 145 at 280.

¹⁴⁸Doris M. Besikof, *International Adoption – United States Adoption of Vietnamese Children: Vital Consideration for the Courts Note*, 52 DENV. L.J. 771, 777 (1975).

¹⁴⁹Driessen, *supra* note 145 at 282–283.

¹⁵⁰Friends of Children of Vietnam, *Friends of Children of Vietnam – Newsletters, 1973–1981*, Adoption Process, <https://www.fordlibrarymuseum.gov/library/document/0412/041200016.pdf>, [<https://perma.cc/ES4U-VTC7>].

¹⁵¹Meeting on Placement and Adoption of Vietnamese Children in American Homes, *supra* note 84 at 42741.

The validity of parental consent for adoption also proved problematic. Under Vietnamese law, an orphanage had legal custody and the authority to release a child for adoption if the child's parents had surrendered the child to the orphanage or the child's parents were unknown.¹⁵² American adoption agencies believed that they had the legal authority to release for adoption children surrendered to them by Vietnamese orphanages because they had acquired legal custody of the children under Vietnamese law.¹⁵³ In lieu of parental consent to adoption, American adoption agencies submitted to U.S. authorities adoption releases that were signed either by Vietnamese orphanage directors or by American adoption agencies themselves acting as the children's legal guardians.¹⁵⁴

American adoption agencies' practices in Vietnam raised serious human trafficking concerns in the U.S. States denied pre-adoption applications when prospective adoptive parents could not provide clear child histories required by anti-trafficking laws.¹⁵⁵ In states that required the consent of both parents for adoption, releases signed only by mothers were rejected. More commonly, the INS, state courts, and child welfare authorities questioned Vietnamese orphanage directors' legal authority to relinquish children for adoption.¹⁵⁶

Adoption activists lobbied states to eliminate requirements for natural parents' consent notification in intercountry adoptions from South Vietnam. They argued that requirements for natural parents' consent and children's identification history were burdensome and unnecessary. Asserting that it was neither necessary nor practical to obtain Vietnamese mothers' consent to adoption, an adoption activist wrote: "A semi-literate, destitute, or socially embarrassed mother is not likely to see the need to record her failure by identifying herself in a relinquishment."¹⁵⁷ Adoption activists claimed that Vietnamese, including adoptees' parents, would blackmail American adopters if adoptions became public.¹⁵⁸ Thus, they urged courts to waive the adoption notice to Vietnamese parents so as to "protect" adopters from what they characterized as Vietnamese parents' "extortion" or "unscrupulous claims" about improperly terminated rights.¹⁵⁹

Cold War maternalism targeted the intercountry adoption regulatory apparatus. Activists vilified immigration, child welfare, and legal authorities as "indifferent, unavailable, and excruciatingly slow" bureaucrats.¹⁶⁰ *The Sins of the Fathers* bashed the "antiquated laws and sectarian requirements" that "make adoption difficult... but nothing has been done."¹⁶¹ The media reported stories of Amerasian orphans allegedly dying while awaiting bureaucratic adoption processing.¹⁶² U.S. legislators responded to these charges. Between 1971 and 1975, the House and the Senate introduced at least 42 bills, mostly with bipartisan support, to facilitate American adoption of Vietnamese children.¹⁶³ Echoing Pearl S. Buck, in June 1971 Senator Frank Moss of Utah pleaded to his colleagues to save Vietnam's "illegitimate," "homeless," "orphaned children...of disgrace," who were nevertheless America's responsibility.¹⁶⁴ Framing adoption as Americans' moral duty to "orphaned" American children victimized by the war, Senator Moss proposed the first Senate bill to promote the adoption of Vietnamese Amerasian children by American citizens. The bill included measures to pressure the GVN to allow mass removal of Vietnamese Amerasian children through American adoption, allocate federal grants to support private American adoption agencies in South Vietnam, and simplify the immigration process for adoptees from Vietnam.¹⁶⁵ The Pearl S. Buck Foundation applauded these

¹⁵²Tai, *supra* note 118; Friends of Children of Vietnam, *supra* note 145.

¹⁵³Cheryl Makson, *Affidavit by Cheryl Makson, Executive Director, the Friends of Children of Viet Nam (December 15, 1975) Submitted to the Oakland County Department of Social Services*, (1975).

¹⁵⁴Nguyen Da Yen v. Kissinger, 528 F. 2d at FN 6; Friends of Children of Vietnam, *supra* note 145 at Affidavit by Cherie Clark (undated, unsigned); Besikof, *supra* note 148 at 778.

¹⁵⁵Driessen, *supra* note 145 at 281–282.

¹⁵⁶Driessen, *supra* note 151, at 282; Doris M. Besikof, *International Adoption – U.S. Adoption of Vietnamese Children: Vital Consideration for the Courts Note*, 52 DENV. L.J. 771, 782 (1975).

¹⁵⁷Besikof, *supra* note 148 at 18.

¹⁵⁸*Id.* at 782.

¹⁵⁹*Id.* at 773.

¹⁶⁰Driessen, *supra* note 145 at 258.

¹⁶¹NBC Reports: *The Sins of the Fathers*, *supra* note 52.

¹⁶²Gloria Emerson, *Part Vietnamese, Part Black-And Orphans*, NEW YORK TIMES, Feb. 7, 1972, at 26.

¹⁶³Thomas, *supra* note 38 at 62–70; Jean Yavis, *Adoption in the United States*, CONGRESSIONAL RESEARCH SERVICE, 24–27 (1972), <https://heinonline.org/HOL/Page?handle=hein.crs/crsuntaall0001&id=1&div=&collection=congresc> [<https://perma.cc/LAN4-LW6F>]; *Legislation*, <https://www.congress.gov/advanced-search/legislation> (last visited June 19, 2025).

