

CHAPTER THIRTEEN

INTERCOUNTRY ADOPTION: PRIVILEGE, RIGHTS AND SOCIAL JUSTICE

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Intercountry adoption tends to be understood in parts – the individual child, the needs of adoptive parents, the legality of its processes, and perceived red tape. Mostly, however, the focus is the facilitation of placing a child with a prospective adoptive family, and the elimination of perceived barriers between the adoptive parents and the desired child. By failing fully to consider the whole picture concerning intercountry adoption, important issues are obscured and disempowered people remain disempowered. Resources are consequently directed toward specific, enabling aspects of intercountry adoption, a need constructed by influential voices particularly where the market approach dominates.¹ In that process, other considerations such as the moral or material circumstances that lead to intercountry adoption and the disempowered first parents, families and communities tend to be ignored in public commentary in the media and in adoptive parent group blogs and chatrooms.

Intercountry adoption is overwhelmingly conceptualized and regulated in legal, individualistic terms and understood through a perspective of privilege which is the perspective of those seeking to adopt children. The response to the idealized “alone” child in intercountry adoption is to remove him or her to a safe, loving, non-biologically related and predominately culturally dissimilar nuclear family. Rarely is the child perceived as having family or other connections prior to adoption. Factors such as poverty, access to education and the lack of alternatives that threaten to separate vulnerable families from their children in the first instance are rarely regarded as relevant to intercountry adoption practice except where these conditions become the very justification for removal.² In many places where intercountry adoption occurs, there is little attention paid to the adequacy of relinquishment processes or even attempts at reunification when a child is separated. The adverse impact on parents and families who lose their children to adoption and adoptees have only relatively recently been recognized by researchers.³

Intercountry adoption is promoted as a welfare solution for individual children that focuses on the best interests of children but functionally meets a demand for other people’s children as a way of forming families for the many potential adopters.⁴ Ensuring steady, expedient and reliable intercountry adoption programs – perceived as “services” by which adults access children – has become the dominant focus in receiving countries.⁵ How problems and their solutions are constructed and how power operates within these processes are important to a holistic understanding of intercountry adoption. The current international trend of decreasing numbers of

¹ Patricia Fronek, “Intercountry Adoption in Australia: A Natural Evolution or Purposeful Actions,” in *Other People’s Children: Adoption in Australia*, Ceridwen Spark and Denise Cuthbert, eds., (Melbourne: Australian Scholarly Publishing Pty Ltd., 2009): 7–54.

² Denise Cuthbert and Patricia Fronek, “The Future of Inter-Country Adoption: a Paradigm Shift for This Century,” *International Journal of Social Welfare* 21, no. 2 (2012): 215-24.

³ Denise Cuthbert, Patricia Fronek, and Indigo Willing, “Review of Sociological Literature on Intercountry Adoption,” *Social Policy and Society* 11, no. 3 (2012): 465-79.

⁴ Laura Briggs, “Feminism and Transnational Adoption: Poverty, Precarity, and the Politics of Raising (Other People’s?) Children,” *Feminist Theory*, 13, no. 1 (April 2012): 81-100; Ceridwen Spark and Denise Cuthbert, eds., *Other People’s Children: Adoption in Australia*, (Melbourne: Australian Scholarly Publishing Pty Ltd., 2009).

⁵ Cuthbert and Fronek, “The Future of Inter-Country Adoption,” at 215-24.

intercountry adoptions⁶ is failing to meet the need to parent, a driver of the phenomenon. So in receiving countries of children, influential in world politics and trade, the “problem” is constructed from the perspective of prospective adopters as one of diminishing numbers and reduced access to children. “Solutions” therefore favor the needs of prospective parents and override the original problem – the separation of children from their families and the factors that contribute to these separations. Resources aimed at the “solutions” find new ways of increasing the numbers of adoptions – exerting influence on countries who reduce or close their programs to reverse these decisions, finding new countries of origin, and supporting countries to achieve Hague compliance in order to *facilitate* adoptions rather than “prevent the abduction, the sale of, or traffic in children.” Pre-adoption circumstances are not problematized and neither are solutions inclusive of these factors.

If we think through the interests of children in need of family-based care outside the market-driven adoption framework, other options for the care of children emerge. Intercountry adoption does not offer the one right way to care for children. It is often promoted as such because intercountry adoption meets the needs of those seeking children with whom to form families and who are also those most able to exercise their rights. The time is right for a paradigm shift that reconceptualizes the first and most pressing problem as the separation of children from their families and communities in the first instance and the need to redirect resources and exert influence that includes responses to causal factors.

In this chapter, we examine intercountry adoption through a social justice lens by which the operation of power of the privileged over the most marginalized emerges as important in understanding and reconceptualizing intercountry adoption. That is, we specifically draw into the consideration of intercountry adoption factors that extend beyond the adoptive parents’ need for a child and the adoption process itself. We do not assume that adoption is the only, or the best, outcome in all cases. We do this by exploring whose rights and needs are placed to the forefront in intercountry adoption as it is currently practiced and argue the need for a paradigm shift in intercountry adoption practice. We draw upon a range of disciplinary perspectives, including sociology and social work, in this chapter.

