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Title: Intercountry adoption swimming against the tide: Restitution in Samoa

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Abstract (99 words):

Intercountry adoption (ICA) is a contested practice represented by competing discourses of humanitarianism, exploitation, poverty and wealth. Multiple factors have contributed to decreasing numbers of adoption globally including documented incidents of fraud which have accumulated over the last two decades. There is little recompense for families subjected to the fraudulent removal of their children, the children, and adoptive parents who are also defrauded. This article reports on the troubled progression of fraudulent ICA, presents a case of fraud and novel restitution in Samoa and concludes that restitution pathways should also facilitate contact and reunification of children with their families.

Key words: intercountry adoption, fraud, restitution, Samoa, transnational adoption

Introduction

Intercountry adoption (ICA) is a contested practice. In the last two decades, polarised discourse has been the focus of scholarly deliberation, often debated as to the merits of ICA practice, in particular, humanitarian rescue grounded in its historical context versus abuses that occur in practice on a global scale (Bartholet and Smolin, 2012; Roby, 2007). Illicit and fraudulent adoptions, an increasing number of countries complying with the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and the development of alternative care and family support systems in

countries of origin are contributing factors to this global decline in numbers (HCCH, 1993; Kim et al., 2015; Selman 2012). Although not a signatory to the Hague Convention and arguably the most influential receiving state of internationally adopted children, the US has experienced a decrease of at least eighty-five percent since 2004 (HCCH, 1993; Neville and Rotabi, 2020). Travel restrictions and other public health measures to manage the COVID-19 pandemic have affected these numbers further (Fronek and Rotabi, 2020).

Many perceive the decline as positive because it allows for the expansion of nascent child protection systems in developing countries, enables children to be cared for by their own families or kinships groups, and within their own countries and cultures. Conversely, the decline is overwhelmingly perceived negatively in countries with a strong demand for children (Williamson and Greenberg, 2010). Negative perceptions are attributed to lobby group pressure on governments and agencies, the sentimentality of media representations, and anxiety experienced among prospective adopters and in institutions philosophically committed to ICA or reliant on a business model of practice (Fronek, 2009; Mather, 2007; Quartly et al., 2013). These factors, particularly the pressure and urgency exerted in welfare models that rely on privatisation and outsourced services have contributed to abuses of children and human rights (Dickens, 2009).

Depending on the country, ICA is practised within different adoption systems. The decline in numbers has meant that many agencies operating on business models as part of the capitalist market economy have closed ICA programs and agencies in the US and in developing countries, essentially unable to make a profit (Bunkers and Groza, 2012; HCCH, 1993; Neville and Rotabi, 2020). Over their fifty-year history, these types of agencies have advertised their services as humanitarian, operate as social entrepreneurial models, and yet are reliant on the marketplace which creates certain vulnerabilities. As well as reduced viability, activities such as actively canvassing families and recruiting children for adoption

are incompatible with maintaining the rights of children and their families (O'Connor and Rotabi, 2012; Cheney, 2014).

Abuses and human rights violations in ICAs have been well documented for decades, yet there are very few cases where restitution for children and their first families has been attempted (Bergquist, 2009; Brookfield, 2009; Rotabi and Bromfield, 2017). This article outlines some of these abuses, from ICA's troubled past through to the present, and presents a unique case study between Samoa and the US which offers a novel, legally sanctioned example of a pathway to restitution. The article concludes that countries have a responsibility to provide supported avenues of restitution where practice failures have occurred. Further to this, promoting ICA as a preferred practice violates rather than upholds the rights of individual children (for example, identity and cultural rights) ignores alternatives that may be more appropriate, and ignores the industry's troubling practices. Such approaches go against the tide of a substantial and growing body of knowledge. Governments and donors need to maintain a focus on strengthening and reuniting families, redressing past wrongs and preventing future harm as the first priority. Promoting ICA simply because it appears to offer an easier, politically attractive and cost effective solution to children and families in need while gratifying demand and business models of operation does not adequately meet the needs of individual children. This shift in priorities does not negate the legitimate place adoption has in the care of some children in welfare systems.

