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Expectations of the Consequences of New International Adoption Policy in the U.S.

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In 2006, the State Department published its Final Rules for implementation of the Hague Convention and the Intercountry Adoption Act. This new rule, which took effect in 2008, signifies a departure from previous practice by specifying national, uniform conditions and terms for international adoption practice by U.S. agencies and professionals. Interviews with adoption professionals reveal their predictions regarding the potential consequences of the new rule. Participants indicate the new rule will protect children and families from unscrupulous adoption practices, thereby fulfilling its stated purposes. Paradoxically, they also predict that the new rule will have latent consequences that will negatively impact waiting children, prospective families, and adoption agencies.

Key words: Hague Convention, intercountry adoption, practice, international adoption

International adoption has evolved into an institutionalized practice involving thousands of children, with a dramatic increase in the practice over the past 15 years. In 1988, approximately 19,000 children were adopted internationally, and by 2001, this figure had risen 79% to 34,000 children from over 50 countries (UNICEF, 2003). The United States is the number

one "receiving" country, with 19,237 foreign adoptions in 2001 (the most recent date for which world figures are available), constituting about 57% of all international adoptions (UNICEF, 2003).

The legitimacy of international adoption practice has been widely discussed and debated. Opponents of international adoption have raised concerns of child selling (Fieweger, 1991; Kapstein, 2003; Neubauer, 1988), exploitation of women and children in sending countries (Herrmann & Kasper, 1992; Pastor, 1989), and fraud and corruption (Bisignaro, 1994; Fieweger, 1991; Jacot, 1999; Kapstein, 2003). Indeed, the State Department has issued a number of warnings of potential fraud and corruption in various countries over the years, and at times moratoriums on adoptions have been issued in response to these concerns. For example, concerns regarding "irregularities" in Vietnam, such as reports of payments by service providers to orphanage directors for referrals of children for international adoption, recently led U.S. Citizenship and Immigration Services to initiate a requirement of DNA testing to facilitate confirmation of the orphan status of children to be adopted (U.S. Embassy Hanoi, 2008a, 2008b). Some have concluded that the practice of international adoption is imperialistic, with richer countries benefiting from the poverty and ineffective family care systems in poorer countries (Cummings, 1998). With more than 140 million orphans in the world (UNICEF, 2005), proponents of international adoption have argued that while the system is imperfect and requires controls, the fate of children in these countries is dismal and the practice serves a vital function in addressing abandoned and orphaned children's need for families (Bartholet, 1993; Daly, 2007; Price, 2005). The world community first responded to the debate in 1986 with the Declaration on Social and Legal Principles (DSLPL) relating to the Protection and Welfare of Children (United Nations, 1986) and the U.N. Convention on the Rights of the Child (CRC), in 1989. These policies provide that international adoption may be an option under the following conditions: if a country determines that removal from family is in the child's best interest and if the child cannot be placed in suitable care within the birth country. Both the DSLPL and CRC construct a hierarchy of placement decisions with

international adoption to be considered only if the options for in-country care are not viable.

The first international policy to comprehensively address international adoption was the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption Hague Convention of 1993 (the Convention). The Convention establishes a legal recognition of adoption between participating countries, provides operating standards for countries engaged in the practice, and requires that participating countries establish a Central Authority for oversight and responsibility. The central purpose of the Convention is to apply standards for the practice in order to protect children from abusive practices (i.e., child trafficking and child-selling). The Convention has entered into force in 75 countries (Hague Conference, 2008). The U.S. ratified the Convention in December 2007 and implemented it in April 2008 (U.S. Department of State, 2008). In 2000, the Intercountry Adoption Act of 2000 (IAA), the U.S. legislation to effect the Convention, was enacted.

The stated purposes of the IAA are as follows:

(1) to provide for implementation by the United States of the Convention; (2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and (3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (IAA, 2000, § 2)

In 2006, the State Department, which was designated by the IAA as the Central Authority in the U.S., published its Final Rules for Implementation of the Hague Convention and the Intercountry Adoption Act. Upon implementation, the practice of international adoption with other Convention countries in the U.S. was newly governed by the IAA as detailed in the new rule. The most significant change that will take place under the new rule will be the requirement of accreditation.