¹⁶⁴Frank Moss, *Vietnamese-American War Orphans*, 117 CONGRESSIONAL RECORD 19,805, 19,805 (1971).

¹⁶⁵*Id.* at 19806.

proposals.¹⁶⁶ A group of U.S. senators soon conceived the Vietnam Children's Care Agency, a centralized agency that would facilitate Americans' adoption of orphaned or abandoned Vietnamese children, particularly children of United States fathers.¹⁶⁷ Representative Patsy Mink proposed several concrete steps to remove "existing immigration barriers" to Amerasian orphans' adoption.¹⁶⁸ Representative Mink entered the full written transcript of *The Sins of the Fathers* into the Congressional record as evidence of the need to "remove immigration obstacles to American adoption" of "American-fathered Vietnamese orphans."¹⁶⁹

Although most of the bills to expedite American adoption from Vietnam did not pass, these federal legislative efforts validated the attacks on legal oversight in the adoption process and reinforced the backlash against the legal paradigm shift from serving adoptive parents to protecting vulnerable birth parents and their children. Some states, in fact, passed legislation to lower standards in intercountry adoption. For example, Wisconsin modified its adoption law so that the Department of Social Services could approve pre-adoption home studies without assessing children from foreign countries.¹⁷⁰ Connecticut relaxed its adoption requirements, allowing private child-placement agencies, namely, American adoption agencies in Vietnam, to certify a foreign child's adoptability.¹⁷¹

Eventually, the legal framework designed to protect vulnerable Vietnamese parents and children in intercountry adoption collapsed under the attack of Cold War maternalism in the last weeks of the war. In April 1975, President Gerald Ford launched *Operation Babylift*, vowing that "all bureaucratic red tape is being eliminated to the maximum degree" to "rescue" South Vietnamese war orphans and expedite their adoption by American families.¹⁷² With the legal safeguards dismantled, *Operation Babylift* quickly descended into disarray, driven by a maternalist zeal. The identities of approximately 1000 children removed from Vietnam by *Operation Babylift* remain unknown to this day. What began as a rescue mission became a colossal legal calamity.

LIMITS OF THE LAW

The lawsuits stemming from *Operation Babylift* emerged during a pivotal period in American family law after *Stanley*. Central to these cases was the contest between Cold War maternalism and the recognition of Vietnamese mothers' fundamental rights to raise their children. In the federal class action, *Nguyen v. Kissinger*, Judge Spencer Williams refused to consider returning non-orphaned adoptees to their parents, insisting that the adoptees would be better off staying with their adoptive families, regardless of how they were taken.¹⁷³ By contrast, in the adoptees' mothers' lawsuits for their children's custody, the state courts, following *Stanley v. Illinois*, recognized the fundamental parental rights of the adoptees' mothers and ordered reunification. The Connecticut Supreme Court held that the adoptee's mother, Hao Thi Popp possessed a constitutional right to preserve her parental rights unless "the child's welfare plainly requires custody to be placed in the stranger."¹⁷⁴ A Colorado judge, James J. Delaney declared: "The Zens (the adoptive parents), in parlance of the law, are strangers to the child. Mrs. Popp (the mother) is the natural parent so they're not on equal footing, they don't have equal rights (*sic*)."¹⁷⁵ Judge L.E. Plummer of the Hancock County Court in Iowa compelled Johnny and Bonnie Nelson to return Binh to his mother, Doan Thi Hoang Anh, and warned that a natural mother's parental right must be "carefully guarded" as "the danger to one natural mother becomes a threat to all parents."¹⁷⁶ Statistically negligible and burdened with extraordinary cost and delay, these reunifications

¹⁶⁶Varzally, *supra* note 3 at 45.

¹⁶⁷Vietnam Children's Care Agency Hearing, *supra* note 63 at 2-9; Thomas, *supra* note 38 at 63.

¹⁶⁸Thomas, *supra* note 38 at 62.

¹⁶⁹Patsy T. Mink, *Extension of Remarks: The Sins of the Fathers - Vietnam's Dying Orphans*, 119 93RD CONGRESSIONAL RECORD 22,170, 22,170 (1973).

¹⁷⁰Driessen, *supra* note 145 at 281-282.

¹⁷¹Besikof, *supra* note 148 at 791.

¹⁷²Transcript Press Conference No. 12, 7 (1975).

¹⁷³*Nguyen v. Kissinger*, 70 F.R.D. 656, 666 (U.S. District Court, N. D. California 1976).

¹⁷⁴Hao Thi Popp v. Lucas, 182 Conn. at 551.

¹⁷⁵Hearing in re Le Thanh Tung, at 20.

¹⁷⁶L.E. Plummer, *Findings, Conclusions and Decree*, 90 (1976).

were, however, Pyrrhic victories. American courts' mixed record in addressing individual injustices and systemic abuse arising from *Operation Babylift* reveals both the law's capacities and limitations in transcending ideological constraints and confronting the hegemony of Cold War maternalism.

Natural Parent's fundamental rights to the custody, care, and nurture of the child

The Operation Babylift adoptees' mothers' cases in state courts should have been straightforward. *Stanley* unequivocally holds the supremacy of natural parents' constitutionally protected parental rights, unless those rights have been involuntarily terminated by the state through proper judicial proceedings or have been voluntarily relinquished by informed consent. No court, however, was able to order immediate reunification between any adoptee and their mother as the adoptive parents claimed that the Vietnamese mothers had abandoned their children and voluntarily relinquished their parental rights—a core claim of Cold War maternalism.

