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Moving from Fad to Fundamentals: The Future of the Evangelical Christian Adoption and Orphan Care Movement

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CHAPTER SEVENTEEN

MOVING FROM FAD TO FUNDAMENTALS:
THE FUTURE OF THE EVANGELICAL
CHRISTIAN ADOPTION AND ORPHAN
CARE MOVEMENT

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Although the current evangelical Christian adoption and orphan care movement is less than ten years old, it has already attracted severe criticism.[1] As an evangelical Christian and adoptive parent, I have been among the "inside critics" of the movement. The inside critique of the movement is distinctive in embracing the Christian presuppositions of the

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[1] *See, e.g.*, Kathryn Joyce, *The Child Catchers: Rescue, Trafficking, and the New Gospel of Adoption* (Public Affairs, 2013).

movement, while still offering objections to the theology, rhetoric, and practices associated with it.[2]

Given the intensity and scope of my critiques, it may have been easy to misunderstand the intention as purely negative. To the contrary, however, my intention is ultimately constructive because I am fundamentally pro-church and thus committed to the success of the church in accomplishing God's mission. Hence, the goal of the critique of the movement is correction and reform.

I am hopeful about the prospects for such correction, in part because the American, evangelical side of the catholic (universal) church is often fad and personality driven and can shift direction quickly. There is a constant stream of the "latest" thing: the latest major cause, the emerging new personality. In recent years, the evangelical Christian adoption and orphan care movement has been one of those "latest" things.[3] While calling the evangelical church in the United States fad- and personality- driven can be viewed as a negative characterization, the positive side of the same coin is that the evangelical churches are also adaptable and flexible, and hence capable of making positive changes. Since the evangelical adoption movement is so young, and the evangelical movement in the United States itself so adaptable, there is good reason to hope for positive change.

In addition, because the evangelical churches in the United States are an authentic part of the one holy catholic and apostolic church, they are deeply connected to the fundamental Biblical and historical practices of compassionate action on behalf of the poor, the vulnerable, and the widow and orphan. While the very recent adoption and orphan care movement is

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[2.] *See* David M. Smolin, "Of Orphans and Adoption, Parents and the Poor, Exploitation and Rescue: A Scriptural and Theological Critique of the Evangelical Christian Adoption and Orphan Care Movement," 8 *Regent Journal of International Law* 8, 267 (2012), available at http://works.bepress.com/david_smolin/10/; Caleb David, "Evangelical Trafficking?" (May 1, 2013), http://www.martyduren.com/2013/05/01/evangelical-trafficking-a-guest-post-by-caleb-david/; Mark Riley, "The Child Catchers, Review and Interview with the Award Winning Author, Kathryn Joyce," *Rileys in Uganda* (April 22, 2013), available at http://rileysinuganda.blogspot.com/2013/04/the-child-catchers-review-and-interview.html.
[3.] *See, e.g.*, Ted Olsen, "Adoption is Everywhere," *Christianity Today*, July 2, 2010, available at http://www.christianitytoday.com/ct/2010/july/10.5.html.

an attempt to do something "new" in our day, the movement nonetheless is intended to be grounded in these fundamental characteristics of the church. Ultimately, the purpose of critiquing the movement is to point back to the fundamentals of what the Bible actually teaches on care and compassion for the poor, vulnerable, and the widow and orphan. In addition, the critique is also designed to assist the church in more accurately understanding the historical and contemporary law and practice of adoption, for the church operates within a broader historical and cultural context. A combination of a return to fundamental Biblical principles, and an accurate account of historical and present law and practices of adoption will enable the movement to reform and to effectively express in our time the church's ancient and persistent concern for the poor, the vulnerable, and the widow and orphan.

Indeed, there are signs that the evangelical adoption movement is already trying to make corrections and adapt to critiques. While such is not occurring fast enough or overtly enough to avoid significant and continuing forms of exploitation, nonetheless it is happening. Given this context, the purpose of this essay is to summarize the critiques of the movement, assess current efforts from within the movement toward reform, and propose additional directions for reform.