The troubled global progression of ICA

Globally, maverick adoptions occurred before international conventions, legislative protections and other safeguards could be put in place (Brookfield, 2009; Choy, 2007; Quartly et al., 2013). As these adoptions placed pressure on governments, intense competition between receiving states to adopt children from less developed countries resulted in competition that continues today (Choy, 2007; Kim, 2007; Pilotti, 1993). Politicians and

governments in most destination countries sent delegations, often on the back of trade delegations, to less developed countries to leverage adoption programs (Fronek, 2009; Rotabi, 2012a). Even with the Hague Convention and other regulations, abuses have continued to occur when the focus of agencies shift to less regulated countries as sending countries introduce quotas or tighter regulation and monitoring. For example, shifts have been documented from South Korea to Vietnam and neighbouring countries, to China and eventually to Ethiopia and other African countries (Fronek and Cuthbert, 2012). In the US, the focus shifted from Guatemala to Ethiopia where there was little regulation (Bunkers, Rotabi and Mezmur, 2012). Ethiopia has since closed due to illicit ICA practices and problems in Africa continue to be documented (Bunkers et al., 2018; Cheney, 2017, Neville and Rotabi, 2020).

As numbers declined, attention also turned to new and equally complex methods of forming families such as a renewed focus on domestic adoptions and commercial surrogacy (Fronek, 2018; Rotabi and Bromfield, 2017). Of significance are policies in countries such as the US and the UK that promote and provide incentives for adoption from state care as a preferred form of child protection rather than approaching adoption as the best placement fit for a particular child, or undertaking sustained work with families to improve capacities for care for their children or to maintain familial relationships when a child cannot live with their family (Coakley and Berrick, 2008; Featherstone et al., 2018). These adoption-driven policies displace the emphasis from children and their families' unique, individual needs to a phenomenon which assigns a group of heterogeneous children to a singular, preferred outcome that measures success by the numbers of adoptions, often legislated to be achieved in timeframes within which sustained change is rarely possible.

As new source countries become scarcer, the rapid advancement towards developing child protection systems in less developed countries has left space for the resurgence of ICA

via the hasty introduction of cogent and well-founded movements such as deinstitutionalisation (Fronek et al., 2019). ICA has been used as a means of emptying residential care facilities in some countries, particularly where there are limited resources to serve families and social care workforces are under-trained (Cheney, 2014). Historically, ‘orphanages’, western models of child welfare in many instances funded by international aid, were imported to poorer countries to house children in need of protection, sustenance, healthcare or education. Although families often placed children for short periods, for education, healthcare or during family or wider crises, the emptying of ‘orphanages’ via adoption has occurred in conflict and poverty-ridden environments in South Korea, Vietnam, Guatemala, Haiti, Uganda and China, and these institutions have proliferated not reduced where ICA is practised (Cheney, 2017; Chou and Browne, 2016; Fronek and Cuthbert, 2012; Fronek et al., 2019; Rotabi and Bromfield, 2017; Zigler, 1976).

In countries that are strengthening child protection systems and introducing deinstitutionalisation policies, succumbing to foreign pressure and the prioritisation of adoption over family preservation in some cases has meant that ICA has found a new source through legitimate, albeit hastily implemented, child protection reforms. The lack of resources, qualified and trained staff, and donor priorities combined with government targets to close institutions have meant that children have been adopted prior to adequate searching, assessment, reunion and family support in an attempt to meet deinstitutionalisation targets (Fronek et al., 2019). Throughout its history of expatriation, low-resourced countries are usually unable to ensure ethical, corruption-free and justified adoptions. This has too often resulted in illicit adoptions, failures to uphold the rights of children, adoptee identity dysphoria, cultural displacement, and harm to children and their families through unnecessary separation as well as to adoptive families (Baden et al., 2016; Schwarzwald et al., 2015; Trenka et al., 2006).

