Law & Society REVIEW

Moving Children through Private International Law: Institutions and the Enactment of Ethics

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This article examines how the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) plays a central role in justifying the institution of legal adoption. The Hague Adoption Convention has often been regarded as a response to the challenges that the "global situation" brings to adoption practice. Based on private international law, the agreement contains protocols and norms to ensure the protection of the child in intercountry adoption. In the article, I propose that the Hague Convention can be understood as a "transparency device"; a complex assemblage working in pursuit of global "good governance." The device, however, also operates as justification within the institutional domain, allowing adoption agencies to make distinctions between legitimate and illegitimate adoptions. Idemonstrate how the logic of transparency disguises as much as it promises to reveal. While the doctrine's aim is to validate adoptability and combat trafficking, it also helps to mainstream Euro-American adoption knowledge to other parts of the world.

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The world of international adoption today is undergoing profound changes. Adoption advocates speak of a state of crisis. Since 2004, the number of international adoptions has dropped dramatically. A global decrease was evidenced by at least 50 percent in 2011 since figures in 2004 (Selman 2009, 2012), and the numbers keep falling worldwide. Yet the shortage of adoptable children in so-called "sending countries"—those nations sending children away for international adoption—have not diminished the demand for children in "receiving countries"—those states to which the children are sent to be adopted by prospective parents. The continued demand has put

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This research was funded by a DECRA grant from the Australian Research Council (project number: DE140100348). I would like to express my gracious thanks to the three reviewers who provided valuable comments and suggestions for improvement. I would also like to thank my editor Catherine V. Howard for her generous work in editing my article and for her insightful feedback.

Law & Society Review, Volume 53, Number 3 (2019): 671–705

severe pressure on institutions that facilitate international adoptions. Some argue that the situation has elicited or aggravated corrupt practices, child buying, and child trafficking in the major sending countries, such as China, Russia, and Guatemala (Smolin 2006, 2010; Graff 2008). Across these institutions, internal and public debates are taking place to devise the best ways to manage these new challenges.

One of the principal interrogations in these debates is how the current practice of international adoption relates to the application of the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (hereafter, Hague Adoption Convention), a Convention established in 1993 that is geared toward regulating cross-border adoptions. Legal scholarship on adoption has labored over this problem by gauging the original goals and intentions of the Convention, by assessing how well countries implement its principles and directives, and by scrutinizing the effectiveness of the instrument.[1] While some argue that the Hague Adoption Convention closes opportunities for adoption and can be regarded as one of the major instigators of the recent decline (Bartholet 2007:154; Clemetson 2007), others contend that the decline was precipitated more directly by local measures, independent of the Hague system (Smolin 2010: 465). On the whole, the literature has focused primarily on the regulatory aspects of the Hague Adoption Convention. Within this framework, commentators may critique the language, implementation, or adaptation of the Convention in local, organizational, or governmental settings. The solutions they suggest often remain within the realm of law, proposing more regulation or proffering institutional "best practices." Crucial questions, however, remain: in what way is the Convention enacted in daily practice? How do institutions—including their actors, experts, and stakeholders—make use of or implicate the Hague Adoption Convention in their day-to-day operations?

In this article, I examine the uses of the Hague Adoption Convention in institutional practices that must contend with reproductive desires, on the one hand, and humanitarian intentions, on the other. I discuss the fundamental issues of practice and ethics, and describe the tension between enabling adoption and policing the commodification of children. Sociolegal scholarship on adoption, or reproductive technologies more broadly, focused on this tension, bringing ethics to bear on commodity thinking (Ertman 2003; Goodwin 2010; Yngvesson 2002). Drawing from theories in economic sociology, legal anthropology, and

[1] See, for instance, Bartholet 2007; Smolin 2006, 2010, and 2015; Dillon 2003, 2008; and Tobin 2014.

science and technology studies, I extend these studies to focus particularly on how the Convention and its artifacts (such as forms, guidelines, and "best practice" guides) are enacted by institutions and what the consequences of such enactments are.

Enactment is a key term in science and technology studies (Lien and Law 2011; Mol 2002; Strathern 2005; Woolgar and Lezaun 2013) and is aimed at bypassing investigations of representation. In looking at how a legal technology—such as the Hague Adoption Convention—is enacted, I'm not concerned with how it has been represented, which would involve epistemological questions aimed at uncovering a more truthful world outside of representation. Instead, enactment privileges an analysis of how objects—in this case, the Convention and its artifacts—are performed in practice, describing how worlds come about—or are achieved. A focus on enactment is more concerned with ontology rather than epistemology and I am particularly interested in how the Convention comes to be stabilized (albeit strongly or weakly) in institutional practice. I argue, along with Woolgar and Lezaun (2013: 332), that its stabilizations are achieved "in virtue of its articulation as part of the structure of the moral order of which it is part." Enactments, then, have normative effects and I will demonstrate that a focus on enactment highlights the Convention's function as a legal technology of global governance in which politics is obscured by a depoliticized practice of ethics.

The first half of the article provides a context to the Hague Adoption Convention by discussing its purpose, history, and implementation. I focus on a central discrepancy in the multidimensional component of the Convention: the core principle of subsidiarity.[2] In my reflections on this context, I turn to criticize a central notion underlying Karl Polanyi's (2001[1944]) socioeconomic theory, namely, the "double movement." The first of this double movement involves the expansion of a capitalist market to the point where abuses are committed, and the second involves a countermovement when social protections are put in place to combat the abuses. The Hague Adoption Convention can be seen as responding to the tribulations of "marketization," that is, the abuses that arose from the market mechanisms underlying adoption practices in a globalized world and, as such, can be

[2] According to the Hague Adoption Convention, subsidiarity is defined as follows: "'Subsidiarity' in the Convention means that Contracting States recognize that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent care in the State of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. As a general rule, institutional care should be considered as a last resort for a child in need of a family." See https://assets.hcch.net/upload/outline33e.pdf.

considered as a countermovement. However, I demonstrate that the double movement is embedded *within* the Hague Adoption Convention itself. The treaty functions, on the one hand, as an enabling force, intended to allow adoption to take place within a streamlined conception of global governance. The restructuring of legal matters pertaining to adoptability, accreditation, and citizenship is supposed to make adoption processes in the sending and receiving countries more compatible, and therefore more expedient. On the other hand, the Convention's reliance on public international law makes cross-border adoption a restrictive practice, one that has to undergo numerous protection measures in order to comply with the ethical principles of human rights. The section probes this double movement *within* a countermovement.

In the second half of the article, I focus on the enactment of the Hague Adoption Convention in institutional practice. Here, I refer to my ethnographic material collected from United States and Dutch adoption institutions and describe how the notion of transparency is core to how institutions implicate the Hague Adoption Convention in their day-to-day operations. I argue that the Hague Adoption Convention can be approached as a "transparency device" (Harvey, Reeves, & Ruppert 2013), that is, a complex assemblage working in pursuit of global reproductive governance. From the perspective of science and technology studies, a device sets out to configure capacity and performs aspects of knowledge and expertise (Muniesa, Millo, & Callon 2007). In the context of the Hague Adoption Convention, the transparency device functions as a technical instrument that configures adoption capacity through the performance of knowledge and expertise on what are considered virtuous transparent practices. I discuss the differences between European and American understandings of transparency in enacting the Convention and explain that these differences illuminate the tension inherent in how the device is used. Ultimately, I argue that the transparency device helps to keep the double movement in check: while the Convention legitimizes cross-border adoption through its emphasis on protection, transparency facilitates an ordered global adoption system by making legal adoption compatible across borders.

