

Forms and Usage of Adoption through History

An Honors Thesis (HONR 499)

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To my daughter

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Abstract

The purpose of this paper is to give a detailed overview of the history of adoption in order to enable the reader to understand adoption in the modern-day world. Since the purpose and direction of adoption took a turn in the nineteenth-century United States which has forever changed the way the world views it, the story told here works to pave a path from antiquity to Europe to America. Adoption has a rich history which extends back to antiquity. Though adoption served a variety of purposes across differing cultures, its primary function has generally been one of continuing the family line. This furnishing of an heir materially benefitted both the adoptive family and the adopted person. In many cultures, certain original family lines dominated their societies from the time of early tribal formation. By the Middle Ages, descendants of these original members came to be popularly mythologized as having divine blood. This widespread perception of inherent superiority of blood allowed the uncontested perpetuation of noble classes which became increasingly hostile to adoption, viewing it as a perversion of bloodline inheritance. Concurrently, Christian monasticism spread throughout Europe, and with it the practice of child oblation which served as a humane form of child abandonment. By the time the New World had been settled fairly thoroughly, the United States had begun the gradual creation of formal adoption legislation to provide for the best interests of a steadily increasing number of dependent children. As international policy began shifting toward globalization in the twentieth century, intercountry adoption came to be formally instituted and increasingly regulated. The international community continues to work to improve available opportunities for care of dependent children, both domestic and international.

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Forms and Usage of Adoption Through History

Introduction

Adoption, like other cultural customs, has naturally been practiced in different manners across cultures and over time. The practice of adoption has a rich history which extends back to antiquity and has culminated in benevolent international adoption policies today. Though adoption served a variety of purposes across differing cultures, its primary function has generally been one of continuing the family line. By the Middle Ages, however, a class of European nobility had formed which believed itself to have superior blood to the lower classes, a perception which necessitated the demolishing of adoption practice as useless for bloodline inheritance. As this attitude became fashionable also within the lower classes, dependent children were increasing given up to be raised in monasteries as a humane method of child abandonment. Within its first century of existence, the United States began to recognize adoption as a legal institution which was to serve the best interests of adopted children, a revolutionary focus which continued to be the foundational principle of all future US and international adoption laws. Tracing the history of adoption backwards from US history enables a thorough grasp of modern adoption policy worldwide.

I. Adoption in Antiquity

Though adoption in antiquity occurred in situations which differed greatly from one another, it generally served to maintain the family line. Several ancient cultures even practiced multiple forms concurrently. In ancient Roman culture, there were two distinct forms of fictive ties: adrogation of a free person, and adoption of a child under jural authority (proper adoption).

Typically, a child was adopted, whereas an adult was adrogated. This was not always the case though; an adult under jural authority, here meaning legal parental authority, (probably a female) would have to be properly adopted, while a child under no jural authority could be adopted by his own free will. This mechanism of differentiating without explicit regard to age is due to the perception that any man under his own authority is head of a household, even if he had no spouse or children. In an adrogation relationship, the person adrogated brought all his family and possessions along into his new family. More confusingly, in ancient India there have been recorded at least twelve distinct versions of fictive sonship or filiation. Aside from proper adoption, which worked much like it did in other ancient cultures, the only one of these fictive kinships to survive today is that of the “appointed daughter.” This daughter would provide her firstborn son as an heir to her father’s line in the event that he had no son to be a proper heir.

In antiquity, adults were often adopted more frequently than children. An ancient text from the city of Sippar in Babylonia describes the adoption of adults for purposes of marriage arrangements (Suurmeijer, 2010). Though such arrangements were often made with infants and children for marriage in the future, this was not an uncommon practice with nubile, or sexually mature, women who required a parent to give them away. The same text gives cases of adults being adopted in order to provide for the sustenance of older adopters, with the reciprocal benefit of gaining inheritance rights. In the broader ancient Near East during the late Bronze Age (Justel, 2011), we find the same sorts of arrangements: adoption of mature females, sometimes as concubines, other times to perform funeral rites as a true daughter would customarily do for her mother upon the death of the latter. In Roman culture, an adult could be adopted if she were under the legal authority of her parents (she being presumably female, because an adult male would be considered as head of a family and therefore independent).