Cultural practices and traditional forms of adoption are difficult to harmonise with western adoption practices adding to the confusion experienced by families when approached by recruiters (Bowie, 2004; Schacter, 2017). Incident after incident of fraud, illicit adoptions, rehoming, child laundering and trafficking have been reported (Bergquist, 2009; Roby and Brown, 2015; Rotabi and Bromfield, 2017; Smolin, 2005, 2010). Invariably, the removal of children from countries in Asia, Africa and South America to wealthier countries has been the dominant practice in ICA with some exceptions. The ICA of African-American children from the US to destination countries, such as Canada and into Europe, and the post-war adoption of Afro-German children to the US are imbued with discourses of racial conflict (Briggs, 2012; Lemke Muniz de Faria, 2003; Mandell, 2007; Naughton, 2012).

Potential adopters in wealthier countries are beguiled by the 'orphan' child in need of rescue, driven by infertility or, for some, the opportunity to proselytize a certain brand of evangelistic Christianity through adoption (Joyce, 2013; Smolin, 2015). Many first families, usually in poverty, have been coerced or enticed by the promise of an education for their children and told lies about the realities of adoption with little legal, financial or civil recourse to address these abuses (Roby and Maskew, 2012). These common threads in first family experiences across all countries from which children have been expatriated are well documented (Ballard et al., 2015; Gibbons and Rotabi, 2012; Briggs and Marre, 2009).

Although the core tenet of much ICA discourse proports the practice is all about the children, the voices of adult adoptees are too often marginalised in policy decisions and political influence (Fronek and Briggs, 2018; Walton, 2012). Studies on adult intercountry adoptees have shown that there are psychological and social consequences of unethical and illicit adoptions even where the adoptive experiences have been positive and stable (Baden et al., 2015; Baden et al., 2016; Fronek and Briggs, 2018; Powell and Afifi, 2005). One pertinent example of harm is the rehoming of children over the internet by adoptive parents

(The Donaldson Institute, 2016). The circumstances of these adoptions and subsequent breakdowns including unnecessary removal from families, inadequate prospective parent assessment and preparation, and scarce post-adoption support are some of the contributing factors to the rehoming phenomenon.

Restitution

There are few examples in the literature of restitution that occur in the early post-adoption stages. The return of adult adoptees to their country of origins to search for their families or when countries such as South Korea and Thailand host motherland tours for adoptees, critiqued as political and superficial gestures, could be viewed as a form of social rather than legal restitution in that identities are strengthened and in some cases, families reconnect (Kim, 2005; Willing and Fronek, 2014). These are usually self-instigated, individual endeavours supported by adoptive families or adoptee groups while tours are often hosted by governments or organisations in the countries of origin. Due to the activism of adult adoptees and mothers in South Korea, in a world first intercountry adopted adults were given opportunities to return to their homeland, regain citizenship and related rights, and to live in South Korea if they wish (McGinnis, 2012; Bergquist et al., 2007). From a virtual connection perspective, Korean, Guatemalan, Vietnamese and other adoptee networks offer support and shared experiences in their searches for information, family and identity (Fronek and Briggs, 2018; Hübinette, 2004; McGinnis, 2012). Although generally positive, these approaches have limitations in redressing wrongful adoptions.

One disturbing, highly politicised case of restitution involved an adopted mother, Torry Hansen, who put her adopted seven-year-old child on a plane to Russia with a backpack and a note to a taxi driver to return him to the authorities. Hansen was ordered by a Tennessee judge to pay child support of US\$150,000 but suffered no criminal consequences. Outcomes for the child nor how child support funds were managed have not been reported.

Although some restitution was made in monetary terms for support of the child, this case marked the failure of adoption in private markets at many levels (Rotabi and Bromfield, 2017).

Attempts to return children to their families once fraud, coercive and illicit adoptions are uncovered are scarce (Fronek et al., 2015). Usually these decisions are made in the courts of receiving countries where adoptive parents have legal custody and have taken emotional ownership of the child. Children invariably remain with adoptive parents even when they have been illegally removed from families because outcomes are usually decided in the courts where the children are residing. Children have often been in their adoptive families for long periods, and in many instances adoptive parents choose to keep the child rather than facilitating the child's return to their family or even facilitating contact (Fronek et al., 2015).