In the final part of the article, I argue that humanitarianism as an "internationalist" ideology combined with transparency as a device depoliticizes international adoption. While the debate on international adoption necessarily treads on the postcolonial question whether it serves wealthy childless couples in the North at the cost of birth families in the South, my point is of another postcolonial nature, namely, that only a certain kind of kinship knowledge becomes known through international law, screening

out other kinds. The problem of such filtering cannot be addressed merely by making the process of international adoption transparent. Instead, it demands a political response and a global debate about how we can honor, respect, and legally work with different kinds of kinship knowledge in a transnational space.

My article is based on empirical research conducted across a period of 5 years, from 2007 to 2012, which made use of ethnographic methods, in-depth interviews, and document analysis. I visited a number of adoption agencies in the Unites States and the Netherlands. In one Dutch agency, I spent 5 months doing fieldwork (for a total of 160 hours between March 2008 and July 2008, with two return visits in December 2011 and September 2012). Data include ethnographic observations of meetings, events, meetings between social workers and prospective parents, meetings between social workers and medical practitioners, and repeated interviews conducted with social workers, the manager, and the three consecutive directors of the organization. I conducted a total of 40 interviews in the Netherlands and 21 interviews in the United States with adoption professionals, including directors, social workers, and representatives from central state authorities, adoption medicine specialists, academic adoption experts, critical adoption activists, and adult adoptees. Policy and legal documents were analyzed from U.S. and European national bodies, as well as from adoption agencies and international bureaus regulating international adoption, which used the Hague Convention for Intercountry Adoption and the United Nations Convention on the Rights of the Child (UNCRC).

Context of Action

The Hague Conference on Private International Law (HccH) is one of the world's leading organizations for cross-border cooperation and commercial matters. It is an intergovernmental organization responsible for the regulation of private matters across different jurisdictions. Established in 1892, it includes today 75 states and the European Union. Over the years, it has adopted numerous conventions that aim to harmonize conflict-of-law situations. The status of children in cross-border settings has been a primary focus: conventions in this area include child abduction, maintenance obligations, and intercountry adoption. More recently, HccH has been researching the possibility of formulating a Hague Convention on International Surrogacy Arrangements.

The Hague Adoption Convention was concluded on May 29, 1993 and entered into force on May 1, 1995. The agreement

contains protocols and norms to ensure the protection of the child in adoptions occurring between countries.[3] The *Guide to Good Practice*, volumes 1 and 2, published by the Permanent Bureau in 2008 and 2013, respectively, forms the practical guide to implementing the principles of the Convention.

In 1990, the Dutch legal officer Hans van Loon wrote a key discussion document that informed the creation of the Convention, acknowledging that, compared with intercountry adoptions in the period following World War II, a new situation had emerged.[4] Rather than war, children were now being abandoned for structural reasons, that is, in response to socioeconomic constraints relating to poverty and unemployment, or to cultural and religious constraints pertaining to stigmas attached to family planning and unwed mothers. At the same time, industrialized countries experienced increasing infertility, partly due to the influence of Western feminism and the growing participation of women in the workforce. Other significant trends in these countries were the increasing use of birth control resulting in fewer unwanted pregnancies, the growing acceptance of single mothers, and the reorientation of domestic adoption to either permanent fostering or open adoption, contributing to a significant decrease in the number of children available for domestic adoption. This, in turn, increased the demand for cross-border adoptions. As Van Loon argued, using the language of economics, "A structural 'supply' of children 'available' for adoption abroad in economically developing countries met with a structural 'demand' for such children in economically advanced countries" (1990: 39). This situation led to increasing abuses, such as child buying and child trafficking, which, according to Van Loon, demanded as much attention as the technical legal issues concerning which laws to apply in cross-border situations.

The preparatory discussions informing the creation of the Convention revolved around the need for global regulation and the prevention of abuse in adoption matters, dealing specifically with the civil issues they would entail rather than the criminal aspects, which would be covered by international criminal law.

[3] As I write this article, the Convention has been ratified by 96 states. France, Italy, the Netherlands, Canada, and the Nordic countries were the first to ratify the Convention as receiving countries (1990s). Countries that send large numbers of adoptees, such as South Korea, Nepal, and Russia have signed but not ratified the agreement. Moreover, it was not until 2008 that the United States, the country receiving the highest number of adoptees, finally ratified the Convention. Ratification means that the member state is expected to apply the values and norms set out by the Convention to its international adoption practices.

[4] This preliminary document was circulated to the members of the sixteenth meeting, which led to the creation of the Convention. Historically, meetings for drawing up regulations for international adoptions focused those occurring between European states.

The drafters acknowledged that the proposed instrument should go beyond matters of administration and include sociopolitical enquires regarding social welfare, migration, and nationality. The Hague Adoption Convention, therefore, became a multidimensional instrument: at the same time that it is an instrument for judicial and administrative cooperation, it is also a human rights instrument (Van Loon 1990; see also Baker 2013:420). As a private international law instrument, it works to eradicate so-called "limping adoptions," referring to weak or unrecognized adoptions, in either states of origin or receiving states, which can leave children stateless or without formal legal parentage. The Hague Adoption Convention can also be qualified as a human rights instrument, for it incorporates and complements the principles and norms of the UNCRC.[5]

In the following section, I focus on a central discrepancy inherent in the multidimensional component of the Convention, which I argue functions as a necessary factor in making a legal adoption compatible across borders. It concerns the principle of subsidiarity and the related matter of full and simple adoptions. Although other problems can be found in the Convention, I chose to emphasize the topic of subsidiarity, since it constituted a core issue debated during the negotiations behind the Convention and it continues to figure prominently in contemporary practice. I then discuss how we can understand this discrepancy in a broader perspective, taking into account socioeconomic approaches and perspectives from political economy.

Principle of Subsidiarity

The United Nations Convention on the Rights of the Child (CRC) significantly informed the language and formulas of the Hague Adoption Convention. A closer look at some of the shared principles, however, reveals important differences between the Convention and the CRC. One of the Convention's core principles, for instance, is the principle of subsidiarity. Subsidiarity means that, at all times, preference should be given to local solutions for a child's care before resorting to international adoption. Articulated in Article 21, the CRC understands subsidiarity as the following:

> Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.

[5] The UNCRC was signed on November 20, 1989 and came into force on September 2, 1990.

For the Hague Adoption Convention, subsidiarity, as articulated through the preamble, means the following:

> Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
> Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.

At first glance, the subsidiarity principle in the Hague Adoption Convention seems to align with the CRC. But the precise wording of the principle reveals that it contains a crucial difference: while the Hague Convention emphasizes "family," the CRC stresses "care." In the latter, the CRC widens the opportunities for children to be *cared for* in local arrangements before international adoption (which can be interpreted as including foster care, group homes, and institutional care), defined by the CRC as a *transnational alternative form of care*. By focusing on "family," however, the Convention limits this opportunity. Although the principle of subsidiarity is not clearly defined in the Convention itself, the guides are more explicit in their language and, as I will demonstrate later in the article, strongly suggest that *permanent placements in families* are privileged over alternative forms of care. In practice, this means that children can be put up for intercountry adoption as soon as it is established that they cannot be placed through domestic adoption.

Chad Turner (2016) describes the discussions on subsidiarity among member states preceding the drafting of the document. Drafters made a fundamental shift from the CRC's emphasis of adoption as "care" to the Hague Convention's final emphasis on *permanent families*. Although consensus was reached on the wording, member states from the non-Western and developing countries had suggested different wordings and had criticized the drafters for not adequately adhering to the CRC. Egypt, for instance, was especially critical to the direction that the drafters were taking the document. The delegate insisted that *Kefala*—an Islamic form of fostering—be included in the document as an alternative form of care (Turner 2016:105). Moreover, this delegate accused the drafters of disregarding the CRC by not providing provisions that would consider the children's nationality, culture, or religion. Such clauses of cultural diversity are encompassed by the CRC and

are central to the African Charter on the Rights and Welfare of the Child.[6]

The practice of international adoption today still engages with these very same discrepancies around subsidiarity. Studies on child circulation in South America (Fonseca 2002; Leinaweaver 2008), practices of *kefala* in Islamic countries (Bargach 2002; Malingreau 2014), and fosterage systems in Africa (Bowie 2004; Notermans 2004) illustrate the myriad forms of alternative child care practices in local settings, revealing the difficulties of streamlining the system according to some supposedly shared idea of child adoption. Local practices in sending countries more often than not practice different forms of care that do not align with requirements of permanency set out by the Convention. What often happens in adoption practice is that the principles of subsidiarity are met according to the Hague Adoption Convention when they would not have been met according to the requirements of the CRC.

