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978-1-107-14963-2 - The Globalization of Adoption: Individuals, States, and Agencies
Across Borders

Becca McBride

Excerpt

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The globalization of intercountry adoption

I A puzzling trend

Jim Smith¹ was born to American medical missionary parents in the Congolese village Kimpese in 1970. Shortly after Jim was born, his father accepted a job running Mama Yemo hospital in Kinshasa, named after Congolese dictator Mobutu's mother. For the first seven years of his life, Jim remembers playing with Congolese children in a neighborhood across from the south end of the Congo River, and trading with them for the intricate toys they made out of scrap metal. One of his most vivid childhood memories comes from his visit to Mobutu's grounds, which housed a personal zoo and a large swimming pool. He said that even as a child he thought that it just did not seem right for the Congolese leader to have such an opulent lifestyle compared to the rest of the Congolese people.

Jim's family moved back to the United States when he was seven years old. Several decades later, when he was married with small children, he and his wife Jessica were active participants in a faith community that revolved around adoption. Many of the church members had adopted children domestically and internationally, and the language of adoption permeated the dominant narrative in the community. The Smiths lived alongside families who were experiencing firsthand the needs and challenges of adoption – political complications in the midst of adoption as well as post-adoption difficulties. As they sought to support their friends, they started examining their own place in orphan care. When they decided to pursue adoption, Jessica voiced the idea of adopting a child from Jim's country of birth. At the time, the Smith family did not even know if it would be possible to adopt from the Democratic Republic of

¹ The names of this adoptive family have been changed to protect their privacy and ongoing adoptive process.

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Congo (DRC), but the idea took root in their mind and they decided to explore the possibility.

Since World War II, international adoption has increasingly become a familiar phenomenon. Since the early 1940s, more and more states have allowed foreigners to adopt vulnerable children who are not their relatives. This trend did not happen accidentally – states have passed laws and developed policies that facilitate the flow of children across international borders. When China passed its law on foreign adoptions in the early 1990s, it became the fifty-sixth state in the world to allow foreigners to adopt children. As of 2010 almost half of the states in the world coordinate their visa regimes with other states in order to allow foreigners to adopt children. Strangely, many of the states that allow intercountry adoption have a small supply of vulnerable children, and many of the states that still do not allow intercountry adoption have a large supply of vulnerable children.

How and why intercountry adoption has spread through the international system, allowing families like the Smith family to adopt foreign children, is at the heart of this study. We know that states with vulnerable children make money from participating in intercountry adoption programs, which might lead us to study intercountry adoption as an economic exchange. We also know that individuals like the Smith family are key to the processing of intercountry adoptions – they select countries from which to adopt and construct families across racial and national boundaries. This observation might lead us to study intercountry adoption as a sociological or psychological process. Accordingly, scholars in these fields have produced research that explains the economic, sociological, and psychological aspects of intercountry adoption.

But we still know relatively little about why a state like the DRC, with a brutal history of colonialism and justified suspicion of Western intervention, would allow citizens of these same Western states to adopt their children. In other words, we know little about the *politics* of intercountry adoption. It might seem like an obvious conjecture that intercountry adoption is simply a response to a child-welfare problem. As states have more and more vulnerable children without parental care, they are unable to domestically care for those children and instead turn to international solutions. However, this explanation fails to explain variation in states' choices to participate in intercountry adoption. States with similar child-welfare problems – states like Ethiopia and Rwanda, for example – make different choices regarding their participation in intercountry adoption. Moreover, many of the states that allow intercountry

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adoption – states like the United States, South Korea, and China – have robust domestic programs for caring for vulnerable children.

Perhaps even more puzzling than the spread of intercountry adoption is the timing with which it has spread. Not all states allow intercountry adoption at the same time; in fact, states with similar child-welfare problems have allowed intercountry adoption at different times. Take Ethiopia and Rwanda, for example. The two states share a region and have similar child-welfare crises. Ethiopia has taken steps to build a robust intercountry adoption program since the early 1980s and is currently one of the top states allowing foreign adoption; Rwanda, on the other hand, has only started to implement the legislation that allows foreigners to adopt children, and foreigners have adopted comparatively few Rwandan children over the past two decades. States like the DRC, on the other hand, have cautiously allowed intercountry adoption, but recently taken steps to more tightly control the process. What explains the difference in timing? Why are some states innovators who try intercountry adoption before other states? Why do some states still not allow intercountry adoption?

These two broad puzzles about the patterns and timing in the spread of intercountry adoption highlight a more specific puzzle: If intercountry adoption is spreading as a policy choice, who is the agent of this diffusion? In other words, who is facilitating the spread of intercountry adoption? On one level, we know that adoptive parents in developed countries initiate the process of adopting from a foreign country. But they cannot adopt a child without state-level policies that allow and facilitate that adoption. So how do adoption-friendly policies form at the state level? How do states with no experience in intercountry adoption decide to allow foreigners to adopt children and build policies and partnerships with other states around that practice?

