

BOOK DISCUSSION

**Book Discussion: Winner, 2020 Distinguished Book Award, Asian Law and Society Association (ALSA), Anna High, *Non-Governmental Orphan Relief in China: Law, Policy, and Practice* (Routledge, 2019): Introduction by Hiroshi Fukurai**

**I. Introduction**

This award-winning book by Professor Anna High constitutes a major and significant socio-legal study of how the non-state, “unregistered” institutions and welfare agencies have dealt with the vulnerable populations of orphaned and abandoned infants and children in China. Based on many years of in-depth interviews and field observations, the author critically examines how Chinese law, state and local policies, institutional practices, and governance of non-governmental agencies, including foreign and Chinese non-governmental organizations (NGOs), have filled the huge gaps left by the formal state welfare actors in taking responsibilities for orphanages and foster homes—social welfare problems that have emerged during the turbulent and transformative era of the last several decades in China. The book further interrogates the nuanced nexus among the Chinese government’s oversight responsibilities, formal and standardized; social impacts of state-mandated birth planning policies, the cultural treatment of “undesired” infant girls, and the abandonment of “disabled” children in rural regions. The book also asks critical questions regarding human rights obligations to maintain and improve the quality of life for orphaned and vulnerable infants and children in China, including the situations of those whose primary caregivers were serving long-term or life sentences at China’s carceral institutions. The author’s socio-legal and “on-the-ground” studies of China’s organized care of orphans and vulnerable children are highly relevant, particularly as the 2021 UNICEF report indicated that the majority of the 153 million orphans in the world were still found in Asia, mostly in China, India, Afghanistan, and other regions in Central, Southeast, and West Asia. Furthermore, in 2020, China, India, and South Korea became the top three countries in the world that made arrangements for international adoption of their orphans and vulnerable children.<sup>1</sup>

Since the beginning of this millennium, the “geopolitical” analysis of the rise in the number of orphans and other vulnerable children began to receive increased international attention from socio-legal scholars, state policy-makers, human rights organizations, and international agencies around the globe. Such agencies included the UN and other international groups, including UNICEF, the Defense for Children International (DCI), Save the Children, and the Centers for Disease Control and Prevention (CDC), among many others.<sup>2</sup> The increase in vulnerable children spiked when the world was hit by the COVID-19 pandemic in 2020. The CDC reported, for instance, that COVID-19 alone produced 1.5 million

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<sup>1</sup> Jones (2018).

<sup>2</sup> *Ibid.*

orphans, including those in many poor countries in Asia. A series of cross-species viruses, including HIV/AIDS, SARS, MERS, and other deadly zoonotic epidemics, had previously contributed to the loss of parents and guardians in multiple regions of Asia.<sup>3</sup> Military conflicts in Afghanistan, Iraq, Syria, Yemen, and other “war-zones” in West Asia also resulted in hundreds of thousands of children being left without parents. The Arab Spring conflict in Syria in 2011, for instance, forced 8,000 children to flee Syria without their parents.<sup>4</sup> There were also deaths of parents and the dislocation of caregivers and family members due to earthquakes, cyclones, tsunamis, and other natural disasters that took place throughout Asia, including in Afghanistan, India, Pakistan, Bangladesh, Nepal, the Philippines, and other vulnerable regions. Government sanctions and policies against ethnic minorities further contributed to the “political production” of vulnerable children, including Rohingyas in Rakhine, Myanmar; Muslims in Kashmir, India; Karen and other ethnic nations in Myanmar; and religious and ethnic communities in other parts of Asia. These multiple factors further increased the numbers of vulnerable children and traumatized many families as a result of the deaths and/or forced dislocation of their parents, legal guardians, and principal caregivers.

## 2. Socio-legal studies of orphans and vulnerable children in China

Given the wars, natural disasters, epidemics, and sociopolitical sanctions and traumas inflicted upon multiple ethnic groups, families, women, and children in multiple regions of Asia, the analysis of the precarity of orphans and abandoned children in China provides an important socio-legal view of the intersectionality of disability and gender, the friction between China’s traditional “filial piety,” and the cultural strictures caused by harsh economic and social reality, as well as the nexus of governmental policies and the reality of implementation. While hundreds of thousands of Asian children have been traumatized and orphaned by the impact of military aggressions, government sanctions, the COVID-19 pandemic, and other significant disasters that have struck various regions of Asia, China had been somewhat unscathed by many of the external natural or geopolitical conflicts that were observed in other Asian countries and regions.<sup>5</sup>