Making Adoption Compatible

The debate on subsidiarity has been entangled with the discussions on what are known as "simple" and "full" adoptions. Simple adoptions do not terminate the original parent–child relationship; instead, a new parent–child relationship is established on top of it. Full adoptions, by contrast, completely terminate the preexisting filial relationship.

During negotiations for the Hague Convention, the drafters considered simple adoptions to be problematic and sought ways to address them in order to make adoption compatible across borders. In his discussion paper, Van Loon describes how developing countries in Latin America, Asia, and Africa mostly facilitate simple adoptions rather than full adoptions (this is pertaining to incountry adoption). Citing anthropological research, he writes that "in many small scale societies adoption is between relatives; it is not always permanent although this may be the intention at the time of adoption; it does not involve cutting of ties with the birth parents; and may involve continuing or additional inheritance and successional rights" (1990:34).[7] He acknowledges the challenges that these

[6] Article 4, 5, 8, 14, and 29 of the CRC all refer to forms of alternative care in conjunction with ethnic, religious, cultural, and linguistic contexts. Article 29, for instance, stipulates that the education of the child should include (among other things) "respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own." The African Charter on the Rights and Welfare of the Child was established to complement the CRC by including the distinctive sociocultural and economic realities of Africa, for instance, including a special reference to the care of children by extended families.

[7] Here, Van Loon references the work of Maev O'Collins 1984.

situations can bring to receiving states when a child is adopted by a person or couple in a state that may only have the capacity to accept full adoption (like the United States). In other words, the relativity of adoption in the Global South can pose a problem to the narrower idea of full adoption in the Global North.

Van Loon also acknowledges that legal arrangements around adoptive parenthood are changing in the Global North, leading to more openness and the involvement of birthparents and the original biological families in children's lives after adoption. Indeed, during the 1990s—and even more so in the decades thereafter—the increase of stepparent families due to rising divorces, the growing practice around reproductive technologies, and the emergence of LGBTIQ families have all led to the expanding formation of blended and "recombinant" (Strathern 2005:26) families. Some of these arrangements are legally recognized through existing and new adoption laws. France, for instance, revived an existing law in "simple adoption" from its Civil Code of 1804 to address contemporary legal provisions in stepparent arrangements. While relatively unknown to the general community (including scholars), simple adoptions are now the most common form in France, having surpassed full adoptions since the 1990s (Mignot and Hamilton 2015: 525; Perreau 2014), though this applies only to domestic adoptions. In addition, the expanding emphasis on open adoptions within more and more countries (including the United States, Australia, and the European states) is challenging the closed nature of full adoptions that hitherto have been the norm in the Global North (Smolin 2015: 29). While discussions are ongoing on how to implement these changes in law, institutions in some countries have already adopted multifaceted forms of open adoption in their daily practice.

Despite alternative forms of adoption in the Global South *and* the Global North, the 1993 Hague Adoption Convention works toward the achievement of permanent and full adoptions in cross-border arrangements. As worded in Article 2, line 2 of the Convention, "The Convention covers only adoptions which create a permanent parent–child relationship." Drafters of the convention marshaled evidence from research in psychology and child development that claimed that permanent adoptions achieve more stability for the child and were hence in the child's best interest. Nonetheless, as Van Loon predicted, "The general 'relativity' of adoption in the Third World may pose special problems of a transcultural nature in the context of intercountry adoptions" (1990:209). This meant that concrete steps were necessary in practice to make adoption compatible with the proposed system.

The subsequent publication of the two volumes of the *Guide to Good Practice* indicates how this problem has been handled since

the establishment of the Convention. These guides, drawn up in 2008 and 2013, were published by the Permanent Bureau of the HCCH with the aim of assisting the central authorities and contracting states that are responsible for applying the conventions, and to assist practitioners (judges, lawyers, notaries, social workers, etc.) working with the Convention.[8] The first guide explains, for instance, how the Convention includes a nondiscrimination clause in which "the child's rights resulting from the adoption should be equivalent to those resulting from a similar adoption made under national law in the receiving State".[9] Although formally the Convention applies to both simple and full adoptions, the guides give room to transform them into full adoptions:

> In order to enable the receiving State to "upgrade" a simple adoption to a full adoption, Article 27 of the Convention provides the possibility of converting a simple adoption into a full adoption. But since the simple adoption does not lead to severing the links with the birth parents, this is only possible under the condition that those parents, if they have not already done so, give their permission to the full adoption (see Art. 27(1) b)). In the case of a conversion under Article 27, the newly created full adoption will replace the original simple adoption, and, if certified in accordance with Article 23, will be recognized in all Contracting States.[10]

On the surface, like many documents of this genre, the language is slippery. The Convention is cautiously expressed (using terms such as "permissions" or "possibilities"), which seems intended to cover earlier concerns expressed by Van Loon and others, but also to foil a clear reading.[11] The guide's suggestion of an "upgrade" hints at the opportunity to transform simple into full adoptions. In practice, this is exactly what is happening. The transformation of simple adoptions to full ones is an attempt to make adoption compatible in a global regulatory system. Such conversions are not entirely innocent. Active conversions contribute to facilitating a distinct form of legal adoption.

Anthropological research from different contexts throughout the world demonstrates that there are many ways of organizing family and alternative forms of adoption (Bargach 2002; Bowie 2004;

[8] See the publications entitled, "The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice" (HCCH Publications, 2008), and "Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2" (HCCH Publications, 2013).

[9] Point 56 of the *Guide to Good Practice*, volume 1 (2008) referring to Article 26(2) of the 1993 Hague Convention; see also point 494.

[10] See point 560, *Guide to Good Practice*, volume 1 (2008).

[11] Many thanks to my editor Catherine V. Howard for suggesting this point.

Fonseca 2002; Fonseca, Marre & San Román 2015; Leinaweaver 2008; Malingreau 2014; Notermans 2004). In her research on family practices and values among Brazilian favelas, Claudia Fonseca (2004), for instance, demonstrates how since colonial times, a form of informal fosterage was common among working-class populations in Brazil. Here, children lived with extended family chosen by their birth mothers and rarely involved cutting off the original ties with birthparents. Following ideologies that deemed pitiful the kinds of kin arrangements existing among these communities, the state and its adoption laws intervened in these practices and followed the dynamic of what Shellee Colen has termed "stratified reproduction" (1995). Favela residents are on the bottom side of this stratification process, surrendering their children without fully realizing the legalities implicated by adoption, while middle-class Spanish parents and adoptive parents from the Global North are enabled in their reproductive desires.

In the context of Brazil, full adoptions were introduced to eradicate "direct adoptions," (adoptions arranged directly between adoptive parents and birth mothers), which were considered by the elite to be prone to abuse. According to Fonseca (2009), however, full adoptions brought benefits to middle-class adoptive parents in and outside of Brazil at the expense of poor birthparents. Moreover, in its combat against abuse and commodification, the Hague Adoption Convention allowed no contact between birthparents and adoptive parents before adoption, which was contrary to the practices of child circulation.[12] Here, transnational institutional rules aligned the "best interest of the child" with "no contact," which in the Brazilian context led to the suppression of the already restricted forms of agency that birth mothers have had in the past (Fonseca 2009:28–30). Such practices raise the troubling prospect that the Convention and its guidelines, although intended to offer safeguards and protection against abuse, also obscure local dimensions of adoption and transform the meaning of child adoption as it moves into the international sphere.

