

# Transnational Negotiations of the Mechanisms of Governance

## Regularizing Child Adoption

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At the end of October, 2007, the story of the “Darfur orphans”<sup>2</sup> – a hundred children, aged one to ten, “kidnapped” from their West African homes by members of a French NGO with the telling name of *Zoe’s Ark* – was splashed across the headlines of every leading newspaper in Brazil. From then on until early January, in their daily papers and on major television networks, Brazilians accompanied the fate of these NGOers as they were arrested (at the Chadian airport from which they were embarking), tried and condemned to seven years hard labor before being extradited back to France. Newscasters referred to rumors that the children, lured with false promises from their native homes, were destined to the mafia of organ transplants or pedophilia. At the very least, the children were to be “sold” for high gains to French and Belgian families. Thus, it was no surprise to hear that “thousands” of Sudanese had gathered in Khartoum to protest against the European menace to their children or that, by December, citizens of Chad (where the trials took place) were thronging at the door of the French embassy to demand exemplary punishment for all those involved. The president of *Zoe’s Ark* had announced earlier in the year that his organization, through “Operation Children’s Rescue”, would be saving up to ten thousand orphans of the Darfur-Sudanese war from famine and probable early death. However, after the October arrests, few still believed in this claimed altruism. A UNICEF spokeswoman pointed out that the organization’s activities had transpired in clear violation of the International The Hague Convention on international adoption.

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2 The quotation marks are to underline the fact that – as journalists soon discovered – most children involved in the incident were not orphans, nor were they from Darfur.

Although it concerns an event that occurred many thousands of kilometers away, involving nationals of other countries, the “Darfur orphans” incident serves, ironically, as an appropriate introduction to our reflection on adoption policies and practices in Brazil. In the first place, it highlights the globalized nature of opinion-forming media. There was no doubt nothing exceptional to the Brazilian interest in this scandal involving the “traffic of children”. Throughout most countries in the world, people were listening to similar journalistic reports that included speculation about the Europeans’ colonialist attitudes, comments on a possible dark side to “humanitarian” aid, and analysis of international documents pertaining to the international adoption of children. In the second place, the “Darfur orphans” incident underlines a certain aspect of the dynamics of governance in today’s world that we intend to demonstrate in the following paragraphs: the manner in which apparently private conflicts concerning children and their caretakers have come under worldwide scrutiny, marking a clear global presence in seemingly local matters. Put in other terms, it inspires reflection on how particular constructions of “the irregular” (Leifsen 2006) are used to forge instruments of governance.

According to my frame of reference, change is never the simple result of global trends. Although one may speak of certain evolving “global forms” of childcare policy -- phenomena “that have a distinctive capacity for decontextualization and recontextualization, abstractability and movement, across diverse social and cultural situations and spheres of life” -- these forms only become pertinent to policy and practice when articulated as concrete “assemblages” in specific, territorialized situations (Ong and Collier 2005: 11). As N.Rose points out, these real-life results often bear little resemblance to the neat projection of policy planners:

This is not a matter of the implementation of idealized schema in the real by an act of will, but of the complex assemblage [of diverse forces, techniques, and devices] that promise to regulate decisions and actions of individuals, groups, organizations in relation to authoritative criteria. (2006: 148)

In an effort to understand the “technologies of government” tailored to smooth out certain conflicts in the Brazilian child rights scenario over the past twenty years, this article traces the intertwining dynamics of “external” inputs (such as those represented by international legal conventions), “local”

specialists (including social workers, NGO volunteers, and judicial officials), and the media. However, it should soon become clear that the horizontal and relational processes that crisscross the globe implode images of global versus local, as well as any idea of unidirectional flow. Global forms operate through transnational circuits in which goods, people and ideas pass through mediating situations that do not simply transport meanings, but rather, “transform, translate, distort, and modify the meaning of the elements they carry” (Latour 2005: 39). The process of mediation implies change for all sides of the process. If local policies bear the mark of international legislation, this legislation also reflects, to varying degrees, the concerns of activists rooted in their own national setting. If the 1980s “hemorrhage” of children out from “sending countries” has radically changed childcare policies as well as notions of nationhood within those countries, so, in Europe and North America, the flood of children adopted overseas – who grow up side by side with African, Latin American and Asian immigrant children -- pose questions of nationhood and belonging at the “receiving” end of the process (see Howell 2006, Yngvesson, 2007).

Throughout this paper, we trace through the reversible flows – the play of *mutual* influences – between Brazilian and international sites that produce relatively consensual results. At the end of our discussion, we briefly return to the theme of “traffic” in adopted children, framing it as a controversy that reveals certain latent tensions for which “evident” solutions have yet to be found.

### **Locating examples of abuse**

The conflict that pits nationals against foreigners (or “national adoption” against “intercountry adoption”) gains ready visibility in clashes such as that of the Darfur orphans. High-placed statesmen get involved, and newspapers revel in inflamed rhetoric underlining sentiments of national honor. Nonetheless, there is another possible focus of conflict here – that between child-givers and child-receivers – which occurs in any sort of adoption. In the case of the Darfur orphans, the mismatched frames of reference are obvious: legal adoption, as it is known in France, does not exist in the Muslim world. The Chadian driver who served as intermediary in the recruitment of children swears he had not understood that the children would be taken

out of the country to live permanently removed from their original families. His misunderstanding of the situation calls to mind another similar episode of a youngster from a Malawi orphanage adopted by the American pop star, Madonna. Journalists, discovering that the child was not an “authentic” orphan, located and interviewed the boy’s father. The man, at first complacent – and even grateful – to see his son taken in by a well-off foreigner, gradually changed his tone, alleging he had never understood that his child would be permanently removed from his existence.

Brazilian newscasters, in their cool appraisals of the Chadian incident, imply an enormous distance between problems “over there”, in less developed regions of Africa, and the modern nation of Brazil. Today, the priority issues in child welfare are different. Citing concerns voiced by representatives of UNICEF or UNESCO, journalists are apt to run stories on the impressive number of murdered youth in Brazil (many, victims of the drug wars), child abuse, or the sexual exploitation of children and adolescents. Intercountry adoption, as fodder for potential scandal, has dropped virtually out of sight. What the media fails to recall is that scarce twenty years ago, Brazil was one of the world’s leading exporters of internationally adopted children, and well into the 90s, the country was subject to periodic scandals and often exaggerated accusations about the “sale” or even “dismantling” of orphans for the benefit of foreign adopters (Fonseca 2002).