The State Department has entered into agreements with two accrediting entities (one is the State of Colorado, which will only accredit Colorado agencies, and the other is the Council on Accreditation, or, COA) in the U.S., and in order to legally practice international adoption with Convention countries, adoption agencies must go through an accreditation process (or be supervised by such an agency) with one of the designated accrediting bodies. The details of requirements for accreditation comprise the thrust of the new rule.

The new rule signifies a departure from previous practice, which was guided by state laws and agency guidelines, by specifying national, uniform conditions and terms for international adoption practice by U.S. agencies and individual professionals. Changes in practice as delineated in the new rule include the following requirements: standard reporting of services by agencies and of activities by accrediting organizations; supervisors of clinical workers in accredited agencies must hold a Master's degree in Social Work or a related human service field; clinical workers must have a minimum of 20 hours of training in the field and a Master's degree or Bachelor's degree in Social Work or a related field along with experience in adoption; prospective parents must complete 10 hours of training and education; and primary providers must carry \$1 million per aggregate of liability insurance. The requirements are established minimums, as states and Convention countries may require higher standards for adoption practice in their respective jurisdictions.

Theoretical Framework

Merton's Theory of Purposive Social Action (1936, 1968) identifies outcomes of social activity as either manifest (known and intended) or latent (unrecognized and unintended) by the actor. These consequences can be functional, dysfunctional, or irrelevant to the social system and various subsystems within them. Applying this conceptual framework to the development and evaluation of public policy, manifest functions are those consequences that policymakers will publicly record as the purposes of a particular policy. The theory rightly acknowledges that formal organizational activities' manifest functions

are easily determined, inasmuch as bureaucratic structures tend to produce documentary evidence pertaining to the intended actions of the group. In the policy development process, policy goals are oftentimes articulated in order to delineate what is to be achieved by the policy, are written into the policy itself, and thus are publicly communicated. Consequently, the manifest functions, as presented by the policy purposes, may aid in rationalizing the policy decisions to a variety of stakeholders affected by the policy. Merton's theory advises that social action can, and will, have consequences that are neither predicted nor intended by the actors. These latent consequences may be positive, neutral, or negative in their effects upon different persons or segments of the population. Merton warns that deliberate evaluation of potential latent consequences is necessary to avoid serious dysfunctional impacts. According to Merton, and reprised by Portes (2000), the investigation of latent consequences should be of primary interest to the social scientist, since they move beyond the surface of social activity and offer the opportunity for a more substantive analysis of the impact of any given activity.

Despite the profession of social work's key role in adoption practice in the U.S. and the sweeping changes to the practice of international adoption the new rule implies, the subject of the Hague Convention has received comparatively little attention in the literature. A search of the *Social Work Abstracts* from 1990 through November 2007 revealed only 25 references to international or intercountry adoption and only two of these articles offered a discussion of the Hague Convention. The purpose of this study was to explore professional adoption workers' predictions regarding the potential consequences of the new rule for the practice of international adoption in the U.S.

Method

Because of the absence of theoretical or empirical analyses of this change in policy, a qualitative study was deemed an appropriate method to approach the subject. Qualitative research is particularly useful in investigating people's meanings and perceptions of phenomena that are changing or about which little is known (Gerson & Horowitz, 2002; Merriam, 2002;

Reid, 1994). A non-random sampling method was employed, as a comprehensive list of international adoption service providers (i.e., there is not a national database of agencies) is not currently available. To access the field, participants were recruited through two methods: self-selection and snowball sampling. Twenty respondents to an online survey of adoption professionals indicated willingness to be contacted for further research. An attempt was made to contact all twenty to invite them to participate in an interview on the practice of international adoption. One no longer worked at the agency of contact, ten did not respond to the request, and nine completed the interview (representing a 45% response rate). As interviews were conducted, participants were asked for contact information on other professionals who may be interested in participating. Another four participants were solicited through this method, resulting in a total of 13 participants. All interviews were conducted by phone, recorded, and transcribed verbatim. The interviews took place over a period of six months from late 2006 to early 2007, and each lasted from 60 to 90 minutes. The data were coded and analyzed and the sample size was increased to the point of saturation; that is, no new information was forthcoming in the responses. In the event a participant indicated something novel, subsequent participants would be queried on the issue.