Decisions become increasingly challenging the longer a child is with an adoptive family due to the disconnection and loss of cultural, linguistic, and social origins alongside new attachments formed within adoptive families and the complicated matters of determining best interests and upholding human and child rights. In legal matters, positions often become adversarial as families are often strangers to each other and usually first family perspectives are under-represented. While it is true that some ICA families are open to sustained communication, support and contact with first families and there is an increasing trend towards varying degrees of openness in domestic adoptions, open adoptions are rarer in ICA. Open adoptions are also defined differently in different countries ranging from exchanges of information to maintaining relationships. When contact occurs in ICA, it is usually due to the receptive attitudes and resourcefulness of adoptive parents rather than any regulatory requirement or ongoing formal support to do so (Roby et al., 2005; Scherman, 2012)).

These circumstances are reflected in at least one Australian case, a girl adopted from India, and in Guatemala where in 2009 a court ordered the return of a child from the US

when it was determined that the girl had been abducted into adoption, kidnapped and removed from her home country on falsified documents (Rotabi, 2012b). In this case, her adoptive family refused to comply with the court order, asserting that it was not in the child's best interests to return to Guatemala (Rotabi and Bromfield, 2017). Even with the involvement of The International Criminal Police Organization (Interpol), the US Department of Justice refused to adhere to the court order. Today, that child is an adolescent and her family in Guatemala continues to await her return. Whichever decisions are made, there are likely to be adverse psychological and social consequences for adoptees, their identity and relationships.

An exception to this pattern is exemplified in the actions taken by one American couple who sought the assistance of the organization, Reunite Uganda, which engages in intensive case management to assist children to stay or return to their families. Jessica Davis and her husband were responding to their six-year old adopted daughter's disclosure that she did indeed have a family in Uganda and a happy homelife. The couple made extraordinary efforts to return her to her family one year later (Davis, 2017).

Responses of receiving countries to those individuals and organizations that facilitate illicit or fraudulent adoptions are rarely punitive and offer little disincentive. When fraud cases are prosecuted, the penalties rarely require a prison sentence despite the gravity of the crime (Leifsen, 2008). There have been cases where offenders have spent time in prison in the countries where the agency was active, however, once extradited there have been limited consequences (Bergquist, 2009). Certainly, sympathies towards motivations of child rescue in some cases and confounding factors in law exist but these are serious crimes that impact children and adults over a lifetime.

Fraud, lies and money in Samoa

Between 2002 and 2005, eighty adoptions from Samoa to the US were facilitated by a Utah-based adoption agency, Focus on Children, which also had a presence in Russia, Vietnam and Guatemala (FoC) (Markel, 2011). Concerns were triggered when children told adoptive parents about their home lives with parents and siblings in Samoa and when prospective parents were advised not to visit Samoa due to the measles outbreak (Reavy, 2009; Tribolet et al., 2009). Further problems arose when a Samoan child suffering from malnutrition died in the care of the agency. The circumstances surrounding these adoptions reflected documented experiences of many families in other countries who did not understand adoption and were vulnerable to exploitation (Bunkers et al., 2018). Access to education, regular communication and the eventual return of the children were promises made to the Samoan parents. Documents to be signed were presented in English not in the parents' language, and parents were promised small amounts of money and food (Markel, 2011).

Adoption was explained in a way that was consistent with Indigenous, open family practices. In sharp contrast to western concepts of family and adoption practices, children commonly move amongst kin and community through customary Fa'a Samoa (The Samoan Way) which means sharing (Schachter, 2017). Interpreted through that lens and acknowledging the complexities of cultural understandings, vulnerable parents are less likely to understand adoption as a permanent arrangement that diverges from their cultural understandings of kinship. Rather promises were understood as an opportunity for their children to receive an American education while remaining their children. As Kim (2007, p. 135) reported of Korean adoptions, strong economic and political relationships with the US create a "fever" of all things American so much so that "whoever goes to America, his or her life will be better off", a belief common in developing countries. This combines with a parallel belief held by prospective parents that life is better in the west and political discourse that seeks to find a child for every home (Cheney, 2015).