Social Justice and Human Rights

Modern intercountry adoption, characterized by competing rights and interests, is a complex system, fine tuned since the 1950s. Discourses surrounding the rights of the child define it, yet in reality its practice characteristically pits the rights of the poor against those of the privileged.⁷ That is, it pits women affected by their social and economic conditions against relatively affluent women hoping to parent a child.⁸ Legislated adoption as it has evolved in the West results in legal, geographical, and cultural separation of children from their families and communities. Promoted as the only viable course of action, the removal of children further impoverishes the individuals and communities who lose their children. Rights-based and feminist theoretical perspectives were originally intended to address the imbalances of power, gender and inequality. However, with the prevalence of rights-based discourse, flaws and limitations emerge. As Carol Smart has argued,⁹ where there are competing rights being claimed, it is the privileged who are more able to voice, exercise, and access their rights. In the domain of intercountry adoption, access to children for adoptive family formation is cast as the right to parent or the right to form a family by the comparatively affluent – increasingly, this “right” is being claimed by those – single people, older adults, and gay and lesbian couples – formerly excluded from heterosexual norms of parenthood.¹⁰ These “rights” backed by relative power and affluence appear to have trumped other rights such as the right, enshrined in the United Nations’ *Convention on the Rights of the Child 1989* (“CRC”), for a child to be raised in his/ her own family or culture. Rights discourse provides a political language for the promotion of certain interests over others when interests conflict or when the interests of the less powerful are represented by others.

⁶ Peter Selman, “The Rise and Fall of Intercountry Adoption in the 21st Century: Global Trends from 2001-2010,” in *Intercountry Adoption: Policies, Practices and Outcomes*, Judith L. Gibbons and Karen Smith Rotabi, eds., (Surrey, England: Ashgate Publishing Co., 2012), 7-27.

⁷ David M. Smolin, “Intercountry Adoption and Poverty: A Human Rights Analysis,” *Capital University Law Review* 36 (Winter 2007): 415.

⁸ Mirah Riben and Bernadette Wright, “Reverse Robinhoodism: Pitting Poor Against Affluent Women in the Adoption Industry,” *Conducive Magazine*, October 20, 2009, <http://www.conducivemag.com/2009/10/reverse-robinhoodism-pitting-poor-against-affluent-women-in-the-adoption-industry/>

⁹ Carol Smart, “Feminism and the Power of Law” (New York, NY: Routledge, 1989).

¹⁰ Rosemary Pringle, “Adoption in Britain: Reflexive Modernity?,” *Australian Feminist Studies* 19, no. 44 (July 2004): 225–40.

An interesting example of problem definition and rights conflict that prioritizes the needs of adoptive parents over a birth parent has recently played out in the United States Supreme Court, the domestic case of *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552.¹¹ The child, Veronica, was placed for adoption by her mother. The father, who is of the Cherokee Nation, allegedly signed the release without fully understanding the process and without all the relevant information needed to make an informed decision. On discovering he had signed consent for adoption, he immediately pursued legal action to have his daughter returned. After two years, Veronica was returned to her father, a situation contested by the adoptive parents. In June 2013, Veronica was returned to her adoptive parents by the courts. Although this case has been enacted in the domestic arena, the distinction between domestic and intercountry adoptions has been argued to be a false dichotomy when it comes to rights and the exercise of power over marginalized people.¹²

What is interesting here in terms of rights and power is that the father was initially able to act on his rights because of the Indian Child Welfare Act of 1978. The Indian Child Welfare Act, introduced to protect Indian children after decades of forced removal from their families, implicitly prioritizes family and cultural connections, as does the CRC. As a result of the contested nature of this case, it is reported that the future of Indian Law is threatened and the protections it ensures will be compromised in favor of Western notions of adoption. The focus of much media attention and public commentary has been on the rights of the adoptive parents and the loss of the child they have parented for two years (underpinned by assumptions of a coincidence between the rights and interests of the child and those of the adoptive parents). In this focusing on the rights of the father, the loss he has experienced and the appropriateness, lack of transparency, and ethical concerns highlighted during informed consent and relinquishment process were sidelined. In the same way, Veronica's loss of her parents and cultural heritage was also not in focus despite being deemed a priority in legislation. In this way, this case highlights the relative power of the adoptive parents and the precedence of their private interests over the biological and cultural connections for the child. The power of rights of the adoptive parent narrative has proved stronger than biological and cultural connections and alleged problems in consent processes. Veronica's case is important because it is one of the few cases in recent history where an adopted child, domestic or international, has been returned to a parent even for a short period. And because the child was separated from the birth parent a second time, its outcome typifies the dominance of the rights of adoptive parenthood over the rights of the child enshrined in both Indian law and the United Nations' *Convention on the Rights of the Child 1989*.