It is the "multidimensional" aspect of the Convention that generates friction and imbalance in its attempt to making compatible dissenting understandings of adoption. As an enabling instrument, it cannot avoid overriding some of its protective measures. The shift to "permanent family" from "care" and the preference of full over simple adoptions reveal the implicit predilection of Euro-American

[12] Article 29 of the Convention stipulates: "There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care for the child until the requirements of Article 4, subparagraphs a)–c), and Article 5, subparagraph a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin."

kinship knowledge in the restructuring of legalities around cross-border adoption. It holds the naturalized assumption that the family unit is made up of the nuclear unit, encompassing a maximum of two legal parents.

Double Movements: Enabling and Restricting Adoption

The 1993 Hague Adoption Convention has often been regarded as a response to the challenges that the global situation has brought to adoption practice. The solutions that worked for the cross-border adoptions of children orphaned by World War II were tailored to deal primarily with adoptions *within* Europe.[13] However, from the 1960s onward, such solutions could not cope with the steady increase in cross-border adoptions of children mainly from developing countries brought to welfare states in Europe, North America, and the Antipodes.[14] Complex legal situations emerged from these transnational child migrations, prompting questions about which laws should be followed and what rules should be put in place for the process to be more orderly. The situation represented a pressing "conflict of law" that required transnational legal measures. Furthermore, public debate in the 1970s and 1980s raised concerns over the expanding practices of child trafficking. Discussions during the drafting of the 1993 Hague Adoption Convention held these views in tension. While efforts to formulate a working treaty were intended to facilitate and enable the practice of intercountry adoption, they also sought to implant safeguards to protect child from trafficking and being bought and sold as if they were commodities.

In *The Great Transformation*, Karl Polanyi (2001[1944]) proposed the model of a "double movement" to designate the ways in which capitalism treats all exchange as commodity exchange (the first movement), and the ensuing ways in which society responds to such an unparalleled process of "marketization" (the second movement). It does so, not in a grand movement and countermovement, but in a series of successive waves, informed

[13] The Hague Convention did put in place an earlier convention, the "1965 Hague Adoption Convention," that regulated cross-border adoption within Europe. Similarly, a multilateral agreement, called the "Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors," which was signed in 1984, regulated cross-border adoption between states in the Americas. The 1993 Hague Adoption Convention aspired to be a global instrument in private international law, complementing or replacing regional agreements.

[14] The discussions preceding the 1993 Hague Adoption Convention did not tackle the translatability of domestic adoptions to other countries or the adoption of children of adoptive parents with different nationalities. Instead, it specifically targeted the migration of children from the Global South to the Global North for the purposes of adoption (for a discussion, see Van Loon 1990).

by a cyclicality of actions. However, not all forms of exchange can be successfully transformed to commodities. Polanyi refers to land, labor, and capital as being forms of "fictitious commodities," since they are not intended to be traded in the marketplace. Children, commodified as either labor or capital, fall directly into this category. From a Polanyian perspective, an adoption "market," left to its own devices, distorts the idea of humanity in profound ways, leading to the exploitation and harm of children. Unregulated, the circulation of children across borders has been prone to abuse that commodifies them. The Hague Adoption Convention may be viewed as a response to the chaotic expansion of adoption markets, the type of countermovement that Polanyi refers to as the "self-protection of society." By signing and ratifying the conventions, states enforce transnational regulation to protect themselves against the instabilities of the market (Burawoy 2003; Guthman 2007). However, what I will argue in the next sections is that Polanyi's model is insufficient for explaining the kind of transnational treaty that the Hague Adoption Convention is.

Following the nature of the Convention as a private international law instrument, which objectives have always been on the enabling rather disciplining capacities (Muir Watt 2011: 354) but coupled with the more normative dimensions from human rights discourse, I propose approaching the Hague Adoption Convention as a double movement within a countermovement. On the one hand, the Hague Adoption Convention has facilitated adoption markets, and legitimated adoption's place in a global reproductive economy.[15] On the other hand, it has also functioned as a protective instrument, one that safeguards children from abuses such as trafficking and buying.

Figures indicate that the number of cross-border adoptions worldwide increased by 42 percent between 1998 and 2004 (Selman 2009:578). For the United States, the rise in adoptions of children from other countries between 1993 and 2004 was due almost exclusively to children coming from China, Russia, and Guatemala. According to Smolin, the rise of these three countries cannot be credited to the Convention, since the rise in China predated the ratification of the Convention in 2005, Russia never ratified the Convention, and Guatemala experienced a dubious accession process in 2002 and only started to enforce implementation in 2008. While I am not in disagreement with Smolin, my focus is not on sending countries or their formal adherence to the Convention. Rather, I concentrate on the receiving states and

[15] This was especially true in the 1990s, when certain sending countries, especially China, cooperated well with the bureaucratic structures of the Hague Convention, making it easier for Chinese children to be adopted internationally.

examine how the Hague Adoption Convention—as a legal instrument of governance—has contributed to the rise and fall of intercountry adoption by legitimating or delegitimating international adoption practices.

Context in Action

At the time of my empirical research in the US and the Netherlands between 2007 and 2012, American and Dutch perspectives on the Hague Adoption Convention differed notably. Similarly, opinions and practice also varied considerably among adoption organizations within each country. My ethnographic data and interviews conducted with adoption professionals in the Unites States showed that the enforcement of the Convention in 2008 presented major challenges to many agencies, since the implementation rules constituted a substantial change from earlier practices. Whereas international adoption practices in the past were primarily guided by state laws, with agencies formulating more specific guidelines, they were now directed by national rules devised to conform to international law. For the first time, agencies had to be accredited by a centralized authority at the federal level and report their services and activities on a regular basis. The final national rules were introduced in 2006 and it was expected that agencies would comply with these rules before the Hague Adoption Convention would be implemented in 2008. National requirements included minimal educational degrees of supervising staff in agencies, minimal insurance obligations to mitigate liability, and training and education for prospective parents (Bailey 2009). When I conducted my interviews during this time, informants indicated that some agencies were unable to comply with these new rules and ceased to exist, some struggled significantly to implement the new guidelines, and others reported having little trouble, since their agency already complied with such principles.

The situation in the Netherlands was somewhat different. The Hague Adoption Convention has a unique place in the Netherlands: not only is the Permanent Bureau of the Hague Conference located in the Netherlands, but this is where the Convention was drafted and its chief promoters were Dutch lawyers, one being Hans van Loon, who wrote the key 1990 document used in creating the Convention. The Netherlands is also the country where the organization *Euradopt* was founded in 1993. This European organization aims to establish common ethical rules, promote cooperation between governments and adoption organizations, and improve legislation among European

countries.[16] In contrast to the United States, the Netherlands was an early adopter of the Hague Convention. It signed the Convention in 1993, and ratified and enforced it in 1998. Agencies are now called "licensed operators" (*vergunninghouders*) and are accredited by the Dutch state. They collaborate with regional child welfare organizations (which are responsible for screening adoptive parents) and the Department of Justice (which is responsible for authorizing applicants). Staff in Dutch agencies with whom I spoke tended to be critical of U.S. agencies. In their experience, the United States often had a monopoly over children from sending countries; their adoption numbers were higher and their donation sums much greater than their European counterparts. Dutch agency staff often referred to their long history of working according to the principles set out by the Hague Adoption Convention. At the same time, staff at some agencies distanced themselves from other Dutch agencies, criticizing them for not complying as closely to the Convention's principles as they themselves did.