The “Mothers of Jundiá”, a movement begun by a rag-tail group of families living in a small town not 60 kilometers from the bustling metropolis of São Paulo, was responsible for bringing the most recent (and perhaps last) large-scale scandal to public attention<sup>3</sup>. Starting in March of 1998, a group of protesters, wearing green ribbons on their shoulders and carrying photos of their lost children, would gather every Monday on the steps of their local court house, to demand information on the whereabouts and, hopefully, the return of their youngsters. These lower-income women (and some men) – compared by journalists to the Argentine *madres de la plaza de mayo* – had banded together to protest the “abduction” of their children by the local judge. Newspapers and weekly magazines gave considerable coverage to this movement, delving into detail through investigative reporting. It thus came to the fore that, over the previous six years, 484 of the town’s children had

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3 See Cardarelo (2007) for a detailed ethnographic analysis of this movement.

been given in adoption, nearly half, destined to homes in foreign countries, and most without their family's consent<sup>4</sup>.

According to the original judicial evaluations, none of the families appear to conform to middle-class family standards. One mother, it was pointed out, had three children by three different fathers, another, whose companion had disappeared, was only 14 when her child was born; others were accused of being prostitutes or alcoholics or drug-addicts. In many cases, following the tradition of "child circulation" -- a sort of informal fosterage common among working-class populations in Brazil and other parts of Latin America ever since colonial times (Leifsen 2006, Leinaweaver 2008, Fonseca 2004), the children were living with surrogate parents (uncles and aunts, grandparents, god-parents...) chosen by their mother. The judge, backed by the cursory evidence collected by court assistants of similar persuasion, took such placements as a sign of abandonment. Compounded with what he saw as the child's precarious moral and economic living conditions (most of the accusations of physical abuse never panned out), he presented journalists with laconic justification for the high number of expedited adoptions: "I can't condone the fact of a stripper living in the same house as the child"; "the children were living in the worst possible conditions of hygiene"; "the [original] family did not offer conditions for a dignified life" (*Isto É*, 13-5-98.). Acting, for the most part, in connection with a reputable Italian adoption agency, the judge insisted that his decisions had been guided solely by the children's best interest.

The fleeting movement of birth families (which lasted barely more than a year) certainly would not have received so much attention had the field not been previously prepared by a decade of scandal in the papers and debate by child rights activists, going hand in hand with legislative changes. In fact, the heyday of scandal was in the 80s and early 90s, when, in reaction to a high number of precariously-regulated adoptions by foreigners, accusations linked real and documented cases of "traffic in orphans" across national borders, to "the traffic of [human] organs". In 1988, the theme was included in the agenda of a Congressional Parliamentary Inquest, and, throughout Brazil, the federal police opened a record number of investigations on intercountry adoptions. The mood was ripe for the massive wave of legal investigations of any lawyer, orphanage administrator, maternity ward nurse or charity worker

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4 See *Isto É*, 13-5-98 e 25-11-98, 19-5-99; *Epoca* 31-08-98,

who had served as go-between in an adoption involving foreigners. With jail sentences and other sanctions being meted out, public opinion underwent an about-face, causing an abrupt fall in the potential status of such agents from “child-savers” to “child-traffickers” (see Abreu 2002). As of 1994, intercountry adoption, on the wane ever since the 1990 Children’s Code, began its definitive decline, bringing the number of children thus leaving the country from 2143 in 1990 to under 500 at the decade’s end (Fonseca 2002).

The “Mothers of Jundiá” thus stands as a sort of swan song of scandals involving intercountry adoptions in Brazil. From the protestors’ point of view, the results were not particularly rewarding. The government officials involved were never censured. (The judge was moved to another district where he no longer deals with children’s affairs. After being absolved by his peers in the judiciary, he proceeded to sue the news vehicles who had sullied his image.) Even more discouraging – not more than a handful of the youngsters, and none who were adopted abroad, returned to their families. Notwithstanding the paltry results of this group protest on the individual level, we suggest that the episode exerted an important influence on public policy dealing with children from impoverished households. For this to happen, however, local activists would be obliged to muster “external ammunition” for this local struggle.

### **Globalized regulations settle in: Intercountry tensions recede**

At the end of the 1980s, the first reaction of Brazilian policymakers to the early scandals involving foreign adopters had been to revamp national legislation. Up until this point the wide-spread practice of child circulation had seldom been brought to the attention of government authorities. Those adults wishing to officialize their relation to a youngster they were raising would simply take out a birth certificate as though the child were their biological son or daughter. In the 80s, this sort of “ideological falsification” known as *adoção à brasileira* (or *adoption Brazilian way*), was thought to be much more common than any form of legal child placement. Although illegal, the practice was generally tolerated by judicial authorities who took the parents’ “noble motivations” as an attenuating factor (Abreu 2002). Scandals over intercountry adoptions brought child placement practices into the limelight, urging a tighter control over irregularities.

The scandals, one should remember, coincided with the ascendance of the judiciary, called upon throughout the Western world to settle an ever greater array of matters in the private sphere (Santos 2000). Brazilians had their own particular reasons for casting their hopes with the new “rule by law”. During the 1980s, with the ebbing of the country’s twenty-year military dictatorship, social movements burgeoned. The mobilization of such varied categories as landless peasants, metallurgical workers, street children, and housewives in the slums resulted in wide popular participation in discussions geared toward a new Constitution (Caldeira and Holston 2006). Child rights activists organized nation-wide discussions not only to guarantee proper space in the 1988 Constitution<sup>5</sup>, but – even more importantly – to elaborate a new Children’s Code (1990). Coming on the heels of the 1989 UN Convention for the Rights of the Child<sup>6</sup>, the Code – seen as “even more advanced” than the international document – inspired constant and favorable comparison.