I. Critiques of the Evangelical Christian Adoption and Orphan Movement

Many of the following critiques have been elaborated at greater length elsewhere.[4] Given space limitations, I can only hope to summarize most of the relevant critiques here.

A. The Movement Fundamentally Distorts the Biblical Call to Assist the Widow and the Orphan by Failing to Discern that the Primary Call is to Assist the Widow and Orphan as a Unit and, More Broadly, is a Call to Assist and Preserve Vulnerable Families

Probably the single most popular text of the movement is the call in James 1:27 to assist the orphan and widow. Unfortunately, the movement has often missed the primary meaning of their foundational text, which is to

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[4.] *See* Smolin, Regent, *supra* note 2.

assist the orphan and widow *in surviving together as a family unit*, in a context where the "orphan" most often is a child whose father is dead or otherwise not available, but whose mother is still alive.[5] The Biblical focus on the widow and orphan as a unit is perhaps obscured for modern readers by the use of the English word "orphan" to translate the underlying Hebrew and Greek terms; for this reason it would probably be better to follow the King James in using the word "fatherless" as the appropriate translation in both the Old Testament and also in James 1:27.[6] Nonetheless, I will herein follow the perhaps unfortunate practice of using the translation "orphan" since the term is so central to the so-called "adoption and orphan care" movement.

This primary meaning of assisting the widow and orphan as a unit is made clear in the numerous Old Testament texts on the widow and orphan, which James is summarizing, including texts in the Torah (law),[7] Psalms,[8] prophetical books,[9] Job,[10] and Lamentations,[11] as well as the narrative texts in which Elijah and Elisha assist a widow and orphan family unit.[12] The New Testament includes a Jesus narrative that recapitulates the Elijah/Elisha texts in which the prophet restores a child to her widowed mother,[13] a focus in Jesus' preaching and gospel texts on widows,[14] and a focus in Acts[15] and Pauline texts[16] on assisting widows. By contrast, there is not a single positive portrayal in the Bible of the act of taking away the child of a poor family or widow and giving the child to someone else. Indeed, in Biblical terms, such would be an act of exploitation rather than compassion.[17]

[5.] *Ibid.*, 296-307.
[6.] *Ibid.*, 296–97, 303, and sources cited at notes 127, 155–57.
[7.] *See* Exodus 22:22, 22:24; Deuteronomy 10:18, 14:29; 16:11, 16:14, 24:17, 24:19, 24:20, 26:12, 26:13, 27:19.
[8.] *See* Psalms 68:5, 94:6, 109:9, 146:9.
[8.] *See* Isaiah 1:23, 9:17; Jeremiah 7:6, 22:3, 49:11; Malachi 3:5.
[10.] *See* Job 24:3.
[11.] *See* Lamentations 5:3.
[12.] *See* 1 Kings 17:2 Kings 4:1-7; see also 2 Kings 4:8-37.
[13.] *See* Luke 7:11-17.
[14.] *See* Luke 2:26-38; 4:25; 18:1-8; 20:47; 21:1-4.
[15.] *See* Acts 6:1-6; 9:36-42.
[16.] *See* 1 Timothy 5:1-16.
[17.] *See* Job 24:9; 2 Kings 4:1-7.

B. The Movement Embraces a Concept of Adoption
that is Contrary to Scripture and Natural Law

What is adoption? It is not clear that the movement has seriously considered this question. Instead, since the movement has arisen in the United States and is dominated by Americans, the movement has assumed that modern American ways of conceiving adoption are normative. Thus, the mid-twentieth century American development of full, closed-record, "as if" adoption is the assumed foundation of the movement's understanding of adoption and the lens through which the movement reads the Bible.