The protections offered by the Indian Welfare Act were insufficient to keep a father and his child together in this domestic case. International conventions are equally ineffective where trafficking and other coercive practices exist. Despite international legal frameworks and national laws (where they exist) designed to protect minorities or the disadvantaged, adopters (who are generally citizens within the jurisdiction in which such conflicts arise) are favored in receiving countries of children even where a child has been trafficked. There is little recourse for parents, who are non-citizens and by definition without resources, whose children are wrongly sent for adoption, even assuming the personal and physical resources to challenge an adoption. All biological, legal, and cultural ties are permanently severed. Reunions and contact with first families and cultures of origin are reliant on the insight and support of adoptive parents or the actions of the adoptee themselves in adulthood. Abuses in intercountry adoptions are frequently reported¹³ and the legitimacy of adoption processes often remains unexamined by governments and those desperate to have families. The lack of transparent processes that trace family, ensure informed consent, resist corruption and ensure accurate and adequate record keeping are often excused or justified in order to expedite adoptions. In cases where family members have been able to trace their missing children, few children are returned to their families. Often many years have passed and children are

¹¹ See Suzette Brewer, "The Fight for Baby Veronica, Part 1," *Indian Country Today* (May 6, 2013), accessed June 2, 2013, <http://indiancountrytodaymedianetwork.com/2013/05/06/fight-baby-veronica-part-i-149219>; Rory Callinan, "Indian Family in Fight to Repatriate Stolen Daughter," *The Age* (February 19, 2013), accessed February 27, 2013, <http://m.theage.com.au/national/indian-family-in-fight-to-repatriate-stolen-daughter-20130218-2eni2.html>.

¹² Denise Cuthbert and Patricia Fronck, "Apologies for Forced Adoption Practices: Implications for Contemporary Intercountry Adoption," *Australian Social Work* 66, no. 3 (2013): 402–14.

¹³ Katie Gresham, Larry Nackerud, and Ed Risler, "Intercountry Adoption from Guatemala and the United States," *Journal of Immigrant & Refugee Services* 1, no. 3-4 (June 2003): 1-20; Benyam D. Mezmur, "'The Sins of the Saviours': Child Trafficking in the Context of Intercountry Adoptions in Africa," *Hague Conference on Private International Law, Information Document no. 2* (June 2010): 32; Patricia J. Meier and Xiaole Zhang, "Sold Into Adoption: The Hunan Baby Trafficking Scandal Exposes Vulnerabilities in Chinese Adoptions to the United States," *Cumberland Law Review* 39, no. 1 (2008-2009): 87, 87-130; Viet Nam News Service, "300 Infants Illegally Put up for Adoption," *Viet Nam News*, July 15, 2008, accessed January 13, 2013, <http://vietnamnews.vn/Politics-Laws/Law-Justice/178458/300-infants-illegally-put-up-for-adoption.html>.

older, further complicating a difficult situation.¹⁴ Brookfield¹⁵ tells the story of the reunification of Nguyen Thanh Minh with his son after a thirty-year search. Bergquist¹⁶ tells how United States authorities were notified that many children arriving from Vietnam during Operation Babylift indeed had family. A class action (*Nguyen Da Yen et al. v. Kissinger*, 528 F.2d 1194 (9th Cir. 1975)) was filed, but the best interests of the children were deemed to lie with the adoptive parents and few children were returned to their parents. The story of Thanh Campbell, reunited with his family who had never stopped searching, is told by Strong-Boag and Bagga.¹⁷ These stories are of adoptions that occurred decades before; but, there are similar reports of more recent wrongful adoptions.¹⁸ Children are separated from their families as a result of poverty, gender, corruption, conflict, and trafficking. Children are often vulnerable to trafficking in situations where parents are trying to improve the life circumstances of their children by sending them to school. The false promise that their children will gain access to education is a common ploy reported in cases of trafficking.¹⁹ Parents are vulnerable in relation to policies such as the Chinese One Child Policy; and lax border control, such as between India and Nepal, is an open invitation to traffickers.²⁰ Yet, little international attention or resources in the intercountry adoption field are focused on the circumstances that separate families from their children and cross sector collaborations that attempt to address these complex problems are not evident in this field.

Formal recognition of harm caused by forced, wrongful adoptions justified by partial understandings of power dynamics and the role of particular actors has been made to people affected by past domestic adoption practices in the National Apology offered by the Australian Government in 2013.²¹ This most recent apology followed others relating to problematic child removals – the Stolen Generation in 2008, Aboriginal and Torres Strait Islander Peoples affected by forced removals, and the Lost Australians and Lost Innocents in 2009, former forced imperial child migrants and institutionalised children.²² The recognition of past harms in domestic adoptions and other child welfare interventions has not yet been extended to those adversely affected by similar practices in intercountry adoptions. Problematic adoptions, whether domestic or intercountry, are characterized by force, coercion, the withholding of or false information, or simply lack of options rather than an unwillingness or incapacity to raise one's child.²³

¹⁴ Patricia Fronek, "Operation Babylift: Advancing Intercountry Adoption Into Australia," *Journal of Australian Studies* 36, no. 4 (2012): 445-58.