II The argument in brief: diffusion through state learning

This book addresses the gap in our knowledge of the political processes that drive the diffusion of intercountry adoption. I argue that intercountry adoption has spread through the international system because adoption agencies have taught states that intercountry adoption is an effective and accessible solution to child-welfare problems. As adoption agencies seek to proliferate intercountry adoption, they offer to facilitate the solution for states considering the practice, and they point these states toward other states' experience as evidence of

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effectiveness. This relatively simple explanation helps us understand the process *and* agents of the diffusion. Adoption agencies are seeking to influence state policy concerning children, and states are learning something about the effectiveness and accessibility of intercountry adoption in the process of interacting with these agencies. This explanation also helps us understand how state-to-state relationships are formed as adoption agencies advocate for intercountry adoption. When adoption agencies seek to influence state policy toward adoption, this influence is always tied to facilitating adoption relationships with *particular* adopting states.

But we need more if we are going to understand why Ethiopia is an active participant in intercountry adoption while Rwanda and the DRC have been more reticent to participate. To explain this difference in timing, we have to understand how a state's domestic characteristics make it more or less receptive to intercountry adoption as a policy and practice. I demonstrate how a state's regime type, level of development, demographic situation, and religious culture make it more or less likely to learn from adoption agencies. States with receptive characteristics are more likely to initiate intercountry adoption policies and practices even without the influence of adoption agencies. On the other hand, states with less receptive characteristics will likely only learn through intense interaction with adoption agencies, or conversely stick with the status quo solution if adoption agencies have not pursued advocacy in that state.

Showing how states' domestic characteristics shape their learning processes, and the consequent paths through which states accept foreign policies, has important implications for our theories of state learning and policy diffusion. More importantly, it provides scholars and practitioners with a typology of state learning that can help identify avenues for influence and potential for change in public policy across state contexts and issue areas. Adoption is a hard case for state learning because for a state to allow intercountry adoption, it must accept guidance from outsiders on how to manage its domestic child-welfare problem. Prominent cases like the recent ban on US citizens adopting Russian children and the Congolese ban on exit permits for adopted children highlight the cultural sensitivity toward foreign solutions when children are involved. If we can provide a model for how states learn in such a culturally sensitive matter, the model can travel to other less culturally sensitive contexts and provide a blueprint for understanding state learning in the international system.

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A Existing explanations

Very little has been written on the politics of intercountry adoption. Breuning and Ishiyama (2009) and Breuning (2012) are two political evaluations of the factors that influence the restrictiveness of states' intercountry adoption laws. In particular, these studies show that Muslim states and states with more women in the government tend to have more restrictive intercountry adoption laws, while states with larger orphan populations tend to have less restrictive intercountry adoption laws (Breuning and Ishiyama 2009; Breuning 2012).² Both these studies rely on factors that explain why, at the time the articles were published, states would be more or less open to intercountry adoption. Currently, there are no studies that can help us understand why and how intercountry adoption has spread across the international system over time, and there are no studies that can help us understand how states' partnerships on intercountry adoption are formed.

I use policy diffusion literature to explain why and how intercountry adoption has spread, as well as why and how states form partnerships on intercountry adoption.³ Key to my argument is the claim that when one state chooses to allow intercountry adoption, or chooses a partner for intercountry adoption, this influences other states because it conveys information about that choice. As more and more states choose to allow intercountry adoption, and choose specific partners for the practice, states' choices will tend to converge because of the strength of the evidence concerning the effectiveness of that choice. Adoption agencies serve as the conduit conveying this information across state borders. At the most basic level, states' choices for intercountry adoption are interdependent.

There are at least two other strands of literature that might explain the puzzles I have identified differently. The first strand might explain this puzzle by arguing that intercountry adoption is merely the policy preference for states facing similar constraints or having similar

² The findings from these two studies were conflicting in some ways. But Breuning (2012), the most recent with the most expansive data, found that women in government and orphan population are the two domestic characteristics that have the most impact on intercountry adoption laws.

³ Policy diffusion research has identified patterns of interdependent policy choices both within and across states in substantive issue areas like democracy promotion (Gleditsch and Ward 2006), education policy (Meyer and Rowan 1977), human rights (McNeely 1995; Boli and Thomas 1997; True and Minstrom 2001; Wotipka and Ramirez 2007), and economic liberalization (Guillen, Zelnor, and Henisz 2004; Simmons and Elkins 2004).