Participants were asked a series of questions to uncover their predictions on the impact that the Final Rules would have for families, children, and agencies. Participants were first asked their level of familiarity with the new rule and then they were asked questions regarding the impact the new rule will have on children, families, and agencies. Respondents were also asked to reply to three open-ended questions: 1) what concerns, if any, do you have with the new rule; 2) what effect will the new rule have on your agency; and finally, 3) do you have any thoughts or remaining concerns? The responses to these questions were combined into segments and coded by the researcher. First level coding resulted in 14 descriptive codes, which were then reduced to five categorical codes falling within two thematic categories. A cross-case analysis of the coded segments resulted in two core categories: practice changes and system changes. Practice changes include

the subcategories of ethics, standardization, and transparency (manifest consequences) and cost and labor (having latent consequences). System changes fall in the realm of latent consequences and include the subcategory of choice.

Results

Sample

The majority of participants had extensive experience in the field of international adoption, ranging from a low of 15 months to a high of 14 years, and a mean of 7½ years of experience. Four of the respondents were from home study agencies—agencies whose involvement in international adoption is limited to performing the home study and post-placement reports—and the remaining nine were from child placement agencies—agencies whose involvement in international adoption generally includes a range of services such as dossier preparation and coordination with foreign professionals. All respondents from home study agencies indicated that their agencies did a small number of international adoption home studies and post-placement reports (on average, 30 per year) and that domestic adoptions were the primary function of the agencies. The nine placement agencies in the sample included a mixture of small agencies (n=3; performing under 100 international placements annually), medium-size agencies (n=3; performing between 100 and 200 placements) and large agencies (n=3; performing over 300 placements annually). The placement agencies operate in 20 different countries, and the average number of countries the agencies operate in is five, with some operating only in two countries (n=3) and several operating in five or more different countries (n=6). Several countries from which the agencies place children dominate the list: all nine perform adoptions with China and eight with Guatemala.

Findings

Respondents were first asked their level of familiarity with the Final Rules. All indicated some knowledge of the rule, and the majority (n=9) reported being very familiar with it.

Manifest impact. Most of the participants discussed the

potential impact of the rule in terms that were congruent with its intended objectives. The core category that encapsulates these responses is that of practice: new practices will be instituted, and all but one respondent agree that these practices will create a better, safer environment for families and children.

Seven participants indicated that the rule would create more ethical practices in the field. These respondents indicated ethical practices would be facilitated by two related processes: standardization and transparency of practices. The rule details standards for practice, such as post-adoption monitoring and reporting, that have been absent in international adoption. These standards will apply to all agencies in their operations in Convention countries, thus creating a field of common practices among providers. The rule also mandates a level of transparency of practices, such as requiring agencies to provide full and complete disclosure of costs to prospective families. Three respondents linked the implementation of standards of practice or the requirements of transparency to a potential system change. That is, agencies that participate in fraud or corruption will be forced out of the field of international adoption, at least with Convention countries.

Eleven of the participants related that this standardization would produce practices that will have a direct, positive impact on families and waiting children. Families will be more informed and therefore will make better decisions regarding their choice of agencies and decision to adopt. Families will be better prepared due to these more informed decisions and due to the new training requirements they must undergo, so children will be better protected from potentially unstable placement environments. Children will also be protected from unethical practices, such as child selling, which is expressly prohibited by the rule. The following excerpt captures the view of the relationship between the new standards and protection for families and children:

I hope some of these regulations can clean up international adoption and really remove as many potential risk factors for families and children as possible. And I understand right now the industry is fairly unregulated and you know you could decide

tomorrow that you wanted to open up an adoption agency, and if you were in the right state you could do it without any credentials or any sort of background or training. And if a naïve family came your way you could tell them yeah for x number of dollars I could do an adoption for you. And that to me is a problem.