¹⁵ Tarah Brookfield, "Maverick Mothers and Mercy Flights: Canada's Controversial Introduction to International Adoption," *Journal of the Canadian Historical Association* 19, no. 1 (2009): 307-30.

¹⁶ Kathleen Ja Sook Bergquist, "Operation Babylift or Babyabduction? Implications of the Hague Convention on the Humanitarian Evacuation and 'Rescue' of Children," *International Social Work* 52, no. 5 (2009): 621-33.

¹⁷ Veronica Strong-Boag and Rupa Bagga, "Saving, Kidnapping, or Something of Both? Canada and the Vietnam/Cambodia Babylift, Spring 1975," *American Review of Canadian Studies* 39, no. 3 (September 2009): 271 - 89.

¹⁸ Bergquist, "Operation Babylift," *supra* at 621-33; Callinan, "Indian Family in Fight,"; Siobhan Claire, "Child Trafficking and Australia's Intercountry Adoption System," *The University of Queensland Human Trafficking Working Group* (2012): 28, available at <http://www.law.uq.edu.au/documents/humantrafficking/child-trafficking/Child-trafficking-and-Australia's-intercountry-adoption-System.pdf>; David M. Smolin and Desiree L. Smolin, "The Aftermath of Abusive Adoption Practices in the Lives of Adoption Triad Members: Responding to Adoption Triad Members Victimized by Abusive Adoption Practices" (first presented as Plenary Presentation, Annual Symposium, Joint Council on International Children's Services, New York, NY, April 2012), http://works.bepress.com/david_smolin/12.

¹⁹ Scott Michels, Beth Tribolet, and Teri Whitcraft, "Four Sentenced in Scheme to 'Adopt' Samoan Kids," *ABC News*, February 26, 2009, accessed June 6, 2013, <http://abcnews.go.com/TheLaw/story?id=6958072&page=1>.

²⁰ Charlie Custer, "Carried Off: Abduction, Adoption, and Two Families' Search for Answers," *China File*, July 24, 2013, <http://www.chinafile.com/carried-off-abduction-adoption>; Frances A. Dellacava, Madeline Engel, and Norma K. Phillips, "International Adoption: A Sociological Account of the US Experience," *International Journal of Sociology and Social Policy* 27, no. 5/6 (2007): 257-70; Kay Johnson, "Chaobao: The Plight of Chinese Adoptive Parents in the Era of One-Child Policy," in *Cultures of Transnational Adoption*, Toby Volkman and Alice Volkman, eds., (Durham and London: Duke University Press, 2005): 117-41.

²¹ Cuthbert and Fronek, "Apologies for Forced Adoption Practices," *supra* at 402-14.

²² Denise Cuthbert and Marian Quartly, "'Forced adoption' in the Australian Story of National Regret and Apology," *Australian Journal of Politics and History* 58, no. 1 (2012): 82-96; Denise Cuthbert and Marian Quartly, "Forced Child Removal and the Politics of National Apologies in Australia," *American Indian Quarterly* 37, no. 1-2 (2013): 178-202.

²³ Cuthbert and Fronek, "Apologies for Forced Adoption Practices," *supra* at 402-14; Chieko, Choi, H.-s., A., Gam, E.-n., and Vegdahl, S., "Voices of Those Affected III: Stories of Single Moms who are Rearing their Children" (paper presented at Redefining Family: Moving from Adoption to Family Preservation, Seoul, South Korea, May 11, 2011); Gresham, Nackerud, and Risler, "Intercountry Adoption from Guatemala and the United States," 1-20; Riitta Högbäck, "Maternal Thinking in the Context of Stratified Reproduction: Perspectives of Birth Mothers in South Africa," in *Intercountry Adoption: Policies, Practices and Outcomes* 143-59; Kim, H.-o. and Noh, G.-J., "Voices of Those Affected I: Mothers whose Children were Sent for Adoption" (Paper presented at Redefining Family, Seoul, South Korea); Smolin, "Intercountry Adoption and Poverty," *supra* at 415; The Schuster Institute for Investigative Journalism. (2013, 13 May). "Fraud and Corruption in Intercountry Adoption," *The Schuster Institute for Investigative Journalism*, May 13, 2013, accessed May 13, 2013,

In intercountry adoption, children's interests are voiced by the most influential. In countries that receive children, the needs of children elsewhere have become indistinguishable from the needs of those hoping to adopt in public discourse²⁴ while the meaning of the "best interests of the child" is contested in local and intercountry adoptions.²⁵ Pfund²⁶ describes the Hague Convention on Intercountry Adoption as the first intergovernmental endorsement of intercountry adoption and a mechanism for its facilitation. As such, it departs significantly from the intent of United Nations' Convention on the Rights of the Child in relation to the preservation of a child's connections to his or her family as the first priority. In practice, intercountry adoption follows domestic adoption but precedes other forms of temporary or permanent care for children in their countries of birth that might be culturally appropriate and/or enable family and cultural connections to be maintained and nurtured like placement with extended families or in fostering arrangements. The focus on culture and maintaining first family connections is in post-adoption care, though somewhat inadequately, not on pre-adoption circumstances or the principles enshrined in the Convention.