Evidence offered in court discredited the claim that the Vietnamese mothers had abandoned their children. Extensive testimonies attested to the adoptees' mothers' unwavering commitment to their parental responsibilities and their extraordinary acts of love—ready to make unimaginable sacrifices to ensure their children's safety.¹⁷⁷ In each case, the court found the adoptee's mother to be “a woman of extraordinary courage, perseverance and full compassion for her child.”¹⁷⁸ The case of Doan Thi Hoang Anh offers a powerful rebuttal to the maternalist portrayal of Vietnamese mothers. Doan Thi Hoang Anh had seven mixed-race children. Fearing for her children's safety, she walked 250 miles with the children from Vietnam's Central Highlands to Saigon after the children's father was killed. They arrived in Saigon just days before the city fell.¹⁷⁹ Doan Thi Hoang Anh entrusted her children to FCVN for evacuation to the U.S. Doan Thi Hoang Anh promised her eldest daughter, then 11 years old, that they would be reunited, and instructed her daughter to keep all the siblings together for at least 2 years so that she could find them. Doan Thi Hoang Anh declined to sign any release form for her children's adoption, and obtained FCVN's address in Colorado where she could retrieve her children. True to her word, Doan Thi Hoang Anh arrived in the United States as a refugee months later, located FCVN in Colorado, and found all her children. Six of her children were voluntarily returned to her. Despite Doan Thi Hoang Anh's exhaustive efforts, her youngest son, Binh's adoptive parents refused to return him, arguing that Doan Thi Hoang Anh had abandoned him.¹⁸⁰ The Iowa Supreme Court found that Doan Thi Hoang Anh's “relentless search for them (her children) in this country affirmatively manifests her intention to meet her parental duties and obligations,” and indisputably refuted the adoptive parents' claim that Doan Thi Hoang Anh had abandoned Binh.¹⁸¹

State courts also found the claim that the adoptees' mothers willingly relinquished their children to adoption unconvincing, particularly in the context of war. As exposed in *Nguyen v. Kissinger*, among the 2547 Operation Babylift adoptees, only about 570 had documented parental consent to adoption, and of those, 533 were released for adoption in the final weeks of war.¹⁸² Nancy Stearns argued rigorously that these 533 releases for adoption were not truly voluntary or lawful because they were signed in the total panic spreading through Vietnam at the end of the war.¹⁸³ The state courts agreed, finding that these adoption releases were invalid “due to the exigencies of war.”¹⁸⁴ In Duong Bich Van's case, Judge Richard D. Kuhn emphasized that her relinquishment of her son, Duong

¹⁷⁷Richard D. Kuhn, *Opinion in Duong Bich v. John Dempsy, Michigan Department of Social Services, and David and Barbara Pederson*, 3 (1976); Doan Thi Hoang Anh v. Nelson, 245 NW 2d 511, 515 (Supreme Court 1976); *Hearing in re Le Thanh Tung*, at 10–11; Plummer, *supra* note 176 at 88.

¹⁷⁸*Doan Thi Hoang Anh v. Nelson*, 245 NW 2d at 518.

¹⁷⁹Victoria Graham, *Legal Tug-of-War Rages Over Viet Toddler*, CEDAR RAPIDS GAZETTE, Apr. 25, 1976, at 136; PDF, Statement of Miss Anh-Doan Thi Hoang Anh.

¹⁸⁰Doan Thi Hoang Anh v. Nelson, 245 NW 2d at 515; *Briefs for Doan Thi Hoang Anh v. Johnny Nelson and Bonnie Nelson*, Statement of Miss Ann-Doan Thi Hoang Anh (1976).

¹⁸¹Doan Thi Hoang Anh v. Nelson, 245 NW 2d at 515.

¹⁸²Nancy Stearns et al., *Brief for Plaintiffs-Appellants, Nguyen Da Yen, Et Al., v. Henry Kissinger, et al. in the U.S. Court of Appeals for the Ninth Circuit (Index No. 76-1833)*, 9 (1976); Stearns, *supra* note 2.

¹⁸³Stearns et al., *supra* note 7 at 10.

¹⁸⁴Doan Thi Hoang Anh v. Nelson, 245 NW 2d at 518.

Quoc Tuan, was invalid given the wartime context.¹⁸⁵ Duong Bich Van was a staff of the American adoption agency, FCVN. She feared for her son's life because she worked for Americans. Duong Bich Van begged her American colleagues to take her son to America for adoption. FCVN brought Duong Quoc Tuan to the U.S. through *Operation Babylift* and placed him with a couple in Michigan.¹⁸⁶ Duong Bich Van managed to leave Vietnam and eventually resettled in Green Bay, Wisconsin.¹⁸⁷ After the adoptive parents refused to return her son, Duong Bich Van joined *Nguyen v. Kissinger* to seek custody through federal court.¹⁸⁸ When that failed, she filed for a writ of habeas corpus in Michigan's Oakland County court.¹⁸⁹ The presiding judge, Richard D. Kuhn, found that Duong Bich Van did not abandon or relinquish her son. After a week-long trial, Judge Kuhn address his courtroom packed with the local media:

“Tuan's mother did not reject her responsibility with respect to Tuan, but rather exercised the highest type of responsibility toward him. Trapped in dangerous circumstances over which she had no control, she was ready and willing, if necessary, to make the ultimate sacrifice of final separation to ensure the protection and safety of her child, and... the mother gave her child up as an act of love.”¹⁹⁰

In some cases, American adoption agencies were found to have exploited the wartime circumstances, and pressured Vietnamese mothers to relinquish their children for adoption. The Ohio Supreme Court found that the Holt Adoption Agency took advantage of a Vietnamese mother's fear that her child's life was in danger because the child was black and apparently half-American. Holt's agents repeatedly approached the mother and persuaded her that her child could not survive. The mother was particularly vulnerable because she had witnessed the death of an American Vietnamese child caused by the Viet Cong and feared her child's safety under the Communist regime. The Court concluded that the mother “resisted the entreaties to relinquish her child on several occasions; but her resistance ultimately was overcome by her affection for her child and the fear for her child's life,” and ruled that the mother's release for her child's adoption was not as an exercise of her free will, but as “the result of circumstances which were played upon by the adoption agency.”¹⁹¹