Latent impact. All of the participants predicted consequences that have not been articulated as goals of the new rule, and most of these are characterized as potentially negative in their impact. The participants related that the international adoption system in the U.S. will fundamentally change.

The participants were in general agreement regarding the impact the rule will have on agencies. That is, all but one of the participants indicated that the requirements for accreditation, such as requirements for liability insurance and record keeping, will be unachievable for a number of agencies and they unequivocally state that smaller agencies will be disproportionately impacted in this way. The following quotes convey this concern:

In general again, I think it is going to be so incredibly difficult for many of the small agencies to deal with and to purchase the type of insurance that is required and to meet the regulations as defined that you are going to see a great number of small agencies just close their doors. We have already seen in the last couple of months many agencies that have either said 'we're done, we're finished, or we're gearing down to close our doors.'

The preferred option would have been to establish good practice regulations, randomly screen families who have submitted I600A's, investigate those adoptions, and find agencies of facilitators who were trafficking children. Instead, all agencies will be burdened with complex financial requirements that have little to do with good adoption practices, but will work to the benefit of regulators, insurance agencies, and trial lawyers. The new regulations will make it incredibly difficult for new small agencies to start without comparatively prohibitive large amounts of money.

The cost per adoption will fall hardest on small and medium-sized agencies.

According to four respondents, as the system changes, i.e., agencies close, there will be a ripple effect upon families. As agencies close, families will have fewer agencies to choose from, thereby limiting families' options for service providers. These respondents explained:

I think there are some losses in an overall ability for a family to find an agency that meets their needs. You know some families really work well in big agencies and can function fairly independently, but there are some families that want that one-on-one contact... So, I think overall this affects the diversity of options available to families.

Small agencies will be left out not because they say we can't work with them but, because we can, we can supervise anybody, but because we are afraid to work with anybody that doesn't understand what the ramifications are and what the policies and procedures are if we don't do it right. ...What is going to end up happening is we are all going to send out information packages and we'll say, 'oh you live in Nebraska, well here are two agencies you can work with and we only work with those two.' ...Their choices are now taken away from them. They don't have choices. ... And those accredited agencies are going to restrict their standards and they are going to have to say if you want to work with us you are going to have to pick these people in your state or you don't work with us.

Another predicted consequence for families pertains to changes in practice. The rule mandates requirements that will create additional labor for families. The adoption process will be more rigorous because of the additional paperwork and training for families, and it is predicted that adoptions will take longer to complete. According to six respondents, this additional labor and consequent delays will frustrate some families and may deter them from international adoption. This

respondent predicts:

It lengthens the pipeline, it slows the whole thing down, frustrates parents. They don't talk about it positively and not as many prospective parents are interested in doing this. Who wants to go through that pain and agony? And it just slows everything, just the whole machine of administration begins to implode upon itself.

Finally, another practice-related change is that agencies will incur costs to meet the requirements of accreditation and most respondents agree these will be passed along to families. Six participants predict that these higher costs will then dissuade some families from international adoption, which for children will result in longer institutional stays and fewer adoptions. Two typical comments follow:

Fewer people will choose international adoption if it is more expensive and if it is more tedious and bureaucratic which unfortunately they may make it become so. The impact on waiting kids is that fewer kids find homes because fewer American families choose to do international adoption. That is the scary part of it.

As I said, we don't have outside funding so we have to pass on the increase to the families through the fees. But it trickles down, so the actual effect is less children will be adopted because less families will be able to afford it. So all of this is in the best interest of the children, every time I hear that it makes me cringe.