Adoption in antiquity ultimately benefitted both of the involved parties. Though adoption in antiquity was not typically performed in order to pursue the best interests of an adopted child, the adoptee, whatever his or her age, generally reaped the benefit of inheritance as a biological heir would. Such inheritance was easily the most common purpose of adoption from a cross-cultural perspective, often in conjunction with the perpetuation of family worship or funeral rites. In exchange for gaining the inheritance, it was generally understood that the adoptee was to sustain his or her adoptive parents in their old age. In some ancient cultures, a person (often a biological family member) could be adopted as a son or daughter in order to alter the chain of inheritance. Gardiner interprets an ancient Egyptian text to describe the adoption as daughter of a woman by her husband, so that she would inherit the entirety of his estate rather than the lesser portion which was otherwise reserved for the wife (1941). Justel gives an example in the ancient Near East of a woman being explicitly adopted as a son, thus granting her the legal status of a man through a fictive family tie. In another interesting case, Justel describes adoption for the purpose of selling property when such sale was legally restricted, such that the adopter bequeathed the property (land) to his “son,” who then gave his “father” a “gift,” which was actually the agreed-upon price for the land (2011).

Adoption in antiquity was also used to build political alliances. Adoption of this sort was a fairly common occurrence in China during the Han Dynasty, when the general populace had a rather liberal attitude toward the practice of adoption. A family could adopt a son from the another family in order to unify the two houses via a shared bond, in much the same way as a marriage would unite two houses to a certain degree. The family who gave up a son would gain the benefit of political support, while the family who received the son would gain an heir. Adoption in antiquity was like marriage in reverse, in that one might give a daughter in marriage

and take a son in adoption in a sort of flow and counterflow in family population. Brown and de Crespigny state that fictive ties like adoption and marriage “represent efforts to encourage more cordial relations between states” as well as families (2009). In ancient Rome, adoptions sometimes served to pass down an office or political following to the adoptee, which was essentially an intangible property to be inherited by way of succession.

Adoption in antiquity was not always accomplished formally. In the Sippar text, astute readers may infer that an adoption took place in such cases as when a mother gives her daughter away in marriage in place of the girl’s father, who customarily had exclusive right to do so. There may well have been no formal declaration or process for this adoption except the acknowledgment of the parties involved. A better, if more complicated, example can be found in a secondary source: an ancient Egyptian papyrus which describes multiple adoptions, including a man adopting his wife, who then informally adopts three children (who probably had been the product of her husband and a servant given as a concubine), and later adopts her son-in-law as executor of her estate with inheritance share equal to that of the three children (one of the three being his wife). This story illustrates the importance of direct-line inheritance in ancient Egypt. As Gardiner puts it, “there could be quasi-adoptions with varying degrees of formality, and with no requirement for such a permanent transformation of identity as a change of surname” (1941). As history marched on, critical changes began to occur in the purposes and implementation methods of adoption which bore essentially no resemblance to the freedom of establishing fictive ties which permeated ancient cultures.

II. Adoption in the Middle Ages

Often in the formation of early people groups, the first tribes to join together into a small community were regarded as descendants or human embodiments of whichever gods they served. As such, these first members commanded the entirety of political and economic power as a monopoly, and later members tended to accept these privileges of their nobles. The divinely ordained nobles operated as a caste system in their respective civilizations, keeping their family lines free of contamination by lower blood. By the Middle Ages, the common man hardly bucked at the prospect of a wholly privileged aristocracy, as he had no tale or memory of any age of equality as a frame of reference for revolt or dissatisfaction. Even as the lower classes ceded by default all privileges to the aristocracy, the aristocrats generally heeded the rights of the common man, thus leaving little immediate cause for general dissatisfaction among that lower class (Battaglia, 1962).