Not all state courts demonstrated the same level of willingness to assess the adoptees' mothers' consent to adoption within the context of war. Hao Thi Popp released her three mixed-race sons to FFAC for adoption during *Operation Babylift*. Her youngest son was placed with a couple in Colorado, and her two older sons were adopted by an unmarried man in Connecticut.¹⁹² In the Colorado court, Judge Delany found that FFAC's tactics to procure Hao Thi Popp's relinquishment of her children would “offend our sensibilities and would certainly violate all our concepts of civil rights of a person to be informed of what the consequences were to be.”¹⁹³ In contrast, Connecticut Judge Harold Dean ruled Hao Thi Popp's relinquishment valid as he found that her allegation of duress lacked credibility. Judge Dean offered no basis for his finding, but his perception of the courtroom demeanor of Hao Thi Popp, whom he characterized as a “bar girl and prostitute in Saigon.”¹⁹⁴

In the legal discourse surrounding abandonment, consent, and duress, American courts not only acknowledged the fundamental parental rights of adoptees' mothers. By retelling their acts of love, extraordinary sacrifice, and steadfast maternal commitment, the state courts' decisions also offered a compelling counternarrative to the racialized maternalist trope of disgraced Vietnamese mothers, who rejected and abandoned their mixed-race children—an

¹⁸⁵Paul Magnusson, *Natural Mother Wins Custody of Viet Son*, DETROIT FREE PRESS, JUNE 22, 1976, at 1.

¹⁸⁶Cheryl Markson, *Affidavit by Cheryl Markson*, (1975); Ross Meador, *Affidavit by Ross Meador*; Terre Super, *Affidavit by Terre Super*, (1976).

¹⁸⁷Vietnamese Woman Seeks to Find Son Sent to U.S., THE DAILY HERALD [Wausau, Wisconsin] (April 14, 1976), at 22.

¹⁸⁸Stearns et al., *supra* note 7 at 59.

¹⁸⁹Joe Kanaapen, *Duong Bich Van Case*, (2023); Joe Kanaapen, *Tuan Narrative*, (2023).

¹⁹⁰Kuhn, *supra* note 177 at 3; Magnusson, *supra* note 185.

¹⁹¹In re Hua, 62 Ohio St. 2d 227, 232 (Supreme Court 1980).

¹⁹²Johnston, *supra* note 10.

¹⁹³Hearing in re Le Thanh Tung, at 5.

¹⁹⁴Harold Dean, *Memorandum of Decision*, 18 (1977); Harold Dean, *Finding*, 80 (1979).

image constructed to justify mass removals of Vietnamese children. The courts' explicit condemnation of the adoption agencies' coercive and deceptive tactics stripped away the humanitarian façade of American adoption in Vietnam, exposing its dark underbelly: “the ultimate deprivation of Vietnam, depriving parents of children and breaking up families.”¹⁹⁵

The best interest of the child

American courts demonstrated a firm commitment to due process and equal protection by recognizing Vietnamese mothers as rights-bearing individuals with the fundamental rights to the custody, nurture, and care of their children. However, the courtroom debates over the adoptees' mothers' fundamental rights to raise their children, and the prevailing view that their children's best interest may be being raised by them underscore the profound tension between maternalist ideologies, and the emerging legal frameworks that recenter the rights of vulnerable parents and their children.

“[[I]t's hard not to think that most of them (the adoptees) are lucky to end up in a middle-class American adoptive family,” the *New York Times* summed up Americans' view.¹⁹⁶ One adoptive parent stated bluntly: “We think this is the best country possible—the kids have so much better chance to grow here, be what they want. In Vietnam, they would be a fisherman or dirt farmer.”¹⁹⁷ In court, adoptive parents argued strenuously that it would be in the adoptees' best interest to remain in their custody because they could provide better homes, superior educational opportunities, and higher standards of living.¹⁹⁸ Wearied of these insidious comparisons, the adoptees' attorneys argued in *Nguyen v. Kissinger* that their case was not a case of parenting, but wrongful removal and retention of children, and that applying the best interest analysis in the case would inevitably “legalize” the permanent separation of Vietnamese parents from their children.¹⁹⁹ Similarly, in state courts, the Vietnamese mothers' attorneys urged courts to treat their cases as “illegal” removal and retention rather, than custody disputes.²⁰⁰ Implied in these arguments was, however unavoidably, a concession that the superiority of an American middle-class upbringing was indisputable.

Judge Williams indeed turned *Nguyen v. Kissinger* into an inquiry on the adoptees' well-being and a comparison between the American imagination of Vietnamese parenthood and an idealized vision of an American middle-class upbringing. Believing that Vietnamese parents, at least some, were unwilling or unable to raise their children, Judge Williams reasoned that the adoptees, as a class, lacked a common interest in returning to their parents because at least some adoptees would be better off remaining with the adoptive parents, and their best interest would be not returning to their parents.²⁰¹ He “feared” that the adoptees might be returned to “an environment where they were not wanted,” because the efforts to locate the adoptees' parents could prompt some parents' “latent guilt feelings” and “illusory desire” for reunion with their children.²⁰²

Judge Williams bemoaned the difficulty and impracticality of tracing non-orphaned adoptees' parents in Vietnam and reuniting them with their children.²⁰³ Repatriating thousands of children displaced by war and reuniting them with their families as a group was not unthinkable or unprecedented. Nancy Stearns pointed out that more than 50,000 Nigerian “war orphans” were reunited with their families following the 1967–1970 Nigeria-Biafra civil

¹⁹⁵George, *supra* note 1 at 28.