The principle of the paramount interest of children and adolescents now justified the eradication of simple adoption in which children maintained membership in both their biological and adoptive families, with limited inheritance rights in the latter. At the same time that it guaranteed the child’s irrevocable and full rights in its new adoptive family, the 1990 Children’s Code decreed the complete erasure of the child’s original family. However, now, thanks to the “subsidiary principle” stating that intercountry adoption should be seen as an exceptional measure resorted to only after all in-country alternatives had been exhausted, adoption would not normally imply a rupture in the child’s *national* belonging. The directives were essentially the same that would dominate major United Nations legislation formulated three years later at the 1993 Hague Conference on the Protection of Children and Co-operation in respect of inter-country adoption. Aside from stating that children might be adopted abroad only after all in-country solutions had been exhausted, the document affirms the child’s right to physical, psychological and moral integrity, including the preservation of his or her identity (ECA, art. 17)<sup>7</sup>.

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5 Article 227 states the child’s right to “total protection”.

6 Promptly ratified by Brazil on November 21, 1990.

7 One should note, however, that whereas the UN Convention on the Rights of the Child declares a

Perhaps because the Hague document was seen as a repetition of existing national legislation, the Brazilian government's adhesion was not immediate. The subsidiary principle, however, was *not* implemented in like fashion throughout all Brazil. In certain regions (especially those connected with scandals in the media), state commissions for international adoption were quickly set up, bringing together leading citizens with members of the judiciary. However, in other places, such as the state of São Paulo, authorities dragged their feet. With the Jundiá scandal, it became evident that even the supposedly more advanced parts of the country were subject to slip-page and that the Children's Code alone would not assure adequate control of intercountry adoption. It is thus no surprise that in July of 1999, with the "Mothers of Jundiá" still fresh in the memory of policymakers, Brazil finally ratified the 1993 Hague Conference.

From then on, the government wasted no time in implementing the Convention's mandates. In 2000, a "Central Authority" for the regulation of intercountry adoption was set up within the new Special Committee on Human Rights, directly under the supervision of the President's Office. By 2005, in its answers to a questionnaire designed by the Special Commission of the Hague Convention, Brazilian authorities reported that, with the exception of certain ill-equipped regions in the North of Brazil, the Convention was being faithfully applied (2005)<sup>8</sup>. That same year, they edited new guidelines for the accreditation of foreign agencies dealing in the adoption of Brazilian children. Significantly, at the beginning of 2008, all 34 foreign accredited agencies were seated in countries that had ratified the Hague Convention. Agencies from the U.S. – a country which has not adhered to the Convention – were pointedly absent.

Interestingly enough, the number of intercountry adoptions of Brazilian children has begun to slowly climb after the implementation of the international directives, as though local authorities – admitting increasingly centralized supervision – feel less vulnerable to criticism. In this case, moving the "centers of calculation" further from home appears to have been an efficient mode of risk

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child's right to the preservation of identity, national, name **and family relations** (art. 8), the Brazilian ECA concentrates on the child's (individual) identity, omitting any mention of family relations.

8 See Brazil's response to the **Hague QUESTIONNAIRE on the Practical Operation of the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption** on [www.hcch.net/upload/adop2005\\_br.pdf](http://www.hcch.net/upload/adop2005_br.pdf) (consulted 20 July, 2009).

management (Rose 2006). The present situation no longer lends itself to scare signals about foreigners stealing away the country's next generation.

### **From the subsidiary principle to “necessary adoptions”**

It is hard to get a handle on the “local” specificities of an issue while remaining glued to the national scene. Globalized influences – references to the Hague Convention, scandals in the media, etc. – are easily apparent in the speech of local actors. However, it takes a comparative analysis involving data from a number of different countries to bring out national particularities. The British researcher, Peter Selman (2009), furnishes just this sort of material in his demographic analysis of the trends in intercountry adoption between 1998 and 2004 in twenty receiving states. In considering this data, it comes as no surprise that Brazil has long since disappeared from the list of significant donor countries. The intriguing fact, however, is the advanced age of those few children (under 500 a year) who leave Brazil with foreign adoptive parents. Whereas 94% of the Korean children adopted into foreign homes are under one year of age, and 97.5% of the Chinese adoptees have not yet celebrated their fifth birthday, 65% of the Brazilian children adopted abroad *are over five years old*. No other country appears to have come close to the seriousness of Brazil in applying the Hague Conference's “subsidiary” principle.

How did this orthodox application of the Hague Conference come about? Certainly, the progressive centralization of adoption processes in the hands of Juvenile Courts made it easier to supervise and implement the orientations of legal statutes such as the Children's Code and Hague Convention. However, one should also mention that there were, by the mid-1990s, a number of professionals in the adoption field who, in the course of post-graduate studies abroad, had drawn close to international child rights organizations. For example, one legal specialist who had interned at the Porto Alegre Juvenile Court's adoption service, and subsequently studied in Germany, ended up serving as Secretary-Adjunct to the Hague Conference. There, she worked alongside a compatriot (who had done her doctorate in France) who had supervised intercountry adoptions at the same Porto Alegre Court for nearly a decade. Such participants no doubt made an important in-put to the Conference's final document. Returning to pursue their careers in Brazil, such experts became faithful disseminators of the Conference's principles.

An interview with the coordinator of one of the oldest and most influential NGOs dealing with adoption in Brazil reveals in greater detail the weaving back and forth of actors and ideas. After an early experience working in state-run juvenile institutions, she had spent two years studying pedagogy in Paris, during which time she established contact with an international NGO dealing in child welfare throughout the world. Upon returning home, as representative of this NGO, she invested her energies, up until 1992, in the supervision of intercountry adoptions. During the 1990s, however, this activist, following the trend of others at the ONG's international headquarters, turned her efforts toward promoting *national* adoption, helping to organize, throughout the country, a network of locally-based groups composed of present and future adoptive parents (*Grupos de Apoio à Adoção*). As she tells the story, it was her partner who, on returning home in 1987 from a stint in Portugal, brought with him a new philosophy. Not only should their association be limited to national adoptions, it should favor the adoption of difficult-to-place children: older, dark-skinned and handicapped youngsters. As in many of these processes, it is not always clear where the initial impetus for policy turn comes from. Although granting that the European-based head office gave crucial financial support to their different programs, my Brazilian interviewee implies that it was she and her partner who exerted a major influence on Swiss headquarters, persuading them to integrate this new emphasis on difficult-to-place youngsters into their work in other Third World countries.