Despite the differences, adoption agencies in both receiving states, whether private, state regulated, or somewhere in between, were all increasingly subjected to expectations set out by the Hague Adoption Convention. The Convention became the ultimate justification for complying with ethical standards. In both countries, it was generally assumed that, if an agency complied with "the Hague," then the institution and the adoptions it arranged were legitimate. The phrase "we comply with the Hague" became synonymous with ethical practice and was integral to the enactment of the Convention by institutions. When I probed deeper into the naturalization of the justification "complying with the Hague," it became evident that the idea of "transparency" was central to how institutions understood the ethical dimensions of the Convention. In the following sections, I look more closely at the enactment of transparency by first examining how social workers in agencies used and framed the Hague Adoption Convention in their discussions on ethical practice. Second, I describe the tendency by social workers in the United States to contrast transparency with bureaucracy when explaining their view that the Convention was stifling rather than enabling adoptions. Third, I look at the inclination of European counterparts—in particular, the Dutch—to consider the Convention as not being transparent enough. Fourth, I describe the debate around adoption capacity and examine the source of the Convention's legitimacy beyond its formal structures. Finally,

[16] This association presently has member organizations in Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Luxembourg, The Netherlands, Norway, Spain, Sweden, and United Kingdom. Agencies aligned with *Euradopt* meet once every 2 years and discuss pertinent matters of adoption practices.

I reflect theoretically on the notion of transparency and argue that the modern enactment of transparency obliterates sociocultural and political complexities inherent in international adoption.

The Hague as Transparency Device

When I would ask adoption professionals in the United States and the Netherlands what "complying with the Hague" meant to them, they often said it referred to making their daily operations as transparent as possible. Transparency was a term mentioned for a variety of matters, ranging from costs and fees to communication and legal processes. The first *Guide to Good Practice* (2008) said the following about transparency:

> One of the best protections against misuse of a system and exploitation of children is transparency. Laws, regulations, policies, fees and processes should be clearly defined, and clearly communicated to all who use the system. This transparency enables users to see what protections are in place and to identify where actual or potential abuse of the system may occur.[17]

The most obvious application of the principle of transparency lies in the clarity and openness in the communication of costs involved in the adoption process. This can refer to agency costs, including application fees, expenses for mediation, documentation, and legal matters, costs for home studies and screenings, translation, and travel. Transparency of costs also refers to the rules and ethical guidelines involving donations to an orphanage, financial relations between aid and adoption services, and the distribution and rationalization of monetary assistance to humanitarian and child welfare projects in sending countries. In the field of adoption, the imperative of transparency also applies to the disclosure of information, including data about the past and present practices of agencies, orphanages, and their facilitators.

I would argue that the Hague Adoption Convention functions as seal of ethical approval and can be approached as what Harvey, Reeves, and Ruppert (2013) term a "transparency device." Such devices are complex assemblages working in pursuit of global—in this case reproductive—governance. Transparency works as a reactive apparatus. By making visible "laws, regulations, policies, fees, and processes," transparency devices are "purposeful apparatuses devised to enact transparency and provide a space of moral certainty about what constitutes good governance or harmonious social relations" (Harvey, Reeves, & Ruppert 2013:295, 299). In the

[17] See *Guide to Good Practice*, volume 1 (2008) 3.6, note 134.

case of international adoption, transparency represents a promise to deliver some form of certainty to the adoption process and to combat corruption and abuse in the system.

In adoption, people, such as social workers, adoptive parents, representatives of central authorities, orphanage directors, lawyers, translators, mediators, medical practitioners, as well as artifacts, such as legal documents, referral photos, video material, data systems, and software, all facilitate matching and thus become implicated by and constitutive of the transparency device. As Harvey and colleagues argue, these devices are vital for negotiating state–subject relations, although the state is often absent in enactments of transparency:

> [I]n the end, it is not the vows, character or commitments of humans but the transparency of their actions that matters and convinces. Indeed it is the very technicality of the devices—of all their material and social technologies—that make moral certainty a possibility." (Harvey, Reeves, & Ruppert 2013:299)

In receiving states, accountability at the level of transparency differs among agencies and depends on a variety of factors. One such factor I heard during fieldwork was whether or not an agency was sufficiently funded, either by the state or, in the United States, through private means, in order to fulfill its financial reporting requirements. The well-funded and well-endowed agencies were able to put in place enough professional people and administrative infrastructures, which, they asserted, made them more professionalized and led to more efficient practices of transparency, including financial transparency and expedient reporting. Smaller and volunteer-run agencies, meanwhile, struggled to meet the administrative requirements of the Convention.

But transparency issues were even more deeply related to the unpredictability of processes in sending countries. Transparency represented a means for receiving states to manage this unpredictability according to the Convention's principles. One of the core issues in transparency involved the management of privately arranged adoptions. Here, U.S. and European perspectives differed significantly, which I will discuss next.

American Worries: Transparency Means Bureaucracy

Although the Hague Adoption Convention is critical of privately arranged adoptions—namely, arrangements made directly between biological parents in one state and prospective adoptive parents in another—such arrangements are not forbidden. Private adoptions fall within the scope of the Convention, although they

are subjected to requirements resembling those for agency-led adoptions. These requirements range from due consideration to the possibilities of local placements, the counseling of biological parents, the explicit consent of the birth mother (after giving birth), and the suitability of adoptive parents. As such, they lose their private character. The first *Guide to Good Practice* from 2008 states that:

> [P]rivate adoptions arranged directly between birth parents and adoptive parents come within the scope of the Convention if the conditions […] are present. This means that these adoptions should comply with the Convention standards and requirements, but this is not possible without losing their "private" nature. In other words, a purely private intercountry adoption arrangement is not compatible with the Convention.[18]

The *Guide* makes a distinction between "purely private adoptions" and "independent adoptions," with the latter used to refer to those cases where adoption arrangements made privately by prospective adopters are approved by their Central Authority or accredited body.

Although "independent adoptions" occurred in many countries, the United States is particularly known to facilitate them, since privately arranged adoptions were legal in some U.S. states. Until recently, anyone in the United States could start an adoption agency specializing in international adoption without accreditation or licensing from the federal administration. This changed in 2008, when the United States ratified the Hague Adoption Convention.[19] For agencies, ratification meant that they had to become accredited by the central authority, in this case, the Office of Children's Issues of the Bureau of Consular Affairs, part of the Department of State. And while privately arranged adoptions were commonplace before the implementation of the Convention, such arrangements became subject to international legal control that brought them under public scrutiny.

Members of denominational and other smaller volunteer-run agencies in the United States saw the implementation of the Convention as blocking the adoption process with more "red tape." They understood the necessity of recording and documenting their actions but felt it hampered the expedient placement of children with families. As one case worker explained to me,

> It would have been a nicer world if we could all do it for the right reasons and do it the right way without having to have the

[18] See *Guide to Good Practice*, volume 1 (2008) Note 524.

[19] Note that the United States has yet to ratify the CRC.

> Hague Convention. The Hague Convention brings with it a lot of bureaucratic implications that agencies like us need to work hard on. But for good reasons. But it also slows down especially now.[20]

From this perspective, the bureaucratic paperwork accompanying the Hague Adoption Convention was arduous labor that seriously slowed down the bureaucratic process. They longed back to a looser system in which personal contact and trust were the tools of communication between countries and organizations. As one American informant explained:

> It really was a simpler system in the past. There were in-state [agencies] and agencies who did the overseas part. So that people could become very skilled. What happens now is that everyone wants to do both and be very skilled. They want to do it better, faster, it's more consumer driven.

Most of these organizations had their own contacts within their religious or charitable networks. Before the implementation of the Hague Convention, they placed their trust in these individual contacts in the countries of origin. Transparency regimes stimulated by the Convention slowed down the adoption process, since it meant relying on other mechanisms besides trust. Documentation, legal authorization, and medical reports were now the centerpiece of communication between organizations in the country of origin and those in the receiving countries.