Previous research related to vulnerable children and orphans in China thus focused on internal and external political forces that had produced these vulnerable populations. For instance, the end of World War II resulted in many Japanese orphans, left behind and/or abandoned by their own parents when the Soviet troops began the military assault of Japan’s former colony in Manchukuo in the north-eastern region of China in 1945.<sup>6</sup> Many orphaned children were adopted by Chinese families without knowledge of their ancestral connections to their parents, siblings, and families in Japan, despite the China–Japan collaborative efforts to address this human rights issues for many decades following the war.<sup>7</sup> The governmental policy on reproductive restriction due to China’s one-child policy has also affected unwanted pregnancies and infant femicides for many decades.<sup>8</sup> In addition, the lack of public and private resources and inabilities of families to deal with disabled children and those with significant handicaps have led to their abandonment and calamitous situations. Professor High reports that the Chinese government allows private orphanages and foster homes to engage in non-state welfare sectors to improve the life quality of abandoned children and thus fill the gaps left by the formal

<sup>3</sup> Pinsker (2021).

<sup>4</sup> Radenkovic (2016).

<sup>5</sup> The exception is the 2008 Sichuan Earthquake, which led to the loss of 87,000 lives.

<sup>6</sup> Chan (2011).

<sup>7</sup> Itoh (2010).

<sup>8</sup> Johnson (2017).

state orphan welfare programmes. Another important element noted is that the creation of stratification among China's orphans has led to differential access to care and adoption prospects. While this reproductive policy might not have been imposed on other ethnic minorities, such as Muslims in Xinjiang and Tibetan autonomous regions, the lack of resources for orphans and other vulnerable children has also been reported elsewhere, including those areas faced with illegal adoption and child abandonment, among others.<sup>9</sup>

There has been a rapid economic ascension of the Chinese economy, during which, according to the World Bank (WB) report, more than 850 million Chinese people have moved out of destitute poverty. The issue of orphans and their treatment by state and local governments as well as newly emerged private sectors remains a very significant socio-legal issue in China, especially as it moves towards greater socioeconomic and political prosperity in the twenty-first century. The new political agenda of “common prosperity” furthered by the Communist Party of China has tried to eradicate the economic inequities and disparities in poor rural regions that had beset many of China's impoverished populations for many years.

Professor High's book presents a timely and critically significant understanding of the trajectory of China's socio-legal and economic policies in relation to one of the most vulnerable segments of populations. It also provides an important view of the socio-legal conditions of China's orphans in today's Chinese society, including a wealth of information and insights into the work of caretakers and humanitarian workers, as well as the role of international NGOs and private institutions that have often operated in the shadow of the law. As China has adopted unprecedented poverty-eradication policies since 2013 and Professor High's analysis ends in 2017, it may benefit from follow-up studies and analysis of China's orphans and vulnerable populations, particularly in light of China's announcement in February 2021 that extreme poverty had been eliminated from a country of 1.4 billion people.<sup>10</sup> Professor High's book also makes valuable contributions to discussions of the transformation of Chinese policies from welfare statism to welfare pluralism, promoting the infusion of private-sector investment into government-led orphanage custody, facilities, and services.

### 3. Conclusions

The “Book Discussion Session” event was initiated at the 2018 Asian Law and Society Association (ALSA) meeting in Taiwan. Multiple scholars were invited to discuss the socio-legal significance of the book that had received the ALSA's Distinguished Book Award that year. The contents of the panel discussions were then published in the *Asian Journal of Law and Society*, along with the author's responses to the critical comments, engaging debates, and constructive suggestions made by discussants of the book. The outbreak in 2020 of the COVID-19 global pandemic forced the cancellation of the annual conference for the first time since ALSA's inception in 2015. Following this setback, three scholars were invited to offer critical comments, analyses, and constructive critiques of Professor High's award-winning book at the 2021 ALSA Conference in Bangkok, Thailand. These scholars included Xiaochen Liang at the University of California, Santa Cruz, US; and Xu Zheng and Shahla Ali at the University of Hong Kong, PRC. The evaluations and critiques of the award book were included in the publication of this issue. The commentary by Xiaochen Liang had already been published in the *Asian Journal of Law and Society*<sup>11</sup> and thus was not included in this issue. The co-authored commentary by both Xu Zheng and Shahla Ali was included in this volume, which was then followed by Professor

<sup>9</sup> US Congress (2004).

<sup>10</sup> Aljazeera (2021).

<sup>11</sup> Liang (2020).

High's responses to the contents of two joint commentaries. The ALSA tradition of the Book Discussion Section and the publication of the critical discussions of the award book will continue in order to showcase the excellent socio-legal research and analysis by scholars, researchers, and legal practitioners specialized in the field of law and society in Asia.

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