¹⁹⁶Johnston, *supra* note 10 at 83; Tracy Johnston, *Viet Babylift – the Final Irony: Viet “Babylift” Aftermath... in Court*, CHICAGO TRIBUNE (1963–1996), May 9, 1976, at 1.

¹⁹⁷Johnston, *supra* note 10 at 78.

¹⁹⁸Lifton, *supra* note 10 at 21; Joe Knaapen, *Custody Trial Opens Over Vietnamese Boy*, GREEN BAY PRESS GAZETTE, June 17, 1976, at 47; Graham, *supra* note 179.

¹⁹⁹Stearns et al., *supra* note 7 at 69.

²⁰⁰Complaint for Writ of Habeas Corpus (1976).

²⁰¹*Nguyen v. Kissinger*, 70 F.R.D. 656, 667 (N.D. Cal. 1976).

²⁰²*Nguyen v. Kissinger*, 70 F.R.D. at 673.

²⁰³*Id.*

war. The warring sides rejected European and American adoption agencies' offer to place these children for adoption with white families. With the international humanitarian community's assistance, all but 27 of the Nigerian war orphans were reunited with their immediate or extended families.²⁰⁴ Child welfare experts agreed that the experience with Biafran children was “the best lesson to apply to the Vietnam situation.”²⁰⁵ The Red Cross and the Vietnamese government agreed to assist in locating the adoptees' families and facilitating their return to Vietnam.²⁰⁶ Despite the precedent in Nigeria, and the available resources to reunite the non-orphaned adoptees with their families, Judge Williams categorically refused to even consider the possibility of returning any adoptees. As he was convinced that there was no better life than what an American middle-class family could offer. Crucially, the dismissal of *Nguyen v. Kissinger* imposed this onerous burden on each adoptee's parents to individually appear in American courts to prove their willingness and fitness to raise their own children.²⁰⁷ In the state courts, the adoptees and their mothers bore the emotional and financial burden of protracted litigation. Hao Thi Popp, for example, spent more than 5 years and over \$80,000 on legal fees to regain the custody of her two sons.²⁰⁸

While natural parents enjoy a constitutionally protected right to raise their children, this right operates under a rebuttable presumption that parental custody serves the child's best interest. In other words, these rights may be terminated or modified if the child's best interest requires it.²⁰⁹ Well-established state law holds that while natural parental custody is presumed to serve a child's best interest, this presumption can be rebutted by clear and convincing evidence that the best interest of the child requires a different custodial arrangement.²¹⁰ As a result, the best interest test became a powerful tool for the adoptive parents, and an unavoidable obstacle in the adoptees' mothers' cases in state courts.

The financial disparity between the adoptive parents and the adoptees' refugee mothers was stark. American adoption agencies in South Vietnam primarily served affluent white families. During the early 1970s, adopting a Vietnamese child cost approximately \$2000—a substantial sum that effectively limited access to adoption to wealthier families.²¹¹ To contextualize this financial barrier: in 1972, the median U.S. household income was \$11,120.²¹² As in the case of Hao Thi Popp, the Connecticut trial court noted that Hao Thi Popp could not compete financially with the adopter, who provided private education, domestic help, and a grand home.²¹³

Besides financial advantages, adoptive parents claimed psychological parentage—firm emotional parent–child bonds that have developed through “day-to-day interaction, companionship, and shared experience,” and may outweigh biological ties.²¹⁴ Adoptive parents contended that the children's emotional bonds with their adoptive parents should take precedence over their biological connections with their natural mothers. Adoptive parents reacted with outrage at the prospect of returning the children to their families in Vietnam as they had grown attached to the children. “Legalities? ... what a return could do to these children; to us, the families? ... How it would tear my heart out!” decried one adoptive parent indignantly.²¹⁵ The adoptive parents' psychological experts asserted that there was no “cogent reason” to return the children to their natural mothers since the adoptive parents had become the children's “psychological parents.”²¹⁶ They warned that separating the adoptees from their adoptive parents would be “cruel

²⁰⁴Stearns et al., *supra* note 7 at 13–14.

²⁰⁵Joseph H. Reid, *American Aid Needed to Keep Vietnam's Children in Vietnam*, Statement by Joseph H. Reid, Executive Director, CHILD WELFARE LEAGUE OF AMERICA, (1975).

²⁰⁶Interview With Tom Miller, Operation Babylift Litigation, *supra* note 3.

²⁰⁷Martin Guggenheim, *Babylift Victims: Vietnamese Parents Seek Their Kidnapped Children*, CIVIL LIBERTY, June 1976, at 1. https://www.fordlibrarymuseum.gov/sites/default/files/pdf_documents/library/document/0412/041200011.pdf [<https://perma.cc/CT4H-AJ5W>].

²⁰⁸William Popp, Letter from William Popp to Congressman Stewart B. McKinney, 6 (1982).

²⁰⁹*Hua*, 405 N.E.2d at 259; *In re Hua*, 62 Ohio St. 2d; *Doan Thi Hoang Anh v. Nelson*, 245 NW 2d; *Hao Thi Popp v. Lucas*, 182 Conn.

²¹⁰*Hua*, 405 N.E.2d at 259; Kuhn, *supra* note 151 at 4, citing M.C.L.A. 722.3 currently as MCLA 722.25 (1).

²¹¹Vietnam Children's Care Agency Hearing, *supra* note 63 at 15, 17.

²¹²US CENSUS BUREAU, *Money Income in 1972 of Families and Persons in the U.S.*, <https://www.census.gov/library/publications/1973/demo/p60-90.html> [<https://perma.cc/5Z63-X5XP>] (last visited Sep 29, 2024).

²¹³*Plaintiff's and Defendant's Appeals from Superior Court, Hao Thi Popp v. Richard Lucas*, et al, Finding (August 17, 1979) (1977).