The implementation of the Convention in the United States commenced in a turbulent time, one in which controversy over intercountry adoption dominated, marked by declining numbers, and publicized adoption scandals (Smolin 2010: 441). One well-known advocate of adoption in the American adoption world was of the opinion that, to a considerable extent, the Hague Convention was responsible for the demise of adoptable children. When the United States implemented the Convention in 2008, many local institutions facilitating adoption in sending countries folded:

> I think it was misinformed to begin with. Even when, finally, all the iterations were finished and they came with the document, I think the mission of it was wrong […] They could have done so much, and it's a complete loss, because then it went into effect with this one narrow focus to prevent trafficking, and it ended up destroying and closing countries, and actually misinforming people about trafficking. […] The core premise was, "We're

[20] Interview with an adoption professional at a denominational adoption agency in the United States, audio recording, January 30, 2008.

> going to end trafficking and make this a more moral process and more transparent!" [But] you need to provide training and in-country capacity. […] The problem here is that if you don't have the other investment, then everyone's going to be hanging.[21]

What my informant was alluding to was the interaction of transparency with the subsidiarity principle. As discussed earlier, the subsidiarity principle in the Convention states that intercountry adoption can only be carried out after due considerations have been made for placing the child within the home country. The implementation of the Hague Convention in states of origin that lack sufficient capacity or bureaucratic infrastructure to follow the subsidiarity principle has caused these countries to be passed over, since they could not meet the criteria of "due considerations." In my informant's view, if there were more investment to strengthen administrative and legal capacities, these considerations could be met and more children would become available for intercountry adoption.

The United States signed the Convention in 1994, but did not bring the Convention into effect until 2008. While some argue that this was due to technical reasons (as a result of the large number of states in the United States with different rules and regulations around adoption), others argue that this tardiness was due to the perceived threat that the Convention would impede adoptions rather than facilitate them. However, the steady decrease in adoptions after 2004 preceded the implementation of the Convention, and many other factors contributed to the dwindling numbers of adoptions worldwide.[22] Indeed, as scholars have indicated, the Hague Convention might at best be only one of the reasons why intercountry adoptions continue to decrease dramatically (Selman 2009; Smolin 2015). As an ethnographic exercise, nevertheless, my fieldwork sought to understand the perspectives of people involved in international adoptions. Focusing intensively on the Convention, it may have been the case that social workers excluded other factors, because it was the reality they had to deal with most closely in their daily work.

[21] Interview with U.S. medical practitioner specialized in adoption, audio recording, October 4, 2012.

[22] Other reasons for the dwindling numbers of adoptable children include the loosening of the one-child policy in China; the increasing practices of contraception and abortion; the growing acceptance of single motherhood; the increase of domestic adoptions in countries that had been sending countries; better foster care that lead to long-term placements; and more generally, the decline in mortality and rise of living standards in countries such as China, which reduce the number of orphans (see Mignot and Hamilton 2015 and Selman 2015).

European Counterparts: Not Transparent Enough

As mentioned earlier, "independently" arranged adoptions occur in many countries, including in many U.S. states. European states, however, tend to frown upon the phenomenon and see it as a legalized form of private adoption. While the move by the Permanent Bureau to replace private adoptions with independent adoptions through the *Guide to Good Practice* was seen by many in the United States as taking unnecessary control over privately arranged adoptions (as described above), other professionals, especially in Europe, saw the move as a necessary step to fulfill the safeguards of protection for the child and the birth mother.

In practice, however, the implementation of conditions surrounding "independent adoptions" remained ambiguous, and so such adoptions were seen as a cover term for privately arranged adoptions. In the Netherlands, an "independent adoption" was known as a "partial mediation" (*deelbemiddeling*). While some agencies there chose to facilitate these kinds of adoptions, others were opposed to them but were forced to review them by the Netherlands' central authority because of their expertise about particular sending countries. There was much debate about such arrangements and the time allotted to agencies for reviewing such cases. One case worker told me that, "for the allocated time and money that we get to review them, I can barely open the dossier."[23] Agencies were expected to review whether the arrangement was conducted in an orderly fashion and in compliance with the Hague Adoption Convention; while such work could take months and even years in their general practice, professionals were expected to review independent adoptions in a few days' time. These agencies clearly indicated that, with few resources and even less time to conduct the review, they were not able to ethically account for the process. Advising government to do something about independent adoptions has therefore been high on the agenda for many agencies and adoption reformers in the Netherlands.[24]

In contrast to U.S. agency staff, who viewed the transparency regime of the Convention as promoting overbureaucratization and thus slowing down or halting adoptions, agency staff in the Netherlands viewed the Convention as not transparent enough and states as not correctly implementing the Convention. Moreover, they felt that the Convention relied too much on the goodwill of other nations, which was especially problematic in the case of major sending countries, such as Russia and Korea that had

[23] Interview with Dutch adoption professional, audio recording, April 17, 2008.

[24] See here the Dutch national inquiry on adoption, the so-called *Kalsbeek* report (Kalsbeek 2008).

not signed or ratified the Convention. In the opinion of these adoption professionals, thus, the source of bad practices was the insufficient implementation of the Convention. The solutions these critics offered remained within the realm of law and advocated a more rigorous adherence to the Convention through state control, assessment, and intervention. The resulting two volumes of the Guide for Good Practice published in 2008 and 2013 are good examples of how the reformers believed that "gaps" in legal practice could be resolved through more legality.

Although most professionals in the Netherlands critiqued the Convention for not sufficiently facilitating practices of transparency, some were skeptical of the idea that more rules could improve such transparency:

> They're mostly lawyers who work at the Department of Justice [the Dutch central authority for the Convention]. They tend to think that reality can be caught in rules, but the practice is so much messier. And you can't catch everything in rules. They have the impression that, if you set up adequate procedures and rules, [then you are ethically engaged].

These professionals believed that ratification of the Convention did not necessarily mean that the adoptions were performed ethically in member countries, or, conversely, that nonmember countries, which had not ratified it, automatically implied they used unethical procedures. They pointed out that some "non-Hague" countries, for instance, South Africa, followed the Convention's principles much better in comparison with some countries that had ratified it. In the opinion of these professionals, the multiplication of rules and procedures, rather than fostering transparency, often led to opaqueness and false securities.

Capacities for Transparency

A recurring and contested discussion in both U.S. and European agencies was how to build so-called "adoption capacity," in other words, how to promote a bureaucratic environment in sending countries so that more of their children who need to be adopted could become available for international adoptions. This was a complicated and fraught debate at a time when the availability of adoptable children had decreased dramatically, particularly when China restricted adoptions to married couples and when placements primarily encompassed older and special needs children. Agencies in North American and Europe turned to counterparts in Africa, such as those in Ethiopia. As large numbers of Western agencies rushed to Ethiopia to set up international adoption

programs, some made attempts to do this according to the Convention and its principle of transparency. This required proper documentation to assess subsidiarity. As one director of a respected American adoption agency explained to me,

> [H]ere's a country we're about to go in, it's non-Hague, and we know that what we're weighing is we know we're going to do everything ethically, and we have a good contact there, and the reason we think of it as a good contact—some agencies think a good contact is somebody who's going to bring us a lot of children—we think of a good contact as somebody who's really going to do due diligence and they're going to know where the children came from, they're going to have some kind of documentation that they were released for adoption.[25]

The degree of unpredictability in a country, especially "non-Hague" countries, is something that agencies and prospective adoptive parents find hard to grapple with. Clients were often well-educated middle-class individuals who expected professional accountability and believed that the agencies they selected would be able to exercise some form of security and control of the adoption process (see Van Wichelen 2014). However, the process became even more unpredictable as the number of children available internationally for adoption declined and as agencies had to search for and adapt their practices to new countries.