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characteristics. In other words, states' domestic characteristics are really driving the fact that more and more states are allowing intercountry adoption. State choices might seem interdependent when in fact the observed pattern is coincidental; states just happen to make the same policy choices, but there is no interdependence in those state choices.

The second strand of literature might argue that international law is shaping and constraining state choices as they choose intercountry adoption and select partners for the practice. When states choose intercountry adoption, they become members of a community of states abiding by a common legal standard for processing adoptions. All the states that adopt children are committed to the Hague Convention on Intercountry Adoption, the multilateral treaty governing the process. These states should only adopt children from states that have committed to that treaty. Even if the states adopting children allow their citizens to adopt children from states that are not committed to the Hague Convention, in the process of facilitating these adoptions, uncommitted states should move toward commitment. In this way, the treaty should influence states' behavior and constrain their choice of partners. I will explore each of these strands of literature theoretically and empirically in the chapters that follow. As an introduction, here I examine each strand of literature and briefly discuss shortcomings in explaining these puzzles.

1 States independently make the same choices on intercountry adoption

It seems plausible and even likely that states decide independently whether or not they will allow intercountry adoption. Most international political research, at least empirically, begins with the assumption that although states are interconnected in important ways, their behavior is not endogenous to those interconnections. In other words, states make choices independently based on their own constraints and interests.⁴ The international community can present an international solution to a domestic child-welfare problem, this perspective would argue, but states decide independently whether to accept or reject that solution.

But this explanation underestimates the important ways that a state's decision to allow any new policy is intricately connected to the decisions of others in the international community. When policymakers are

⁴ In fact, most statistical tools used by political scientists to investigate state behavior require independence of the units and observations of analysis (Smith 1998; Signorino 1999; Goemans 2000).

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deciding whether or not they will allow intercountry adoption, they must assess whether intercountry adoption will more effectively manage their child-welfare problems than the status quo solution. Otherwise, it would make no sense to absorb the costs of implementing a new solution. States do not have their own experience to rely upon in that decision-making process because the solution is new, and has not yet been tried out domestically. States have to get this information from some outside source – I argue that adoption agencies present the solution to states, making it seem accessible, and they convey information about other states' success with the solution, making it seem effective.

Moreover, a basic understanding of intercountry adoption demonstrates that domestic factors do not completely explain how intercountry adoption has spread or how states' partnerships have formed. Families who want to adopt a child from another state initiate the intercountry adoption process by petitioning their government to let them adopt a child from a specific country. They typically make this petition through an adoption agency. Once the adoption has been initiated, the states on both sides of the adoption respond to this request for a child in many ways. First, the state of origin for the child decides whether to allow or prohibit foreign adoption of children and adopting states decide whether to allow or prohibit their citizens from adopting children from the chosen state. Second, both adopting states and states with vulnerable children decide how restrictive the process of foreign adoptions will be.

Third, both adopting states and states with vulnerable children may choose to restrict intercountry adoption with certain states. For example, the Russian Government shows preference in adoptions to adopting states with which it has signed bilateral adoption treaties; it prohibits any adoptions by US citizens. China restricts adoptions to adopting states that are Hague committed and adoption agencies within those states that are Hague certified. Adopting states decide from which states to allow their citizens to adopt children based on two factors: (1) whether or not the adoption will legally transfer across borders and (2) the level of corruption in the intercountry adoption program of the state with vulnerable children. For example, the United States has at times restricted adoptions from both Guatemala and Nepal based on the level of corruption in those programs. Fourth, both adopting states and states with vulnerable children decide whether to commit to the Hague Convention and to comply with its requirements or to process adoptions outside the Hague framework. Fifth, both adopting states and states with vulnerable children can impede any adoption without any formal *legal*

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consequences, as we saw when Russia violated its bilateral adoption treaty with the United States by banning US citizens from adopting Russian children.

Decisions about intercountry adoption do not typically *originate* within the governments of states; rather state-level decisions are *responses* to requests. Except for a few cases where governments have taken the initiative to develop an intercountry adoption program, the decision to allow intercountry adoption is typically a government response to a request for children from the citizens of a foreign state. That request for children is most often facilitated through networks of adoption agencies and other advocates seeking to open adoption programs in that state. The state then *responds* to the request and starts structuring an intercountry adoption program with the guidance of adoption agencies and their domestic partners (like domestic law firms). Intercountry adoption is an interdependent phenomenon. If one state allows intercountry adoption in isolation it makes no sense. Unless there is a state with citizens offering to adopt your vulnerable children, allowing intercountry adoptions will serve no purpose. It certainly will not provide an effective solution to a child-welfare problem. But as more and more states request children and more and more states respond to those requests, the more effectively intercountry adoption can address child-welfare challenges. Because it is by definition an interdependent phenomenon, it needs a theory of interdependence to explain it.