²¹⁴Joseph Goldstein, Anna Freud & Albert J. Solnit, *Beyond the Best Interests of the Child*, 18–19 and 31 (1979).

²¹⁵Pamela Chatterton Purdy, *Taking Footprints – A Visit from Immigration*, in *BEYOND THE BABYLIFT: A STORY OF AN ADOPTION* (1987), <https://www.adoptvietnam.org/adoption/babylift-footprints.htm>. [<https://perma.cc/Y3U8-C6VM>].

²¹⁶*Doan Thi Hoang Anh v. Nelson*, 245 NW 2d at 518.

and traumatic” for the children, who had already developed “a positive and gratifying relationship” with their adoptive parents.²¹⁷

The notion that psychological parentage could transcend biology resonated with Americans. Even the comic strip *Doonesbury* weighed in with an optimistic story about “Kim,” the very last orphan out of Vietnam, and her adoptive parents, the Rosenthals. The story began with Kim arriving in the U.S. as “Abigaile” on an *Operation Babylift* flight, and the Rosenthals being questioned whether they adopted Kim “to atone for our collective national guilt through individual action.”²¹⁸ As the story progressed, Kim adjusted to American life, and the Rosenthals became Kim’s parents. Finally, as she uttered her first words, “BIG MAC!” while enjoying the quintessential American meal with Mr. Rosenthal, Kim completed her transformation to an all-American girl that the Rosenthals renamed “Marcy.”²¹⁹ *Doonesbury* ended the story with a declaration: “Her re-adjustment has been just amazing—especially when you consider that this little kid has never had a family and has been through everything from malnutrition to mortar attacks!”²²⁰ *Doonesbury* omitted that Kim already had a family, and her mother might be looking for her.

The state judges acknowledged adoptive parents’ material advantages but did not find it determinative in serving the children’s best interests.²²¹ They not only firmly rejected the adoptive parents’ psychological parentage claims, but also criticized their obstructionist tactics in prolonging litigation to bolster the psychological parentage claim.²²² Judge Kuhn admonished the adoptive parents for “stonewalling” Duong Bich Van for months.²²³ The public agreed. A Wisconsin local newspaper remarked, “their (the adoptive parents’) willingness to deny the natural mother knowledge of where Tuan (the child) was, and ... to “stonewall” the case, throws into doubt their integrity as well. It also seems to reflect some of the contempt Americans too often demonstrate toward people of other nations, particularly those of other than the white race from underdeveloped lands.”²²⁴

Some state courts, in their best interest analysis, recognized that nurturing an adoptee’s connection to their Vietnamese identity is vital for their emotional well-being. In *Nguyen v. Kissinger*, the adoptees’ attorneys argued that the *Babylift* adoptees must be returned to their own families or placed with Vietnamese families.²²⁵ Transracial adoption scholars, Joseph Westermeyer and Joyce Ladner, testified about severe identity conflicts and racial prejudice faced by Black and Native American children raised by white families.²²⁶ Ladner suggested that Vietnamese children would benefit from returning to their birth families and culture, even with fewer material advantages, because emotional and cultural security should not be sacrificed for material comfort.²²⁷ The state courts considered these views in the adoptees’ mothers’ cases.²²⁸ Considering the adoptive father’s hostility toward the child’s Catholic faith, Judge Kuhn decided that “since the two parties are of different religions and there is a different creed involved ... in the long run the best interest would be with the natural mother.”²²⁹ A Californian court returned an adoptee to his mother in consideration of his psychological wellbeing, noting that the child had rejected his Vietnamese heritage when he was living with the adoptive family, but embraced his identity as “half Viet, half-American after he had been reunited with his mother for two months.”²³⁰ Similarly, the Iowa courts were alarmed that Doan Thi Hoang Anh’s son “had begun to reject his Vietnamese heritage” and that “continued absence from his mother would probably

²¹⁷James Elsmann, *Duong Bich Van v. Dempsey*, (2023); John E. Simonton, *Letter from John E. Simonton to James Elsmann, Re: Matthew Pederson*, (1976).

²¹⁸Garry Trudeau, *Doonesbury*, May 8, 1975, <https://production.doonesbury.com/strip/archive/1975/05/08>. [<https://perma.cc/X42U-ARUR>].

²¹⁹Garry Trudeau, *Doonesbury*, THE WASHINGTON POST, May 10, 1975, <https://production.doonesbury.com/strip/archive/1975/05/10> [<https://perma.cc/R3LQ-QB9Y>]; Garry Trudeau, *Doonesbury*, THE WASHINGTON POST, May 9, 1975, <https://production.doonesbury.com/strip/archive/1975/05/09>. [<https://perma.cc/E888-LLTH>].

²²⁰Garry Trudeau, *Doonesbury*, THE WASHINGTON POST, Aug. 27, 1975, <https://production.doonesbury.com/strip/archive/1975/08/27>. [<https://perma.cc/G788-LTBR>].

²²¹Hearing in re Le Thanh Tung, at 20; Kuhn, *supra* note 177; Doan Thi Hoang Anh v. Nelson, 245 NW 2d at 518.

²²²Doan Thi Hoang Anh v. Nelson, 245 NW 2d at 518.

²²³Kuhn, *supra* note 177 at 7, 11.

²²⁴*Vietnamese Mother and Son*, THE POST-CRESCENT, June 25, 1976, at 4.

²²⁵Stearns et al., *supra* note 7 at 69–70; Stearns, *supra* note 4.

²²⁶Stearns et al., *supra* note 7 at 57.

²²⁷*Id.*

²²⁸Guggenheim and Stearns, *supra* note 6 at 18–19.

²²⁹Kuhn, *supra* note 177 at 7.