The company, FoC, its operators, Scott and Karen Banks, who claimed to be on a religious mission, and three staff were charged with alien smuggling, fraud, money laundering and misuse of visas in thirty-eight of the eighty Samoan adoption cases (Markel, 2011; Rotabi and Bromfield, 2017). Two Samoan collaborators were charged in Samoa. The company pleaded guilty to the felony charge of conspiracy to commit alien smuggling and visa fraud. Scott and Karen Banks pleaded guilty to reduced charges of five misdemeanours of aiding and abetting - Laralee Thornock to one, Coleen Bartlett to two and Dan Wakefield to five. (Reavy, 2009). The offenders received light sentences of five years of probation, the company was dissolved, and those charged were banned from working in the industry in the future.

Restitution in Samoa

Although the unfolding story of the offenders in this case was well documented by journalists in Samoa, US, New Zealand and Australia, there was little reporting on the approach to restitution. According to federal prosecutors, as reported in the media, families in Samoa and adoptive families in the US were consulted about legal proceedings from the outset. The Banks also agreed to co-operate with authorities to improve the adoption system (Reavy, 2009).

In terms of restitution, the judge ordered the offenders to pay US100,000 to establish a trust fund to empower both parents and adoptive parents to make the best decisions for the children (Rotabi and Bromfield, 2017). In recognition of cultural complexities and the inherent power, financial and educational imbalances, a restitution Trust Executer, a qualified social worker, was appointed to lead the restitution measures. The Trust was intended to foster open relationships between the children, their adoptive families and their Samoan families, not necessarily to facilitate the children's return (Rotabi and Bromfield, 2017). Only one child was ultimately returned to their family. Brown and Roby (2016) assert the need for

interventions appropriate to the circumstances and suffering caused by fraud that are based on child rights and in recognition of the complicated nature of competing emotional relationships with the children concerned.

This approach to restitution in the Samoan case was novel and ground-breaking as these types of cases are typically fraught with emotion and involved a number of intensive activities. Comprehensive assessments were conducted with all affected families, adoptive families and children followed by interventions to provide emotional support and support for the decision-making of all parties. Trust funds were used to facilitate contact and to foster relationships through letters, photographs, phone calls (with interpreters as needed), visits to Samoa and post-adoption support for custodial families and first families who no longer had legal relationships with their children (Roby, 2012).

Restitution allowed for common ground and some recompense between families. However, it also accentuated the vast differences between cultures. A CBS broadcast showed the trauma experienced by adoptive parents and the stark contrast between the Samoan culture of sharing and the western perspective of ownership. One adoptive mother said, “Regardless of what happened... We are her parents, and nothing is going to change that.”, a statement which highlights the emotional complexities which influence decisions (CBS, 2009). A broadcast from New Zealand explored the experience of the Samoan family whose child was returned to them (Tagata Pasifika, 2009). The family and child faced challenges as the child had to readjust to her own culture after living with an American family. Another Samoan father was pleased his daughter was in the US as he was firmly committed to the importance of an education and the opportunities that would be available to his daughter. Other families reported communication difficulties as children could no longer speak their language. Although all the children involved faced the challenges of negotiating their place between two families, adoptee studies highlight how children create a better sense of self and

identity into adulthood when they are connected to their families and cultures (Baden et al., 2015; Fronck and Briggs, 2018). Although the Trust is now closed as the children are young adults, any residual funds continue to support ongoing communication.

Discussion

Understanding the irregularities in fraudulent and illicit practices, how ICA continues despite these breaches, and the minimising of evidence that disconfirms ICA as a wholly positive practice provide a more complete picture of ICA, rather than a discourse of positive singularity (Fronck and Tilse, 2010). Presently, ensuring a child is truly adoptable and that processes are above reproach are difficult to guarantee in many countries due to the many actors and steps taken that lead to the adoption of a child. Certainly, regulation and innovative practices such as family conferencing in the Marshall Islands seek to prevent such abuses, they still occur and the scant attention to restitution is insufficient presenting a significant gap in practice (Roby and Maskew, 2012; Roby and Matsumura, 2002; Rotabi et al., 2012).