The "subsidiary" principle, even though directed toward inter-country adoption, ended up having an effect on in-country adoptions. Judges and other professionals from the adoption field, when justifying placements overseas would emphasize that intercountry adoption dealt basically with the children no Brazilian would adopt. Repeatedly news articles brought to the public's view cases of foreigners who had adopted pre-adolescents, Afro-descendants, sibling groups, and even handicapped children. In subtle ways, Brazilians were now being portrayed in an unfavorable light, their narrow-mindedness contrasting with foreign adopters' generosity. National honor was once again at stake, but this time the "enemy" was *local* prejudice.

Besides creating special state commissions to deal with intercountry adoption, the Brazilian juvenile courts began to vigorously promote *national* adoption. Posters were strategically placed in various public locales; state juvenile courts set up special sites on the internet. Evidently, enthusiasm at the

time was highly influenced by the recent embargo on intercountry adoption. However, despite the 1990s campaigns, in-country adoption in Brazil did *not* at first increase.

Ironically, this stagnation (or, according to some sources, decline) may be due to the precise forces that were designed to better organize legal procedures. With the professionalization of court mediation, independent adoptions, arranged directly between birth and adoptive families, became target of heavy criticism carrying connotations of various types of abuse and even traffic. Although Brazil's Children's Code forbids these "direct" procedures in the case of intercountry adoptions, legal loopholes allow in-country adopters to bypass the court's team of adoption specialists, arriving in court *post ipso facto*, i.e., to validate a child transfer that has already taken place.

Today, well into the new millennium, researchers in various parts of the country (Ayres 2008, Mariano 2008) report that direct adoptions continue to account for over half of all legally sanctioned adoptions. This is an intriguingly high proportion despite various efforts to repress the practice. Evidently, many Brazilians do not feel comfortable with the rigid procedures of court-mediated plenary adoption: the screening of candidates, the refusal to allow pre-adoptive contact with the child, the lack of information about the child's origins. It is possible that moralizing campaigns leave potential adopters cornered between a discomfort with official procedures and a reluctance to engage in the much frowned-upon (if not entirely illegal) "direct" adoptions. The net result would be a stagnation in the volume of adoptions registered in court.

Another possible motive for the initial "stagnation" in the number of adoptions may be related to the same processes that created a "shortage" of adoptable children in Europe and North America. During the mid-90s, a certain number of government programs (*bolsa família*, *bolsa escola*, *bolsa alimentação*) became available to lower-income families. Rather than summarily withdraw a child from its poverty-stricken home, more and more social workers could try out home-based alternatives. Aware that, until very recently, many children had become available for adoption for reasons of sheer poverty, juvenile authorities became sensitive to accusations that they might be "trampling" administrative process, skipping over necessary investigations. Since most children put up for adoption by the Children's Court were not voluntarily relinquished, this renovated respect for parental authority was

destined to slow the production of adoptable children. A child's "adoptability" would only become apparent when he or she was older and less appealing to potential adopters.

While the tensions between independent and court-mediated adoptions remained in abeyance, activists quickly turned their efforts to the second problem, of "hard-to-place" or even supposedly unadoptable children. It was in this climate that the first adoption support groups – non-profit, philanthropic organizations composed as a rule by volunteers – initiated their activities. Growing steadily in number since the mid-90s, holding annual national encounters since 1996, the support groups number today over a hundred throughout the country. Although they work in close association with the Juvenile Courts, the volunteers with which I have had contact represent a slightly different perspective from that of the judiciary and its professionals. Some bring with them experience from catholic grassroots movements (*Comunidades Eclesiais de Base* or *Pastoral do Menor*), others invoke the spiritist philosophy of charity, some are workers in the adoption field, but most are simply adoptive parents who feel passionately about adoption. In one association I visited in Brasilia, the pair of founders mentioned they had both grown up in families with informally adopted brothers and sisters.

Although ostensibly these organizations exist to promote adoption, they generally assume a broad approach to the problems of institutionalized children, insisting on the now globally disseminated philosophy that adoption is not aimed at finding a child for a family, but rather at finding a family for a child. The organizers, in monthly meetings with prospective adopters, didactic brochures, and internet sites, combat typical stereotypes – the ideal, for example, of a white infant (generally female), in perfect health, received soon after birth, just "as if" he or she had been born to the adoptive family. In Porto Alegre, the support group has the telling name of "Friends of Lucas" (*Amigos de Lucas*), coined by its founders in reference to the companions their own son (a physically impaired child adopted when he was well past infancy) had left behind at the group home – youngsters who, because they were dark-skinned, older or suffered physical or emotional handicaps, were considered unadoptable.

In 1998, an adoption support group, linked to the local university, incorporated the term "necessary adoptions" in the organization's name (*Grupo de Apoio a Adoções Necessárias*). The label had been coined to replace, among others, the term "late (or tardy) adoption", deemed inadequate because of its

implication that the norm would be to adopt babies. This was one of the first times that the term – used originally to speak of those children adopted by foreigners – was clearly directed toward in-country adoptions. The growing popularity of this category – now apparent in most national encounters and documents dealing with adoption – may or may not have contributed to a change in Brazilian habits. According to the statistics published on the web by Porto Alegre Juvenile Court, only 20 % of the adoptions they mediated between 2002 and 2006 concerned infants under one year old, and more than one third concerned children over five<sup>9</sup>. The sporadic reports from other jurisdictions are not necessarily as encouraging. Nonetheless, the philosophical principle of “necessary adoptions”, now espoused by the vast majority of professionals and groups working with *in-country* adoptions, appears to have come to stay.

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We see then that, during the past twenty years, there have been many changes on the Brazilian adoption scene. Thanks to the principle mandating that adoption abroad remain a last option, most of the worries pertaining to questions of national sovereignty have been successfully addressed. Threats concerning the commodification of children – in which youngsters would be on display in supermarket fashion for prospective adopters to choose from – have been countered through policies of “necessary adoptions”. And the potential abuse of authorities, inclined to hastily remove children from their poverty-stricken families, has been combated through renewed insistence on family preservation as well as a series of government-sponsored family subsidies.