²³⁰Guggenheim and Stearns, *supra* note 6 at 19.

result in further alienation from his heritage,” as he stated “to avoid contact with a Vietnamese family in the community, in effect, rejecting his cultural and racial roots.”²³¹

The adoptees' mothers' parental fitness was attacked and strictly scrutinized as the state courts conducted the best-interest analysis. The adoptive parents told the Iowa courts that each of Doan Thi Hoang Anh's seven children had a different father and “her parents disowned [her] because [of] the lifestyle that she had led.”²³² In Michigan, Duong Bich Van was criticized for being an unwed Catholic mother. Although Judge Kuhn ruled in favor of Duong Bich Van, he determined that the adoptive parents were more morally fit because she had a child out of wedlock.²³³ Connecticut Judge Dean ignored eyewitnesses' testimonies about the adopter's neglect and abuse of the children, and even psychiatric reports confirming the children's bond with Hao Thi Popp. He ruled in favor of the wealthy adopter over Hao Thi Popp, who was portrayed in the court papers as a “bar girl” and prostitute—a “class of people is not good [sic].”²³⁴

The protracted litigation prolonged the separation between the mothers and their children and alienated the adoptees from their mothers and Vietnamese heritage. As the courts had acknowledged, some children expressed rejection, resentment, and hostilities toward their mothers, and the Vietnamese language, culture, and people.²³⁵ Lengthy separations also led to further tragedies, as in Hao Thi Popp's case. Hao Thi Popp spent 5 years in Connecticut courts fighting for her two sons. The child psychiatrists in the case observed that Hao Thi Popp's sons actively searched for their mother. The boys voiced anger at the long separation and showed joy and affection toward their mother during their brief reunions throughout the litigation.²³⁶ Barred by the adopter from contacting their mother, the boys secretly sent her a letter with a housekeeper's help, telling her that they missed their little brother and hoped to see her “real soon.”²³⁷ Tragically, shortly before the Connecticut Supreme Court ruled in favor of Hao Thi Popp, the adopter abducted the boys to Brazil with FFAC's help.²³⁸ Hao Thi Popp's eventual legal victory was rendered meaningless by the adopter's abduction of her children.

The adoptees' reunions with their mothers in state courts demonstrated American courts' commitment to due process and equal protection of Vietnamese mothers' fundamental rights to raise their children. However, the lengthy legal proceedings in American courts subjected the adoptees and their mothers, already traumatized by war and displacement, to demeaning scrutiny, cultural alienation, prolonged separation, and even abuse. The *Operation Babylift* adoptees and some of their mothers' legal struggles in American courts underscore the law's inability to overcome maternalist ideological constraints to remedy individual injustice or system exploitation in intercountry adoption.

CONCLUSION

Nguyen v. Kissinger compelled a global reckoning with intercountry adoption. U.S. intercountry adoption law refocused on protecting children and their biological families from exploitation.²³⁹ For instance, Wisconsin enacted a

²³¹Doan Thi Hoang Anh v. Nelson, 245 NW 2d at 518.

²³²Anh v. Nelson Briefs, *supra* note 180 at 92; Graham, Victoria, *Two Mothers Claim Viet Boy a Case for Solomon*, THE STATE JOURNAL, Apr. 25, 1976, at D; Graham, *supra* note 179.

²³³Kuhn, *supra* note 177 at 7–8.

²³⁴Popp v. Lucas Appeals, *supra* note 213 at 12, 56, 57, 64, A-49; *Id.* at Anna Bazso Testimony; *Id.* at Dr. Leon Yorburg Testimony; *Id.* at Letter from Dr. Albert J. Solnit; *Plaintiff's and Defendant's Appeals from Superior Court*, Hao Thi Popp v. Richard Lucas, Et Al, 3, 4, 44, 50, A-9, A-10, A-13, A-14, A-17, (1980).

²³⁵Guggenheim and Stearns, *supra* note 6 at 19; Doan Thi Hoang Anh v. Nelson, 245 NW 2d; Graham, *supra* note 179.

²³⁶Popp v. Lucas Appeals, *supra* note 213 at Dr. Leon Yorburg Testimony; *Id.* at Dr. Albert Solnit Testimony; *Id.* at Letter from Albert J. Solnit, M.D. (December 6, 1976).

²³⁷Popp v. Lucas Appeals, *supra* note 213 at Brief of the Plaintiff-Appellant Hao Thi Popp.

²³⁸Frank Cochran, *Letter from Frank Cochran to Romeo Zero, Deputy Consul General, Consulate General of Brazil*, (1980); Frank Cochran, *Letter from Frank Cochran to Romeo Zero, Deputy Consul General, Consulate General of Brazil*, (1980); Wende Grant, *Letter from Wende Grant*, (1979); Robert E. Tomasson, *Connecticut Invalidates Adoption of 2 Vietnamese*, NEW YORK TIMES, Dec. 28, 1980, at 28. <https://www.nytimes.com/1980/12/28/archives/connecticut-invalidates-adoption-of-2-vietnamese.html> [<https://perma.cc/4QN7-7SFD>].

²³⁹AMERICAN PUBLIC WELFARE ASSOCIATION & U.S., INTERCOUNTRY ADOPTION GUIDELINES xii (1980), <https://catalog.hathitrust.org/Record/000739932> [<https://perma.cc/4RGE-JDTA>] (last visited May 8, 2025).