Gradually, this medieval nobility was eroded. Widespread education created a lower class with the means to solve problems and develop existing moral concepts, resulting in a new emphasis on individual personality. As Battaglia (1962) puts it, "A nobleman [now] had to be a person, achieving something; he could no longer rest on his prestige as a member of a kin group derived from the shining heavens" (p. 61). As the noble monopoly on land diminished, and trade and finance began to pervade Europe, the lower classes began to have access to measures of wealth and power previously unthought-of. These and other factors contributed to the growing rank and influence of some commoners. As these fortunate laymen were increasingly allowed to intermingle with the original nobility, a lower hierarchy of noble castes were formed, ultimately dispelling most notions of superhuman ancestry. Wealth became the defining criterion of the upper classes. Additionally, the rising Mediterranean Christian church stood for democratic principles in its New Testament theology, thus providing a further egalitarian mindset.

In spite of this paradigm shift, the invasion of the crumbling Roman Empire by various Germanic tribes, whose nobles all treated one another as members of one class of equals, rescued the notion of a privileged upper class from extinction. This unified Germanic nobility made a habit in their conquering of sparing the existing Gallo-Roman, Italian, and Iberian upper classes. In such a climate, tribal origin gradually ceased to be a barrier to marriage, and these conquered upper classes began to be fused with the Germanic nobility. The effect of this aristocratic unity was to galvanize this new caste of wealthy noble families according to its superior bloodlines. Even the Christianization of Europe, which did its part to erode Germanic belief in divine descent, failed to counteract this new unified noble class which considered itself to have the best blood (Battaglia 1962). It was in this environment of bloodlines from the turn of the fifth century onward that adoption came to be viewed distastefully. Battaglia (1962) sums up the effect that this unified nobility had on European politics:

The frequency with which marriages were arranged between the leading dynasties of lands far distant from each other attests the sense of unity that the European elite had attained. The numerous dispensations that were required for such marriages show that by 1100 all of the royal houses and more powerful princely houses were related by blood. They formed one great family. (p. 64)

This class of ruling princes was so thoroughly bonded together that it was only finally dispatched with the disintegration of Central Power empires upon their collective loss in the First World War.

As this attitude toward distinct family lines spread from nobility to the emerging middle classes, a decreasing number of unwanted babies were able to find adoptive homes. Fortunately, a solution had been in the making. Since the rise of Christianity in Europe, monasteries had been

flourishing as an institution. Many of these monasteries accepted oblates, children given to be raised by monks with no further control by parents. In a climate where adoption was now seldom a viable option, if only according to a general shift in tastes, monks took the place of adoptive parents within an institutional framework. In his paper entitled *Offering Sons to God in the Monastery*, Greg Peters pointed out that “there is currently general agreement that the practice [of child oblation], or something similar, is as old as the institution of monasticism itself and was a fully recognizable and canonically legislated practice by the Carolingian era” (2003, p. 287). By the ninth century, the Rule of Benedict, the first written monastic legislation to explicitly endorse child oblation, was made binding, and indeed had become “a common and distinguishing feature of Western monasticism” (Peters, 2003, p. 289). Though there were surely some parents who viewed offering their child to monasteries as a gift to God, economic reasons were just as surely a driving factor, and child oblation came to be viewed as a humane form of child abandonment.

It is notable that monasteries frequently took in both physically and mentally disabled children in this capacity, such that in certain locations these outnumbered the fully fit. Thus, it seems that nearly any unwanted child could be given to monasteries to be raised therein. It is hard to say what would have happened to truly unwanted children in the absence of this institution, as there seems to be no chronological gap between the spontaneous evolutions of common preference and monastic institution. It is also notable that the height of this practice of oblation coincides with the explosion of monasticism in the Middle Ages. Peters describes the eleventh and twelfth centuries as a period when oblation experienced its “fullest flowering” in spite of “the commonly held view that cenobitic, particularly Benedictine, monasticism was experiencing a crisis at this time,” even going so far as to call it “a culmination of over 1,000

years of monastic history” (2003, p. 289). That monasticism was responsible for institutional oblation is undisputed. It could also be argued that oblation fueled further growth of monasticism in turn, especially as monks were increasingly becoming strictly required to remain celibate. Even this healthy monastic-oblatory relationship, however, would ultimately be washed away by the incoming tides colonialism and technological progress.