As long as the questions are limited to a certain, relatively safe terrain -- who has priority right to adopt? and which children have a priority right to be adopted? -- the mutual education process which occurred in intercountry forums appears to follow a reasonably consensual path. However, there remain certain foundational questions: Is adoption the best alternative for most institutionalized children? What are the limits to state intervention into adoption transactions? Does adoption necessarily imply a child’s rupture

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9 [http://jij.tj.rs.gov.br/jij\\_site/jij\\_site.home](http://jij.tj.rs.gov.br/jij_site/jij_site.home)

with all pre-adoptive relations? A consideration of these final questions will reveal power disputes that do not line up neatly along national interests, and that do not produce solutions.

### **“Local” forces bring birth families into focus**

With the “Mothers of Jundiaí”, (also, as we will recall, initiated in 1998), it became clear that it was not enough simply to redefine the criteria used to describe desirable adoptees. Many of the children removed from their families by local court were no longer infants and several were darker-skinned. News articles made it clear that the injustice, in this case, concerned not the type of child adopted, nor even the nationality of who was adopting them. It involved the discrimination against parents and other caretakers whose children were being taken away for the sole reason of poverty. One cannot fail to see the connection between these scandals and the 1999 redirection of rhetoric, as announced by the recently founded National Association of Adoption Support Groups. The *prevention* of child abandonment came at the top of the new organization’s objectives, and, alongside the usual ends of counseling adoptive parents, the founders now made the plea: “(...)Why not help a family, and so avoid abandonment This wouldn’t also be a sort of adoption?”<sup>10</sup>

For the first time in a decade, adoption as the preferred solution for children in institutional care -- a foundational issue in child placement policy -- was systematically questioned. Certain support groups began to concentrate their efforts on what Brazilians call *convivência familiar* – a notion that could be loosely translated either as “family preservation” or “family-based models” of childcare. In fact, the term – already of central importance in the 1990 Children’s Code – had been around for some time. However, whereas the emphasis on family-based models of childcare had been used during most of the 90s to justify campaigns in favor of adoption, the notion was now used to announce seminars and programs looking for ways to maintain children in their original families.

As part of this new philosophy, the necessity for quality institutional care came into focus, considered now as a way to maintain the child’s attachment

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10 Associação Nacional dos Grupos de Apoio à Adoção, ANGAAD, <http://angaad.sites.uol.com.br>, consulted 25-1-2008.

to kin and community while social workers invested in the original family. The issue of foster families that had been denigrated and all but erased during the previous decade, began to find its way onto the agenda of certain policymakers (Uriarte and Fonseca 2009a). Between 2003 and 2008, the country witnessed no fewer than six national conferences to discuss issues of fosterage – conferences organized by Brazilian research centers, public authorities, adoption support groups, NGOs, and church-related associations in partnership with UNICEF, International Children’s Villages, The International Foster Care Organization (IFCO), and the Chapin Hall Center for Children, (University of Chicago). Ironically, in a country where the omnipresent *informal* foster families have been largely ignored, international organizations were called in to help consolidate what was presented as a new and daring proposal.

There are grounds to believe that this renewed attention to maintaining a child’s place in his or her original family was the product of local activists particularly sensitive to issues of inequality close to home. Yngvesson (2004), in her analysis of discussions during the 1993 Hague Conference, suggestively points out that representatives from *sending* countries (India, Korea, etc.) tended to favor a number of local solutions for children in need – including temporary institutional care and foster placement. Among these same delegates, the “proprietary logic” underwriting plenary adoption -- in which children appear to be born anew (“de-socialized”, given a “clean slate”) by administratively erasing all pre-adoption history -- provoked serious reservations. These reservations were overcome, however, by the convictions of another group – led by adoptive parents and agencies in Europe and North America – that plenary adoption was most in keeping with a child’s well-being. The document’s final draft implies that intercountry adoption is preferable to any *local* solution other than full adoption. If, during the 1990s, Brazilian authorities appeared to mirror the First World enthusiasm for plenary adoption, the movement during the early 2000s in favor of alternative solutions to adoption would appear to diverge from the globally hegemonic mood.

It would nonetheless be pertinent to recall that these debates are not settled even *within* the sending countries where the different sides often line up according to class and color instead of nationality. In the United States, for example, activists from black and indigenous movements have long been highly critical of the adoption *and* fostering services which are seen to serve as mechanisms for the appropriation of children from their politically

impotent families of minority origin (Roberts 2002). Despite modest advances, their efforts suffered a major setback with a 1997 federal bill, the Adoption and Safe Families Act (ASFA). Announcing the failure of most efforts at “family preservation”, this document shifted policymakers’ attention to fast-track adoptions. Accusations of negligence, abandonment, and mistreatment were no longer needed to justify the termination of parental rights. It would be enough for a child to have spent fifteen of the previous 22 months in foster care for a state to initiate the process of “freeing” him or her for adoption. Critics claim that the Act not only catered to the demand of would-be adopters (mostly white and middle-class), it also brought a way of moving the financial onus out of the public childcare system and into private, self-supporting families. According to D. Roberts, a Black feminist researcher, under the new legislation, adoption was “no longer presented as a remedy for a minority of unsalvageable families but as a viable option – indeed the preferred option – for all children in foster care” (2002: 150).

A close look at the Brazilian scenario suggests that many of the same tensions witnessed in the United States crisscross the domestic mood. At the end of 2003, a Brazilian congressman launched a project for a new “Adoption Law”, designed to expedite the adoption of institutionalized children through financial incentives to adopters and mandatory time limits for children in institutional care. Arguments called attention to the great number of children in shelters throughout the country<sup>11</sup>, and to the morose judicial system that posed innumerable bureaucratic obstacles to their placement in adoptive families. Backers hoped to see the bill approved by May 25, 2005 – in time to celebrate “National Adoption” day. They had not foreseen the massive reaction that inspired demonstrations throughout the country. A manifest, published in March of 2005 and signed by over sixty NGOs, judicial authorities adoption support groups, social work associations, and civic councils, argued that the new law not only threatened to violate the rights of poverty-stricken parents, but it was drawing attention away from the much more pressing concern of family preservation<sup>12</sup>. Another document, emitted two months later by the National Movement for the Support of Adoption

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11 There are no unified statistics on this population, but, extrapolating on a 2004 study on federally-funded shelters (Silva, 2004). Newscasters and legislators regularly cite and estimated 80.000-100.000 children in institutional care.