As described earlier, the Convention's subsidiarity principle differs from the subsidiarity principle of the Convention on the Rights of the Child (CRC). The Hague Adoption Convention clearly prefers permanent placements and favors intercountry adoption over care that is legally less defined, such as institutional care, foster care, or simple adoptions. This difference becomes acutely visible in the efforts by agencies to advocate and help shape in-country adoption capacities in states of origin. One of the Dutch organizations, for instance, was working on a two-pronged approach to Ethiopia (a "non-Hague" country). They facilitated adoptions from the country to the Netherlands, but with the tacit knowledge that most of the process was not following Convention protocols, including the subsidiarity principle. To improve this situation, they cultivated diplomatic ties and fostered humanitarian projects that helped facilitate foster care and in-country adoption, as one professional explained,

[25] Interview with a director of a reputable adoption agency in New York, USA, audio recording, October 1, 2012.

> Take Ethiopia, and if one takes a look at their laws, it wasn't that long ago that they integrated guidelines for alternative care into their own legislation. Their foster care has improved tremendously and I hope this will be the case for in-country adoption as well. I'd like to stimulate this by helping the delegation that comes to Europe to accommodate their learning needs and by assisting to strengthen their state so that they can effectively ratify the Convention. […] In this way I attempt to close the gap between the very individual question around one child [in adoption] and the more structural question of strengthening child protection.[26]

What took place in cases like this was that Western agencies that came into new non-Hague countries took on a pedagogical role by instructing these countries on the rules of the Convention and good practices such as transparency. Nonetheless, as an organization with staff and running costs, adoption agencies could not afford to focus on efforts to have children placed in their home countries; their ultimate objective was to place children internationally. As the same professional further clarified to me,

> Look, to say it simply, you can't keep an office running if the adoption doesn't deliver the 80.000 Euros. So that's very complicated. And 80.000 Euros is a lot of money. And you can imagine that around 70.000 of that money stays here [in the Western agencies], and only five, or in the odd cases ten thousand, stays in the country itself. And if you then see all the Western countries that are doing the same thing there, then you can only conclude that economic factors play an important role.[27]

Given the developments and debates on "adoption capacity," the Hague Convention performed legitimation work that went beyond its formal structures. When agencies set up ties in new countries that have not signed or ratified the Convention, these countries come in contact with the norms and conditions of the Convention through the pedagogical work of Western agencies that come in to train and develop in-country capacities. Such measures can be seen as strengthening child welfare protection measures in the countries of origin. However, the ultimate objective of Western agencies lies in placing children in permanent families through full adoptions. By going beyond the Convention as an abstract document and looking at how it gets translated into practice, I would argue that, in practice, concerns over children's welfare through in-country

[26] Interview with Dutch adoption professional, audio recording, September 7, 2012.

[27] Ibid.

institutional or foster care or other forms of placement that may be acceptable in their country are brushed aside in favor of enabling international adoptions that conform to a particular Euro-American notion of adoption. In this regard, I would argue that the Convention—as both a protective as well as an enabling force—relies on the pedagogics of transparency. These pedagogics operate beyond its formal rules and principles. The protective aspect includes the ways in which Western agencies attempt to discipline regimes of transparency into the infrastructure of child welfare in such countries. But such measures are also intended to enable the legal means for international adoption that favor Euro-American practices. Hence, at the same time that transparency regimes aim to illuminate bad practices and prevent abuse, they also obscure the economics and politics behind good practices.

The Tyranny of Transparency

These problems with transparency in the Hague Convention raise broader questions about the contemporary creed of "transparency" that underpins a wide array of regulations. As Marilyn Strathern observes, "there is nothing innocent about making the invisible visible" (2000: 309). Transparency is often upheld as the epitome of accountability in our times. Seen as a moral and political principle, the value placed on transparency permeates numerous institutions in Western societies, such as legal institutions, political institutions such as national governments or local parties, and private and nongovernmental organizations that want to convey their commitment by making themselves accountable and "transparent." However, recent studies on the turn to transparency call for a more critical scrutiny of the imperative (Davis, Kingsbury & Merry 2012; Gupta 2008; Jacob & Riles 2007; Riles 2006; Strathern 2000). The rhetoric of transparency seems to promise ethical conduct in the globalization of reproduction. However, when documents, figures, and statistics tell one story (the legal story of informed consent or relinquishment), other stories get lost (histories, cultures, economies, power dynamics). Transparency makes certain things visible while obfuscating others. At the same time that transparency devices set rules and norms about what gets included and what is made explicit or visible, they also displace rather than erase what is implicit (Strathern 2000, 2005).

In the case of transparency regimes such as in the implementation of the Hague Adoption Convention, rules proliferate on top of each other: local rules, state rules, national rules, and Convention rules create a multiplication of regulations (see also Mansfield 2004). In the past, adoption practices used to evolve

around intimate relationships and systems of experiential knowledge. Trust was a vital component in these dynamics. But transparency regimes seem to destabilize these expert systems (Tsoukas 1997; Han 2015). Rather than heighten responsibility, this situation can erode it. As we have seen, the uses of transparency as a device—the enactment of "complying with the Hague"—suggest ethical conduct whereby practitioners know very well what is concealed by the layers of bureaucracy. As Strathern, following Tsoukas (1994), explains,

> This rhetoric of transparency appears to conceal that very process of concealment, yet in so far as "everyone knows" this, it would be hard to say it "really" does so. Realities are knowingly eclipsed (Strathern 2000:315)

At best, the realities that are knowingly eclipsed pertain to issues of inequality, locality, or culture. At worst, they refer to issues of coercion, abuse, and trafficking. In the case of the latter, despite the Convention's adherence to the CRC and its optional protocol that sets out to prohibit the sale of children, legal documents have often "white-washed" corruption and abuse, leading to what Smolin calls "child laundering" in global adoption practice (2006). Market mechanisms still played a major role in the international practices of adoption. However, with the Hague Adoption Convention, these mechanisms were harder to detect. Because transparency regimes seem to operate above politics, these issues are concealed once Convention rules are implemented and transparency is used as device.

What is more, in the practice of cross-border adoption, transparency regimes conceal the ways in which Euro-American notions of autonomy, ownership, and kinship are implicated and privileged. Here, the modern bureaucratic and administrative enactments of Euro-American knowledge practices through the implementation of the Hague Adoption Convention erase the intrinsic complexity of social and cultural life in the sending countries (see also Knox & Harvey 2015). For instance, the "upgrade" of a simple to full adoption does not occur automatically. Consent needs to be sought from the birth parents to transfer rights of parentage, and therefore rights of disposition, to the adopting parties (Strathern 2004). As many scholars have observed, the ethics behind informed consent are also based on Euro-American ideas of freedom, autonomy, and choice (Cooper & Waldby 2014:223; Mills 2011; Rapp 1999). These moral notions are central in legal thinking, particularly in human rights domains, and confers the legal status of personhood to the subject. Individuals are seen as "freestanding, information-processing, cognitively controlled executioners of rights and personal judgments"

(Hoeyer and Hogle 2014, citing Lock & Farquhar 2007:2). Informed consent epitomizes a legal technique that functions as a moral and ethical safeguard against coercion and exploitation.

However, as evidence indicates in the field of adoption practices, the primacy of choice often conceals the power dynamics underpinning decisionmaking for birth mothers or birth parents (Fonseca 2011; Johnson 2005; Leifsen 2004; Leinaweaver 2008). Moreover, knowledge on the legal consequences of adoption varies enormously across cultures. When transplanting legal techniques in other localities, differing accounts of autonomy and choice are not sufficiently considered. Such views were also underscored by my informants. In many countries, birth mothers are either not fully aware of legal issues such as the cutoff period for changing their minds or, if they were aware, they came to regret having relinquished their children. For birth mothers in the Global South, choices are very much informed by sociocultural and economic circumstances.[28]

Returning to the argument that the Hague Adoption Convention functions as a countermovement to the neoliberal and globalized reproductive market, it seems that the Convention is as much a countermovement as it is itself a neoliberal form of global governance, one that produces competition among agencies and states, and reproduces inequalities between Euro-American countries and developing countries, the global North and the global South, the wealthy and the poor (see also Guthman 2007). Private international law's upholding of "transparency," "choice," and "informed consent" ignore foundational inequalities informing reproductive exchangeability, thereby depoliticizing adoption and rendering invisible the politics of value.