III. Adoption in the New World

The nations and empires of Europe continued to grow and change form through the Middle Ages. The voyages of Christopher Columbus to the New World at the turn of the fifteenth century marked the beginning of a new era of extensive European colonization of what were ostensibly unexplored foreign lands. Though several nations were responsible for the early colonization of North America, it was ultimately England that dominated the coastline which would become the original thirteen United States of America. Consequently, much of United States jurisprudence was inherited from England. Though foster paternity did occur in England, the attitude of distinct bloodlines remained firm for purposes of inheritance. In his essay entitled *Law of Adoption*, Leo Huard described the extent to which this centuries-old perception persisted:

To the English, heirs meant legitimate children who were heirs of the blood. This was an unalterable maxim which early became a fixed part of the law of the realm: “... he is only heire which succeedeth by right of blood.” There was, therefore, no English law of adoption (p. 745-6).

Despite “ingenious instances of devious circumvention of the law” (p. 747), adoption only came to be legally recognized in England through the Adoption of Children Act of 1926. One such

circumvention was to treat potentially (read “questionably”) legitimate offspring as being in fact legitimate, to such extreme degree that in one case a newborn child was ruled to be legitimate even though its mother’s husband had been away at sea for three years.

In a paper titled *Antecedents of American Adoption*, Burton Sokoloff corroborates the absence of adoption English common law due to strict bloodline inheritance. He goes on to describe some reasons why England (which may be surmised to be somewhat distinct from mainland Europe) had no need for such laws:

By the seventeenth century, a variety of customs and practices were in place in England which “made adoption for social welfare purposes unnecessary.” These practices included “putting out” (the placement of children in other homes, for domestic service, for varying periods of time), indenture, and apprenticeship. Although centuries earlier these practices had been utilized by families (usually the poor) to seek better care, discipline, and training for their children, “they came to serve as a convenient means for solving the problem of dependent children . . .” (1993, p. 17-8).

Sokoloff notes that these customs traveled to the New World with the Puritans and continued to be used when dependent children could not find homes with relatives. The almshouse, which can be likened to a public orphanage which housed dependent children until they were old enough to be “put out” at age 6 or 7, also migrated from England. Another practice which grew out of the colonial era known as “informal transfers” which grew steadily as the rapidly growing United States required an increasing quantity of farm labor. Sokoloff notes that this practice “developed a uniquely American character as owners of large plantations in the South often took large numbers of dependent children into their families” (1993, p. 18). All these customs together

formed a system which was able to sustain all the dependent children in the New World; thus, there was still no need for formal adoption laws.

This system was only effective for so long, though, as a massive influx in immigration saw a marked increase in dependent children. Simply put, adoption laws were ultimately formed as a function of demand. As the population continued to increase, more and more informal transfers were made, illustrating the growing desire for dependent children to have a legal inheritance, as well as more and better care in general. State legislatures were increasingly being petitioned for "Private Acts" which granted legal recognition of an adopted child in individual cases. As the number of these private bills of adoption grew steadily into a wearying legislative routine, states began to look for a more permanent solution.

The germ of modern adoption laws originated in the United States within its first century of nationhood, and this was certainly original American jurisprudence, for, "The English had an inordinately high regard for blood lineage and consequently the practice of adoption never acquired a foothold there" (Huard, 1956, p. 745). The state of Massachusetts is generally credited with passing the earliest American law of adoption in 1851, though Missouri permitted adoption even earlier. Huard acknowledges that Mississippi technically allowed adoption which served to establish an adopted child as heir of his or her adopter some five years before the Massachusetts law was passed (1956). However, he goes on to assert that "this affront to the pride of Massachusetts should be somewhat assuaged by the fact that the Massachusetts law of 1851 seems to have been more complete" (1956, p. 748). The feature which made this law so unique, however, was that it codified adoption according to what was considered to be *in the best interest of the child* for the first time in all of history. Indeed, this previously unheard-of focus on

the welfare of the adopted child turned out to be a major paradigm shift which has persisted from then on into the modern day in both domestic and international adoption policies worldwide.