Despite a crisis in the funding of welfare in many developed countries such as Australia, the United Kingdom and the United States, and more robust social democratic welfare states such as those in Scandinavia, varying levels of services and supports are available to parents who find themselves in crisis.²⁷ Social policies exist to address economic, social, cultural, environmental and behavioral contributors to poverty, health, employment and housing. Resourcing and supporting governments to move toward policies and practices to prevent family breakdowns is not considered to be in the sphere of influence in intercountry adoption. Influencing governments in countries of origin to address social issues is too often dismissed as impossible or not "culturally appropriate" in the intercountry adoption field as it conflicts with the goals of facilitation, not the rhetoric of the best interests of the child outlined in the CRC. Thus, efforts are made to influence governments and cultures toward participating in intercountry adoption. For instance, adoptees, mothers, and a small number of adoptive parents are influencing governments and culture in South Korea by promoting changes in law, culture, and social policy towards transparent ethical and professional practices in adoption that includes the needs of parents who are no longer invisible in that country.²⁸ As it stands, in most countries of origin, parents and communities at risk of losing their children have little access to resources, and social policy development, if it exists, is often in its infancy. Some countries such as South Africa prefer to turn to intercountry adoption in preference to developing adequate welfare for all South Africans consistently across the country. It is the unstated goals of intercountry adoption that create a chasm between rhetoric and reality and sustain the system.

Toward a Social Justice Framework

It has been claimed that there are hundreds of millions of "unparented" children and that these numbers will persist for millennia.²⁹ The position proposed by Bartholet³⁰ on intercountry adoption assumes permanent separations and disconnection for children from their families as necessary while institutional care is portrayed as homogenous with the same aims, structures, and models of care. It also belies the contact that it is possible for families to have with children while in other forms of care. Reports from the field highlight vast differences

<http://www.brandeis.edu/investigate/adoption/index.html>.

²⁴ Fronek, "Intercountry Adoption in Australia," *supra* at 7–54.

²⁵ Frank Ainsworth and Patricia Hansen, "The 'Best Interests of the Child' Thesis: Some Thoughts from Australia," *International Journal of Social Welfare* 18, no. 4 (2009): 431–39; Kelley McCreery Bunkers and Karen Smith Rotabi, "In an Era of Reform: A Review of Social Work Literature on Intercountry Adoption," *SAGE Open*, (November 25, 2011), available at

<http://sgo.sagepub.com/content/early/2011/11/14/2158244011428160.full-text.pdf+html>; Martin Guggenheim, *What's Wrong with Children's Rights* (Cambridge, MA: Harvard University Press, 2005).

²⁶ Peter H. Pfund, "Intercountry Adoption: The 1993 Hague Convention: Its Purpose, Implementation, and Promise," *Family Law Quarterly* 28, no. 1 (Spring 1994): 53,54.

²⁷ Jonathan Dickens, "Social Policy Approaches to Intercountry Adoption," *International Social Work* 52, no. 5 (September 2009): 595-607.

²⁸ Eriksen, J., Kim, A. M. A., Tams, M. K. -y., & Tokola, N. S., "Voices of those Affected II: Stories of International and Domestic Adoptees" (paper presented at Redefining Family, Seoul, South Korea); Chieko, et al., "Voices of Those Affected III,"; Kim, et al., "Voices of Those Affected I,"; David M. Smolin and Jane Jeong Tenka, "Signing Hague Convention: Implications and Challenges for Korea," *The Korea Times*, May 27, 2013, accessed May 30, 2013, http://koreatimes.co.kr/www/news/opinion/2013/05/137_136433.html.

²⁹ Elizabeth Bartholet and David Smolin, "The Debate," in *Intercountry Adoption: Policies, Practices and Outcomes*, ed. Gibbons and Rotabi, 233- 51.

³⁰ *Ibid.*

in “institutional” care (Abebe, 2009; Fronek, 2013; Islam, 2012).³¹ Smolin and Smolin³² propose that perhaps “separated” children is a more accurate term than “unparented” children.

UNICEF’s Statement on Orphans³³ identifies the distinction between “single orphans” and “double orphans;” and of the 132 million children classified as “orphans,” only 13 million are “double orphans.” The vast majority of “orphans” are living with a surviving parent, grandparent, or other family member. Many children are placed in other types of care to access education or are there temporarily. UNICEF and other international organizations are regularly criticized by claims makers for articulating unpopular statements, tensions highlighted by Graff.³⁴ UNICEF has most recently been accused of being responsible for the global decline in intercountry adoptions in the press.³⁵ Selman³⁶ explains the decline of intercountry adoption numbers internationally to reduced “supply” in key countries of origin. Regardless of whether ideology or critical understandings are adopted, nothing will change in countries of origin when only a partial picture is recognized and resourced.