The decision by the judge to establish a Trust in the Samoan case was unique, forward thinking and sought to serve the interests of the children and the families involved. The Trust's execution of its mission was also important as it did much to avoid conflict and litigious, adversarial relationships. Its strength was the appointment of an experienced social worker as Executor which ensured an ethical and skilled approach and commitment to the values of the profession, social justice and human rights, in meeting the needs of all parties in the US and Samoa. However, the established aim of the Trust was limited as it failed to explicitly encompass the possibility of returning the children to their families, although it was explored through social work involvement. It is acknowledged that these types of cases are associated with intense emotions as adoptive parents who have also been defrauded develop

strong and protective parental bonds with the children, and circumstances are emotionally confusing for children who may have been separated from their first families for some time.

When children are returned, they and their families must adjust after a period of separation, and some families may indeed be satisfied to leave their children with adoptive families as was found in the Samoan case. The western lens through which these decisions are made must also be acknowledged. The perceived advantages and opportunities brought by life in western societies over-rides the losses of family relationships and of culture and identity in what could be described as a double standard. If one were to consider children missing or stolen from US parents, return to their parents would be expected no matter how long the child has been in the care of another (Fronck et al., 2015). This is also the case when a parent abducts their child from a custodial parent. Although difficult and often requiring co-operation between countries, repatriation is the aim and adjustment on return is accepted as something that can be addressed, just as the expected adjustment period when a child enters an adoptive family (Pahrand, 2017). These comparisons call attention to the double standard when one considers the perceived entitlements of families who have lost their children to fraudulent and illicit adoptions.

Ethical issues should always be considered in restitution, in particular, that children are not owned, and defrauded families do exist. Their rights and the subsidiarity principle in the preamble of the Hague Convention should always be a first consideration. Inequalities, power differentials and concepts of the imagined, idyllic life in the west complicate these cases but it is these very factors that also draw attention to the importance of addressing imbalances and supporting restitution efforts. Governments have a responsibility to be cognisant of the consequences of fraudulent adoptions and the power imbalances in adoption processes and addressing fraud when uncovered. ICA is a widely interconnected phenomenon played out on a global stage by multiple, professional disciplines. Establishing restitution

pathways in policy and law for those who have been harmed by the practice requires co-operation between countries and disciplines such as law and social work.

Although definitive recommendations applicable to all systemic models of adoption cannot be drawn from one case study, the Samoan case exemplifies that restitution can commence as soon as fraudulent practices are uncovered. While restitution has moved in the right direction in the Samoan case, there is room to further tackle the difficult issues of wealth and power disparities between children's families and their adoptive families, cultural differences, and the confounding factor of beliefs that life in the west is always best. Support to establish family contacts and returning children to families tricked into adoption where appropriate must also be considered. Systems of co-operation between countries and accordant law and policy in ICA must follow.

Lobbying and using political influence to increase the numbers of ICAs globally through adoption-driven policies are misplaced and swims against the tide of contemporary understandings that encompass lifelong consequences for all concerned. Such actions underestimate its influence on the prevalence of fraudulent practices. It is also ethically dubious in the face of decades of evidence that clearly indicates that ICA is fraught with problematic cases ranging from the falsification of children's birth stories and relinquishment circumstances to incidents of coercion, child laundering and trafficking, and do little to uphold the rights of children or adequately ensure the principle of subsidiarity which insists on family strengthening measures (Smolin, 2005, 2010). Lobbying contributes to the market that provides incentives for fraud to enter the marketplace. It is acknowledged that ICA may certainly have a place for some children. However, wholesale policy trends that focuses on prioritising adoption and increasing numbers do not.

Conclusion

This article has argued that abusive practices still occur in ICA despite its long history and restitution in these cases have been sorely neglected in practice and the literature. There is a strong need to improve the prevention of future abuses particularly where adoption is left to the marketplace in either sending or receiving countries or where the practice is simply insufficiently regulated. The gap is how countries with different systems should redress abuses after the event through the implementation of regulated and specific forms of restitution, implementation of restitution strategies and appropriate support for adopted children and their families on a case by case basis. Inter-disciplinary and intercountry collaboration will be needed to progress issues of restitution.

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