12 “Manifesto contra o projeto de lei da adoção”, *Caderno Especial*, n. 14 (29-4-2005 e 13-5-2005).

and Family-Living, although technically in favor of the proposal, recommended alterations in the law including detailed measures for family preservation as well as the absolute priority of “necessary adoptions”<sup>13</sup>. Facing a congressional impasse, the President’s office formed an interministerial commission (2004-2006), including participants from various NGOs, judicial associations and other child rights organizations (e.g. UNICEF), to lay down the lines of a “National plan for the promotion, protection and defense of the right of children and adolescents to the maintenance of family and community ties”. Not surprisingly, in the commission’s final recommendations, priority efforts were once again directed toward family preservation, and adoption – of any sort (not just by foreigners) – was classified as an “exceptional” measure. Ironically, and furnishing proof that the debate is far from closed, a slightly modified version of the Adoption Law was approved three years later, in July of 2009.

### **Beyond state control: the worry surrounding “direct adoptions”**

We come now to a second foundational tension in the adoption field – the very question of the state’s right to control every step of the process. Disputes over the definition of what exactly constitutes “traffic” in adopted children revolve around this tension. When does the state have the right and obligation to intervene in child placement procedures? When does this intervention constitute an abusive interference? A follow-up study on the Hague Convention, requested by the Hague Conference’s Permanent Bureau and carried out by the International Social Service (ISS, 2005), singles out a concrete focus for these concerns: the persistence of “independent” or “direct adoptions”:

“directly arranged between the child’s birth parents or cares and prospective adoptive parents, without the intervention of a professional third party in the matching process” (2005: item 6).

In Brazil, the tension between independent and state-mediated adoptions recently came to the fore in a last-minute modification introduced into the Adoption Law. In an evident bid to make the bill more acceptable to

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13 “Carta de Goiânia”, 10º Encontro Nacional de Associações e Grupos de Apoio à Adoção, Goiânia, maio, 2005.

congressmen, a clause that criminalized “direct adoptions” was removed a few days before the vote<sup>14</sup>. Thus, still today, despite the constant refinement of legal instruments and professional expertise concentrated in the courts, there is no legal injunction that prohibits birth mothers and prospective adoptive parents from making their own private arrangements.

It is no accident that, among Brazilian nationals, direct adoptions persist with what to judicial authorities might be seen as maddening obstinacy. We mentioned briefly above reasons that prospective adopters may have for avoiding the court services. They might foresee discriminatory practices that would deny their bid to parenthood on the basis of inadequate income or housing, sexual orientation, or seldom-understood psychological evaluations. They might be reluctant to let the courts decide on the child that they, sight unseen, should adopt<sup>15</sup>. Especially those who insist that they want a healthy child in early infancy are aware that their preference will not be met with sympathy by the authorities, and that they may wait years before their turn in line comes up. Birth mothers, on the other hand, evidently have their own motives for avoiding the team of judicial workers. It would be likely that they associate state services with the images of juvenile offenders and run-down orphanages broadcast in the press. In such circumstances, the possibility of participating in the choice of her baby’s parents may be experienced by the birth mother as a solace, a way for her to feel that, despite all, she has acted responsibly. Mariano’s ethnographic research (2008) among mothers who have given their children in adoption suggests that, alongside these concerns, women may also have less “noble” reasons for avoiding court services. They might be impatient with possible counseling against the child’s “abandonment”; they might be avoiding court investigations that would turn up an ex-mate or other relatives willing to take the child in. And they might be hoping to bargain small gains in exchange for their consent to adoption<sup>16</sup>.

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14 *Correio Braziliense*, July 15, 2009.

15 To cite but one example, a couple I interviewed describes how, despite their (two) regular incomes and their recognized parenting qualities, the court specialists had informed them that they would not receive a child unless they moved to a larger apartment in which the youngster would have his or her own bedroom.

16 Mariano (2008) mentions payment of medications, hospital fees and food (fruits, yogurt and other expensive items) during pregnancy.

Yet, despite the number of people opting for direct adoptions, there have been amazingly few accusations of “commercializing babies” registered in the media or in criminal court over the past few years. Not infrequently, one does encounter newspaper headlines such as the following: “Mother gives her child [to another]. Judge prohibits adoption”. But, in this case as in most others, the accusations carry no connotation that mothers have been pressured into “selling” their children<sup>17</sup>. The “abuse” here is limited to the fact that the mother has chosen herself the family that will adopt her child, and the adoptive parents have not “waited their turn in line” for a child of anonymous origin mediated through juvenile courts. The courthouse internet site for jurisprudence in Rio Grande do Sul registers similar episodes in which a public prosecutor has branded such child placements as “irregular”, threatening to withdraw the child from its adoptive family to be lodged, pending adoption procedures through the court, in a group home or shelter. Whereas in previous times, scandals concentrated on allegations that the child had been bartered (money had exchanged hands), it would appear that, today, it is enough to affirm that the adopted parents did not wait their turn on the court’s list of adopted children (*respeitar o cadastro único*) to justify the court’s counteracting intervention.

This sort of slippage between financial benefit and illegality is echoed in both international and national legislation. The Palermo Protocol (United Nations, 2000) provides a precise definition for the traffic of persons that includes not only illicit means of recruitment (fraud, coercion, or payment) but also the exploitative intentions of intermediaries aiming at sexual exploitation, practices of slavery, or the removal of organs (art. 3). The Darfur orphans with which we opened this paper would not technically fall under this definition of “traffic”. Although there were some fleeting accusations of wanting the children for pedophilia or extraction of organs, it was clear to most concerned that the children were being exported not to be commercially exploited, but rather to be raised as sons and daughters in European households.