2 International law shapes and constrains states' choices

It also seems plausible that international law will have a strong influence on states' choices for intercountry adoption, especially once states commit to allowing the practice. When states allow their citizens to engage in cross-border transactions, this perspective would argue, they should want those transactions to occur within a legal framework that protects their citizens' rights and interests. This is true both for simple coordination purposes – wanting the transactions to be legally valid on both sides – and for security purposes – wanting citizens to be protected legally. If this claim is legitimate, states should select their partners based on whether or not those states are committed to the Hague Convention. Moreover, uncommitted states should move toward commitment over time as they interact with committed states. This explanation points to multiple mechanisms through which international law should influence state behavior as they exchange children across

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borders,⁵ which is more convincing when international law has high levels of obligation that restrict state coordination outside its provisions. However, the Hague Convention does not have such high levels of obligation. In fact, there is no legal penalty for acting outside Hague provisions, even for Hague-committed states.

Again, a basic understanding of the practice demonstrates the potential shortcomings of using international law to exclusively explain states' choices for intercountry adoption. While all the states that adopt children had ratified the Hague Convention by 2010,⁶ not even half of the top ten states that send children had ratified the treaty by that time. In fact, only two of the nine states from which US citizens adopt the most children (China, Guatemala, Russia, Ethiopia, South Korea, Vietnam, Ukraine, Kazakhstan, and Haiti) had ratified the treaty by 2010 (China and Guatemala); intercountry adoptions originating in seven of the main states that send children to the United States were thus conducted outside the Hague framework during this time period. Worldwide, only four out of the top ten states that send children (to any state that adopts children) had ratified the Hague Convention in the time period I study. Despite adopting states' commitment to the Hague Convention, states with vulnerable children whose programs are the least institutionalized have largely failed to commit to the treaty. These simple statistics show that the Hague Convention, international law for intercountry adoption, is likely to have only a small influence on states' choices of intercountry adoption partners.

III Why should there be a political study on intercountry adoption?

US citizens adopted more than 230,000 foreign-born children from 2000 to 2010 (USDOS 2010). These adoptions represent around 50–80 percent of all adoptions in the global system, meaning that global adoptions in the same time could be up to twice that many (Engel et al. 2007; Menozzi and Mirkin 2007; Selman 2009). These children have crossed political, ethnic, social, and linguistic boundaries to migrate to new families in new states. It is thus surprising that little work has been done to understand

⁵ Analysts have shown that multilateral cooperative frameworks like the Hague Convention can influence state behavior through various mechanisms such as norm adoption, reciprocity, reputational concerns, information provision, and signaling (Keohane and Martin 1995; Simmons 1998, 2000, 2009; Bearce and Bondanella 2007; Hathaway 2007; Kelley 2007; Mitchell and Hensel 2007; Guzman 2008; Tomz 2008).

⁶ Ireland was the last adopting state to ratify the treaty in 2010.

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the context in which adoptions are processed. Political scientists have so far produced little research investigating the factors that enable or inhibit intercountry adoption. My research addresses an aspect of our interconnected world that has been largely neglected – the flow of children across borders. It explains how adoption has shifted from being primarily domestic to being an increasingly global, interconnected phenomenon. I show that intercountry adoption is spreading because states learn about the effectiveness and accessibility of intercountry adoption through interacting with adoption agencies. This explains why more and more states over time have chosen to allow foreigners to adopt their vulnerable children. It also demonstrates how states choose partners for the practice. These explanations provide new insight into an aspect of state behavior that has historically been understudied – state choices when exchanging children through intercountry adoption.

There are several reasons why it is important to understand how states' choices shape the potential for intercountry adoption. First, the children flowing across borders through intercountry adoption are the most vulnerable citizens of a state, not just because they are children, but because they lack parents to advocate for their protection. Their protection falls within the primary responsibility of the state. Second, intercountry adoption is by its very nature the coordination of legal systems across borders, a goal that can only be accomplished through state policy. Adoptions must be processed in the state of origin such that the child can legally be transferred to another family in another state. Third, complications in intercountry adoption are increasingly becoming international incidents that are negotiated at the state level. For example, Russia's recent decision to ban US citizens from adopting Russian children was motivated, in large part, by US policy restricting Russians accused of human rights abuses from travelling to the United States or owning property in the United States.

Though there are a few studies that attempt to explain aspects of state behavior in intercountry adoption, there is no research examining the fundamental question of why states would allow foreigners to adopt children in the first place. This book identifies that adoption agencies are teaching states about intercountry adoption and facilitating the diffusion of this policy across the international system over time. Furthermore, it shows how state learning is also influencing the partnerships that states form to facilitate adoptions. Ultimately, this book is a story of how one state's choice to allow intercountry adoption influences the choices of other states, and how the information about states'