Increasingly, researchers, think tanks, and policy makers are approaching complex matters across sectors rather than in silos. The Ottawa Charter³⁷ offers a prime example of an international, intersectoral framework to address complex problems. Intercountry adoption currently functions within an international legal framework and has not yet moved to intersectoral approaches to address its complexities. Social problems are worse where inequalities exist.³⁸ Factors such as poverty and structural disadvantage are known contributors to intercountry adoption.³⁹ Yet, a strong focus on facilitation and debates over the meaning and intent of Conventions with little attention on structural and other causal factors of family separations means that many actors in intercountry adoption will not attempt to address root causes and exercise responsibilities to the disempowered despite the subsidiarity principle which prioritizes a child staying with his or her family or community. To complicate matters further, facilitation is often favored at the expense of transparent and ethical practices concerning the relinquishment of children; and, different rules apply to intercountry adoption than those that apply domestically in many receiving countries of children born overseas.⁴⁰ The “ethics” of intercountry adoption is overwhelmingly utilitarian where the end justifies the means. Interestingly, utilitarian ethics has been criticized as it supports unbridled hedonism, has too close a relationship with economic instrumentalism, works against the marginalized and disadvantaged, and justifies the violation of human rights through individualism.⁴¹

Some clarity over our intention is needed here. There is no premise in our argument that intercountry adoption is itself problematic. Intercountry adoption exists on a continuum of possible courses of action for the care of children. However, responsibilities regarding root causes that include receiving country influences have on the separation of families is often overlooked in the intercountry adoption field despite researchers identifying these relationships.⁴² The influence includes the momentum of the industry itself, the demand for children, and the intense lobbying of receiving and sending governments by promoters of intercountry adoption for greater and expedited access to children. A paradigm shift in how we think about intercountry adoption and how we

³¹ Tatek Abebe, “Orphanhood, Poverty and Care Dilemma: Review of Global Policy Trends,” *Social Work and Society* 7, no. 1 (2009), available at http://www.socwork.net/2009/1/special_issue/abebe; Patricia Fronek, host, “Forget Me not: In Conversation with Kate Van Doore (episode 48; podcast), *Podsocks*, March 28, 2013, <http://www.podsocks.com/podcast/forget-me-not/>; Tuhinul Islam, “Residential Childcare: The Experiences of Young People in Bangladesh” (PhD diss., University of Edinburgh, 2012).

³² Smolin and Smolin, “The Aftermath of Abusive Adoption Practices,” *supra*.

³³ UNICEF, “Orphans,” *UNICEF Press Centre*, updated May 25, 2012, accessed May 27, 2013, http://www.unicef.org/media/media_45279.html.

³⁴ E. J. Graff, (2010). “The Baby Business,” *Democracy: A Journal of Ideas* 17 (Summer 2010): 13.

³⁵ Stephen Beale, “UNICEF Blamed for Decline in International Adoptions,” *National Catholic Register*, May 22, 2013, accessed May 27 2013, <http://www.ncregister.com/daily-news/unicef-blamed-for-decline-in-international-adoptions/>.

³⁶ Selman, “The Rise and Fall of Intercountry Adoption,” in *Intercountry Adoption*, *supra* at 24.

³⁷ WHO, “Ottawa Charter for Health Promotion,” *First International Conference on Health Promotion*, WHO/HPR/HEP/95.1, p. 4, Ottawa, November 21, 1986, accessed November 18, 2010, http://www.who.int/hpr/NPH/docs/ottawa_charter_hp.pdf.

³⁸ Kate Pickett and Richard Wilkinson, *The Spirit Level: Why More Equal Societies Almost Always Do Better* (London: Allen Lane, 2009).

³⁹ Cuthbert and Fronek, “The Future of Inter-Country Adoption,” *supra* at 215–24.

⁴⁰ Cuthbert and Fronek, “Apologies for Forced Adoption Practices,” *supra* at 402n14.

⁴¹ Noel Preston, “Ethical Theory: An Overview,” in *Understanding Ethics*, 3rd ed. (Annandale, NSW: Federation Press, 2007): 35-58.

⁴² Catherine Ceniza Choy, “Institutionalizing International Adoption: The Historical Origins of Korean Adoption in the United States,” in *International Korean Adoption: A Fifty-Year History of Policy and Practice*, Kathleen Ja Sook Berquist, Marvin D. Feit, Dong Soo Kim, and M. Elizabeth Vonk, eds. (New York, NY: The Haworth Press, 2007): 25 -42.

intervene in people's lives is needed. This shift moves away from a partial focus on facilitation that fulfils a function by meeting the needs of prospective parents while at the same time ignoring the plight of first families and communities and their children. Strategies are needed for the prevention of family breakdown. With the decline of young healthy children being made available for adoption, the trend is toward older children and those with special needs. Again, there are assumptions that there are no other ways of intervening for these children. According to UNICEF's report on *Children with Disabilities*, over the course of twenty years...