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17 According to this particular news item [*Correio do Povo* (Porto Alegre), 10/4/2009: 7], the adopting couple, of modest income, had made arrangements with an acquaintance who was going through an unwanted pregnancy. Throughout the brief conflict period, the birth mother insisted she wanted her child to go these “friends”, and a court of appeals finally permitted that the child remain with the chosen couple.

The crime of the organizers of the Darfur mission would fall under irregularities defined under the Hague Convention (discussed above) or the “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”, adopted by the UN in 2000 and ratified in Brazil, together with the Palermo Protocol, in March of 2004. Although the bulk of this latter document is centered on sex-related abuse, it sets a broad definition for the sale of children – “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration” (art. 2). Criminal acts extend beyond “remuneration” to “Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption” (art. 3). The Brazilian Children’s Code (1990) wraps up the two elements – profit and illegality – in the same article (n.239), defining as crime liable to fine and four to six years in prison:

“The promotion or help in the realization of practices aimed at sending a child or adolescent abroad in **disrespect of legal formalities** or with **profit in mind**.”

Critical observers will protest that the idea of “With profit in mind” is much more complex than it may originally seem (see Zelizer 1985, Howell 2006). In Brazil, just as in many other “sending countries”, policymakers have tried to insulate adoption from commercial influences by concentrating procedures within Juvenile Courts where services (from counseling to home studies) are provided free-of-charge. Nonetheless, by law (ECA art.51, par.1), Brazilian juvenile courts must require that candidates to adoptive parenthood of foreign nationality present an authorization from competent authorities as well as a “psychosocial study elaborated by a specialized accredited agency in their home country. To assure quality services, agencies – almost always seated in the Northern hemisphere – must stipulate professional fees charged to the prospective adoptive parents. In North America, where critics have questioned the “non-profit” standing of these organizations, more reputable agencies, in a bid for transparency, have published standardized fees on their internet home-page. A “modest” estimate runs to tens of thousands of dollars<sup>18</sup>. And even subsidized European

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18 For example, the home page of Holt International states its 2006 fee: Application \$200, Adoption

agencies that may dispense with a good part of the service fees imply that intercountry adoption is a costly undertaking for prospective parents<sup>19</sup>. In synthesis, the involvement of agencies, entirely in keeping with international recommendations (see ISS 2005)<sup>20</sup>, creates an association that positions, face-to-face, different philosophies on the legitimate use of money in the field of adoption.

We suggest that the fear of money's contaminating power, if attenuated in certain realms, returns to haunt in others. Thus, scandals concerning the "sale" of children take on an instrumental value as they inspire international regulations and underline the need for state control. The belief that the courts -- with their battery of specialists -- are the most efficient guardians of a child's best interests justifies the tremendous centralization of authority within the judiciary<sup>21</sup>. In our analysis of a final foundational issue, we propose to look at a less-commented side effect of this centralization: the total elimination of birth families from the decision-making processes of court-organized adoptions.

### **Associations between no-profit and no-contact in the definition of legal irregularities**

If, through direct adoption, both birth and adoptive families have reason to take initiatives that escape the supervision of judicial authorities, their interests appear to diverge once the child transfer has been legally recognized. My own research among adult adoptees (Fonseca 2004, 2009a) suggests that whereas birth mothers often welcome information and even contact with their child as it grows up, adoptive families view any such contact as a threat.

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Study \$2,500-\$2,900, Adoption Study Update \$300, Dossier Fee \$2,795, Adoption Program \$5,324-\$17,215, Travel for an escorted child \$2,900 - \$3,410, Postplacement \$1,200 - \$1,400, Document Processing Service \$500 (optional-for China). <http://www.holtinternational.org/adoption/fees.shtml>, consulted 12/10/2008.

19 See, for example, the home-page of AIBI Bras (Amici dei Bambini in Brazil) that estimates the minimum cost for adoption of a Brazilian child -- including bureaucracy (translating and certifying documents, etc.) and travel to Brazil -- at nearly US\$10,000. [http://www.aibi.org.br/biblioteca/documentacao/custos\\_da\\_adocao\\_internacional.doc](http://www.aibi.org.br/biblioteca/documentacao/custos_da_adocao_internacional.doc), consulted 31/12/2007.

20 In other words, international regulations allow for the legitimate use of money in specific circumstances

21 See Howell (2006) for a recent take on the complexity of «a child's best interest».

Adoptive parents fear that contact may lead to demands from the birth family for financial support. They fear that, if exposed to its original family, the child will be traumatized – either by guilt or by divided loyalties. Above all, they fear that the birth mother, having improved in life, might want her child back<sup>22</sup>. To allay these fears, many prospective adopters – even in direct adoptions – prefer to go through intermediaries (in general, a lawyer), in the hopes that no “identifying information” (names, photos, addresses) will make its way into the hands of the birth family<sup>23</sup>.

Hegemonic interpretations of international legislation tend to coincide with the adoptive parents` point of view, presenting plenary adoption and its principle of total rupture between a child’s pre and post-adoptive relations as a self-evident truth. The above-mentioned ISS document, implying that independent adoptions are conducive to commercial interests and therefore contrary to a child’s priority interests, expands upon the importance of the “no-contact” principle as laid out in the Hague Convention. The Convention puts a time restriction on recommended control: there should be no contact between birth and prospective adoptive parents *before* accredited intermediaries do the matching and go through all the necessary preliminary procedures (art. 29). The ISS document suggests that even *after* the fulfillment of legal requirements, any contact would be “non compatible with the spirit” of the Hague Convention. Citing the Conference’s original *Explanatory Report to the Hague Convention*, it stipulates a radical and permanent ban on any sort of communication between birth and adoptive parents:

“article 29 sanctions, as a rule, the prohibition of contacts in general terms, therefore including not only ‘direct, unsupervised’ contacts, but also ‘indirect’ or ‘supervised’ contacts (supposedly: visits, postal mail, phone calls, faxes, emailing). (ISS, 2005: 14)”

In the ISS document, “no-profit” is conflated with the notion of “no-contact”, which – in a particular chain of associations -- is seen as more in keeping with the rights of the child. Pre-adoption contact blurs into post-

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22 Abreu e Oliveira (2009) recount how, at the juvenile court they studied, many of the duly-registered potential adopters had been through na experience of direct adoption that had failed for such reasons.