Discussion and Implications

Respondents overwhelmingly expressed a hope that the new rule will protect children and families from unethical adoption practices. Most respondents appeared to view the final rule as fulfilling its manifest function of protecting the interests of children and families. Agencies will be monitored by an accrediting agency to ensure their compliance with practices that provide educational standards for agency personnel;

prohibit payments to foreign providers, birthparents, and others for the purposes of inducement; and ensure full disclosure of agency and foreign fees and children's health backgrounds to prospective parents. These standards are interpreted as creating an ethical model of practice that will lessen the risk of exploitation of children and enhance the stability of their placements. Only one respondent explicitly disagreed with this sentiment. That respondent related that the new rule has "nothing to do with ethics" but rather, was a deliberate attempt to "weed out" the smaller agencies.

While the majority of respondents were hopeful about the effects of the new rule, the predictions from most are that the new rule will also have latent consequences that will negatively impact the practice of international adoption. They expressed concerns for each of the three constituencies: agencies, families, and children. The most consistent concern was that small agencies will not survive. If this prediction proves correct, the landscape of service will be dramatically altered. According to participants, small agencies do not have the organizational structure or resources to implement the changes that accreditation will require. For example, employing a supervisor with a master's degree may be beyond the capacity of the "mom and pop" type agencies that may have only one or two employees, and the accreditation fees (now published as between \$7,000 and \$12,000, see the Council on Accreditation, 2008) are beyond the financial capabilities of these small providers. However, one respondent indicated that these small agencies may continue operating as supervised providers under presumably larger and wealthier primary providers. This would involve trade-offs for both agencies: for supervised agencies it would mean staying in business but relinquishing some control of its operations, and for the primary providers it would allow services to be farmed out, but would require assuming responsibility for that supervised agency's work. However, to the extent the prediction of closures proves true, families may be affected by having fewer options for service providers and by the increased costs associated with compliance with the new regulations that will be passed on to them. Respondents predict that this, along with longer processing times, will discourage families from seeking international adoption. Although not

expressed by the respondents, this could also affect agencies, as having fewer clients could compromise agencies' fiscal viability. The most troubling prediction is that of the consequences for children. Respondents indicate that additional paperwork, new procedural requirements, and fewer families seeking to adopt would delay the adoption process, thereby increasing institutional stays for children. Moreover, having a smaller pool of families will also mean that, ultimately, fewer children will be adopted.

The respondents clearly indicate that the new rule will affect services in ways that have not been articulated by the State Department. Whether these are truly latent, i.e., unforeseen by policymakers, or simply not made public is a question that cannot be answered by the published documents. It could be that these potential consequences were determined to be less important than the proposed benefits of the policy (that is, a cost-benefit analysis could have concluded the costs to agencies, families and children are outweighed by the benefits offered). This argument is more plausible when addressing the impact upon agency practices, but seems unlikely when applied to the predictions regarding families and children. The respondents' concerns that fewer families will be available and that children are likely to wait longer for care imply a paradox: the very policy intended to protect families and children may, in practice, ultimately cause harm to many.

Overall, the results of this study highlight the potential impact that globalization and increasing bureaucratization may have upon adoption services and practice, as determined by some professionals in the field. However, because of the absence of a comprehensive sampling frame, the resulting bias in a self-selected sample, and the small sample size, the findings cannot be generalized to all adoption service providers. But, as they indicated a high level of knowledge of the new rule, they appear to represent an informed group, which is a primary goal for the selection of participants in issue-focused qualitative research (Gerson & Horowitz, 2002). As an exploratory study, this research provides an initial picture of some professionals' perceptions, fears, and hopes of the coming changes, and the theoretical analysis aids to frame these thoughts and concerns. As the new regulations are put into

place in the coming months, it will be important to track the effects to determine if these predictions prove correct.

Conclusion

The State Department's charge was to produce a system that would meet the Convention's expectations. To fail in this could potentially undermine international adoption in the U.S., since Convention countries may refuse to enter agreements with non-Convention countries. The extent to which the State Department has adequately balanced the needs and interests of all stakeholders, including Convention countries, U.S. agencies and families, and waiting children, is yet to be seen. Certainly, the professionals who participated in the present research express some grave concerns regarding the long-term effects of the new rule on adoption practice and the populations it serves. However, it will take years to realize the long-term impacts of the policy, particularly on the world's waiting children.

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