Disability Rights International (DRI) has documented the conditions of children with disabilities in institutions in 26 countries around the world. Our findings are surprisingly consistent. We have interviewed heartbroken mothers and fathers who wish to keep their children at home but receive inadequate support from governments and cannot afford to stay home from work to take care of a child. Doctors often tell parents to place their daughter or son in an orphanage before they become too attached to the child.⁴³

From a position of social justice, ethical appropriateness of only intervening to remove children from institutions for intercountry adoption must be questioned when we are doing little to address the issues that separate all children, with or without disabilities, from their families. We posit that by understanding how social injustice manifests in intercountry adoption from an ecological systems approach, families at risk of separation or who have been separated and our involvement in their lives can be understood on a continuum.⁴⁴ The adoption continuum can be likened to upstream, midstream, and downstream socioecological model articulated in health promotion.⁴⁵ Downstream approaches intervene at an individual level. Interventions move along the continuum from downstream to upstream where problems are addressed at a structural level, essentially addressing the causes of problems, and the implementation of prevention strategies.⁴⁶ Different interventions for the benefit of children can be targeted along the continuum. In contemporary intercountry adoption, all interventions currently are targeted at the individual level. Even the Hague convention is aimed at individual children and though it prioritizes keeping families together offers no obligation to act on prevention strategies.⁴⁷

Using this model, problems can be addressed at societal, community, and individual levels. If a community is losing children to intercountry adoption, identifying the causal issues and responding to them particularly through local community development activities led by those communities has the potential to change circumstances for children and their families. At the height of the onset of adoptions from South Korea, one church-funded community development project in Seoul meant there were no children adopted from that neighborhood for the four years of its operation.⁴⁸ The project folded because of insufficient funds. The South Korean government took a different direction with U.S. proponents and went on to become for many years the largest and longest running adoption program in the world. Certainly many community development projects, including intersectoral collaborations, achieve results outside of the intercountry adoption field and could map future change in intercountry adoptions.⁴⁹ The needs of individual children and families can be approached differently to include strategies such as establishing schools, the provision of support in crises and other community development activities that have the potential to create change.⁵⁰ The provision of schools in places where children are trafficked for adoption is important, as the promise of education is commonly used by traffickers to trick parents into thinking their child is being taken to attend school rather than to be adopted overseas. Intercountry adoption as it has been practiced since the 1950s has essentially changed little in over sixty years because it has focused almost entirely on the individual end of the continuum. Interventions that support first families and children located along a continuum rather than solely on individual models of adoption can operate together with other interventions, such as adoption, provided there is agreement about the nature of the problems, whose interests are served, and whose rights are exercised.

All involved in intercountry adoption pronounce the "best interests of the child," yet these are not the problems usually presented to governments in countries of origin and receiving countries. The problems are commonly compliance with the Hague convention, reducing "red tape," and increasing access to children who might be

⁴³ UNICEF, "Children with Disabilities," *The State of the World's Children* (2013): accessed June 4, 2013, <http://www.unicef.org/sowc2013/report.html>.

⁴⁴ Cuthbert and Fronek, "The Future of Inter-Country Adoption," *supra* at 215–24.

⁴⁵ J. B. McKinlay, "Epidemiological and Political Determinants of Social Policies Regarding the Public Health," *Social Science & Medicine* 13A, no. 5 (August 1979): 541–58.

⁴⁶ *Ibid.*

⁴⁷ David M. Smolin, "Child Laundering and the Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption," *University of Louisville Law Review* 48 (2010): 441.

⁴⁸ H. Miller, "Recent Developments in Korean Services for Children," *Children* 18, no. 1 (1971): 28.

⁴⁹ R. Loewenson, "Evaluating Intersectoral Processes for Action on the Social Determinants of Health: Learning from Key Informants," *Social Determinants of Health Discussion Paper 5* (2013); Geneva: World Health Organisation (WHO).

⁵⁰ Cuthbert and Fronek, "The Future of Inter-Country Adoption," *supra* at 215–4.

suitable for adoption, not the problems that separate children from their families prior to adoption. How the problem is generally understood is best illustrated in disasters. The post-disaster rush for children in places like Haiti in 2010 provided opportunities for expediting adoption rather than responding to communities.⁵¹ The out-of-country response to the children of Haiti, a colonized and traumatized nation, was very different to the post-trauma care of children in New Zealand and Australia in the same year. While saying this, activists, researchers, and people who have experienced loss through intercountry adoption are giving voice to the traditionally disempowered and bringing issues of concern to the attention of governments.⁵²