23 The margin of negotiation for the legal payment of professionals in the adoption field once again contrasts with the zero tolerance for the possible compensation of birth mothers.

adoption contact, calling on the all-prevailing fear of commodification to justify measures that appear to extend well beyond the major risks.

In recent years, there has been a growing number of “roots trips” during which adoptees grown to maturity in Europe or North America return to their native countries where they meet with birth relatives (see, for example, Yngvesson 2007). Such practices have no doubt contributed to a rethinking of the seeming imperative of rupture. However, another equally important, albeit less visible, practice may be making even more serious inroads on the “no-contact” principle. In a procedure that should remind policy-makers that rules do not carry over automatically from the global to the local (or from transnational to national context), direct adoptions *within* the national setting simply outskirt court mediation, underlining a sort of “grass-roots” resistance to what, to some, may appear as arbitrary policies dictated by distant authorities.

Thus, we end with a provocative hypothesis: that international guidelines, designed to forestall a “baby market” in intercountry adoption take on new connotations when applied to in-country adoption, repressing the limited forms of agency that birth mothers traditionally enjoyed. Ironically, at a time when, in the United States and Europe, sealed records and “closed” adoption are being seriously questioned (Samuels 2001, Carp 2004, Martre 2009, Fonseca 2009b), international debates appear to narrow control in an attempt to inhibit such practices. Whereas other problems in the field of intercountry adoption have been openly discussed, leading to consensual change, there has been a lot of hard work invested in “black-boxing”<sup>24</sup> this element of the process -- the principle of no contact between birth and adoptive families. The idea of “rupture” between a child and its birth family slips in as a self-evident element of plenary adoption, taken as part and parcel of the full, permanent and irrevocable incorporation of the child into its adoptive family. Yet, the persistence of direct or independent adoptions (in Brazil and elsewhere) serves as an indication that “modern” legal orientations are not to the liking of all concerned, and as a reminder to analysts that plenary adoption, just as other seemingly-consensual matters, reflects the result of extended power plays between actors with uneven political clout.

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24 Latour 1987.

## Final remarks

M. Goodale (2002:64), in his effort to understand the impact of Western human rights discourse on rural Bolivians, underlines the complexity of legal anthropology in the present, globalized era. In order to ethnographically trace the different vectors that constitute the notion of “proper legal behavior”, his recommendation is to “follow the ideas”—not those circumscribed by a village or a courtroom -- but rather those that are negotiated through a network of relationships established by common interests, and extending well beyond any “local” space.

In this article, I have taken a similar approach, singling out mediating forces – the press, individual actors, and collective movements as well as legal and bureaucratic technologies -- that connect national and international discussions in the field of adoption. Working through the Jundiá incident, we have seen how a demand presented by European adopters, handled through European adoption agencies and a particular Brazilian judge, triggered a collective protest that, despite being small-scale and short-lived, was carried by the national media into the lives of most Brazilian citizens. The coincidence of timing between this protest and Brazil’s final signing of the Hague document, as well as the subsequent implementation of bureaucratic mechanisms to regulate intercountry adoption of Brazilian children, suggests ways in which local events influence a nation’s reception of international legislation. However, the very idea that international legislation is an “external influence” appears somewhat doubtful when we recognize that a number of “local” actors, drawn from the ranks of Brazilian specialists, have participated in the formulation of these documents. The network of NGOs, in constant interaction with policy-makers at both local and international levels, likewise involves concrete actors who mediate the flow of ideas from side to the other of transactions in intercountry adoption.

Intercountry adoption has undoubtedly been a major vector for the introduction of new elements into Brazil’s official policies on in-country child placements as well as domestic adoption. In a first period, the very tightening of legal control over adoption procedures came as a reaction to what was seen as a threat by foreign adopters. Subsequent debate in the international arena, fueled largely by protests from “sending countries”, helped consolidate the subsidiary principle in which only hard-to-place children would be available for intercountry adoption. Finally, the faithful application of this

principle, which riveted attention on the older and darker children adopted into European and North American homes, brought Brazilian activists to formulate a policy (relevant for in-country as well as intercountry adoption) on “necessary adoptions”.

Throughout the discussion, it has been evident that “global influences” are as complex and varied as are their national counterparts. In Brazil, a reaction against adoption as a global panacea to poverty, expressed by child rights activists as well as certain of the Adoption Support Groups, lent support to alternative solutions, including foster homes and quality institutional care, that would permit children to maintain contact with their original families and communities. Whereas orientations from international legislation consistently nudged legislators toward plenary adoption, these activists found political allies and some financial backing among various international institutes and NGOs.

Yet, as we move into what we have called foundational question in the adoption field, the distinction between national and international influences appears less telling than suggestive parallels in tense debates taking place in different parts of the globe. What weight should be given to adoption as opposed to other childcare policies to guarantee the well-being of children at risk? Should government control all steps of the adoption procedure through their specialized services or should independent adoptions be tolerated, giving birth parents and adoptive families a greater say in the process? Before, during and after the adoption, how should information be processed? Should birth and adoptive families be permitted an exchange of news or even a certain supervised contact? These are questions that provoke new oppositions, not between “sending” and “receiving” nations, but between birth families (working through NGOs and some child rights activists) and adoptive parents, between poverty-stricken minorities and the affluent classes, between adopters and court specialists, and between adoptees and their own adoptive parents.

Radical political and economic inequalities that are part of most adoption practices are particularly apparent in transnational adoption where the juxtaposition of different legal codes and value systems serves to highlight paradoxes. It is thus not surprising that news vehicles latch onto scandals in transnational adoption, nor that international legislation is particularly concerned with abuse in this domain. However, when thinking through the

concrete policies that result from these concerns, national policymakers would do well to remember that tensions pervade the child placement process from top to bottom (from transnational adoption to institutional shelters and traditional forms of child circulation) and, given the diversity of interests and complexity of alliances through which it is mediated, the spirit of the law – transformed, translated, modified – does not travel with impunity from one site to the other.

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