IV. Adoption Policies Improved and Unified in the US

Because state governments were fairly independent of the federal government in the nineteenth century compared to in the twenty-first century, the Massachusetts and Missouri policies were merely the beginning of legal adoption in the United States. Only sixteen states had adoption laws in 1873, and it wasn't until 1929 that every state had its own equivalent. In the meantime, two major movements began to take shape in response to the overwhelming quantity of dependent children, one formal and one informal (Sokoloff, 1993). Perhaps the more expected of the two responses from the modern standpoint was the founding of what were essentially early American orphanages, known commonly as "foundling homes," by both public and private institutions. These also quickly became overcrowded, and consequently were afflicted with high mortality rates. Disease, of course, always tends to be one problem of overcrowded conditions. The more nuanced issue in this particular setting was a lack of milk for infants, as wet-nurses were in short supply. Thus, infants suffered a distinctly higher mortality rate than the older children residing in foundling homes. As if these issues weren't bad enough, "pediatricians began to report on the very striking developmental delay which they observed in children in the foundling homes and which they attributed to institutionalization itself" (Sokoloff, 1993, p. 20). Although infants were increasingly placed directly into the homes of wet-nurses for care, such placement was still sharply limited by inadequate supply of those same nurses. Interestingly enough, this inadequacy led to development of baby formula during the 1890s, which reduced

infant mortality and “set the stage for the beginning of early adoptive placement of babies in the first quarter of the twentieth century” (Sokoloff, 1993, p. 21).

A more imaginative and arguably more effective solution was the organization of what came to be known as “orphan trains” to carry dependent children westward to live with farm families, especially in the Midwest. The first and most prominent of these efforts was begun in 1853 by The Children’s Aid Society in New York City, which was founded by Reverend Charles Loring Brace under the belief that placement of orphans with families was always to be preferred to the detriments of institutional life (Sokoloff, 1993). Continued overcrowding of urban institutions necessarily yielded an increasing number of children to such relocation. One may note that the majority of children placed by The Children’s Aid Society were never formally adopted by their families of residence; however, “it also appears that close, enduring, loving, and secure family relationships were established in many, perhaps the majority, of these placements” (Sokoloff, 1993, p. 20). On the other hand, critics were concerned that these informal foster families were seldom screened to a satisfactory degree, and also felt that many of the children placed probably had living biological parents who had not consented to their departure.

Such concerns formed the backdrop for contemporary state adoption legislation, and thus ultimately for future federal and international adoption laws, as these entities continued to explicitly seek the welfare or “best interests” of dependent children. Citing the example of District of Columbia adoption laws as typical of corresponding state laws, Huard lists three goals of such legislation: to protect children from unnecessary parental separation and from unfit adoptive parents, to protect biological parents from deciding too hastily whether to relinquish their child, and to protect adoptive parents by providing background information on their adopted child and enforcing distance from biological parents (1956). According to Huard, the various

state adoption laws began to institute similar standards of exhaustive investigation of the homes and backgrounds of prospective adopters, and of the children to be placed in such homes (1956). Additionally, a child had to live with his or her prospective adopters for six months before they could apply for a formal decree of adoption, which could be granted six to twelve months after that at the discretion of the court, provided with the findings of ongoing inspections throughout the process. As states seldom had the expertise to evaluate homes and families appropriately, these inspections were typically delegated to the federal Department of Public Welfare, which employed qualified social workers (Huard 1956). Upon finalization of an adoption, the law mandated a near-Roman (total) level of biological severance, the only difference being the lack of religious provision, which has always been a sensitive topic in United States history.

The Minnesota Act of 1917 is commonly credited as the beginning of anonymity and the sealing of records in adoption practice (Sokoloff, 1993). Though such policies originally intended only to shield adoption proceedings from public scrutiny, they were progressively expanded over the next few decades to include the sealing of records even from parties to the adoption process, to such extent that adoptive parents received an amended birth certificate upon finalization of the adoption (Sokoloff, 1993). It is said that such extension of anonymity was advanced by social workers to facilitate integration of the adopted child by “removing the stigma of illegitimacy from children born out of wedlock” (Sokoloff, 1993, p. 22). This stigma was not purely social; amazingly, a remnant of the European attitude toward bloodlines had persisted on until the culmination of the eugenics movement around the time of World War II. Many children who were adopted at this point in American history were born to single mothers who decided to give them up.