1981 law requiring formal judicial termination of the natural parents' parental rights with due process in the child's country of origin.²⁴⁰ At the international level, a legal framework for intercountry adoption has been established, prioritizing the preservation of the child's ties to their family of origin and the paramount importance of the child's best interests and fundamental rights.²⁴¹ The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and the 1990 United Nations Convention on the Rights of the Child both affirm that the child's best interest is paramount in adoption practices.²⁴²

Yet abuse, corruption, and exploitation continue to plague the intercountry adoption system.²⁴³ Several major sending countries have severely restricted or ended intercountry adoption due to wide-spread abuse and exploitation.²⁴⁴ Some receiving countries ended or suspended their intercountry adoption programs in 2024 because of the trauma and abuse experienced by adoptees.²⁴⁵ Acknowledging the abuses and structural inequities within intercountry adoption, ardent supporters of intercountry adoption contend that stronger laws and greater global oversight could mitigate harm, and prevent abuse and exploitation in intercountry adoption, which remains “a noble institution” providing a homeless child with an alternative family—a home that each child has a human right to have.²⁴⁶ By contrast, critics of intercountry adoption accuse it of violating children's rights by trafficking children to meet adopters' needs.²⁴⁷ Despite their disagreement, both the proponents and opponents of intercountry adoption remain child-centric and view the child's wellbeing separately from their mother—a hallmark of maternalist adoption ideology.²⁴⁸

“It is not necessary to rescue children” from Vietnam, Trần Tương Như and Tom Miller wrote on the eve of *Operation Babylift*.²⁴⁹ They asked the world to help “solve the terrible problem of orphaned and homeless children in a Vietnamese context, using the strength of the Vietnamese family” instead of sending them to institutions or strangers' homes.²⁵⁰ Their call from half a century ago implores us to reconcile the child's best interest with their mother's rights to the custody, care, and nurture of her own child, and help her raise her child at their own home in their own homeland. So long as intercountry adoption law adheres to a maternalist ideological framework, and

²⁴⁰Wisconsin State Assembly Bill, 732–733 (1981).

²⁴¹Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. [<https://perma.cc/PUF5-DWD6>].

²⁴²Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), May 29, 1993, 1870 U.N.T.S. 167, (<https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>) [<https://perma.cc/QYL7-7WY8>]; Convention on the Rights of the Child (CRC), Nov. 20, 1989, 1577 U.N.T.S. 3, (<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>) [<https://perma.cc/EF3W-8Y87>].

²⁴³Kerry O'Halloran, *The Politics of Adoption: International Perspectives on Law, Policy and Practice* 160 (2021), <http://link.springer.com/10.1007/978-3-030-65588-4> [<https://perma.cc/3DZ6-KC97>]; Barbara Stark, *When Genealogy Matters: Intercountry Adoption, International Human Rights, and Global Neoliberalism*, 51 *VAND. J. TRANSNAT'L L.* 159, 199 (2018).

²⁴⁴O'Halloran, *supra* note 243 at 203; Mariela Neagu, *Children by Request: Romania's Children between Rights and International Politics*, 29 *INT'L J.L. POL. & FAM.* 215 (2015); David M. Smolin, *Intercountry Adoption as Child Trafficking*, 39 *VAL. U. L. REV.* 281 (2004).

²⁴⁵Ali Watkins, *In Norway, a Proposed Ban on Foreign Adoptions Rattles All Sides of a Heated Debate*, *THE NEW YORK TIMES*, Jan. 17, 2024, <https://www.nytimes.com/2024/01/17/world/europe/foreign-adoptions-ban-norway-denmark.html>. [<https://perma.cc/87DQ-K5BJ>].

²⁴⁶1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption – 25 Years of Protecting Children in Intercountry Adoption, 5, (<https://www.hcch.net/en/publications-and-studies/details4/?pid=6604&dtid=3>) [<https://perma.cc/ZKX5-XQ5Y>] (last visited Oct. 26, 2024);

Stacie I. Strong, *Children's Rights in Intercountry Adoption: Toward a New Goal*, 13 *B.U. INT'L L. J.* 163, 186–189 (1995); Elizabeth Barthelet, *International Adoption: Current Status and Future Prospects*, 3 *THE FUTURE OF CHILDREN* 89 (1993); Elizabeth Barthelet, *International Adoption: The Human Rights Position*, 1 *GLOBAL POLICY* 91 (2010); Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption Cases*, 21 *B.U. INT'L L. J.* 179, 253–254 (2003); Rachel J. Wechsler, *Giving Every Child a Chance: The Need for Reform and Infrastructure in Intercountry Adoption Policy*, 22 *PACE INT'L L. REV.* 1, 4–12 (2010); Jorge L. Carro, *Regulation of Intercountry Adoption: Can the Abuses Come to an End*, 18 *HASTINGS INT'L & COMP. L. REV.* 121 (1994); D. Marianne Blair, *Safeguarding the Interests of Children in Intercountry Adoption: Assessing the Gatekeepers Wells Conference on Adoption Law*, 34 *CAP. U. L. REV.* 349 (2005); Barbara Stark, *Toward a Theory of Intercountry Human Rights: Global Capitalism and the Rise and Fall of Intercountry Adoption*, 95 *IND. L.J.* 1365 (2020).

²⁴⁷Kerry O'Halloran, *THE POLITICS OF ADOPTION: INTERNATIONAL PERSPECTIVES ON LAW, POLICY AND PRACTICE*, Intercountry Adoption and the Hague Convention (2021); David M. Smolin, *Intercountry Adoption as Child Trafficking*, 39 *VAL. U. L. REV.* 281 (2004); Carol Bellamy, *Correspondence: Kosovo Kids*, 8 *THE WEEKLY STANDARD*, Jun. 2003, at 6; Diamante Chamberlain, *International Adoptions and Overlooked Abuse: Hawaii's Role in Marshallese Adoptions Comments*, 46 *U. HAW. L. REV.* 209 (2023).

²⁴⁸Högbacka, *supra* note 18 at 280.

²⁴⁹Tương Như, Trần, *Press Release: Aid Group Questions Orphan Airlift*, (1975).

²⁵⁰*Id.*

separates a child's wellbeing from their mother's, its effectiveness in preventing and remedying individual harm, and systemic injustice in intercountry adoption will remain limited, as history has shown.

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