Neoliberal Governance and the Withdrawal of Politics

As we have seen, the role of law is particularly strong in organizing the contemporary global system of international adoption. So, too, are circulating technologies of "best practices" in the adoption world embodied in numerous handbooks, manuals, and guides used by states, authorities, lawyers, medical practitioners, and social workers alike. Brown observes that the pervasiveness of such practices "indexes and facilitates neoliberal economization of heretofore nonmarketized spheres and activities." She further comments:

[28] It is important to note that this is also true with the dynamics of domestic adoption. See, for instance, Solinger 2001; Patton 2000.

> [B]est practices stand for value-free technical knowledge validated by experience and consensus, where the alternative is not only tradition or mandate, but partisanship and contestation over purposes, values, and ends. Best practices connote both expertise and neutrality; they emerge from and cite research, as well as frame it. Their authority and legitimacy is corroborated through replacing rigid rules and top-down commands with organically gestated procedures validated by experience and success. (Brown 2015:139)

In connoting neutrality, advocates can claim that such practices are apolitical. As Brown argues, however, "they are not merely claiming to be unpolitical, but constitute an antipolitics and thereby construct a particular image of the political" (Ibid: 139). If we view the Hague Adoption Convention not simply as a countermovement to abuses in child trafficking but, rather, as a double movement contained *within* a countermovement, I would argue that we can better comprehend how markets and the law co-constitute international adoption practices. This dynamic, I argue, lies at the heart of the neoliberal governance of adoption. I follow here Lemke's critique of Polanyi's double movement, which relies on "[t]he (defensive) strategy [that] aims to 'civilize' a 'barbaric' capitalism that has nowadays gone beyond control; the emphasis is put on regulation and reembedding: neoliberalism as an economic-political reality" (Lemke 2002: 54). Lemke proposes instead that these dualisms play an important role "in constituting and stabilizing liberal-capitalist societies" (Holmes citing Lemke 2013:275). If we only view the role of the Convention in global adoption markets as a measure to balance or counter the abuses that arose from a less-regulated market, then we are presented an either/or situation: either the market wins and the commodification of children becomes commonplace, or adoption practices become completely regulated and sealed off from gaps and loopholes, preventing the possibility of bad practice. But as Holmes argues, both views "either serve to justify inaction or to furnish legitimacy upon processes of state power" (2013:276). Holmes' argument resonates with my observations of how global adoption markets interact with internationalist frameworks of international law.

For Euro-America, the emergence of human rights after the devastation of World War II was characterized by an internationalist mood that moved the imagination of cosmopolitan solidarity into formal international law and global governance. Child welfare, incarnated as opposition to child labor, child trafficking, child abuse, and orphanhood, played a central role in this imagination and fulfilled society's humanitarian intentions, pushing the agenda of children's rights as human rights. The original intent of international adoption,

then, should be viewed as a liberal internationalist project. Such a project imagines "humanitarianism," "rights," the "family," and the "child" in a particular way, foregrounding transnational solidarity in the pursuit of children's welfare.

As I have argued in this article, international adoption's current form combines humanitarian and "internationalist" ideologies (as represented by the Hague Adoption Convention and the CRC) with practices that utilize the Convention as a "transparency device." While this current form legitimizes adoption by its promise of ethical conduct, I argue that it also obscures circumstances where adoption could be delegitimized. This is largely because the enactment of legitimacy through the Hague Adoption Convention has depoliticized adoption, specifically in relation to the politics of value. But depoliticization, as a consequence of justificatory regimes, does not mean that politics do not play a role. Depoliticization, or an "anti-politics," is a political practice in itself. While globalization intensifies the marketization of reproductive life, internationalization—represented most vividly by international law—seeks to govern reproductive life globally. Depoliticization, integral to the project of global governance, and managed here through the Hague Adoption Convention, obscures political, social, and cultural histories of child welfare, foster care, child circulation, and different knowledge practices of kinship and reproduction. Working toward universal standards of regulation and "best practices," it is the "international" element, more so than the "global" element, that allows for colonial processes of universalization to continue.

The argument that colonial processes continue to shape the practice of international adoption is a complicated one. My analysis of how the international gets produced in the case of international adoption clearly points to incongruent positions between the Global North and the Global South. However, more adoptions are occurring within the boundaries of so-called origin countries, suggesting that policies around child welfare are changing and a more affluent class is emergent in them. China is a good example, where the one-child policy was replaced in late 2015 with a two-child policy. Fewer children are being abandoned and more prosperous families are starting to adopt locally. We also witness more cross-border adoptions taking place between countries in the Global North. The United States, for instance, is sending more children, primarily African-American ones, to Canada and European countries. Finally, because of the growing movements of people across national borders, well-established migrants too have started to adopt internationally, often involving children from their birth country and within their own racial or ethnic groups. Although these instances blur the usual lines between North–South and East–West adoptions, they are often still affected by

relations fraught with power, informed by complex and uneven histories of class, religion, sexuality, race, and ethnicity.

As the Comaroffs so eloquently argue, the "'Global South" bespeaks a relation, not a thing in or for itself" (2012: 127); rather, it assumes a position vis-à-vis Euro-America. The example of the situations in China and the United States mentioned above present a miniature version of the North–South dynamics of global adoption. As the Comaroffs summarize, "There is much South in the North, much North in the South, and more of both to come in the future" (2012:127). My argument that the legitimation work in international adoption leads to an overall depoliticization of the phenomenon brings me to a normative view that a return to a more political approach to adoption would be desirable. By "politics," I do not mean to suggest legal reforms or prohibitions on international adoption. My plea would instead be geared toward imagining, doing, and desiring adoption differently and that we reflect more seriously on our apparatuses of transnational governance.

Conclusion

According to the legal scholar John Tobin, the Permanent Bureau of the Hague Adoption Convention has made extensive references to human rights and children's rights but has nevertheless addressed them inadequately by defining them primarily as "needs to be met" rather than substantive issues to consider thoroughly (2014: 320). My article has proposed that this idea of "needs to be met" should be approached from a much broader angle than merely a formalist one that assesses how the regulations represent and protect human rights. This broader approach involves investigating the conditions that produces a set of "needs to be met." It asks the questions of *what* these needs were, *whose needs* were implicated, and *to what end* these needs are met.

The Hague Adoption Convention and, by extension, private international law have not only met the needs of prospective adoptive parents in the North, but has also served as an instrument of global governance. Whether this instrument has served the ideals of social justice is a question that is, of course, highly debated. This is because the Hague Adoption Convention means different things to people in different institutions and countries, and because the legal instrument is put into practice in different ways in these different sites. For agencies and states in the North, the Convention functions as a transparency device, thereby forging a technology that measures how well particular "needs" are being met. Such a transnational legal technology enables the formation of adoptive families and produces a distinct knowledge

about kinship relations. The Hague Adoption Convention can be seen as enacting particular norms and values, namely, the tenets of choice and autonomy that are articulated in the regulation of cross-border adoptions. These norms and values, represented by the authority of international laws and the idea of legality more broadly underpin the rhetoric of legitimacy in moving children from one part of the world to the other.

Beyond the laws and regulations that are considered "modern," however, the Global North is witnessing the emergence of "postmodern" ways of family life and kinship, such as single-parent families, extended families, LGBTIQ families, "blended" families, multispecies families, and adoptive families, all of which challenge Euro-American notions of the nuclear family unit. It may be time to have these (new) forms of kinship in the Global North, together with the (old) forms of kinship in the Global South, speak back to the law.

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