As baby formula became a workable solution to undernourishment and the onset of World War II saw a downturn in childbirth, along with a deadly influenza epidemic, demand for adoption of infants grew steadily, significantly eroding the bloodline mythology. Though in the 1940s the number of placements nearly equaled the number of applicants, many more “special needs” children, defined in the adoption field as having a disability, being older, or being nonwhite, struggled to find placement (Sokoloff, 1993). Indeed, by the 1950s, demand for healthy, white infants so outpaced the quantity in need of placement that the United States saw the formation of illegal black markets in adoption, as well as unofficial adoption markets which were legal but unregulated, known colloquially as “gray markets.” This turn to independent, unregulated adoption continued to grow well into the 1970s, as there was an absolute decrease in the number of healthy, white infants available to be adopted. This decrease can be largely attributed to three factors: greater availability of effective contraception, the legalization of abortion, and an increase in the tendency for unwed mothers to keep their babies due to declining social stigma, along with an increase in social services and financial assistance which enabled them to do so (Sokoloff, 1993).

The 1970s soon saw advancements in technology which allowed parents to have biological children with increasing success. While this served the desires of such people to start a family of their own, placements continued to decrease. In the midst of this latest adoption crisis, children adopted in previous decades were growing to maturity without a strong feeling of identity. The extreme secrecy and sealing of records in the cases of these young adults left their biological family background a mystery to both them and their adoptive parents. This era saw a push for unsealing of records, with mixed results across the fifty states (Sokoloff, 1993). In light of this new difficulty, some parties chose to engage in “open adoptions” in which records were

available to the entire triad of parties: adoptive parents, biological parents, and the adopted child. There continues to be an intriguing mix of open and traditional (closed) adoptions today, with Sokoloff having noted, "Open adoption has grown rapidly in recent years, particularly in the practice of private, independent adoption." As this multitude of problems continued to expand and mutate, a higher standard was set for interstate and international cooperation in an ongoing effort to solve them once and for all.

V. Adoption in the International Community

As a result of the continued mismatch of supply and demand in the adoption market, reactions were once again split into two camps. While private organizations continued to focus on finding "adoptable" children for childless adults, public institutions turned to the task of caring for the "special needs" of dependent children (Sokoloff, 1993). This split focus between the primary tasks of private and public entities largely persists to this day. Despite their differing goals, however, these two realms of society would be brought into closer interplay as national and international adoption regulations were increasingly extended.

Adoption of foreign children by United States families first came into play during the 1950s, largely as a result of the Korean War. Previously, at the onset of World War II, the United States began passage of a decade-long string of legislation allowing Asian peoples, who had previously been excluded from the immigration quota system, to immigrate to the US and become citizens (Winslow, 2012). During the Korean War, a number of babies were born to mixed parentage in Korea, having a white or black American father and a native Korean mother. The fate of these "GI babies" came into contention upon the Korean armistice and subsequent withdrawal of the majority of US soldiers. Because international adoption was relatively

unknown at this time, a large measure of improvisation was necessary to ensure successful immigration of these half-American children. Consequently, in the period when the first international adoption legislation was slowly being drafted in the US, immigration policy was employed as a proxy for proper adoption policy in such cases (Winslow, 2012). Essentially, these children were classified as *de facto* refugees so that increases in the Asian and country-unspecified immigration quotas could serve to prioritize their relocation to America.

With the first pieces of US international adoption legislation in place, international adoptions grew slowly in number until the 1990s. From the standpoint of population ecology, which studies the change and concentration of various organizations, this shift is evidenced by the growth of international adoption services, which have more than doubled in number since 1990 (Watson and Hegar, 2014). International adoptions reached their peak in the following decade, after which they began a slow decline which has persisted to this day. It is believed that the particular characteristics of international adoption treaties created since 1990 have contributed both to the initial upswing and later gradual decline in international placements.