To truly understand intercountry adoption, not just cling to the aspects that support our preferences, a critical approach to power and advantage and the inclusion of all those affected by family separation in any intervention must be acknowledged and acted upon. The true goals of intercountry adoption must be made transparent. If the goals are to meet the needs of those hoping to adopt, then generally these needs are being met often at the expense of the disempowered despite the recent decline in numbers. Research shows that the focus on a particular country merely shifts to one where children are more readily available.⁵³ If meeting the needs of adoptive parents is the true goal, then actors in intercountry adoption cannot afford to adopt an inclusive and comprehensive understanding. If the goal is to do the best for children, we must first see them as part of an existing family and community in the first instance and make moves to include pre-adoption issues that separate children from families and communities on a continuum of possible interventions. We perpetuate the fantasy that we can meet both goals – find a child to parent and do the best for children and their existing families at the same time. While we attempt to meet these goals simultaneously, the needs of actors with the greater privilege override the needs of the less powerful. Our goal must first lie with the child and his or her family and community. If by attending to these matters, the need to become an adoptive parent is ultimately satisfied, that is a good thing. Unfortunately, the need to parent as a primary goal influences how intercountry adoption is actually practiced and thus does not attend to all responsibilities. Ethical, transparent, and appropriate adoptions must not be an exercise of power, whether over individuals or entire communities.

Understanding such an approach necessitates the exploration of causal factors that contribute to the separation of families in countries of origin and to take steps to address them. These go beyond individual circumstances to include structural factors that impact on communities and families and their ability to care for their children. Although structural factors such as poverty, education, and gender are often acknowledged in intercountry adoptions, they are usually relegated to the responsibility of others and removed from the sphere of influence. Instead, structural contributors to the separation of children and families are reinterpreted as a justification for adoption. Social justice and equality considerations require attention and should stand as a necessary prerequisite for ethical adoptions.

Of course, the problems that impact on first families are not going to resolve over night; but, we will never resolve them as long as we ignore one end of the continuum. To be truly confident that we are doing the best for children, adoptive parents, agencies, law and policy makers, governments, and other actors must turn a critical eye toward privileged practices. The difference between those who adopt and those who lose their children to adoption is access to resources. Adoptive parents deserve the knowledge that adoptions occur ethically, and first families and communities deserve the right to raise their own children and receive support during times when circumstances such as illness or access to education interfere. Adopted children deserve to know their adoption was ethical and to maintain connections with their first families wherever this is possible. Many families are affected by crises, breakdown, poverty, natural disasters, and political turmoil, but not all of these families risk losing their children to intercountry adoption for these reasons. A major difference between families who face this risk is the existence of the social and other safety nets that support families in the interests of keeping them intact. Rather than the current focus on removing children for adoption, the international community needs to commit to a cross-sectoral approach, which prioritizes children in their families and communities and supports strategies that aim to do this, and in which intercountry adoption is the very last resort – and not the first response.

⁵⁰ Denise Cuthbert and Patricia Fronek, "History Repeating: Disaster-Related Intercountry Adoption and the Psychosocial Care of Children," *Social Policy and Society* 11, no. 3 (2012): 429-42; International Social Service (ISS). "Executive Summary: Haiti: 'Expediting' Intercountry Adoptions in the Aftermath of a Natural Disaster," *Hague Conference on Private International Law*, Information Document no. 4 (June 2010): 32; Karen Smith Rotabi, "Haitian 'Orphans': A US Social Worker's Caution and Recommendations for Policy," *Social Work and Society News Magazine*, February 18, 2010, <http://www.socmag.net/?p=610>.

⁵¹ Chieko, et al., "Voices of Those Affected III,"; Cuthbert and Fronek, "Apologies for Forced Adoption Practices," *supra* at 402-14; Eriksen, et al., "Voices of those Affected II,"; Kim, et al., "Voices of Those Affected I,"; Smolin and Trenka, "Signing Hague Convention."

⁵² Fronek, "Intercountry Adoption in Australia," *supra* at 7-54.

Conclusion

In conclusion, we aim to bring the intercountry adoption debate into the 21st century despite the risk that some business and personal interests may be challenged in that process. It is time for honesty, transparency, and a child-focused approach in intercountry adoptions. We need to identify the problems that lead to child separation, which in turn give rise to the removal and adoption of children. The desire to form families and the reality of separated families are two different problems affecting different stakeholders in different circumstances. Both considerations demand different approaches to solving them. The adoption solution may be one course of action with the potential in some cases to address the needs of children and adopting adults; but it will not do so in all cases. Adoption sits on a continuum of a range of possibilities and interventions and should not assume a priority position on this continuum.

Intercountry adoption is multidisciplinary and is practiced across multiple sectors of law, welfare, public policy, and child placement. All disciplines need a place at the dialogical table to develop approaches informed by values that include social justice principles. A firmative action that ensures the equal participation and inclusion of parents, families and communities, and adult and child adoptees to ensure their place at the table is needed. Such an approach necessitates a shift in the balance of power and influence from those who speak for them and the sole focus on the interests of adopters. Dialogue begins with prevention, developing meaningful support in regions where adoption is rife, and engaging in more research to fill gaps in knowledge.