Two major international treaties were drawn up and widely ratified in the 1990s which concerned adoption placements between member nations. First came the United Nations Convention on the Rights of the Child (CRC) in 1990. This agreement made spirited attempts to bestow children with “rights as autonomous individuals, independent of the interests of their parents or cultures and nations” (Watson and Hegar, 2014, p. 302). Although ratified by every UN member nation, with the notable exceptions of the United States and Somalia, the CRC was quickly noted as having several flaws which caused concerns with implementation. This respect for the views of the child is one of four pillars of the CRC, which also include: nondiscrimination; the right to life, survival, and development; and a continuance of the now-

widespread concept of devotion to the best interests of the child (Watson and Hegar, 2014). In their paper entitled *The Changing Environment of Adoption Practice*, Watson and Hegar acknowledged a major shortcoming of CRC policy:

The CRC's statements on intercountry adoption are often vague and at times contradictory when addressing the appropriateness of intercountry adoption [as opposed to domestic options] The CRC's enumeration of substantive rights related to the 'best interest of the child' . . . offers states no method of prioritizing the rights of children when all four of its core values cannot be satisfied (Watson and Hegar, 2014, p. 302).

They went on to say that since most sending countries are impoverished, they often have to prioritize some of the four provisions over others. Critics claimed that children adopted internationally were denied the provided right to their original nationality and culture, which could be clearly observed in any case whereby a person is transplanted into a foreign country. A valid countercriticism is that love and family care should outrank cultural heritage in a hierarchy of needs, and that a child first requires sound psychological health in order to enjoy any culture at all (Watson and Hegar, 2014). Proponents also found support for the child's best interests in the better establishment of international adoption as a supplemental means of providing human rights to children (Watson and Hegar, 2014).

As the first great intercountry agreement on adoption between countries, the CRC engendered additional criticisms, including the perception that removing foreign children in adoption is a sort of neo-colonialism. This perception is justifiable because it fits the definition of cultural imperialism as a nation (or international entity in this case) imposing its policy preferences on less powerful entities (individual nations). Another consideration is the perception that a country which frequently sends away children for adoptions cannot provide for its own

children. Finally, there has always been some concern for the potential of financial exploitation or maltreatment of adopted children. These factors all contributed to the aptitude of member countries to disallow their children to be adopted internationally, which they were left perfectly free to do at their discretion (Watson and Hegar, 2014). These concerns have been countered by parties with the opinion that “permanent adoption, whether domestic or international, serves children’s interests far better than foster care” (Watson and Hegar, 2014). Such criticisms of opposition to international adoption sprang out from CRC “subsidiarity” provisions which implicitly elevate most variations of in-country care as hierarchically preferable to international placement.

In 1993, just three years after the CRC went into effect, the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Convention) was set forth. This new agreement improved on some of the difficulties of the CRC, including the “subsidiarity” provisions. In addition to the ever-present best-interests provision, and of course the concept of international cooperation in matters of adoption, the Hague Convention intended to enact safeguards to prevent the exploitation of adopted children. Distinct features of Hague Convention rules include the establishment of a central authority in each signatory nation to handle matters of intercountry adoption, and subsequent assigning of separate, specific duties for both the sending and receiving nations involved in a given adoption (Watson and Hegar, 2014). In short, the sending country in a given case establishes best interests and consent, while the receiving country handles investigation of potential adoptive parents and their environments. Hague Convention rules set these measures forth in a conscious effort to streamline adoption processes in member states (Watson and Hegar, 2014).

Even with these improvements, Hague rules have their own set of issues. Watson and Hegar perceived some unintended consequences which resulted from implementation of Hague policies:

In the judgment of some scholars, the Hague Convention has not met the goal of expanding the opportunity for children to have nurturing parents and permanent homes, but has limited these opportunities by placing obstacles to international adoption placements. (2014, p. 304)

In other words, despite all the streamlining efforts, it appears that increasing safeguards for adoptive children, which few would question to be the product of good intentions, has in fact had the unintended consequence of hindering the overall ability of organizations to make international placements. For instance, a great deal of documentation is required in order to establish adoptability and consent, even though many non-Western countries place a low value on written documentation, or are too poor to effectively keep or retrieve written records of birth, immunizations, marriage, etc.

Several concerns have been noted regarding Hague rules, not the least of which is its effective inability to be enforced. Since each country answers only to its own central authority in the implementation of Hague procedures, member nations are essentially self-policing, which “may be the convention’s greatest flaw” (Watson and Hegar, 2014). Signatory countries have no measure of imposing sanctions on any kind on countries who violate Hague procedures, though in a few extreme cases adoption from a particularly egregious nation has been halted altogether. Watson and Hegar went on to add that, “Provisions of the treaty are only binding between signatories, leaving non-participating countries free not to abide by convention policies and still participate in international adoptions with both signatory and other countries” (2014, p. 305).

Another issue with the Hague Convention is the financial inability of many countries to create and maintain the required central authority and subsequent enforcement of Hague rules even within their own borders. Finally, the convention is vague and subject to interpretation, for instance failing to specify what it means for a child to meet the required standard of being “adoptable”, which is one responsibility of the sending country.

With all its collective flaws, international cooperation has allowed humanity to progress in its quest for superior care of dependent children. As these children matured into adults with firsthand experience of the shortcomings in international adoption policies, the world grew even more resolved to sort out issues of family placement for dependent children. Though adoption has certainly come a long way in the modern era, it has further yet to go.

VI. Adoption in the Future

As adoption agencies have proliferated around the new millennium, appropriate regulation has become increasingly important. In their evaluation of the ecology of adoptive institutions, Watson and Hegar compiled a list of recommendations. These will be discussed in abbreviated form below.

First, the US should ratify the CRC. Despite its flaws, the CRC sets the tone for humane intercountry adoption of needy children. Without the support of the United States as a world superpower, it will be difficult for the other UN member nations to meaningfully implement the beneficial provisions of the CRC. Watson and Hegar contend that the US should amend its ratification to exclude the faulty sections which establish an absolute preference for in-country solutions such as foster care over international placement. As they put it, “Foster care evolved as a superior method to orphanages, but foster care is not designed to provide children with

permanent families. Placing children in such families should be the primary goal of any policy relating to the care of children” (Watson and Hegar, 2014, p. 308). Besides the nudge toward amended placement priorities, ratification would serve as a vote of confidence for international cooperation in the care of dependent children more generally.

The US should also extend its implementation of the Hague Convention policies. The United States implemented the Hague policies by passing the Intercountry Adoption Act of 2000 (IAA). Watson and Hegar noted that, “State licensing requirements and U.S. State Department rules combine to create differences in practice depending on whether the sending country is a member of the Hague Convention” (2014, p. 306). The US could better sustain successful adoption placements over the lifetime of affected children by amending its legislation to extend post-adoption services to intercountry adoptions much like those available in domestic adoptions. Such services, developed in many cases to aid adult adoptees in search and reunion, serve to frame adoption as a lifelong developmental process which requires focus on the needs of all stages of an adopted person’s life rather than childhood alone.

It is equally important to extend the reach of Hague policies internationally. The United States began to implement the Uniform Adoption Act (UAA) in 2014 to rectify the legal variance between its fifty states in the realm of adoption and form a coherent framework for future adoptions. UAA policy includes a measure to identify biological parents and secure their consent in the presence of a witnessing tribunal. If the Hague Convention were to adopt a more uniform adoption code modelled on the UAA, black market baby selling could potentially be reduced. Under such a policy, the Hague Convention could be modified to require member nations to adhere to Hague standards when dealing with any other nation, regardless of whether

that nation has ratified the convention or not. An agreement of this sort could go a long way toward universal implementation.

Finally, private actors should encourage multicultural appreciation in adoptive relationships. Watson and Hager made the case for immersion in the birth culture of the adopted child rather succinctly:

Adoptive families should be encouraged to embrace the culture and language of any country from which they adopt. Individuals adopted through intercountry adoption may struggle with their cultural identity and experience dissonance between their physical appearance and the culture of their adopted family and country. Resolution of the dissonance may involve the need to reclaim their birth culture (2014, p. 310).

By cooperating to implement effective children's services, adoptive parents and adoption agencies would be better able to help a given adoptee form a satisfying, unified identity between his or her two cultures.

Conclusion

Adoption practice has continuously evolved over the course of the majority of written history, having experienced pivotal changes during the Middle Ages and the modern period. Since the United States developed its unique adoption policies which revolved around the best interests of dependent children in adoptive and foster placements, that country has remained dedicated to its ideals even as the realm of needy children expanded to include most of the civilized world. While international adoption policy still leaves something to be desired, the indomitable spirit and unlimited ingenuity the international community will undoubtedly devise ever-better opportunities for dependent children through continued policy experimentation.

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