"Full adoption" means that there is a complete legal transfer of the child from the original family to the adoptive family, making the adoptee a legal stranger to their entire original family and a full member of the adoptive family. Full adoption requires a complete change in the identity and family name of the child. "Closed-records" adoption means that the original birth certificate and court records are sealed, such that in most American states even adoptees, as adults, lack the right to their original birth certificate and to know their original birth identity. The result is "as if" adoption, in the sense that not only the law, but also society, treats the adoptee as if she had been born to the adoptive family, and never had any other family. This is represented by the creation of an "officially falsified document"–a new "birth" certificate naming the adoptive parents as the birth parents, "as if" the adoptee had been born to them. Another way of putting this is "subtractive adoption," in that the original birth family must be "subtracted" before the child can be given a new adoptive family.[18]

As a matter of comparative law, the modern American conception of adoption can be contrasted to various forms of "additive" or simple adoption, as well as to a number of quasi-adoptive arrangements closer, in American parlance, to guardianship or foster care. These "additive" arrangements provide children in need of day-to-day parenting and family life new parents and a new family, without eliminating the adoptee's tie to their original family and without changing the child's original legal identity.[19]

[18.] *See, e.g.*, Smolin, Regent, *supra* note 2, at 272-73 and sources cited at notes 29-30.

[19.] *See ibid.*

Due to the increasing popularity of various forms of "open" adoption in voluntary relinquishment domestic adoption,[20] America paradoxically is adding some of the rhetoric of additive adoption to what is still, legally, a subtractive adoption system. However, even in a so-called "open adoption," the original parents and family are still legally "subtracted," relegated to being legal strangers to the adoptee. In addition, the promises of adoptive parents to provide "openness" to the birth parent(s) are legally unenforceable in many states, and even where potentially enforceable, require the original parent to have the resources to bring a court challenge and in that court challenge to meet a statutory standard, such as best interests of the child. Obviously, the original parents often lack financial resources to challenge the generally much wealthier adoptive parents in court. Unfortunately, in the American context, "open adoption" can be a bait and switch, a way of inducing original parents to relinquish, because these inducing promises of continued information or contact are often unenforceable. Thus, despite a purported practice of "open" adoption, the legal model of subtractive, "as if" adoption still predominates in the United States.[21]

The modern American conception of full, "as if" adoption does not exist in scripture, and is contrary to scriptural principles and practices. To substantiate this point is necessary to survey Biblical texts relevant to adoption. There is no law or practice of adoption in the Torah, either literally or according to rabbinic interpretation. There is a positive role within Jewish law (outside of the Bible) for caring for another's child, but this role does not involve a change in the legal identity of the child and hence is closer to either guardianship or foster care in modern American law.[22]

[20.] *See* Deborah H. Siegel & Susan Livingston Smith, "Openness in Adoption," *Evan B. Donaldson Adoption Institute*, March 2012,
http://www.adoptioninstitute.org/publications/2012_03_OpennessInAdoption.pdf.
[21.] *See, e.g.*, "Postadoption Contact Agreements Between Birth and Adoptive Families," *Child Welfare Information Gateway*, May 2011,
https://www.childwelfare.gov/systemwide/laws_policies/statutes/cooperative.pdf;
Madelyn Freundlich, *The Impact of Adoption of Members of the Triad* 122 (Child Welfare League of America, 2001); Marjorie Cortez, "Proposal to Create Enforceable Open Adoption Agreements Stirs Legislative Debate," *Deseret News*, Feb 5, 2013, http://www.deseretnews.com/article/865572396/Proposal-to-create-enforceable-open-adoption-agreements-stirs-legislative-debate.html?pg=all; "Open Adoption as a Marketing Tool," *Out of the First Mom Closet*, Nov. 20, 2012, http://firstmomout.wordpress.com/2012/11/20/open-adoption-as-a-marketing-tool/.
[22.] *See* Smolin, *supra* note 2, at 274–75, and sources cited at notes 31–34.

Beyond the law, there are a few adoption stories in the Bible, with implications completely contrary to the principles of American "as if" adoption. Thus, in the Old Testament, the story of Moses hinges on his rejection of his adoptive identity as the son of Pharaoh's daughter, in favor of his birth identity, for otherwise he could never have become the leader of the Hebrew people, assisted by his birth brother Aaron and birth sister Miriam. According to the New Testament interpretation provided in *Hebrews*, Moses' rejection of his adoptive Egyptian identity, and adherence to his birth identity as a Hebrew, is one of his decisive acts of faith.[23] The other prominent story is that of Esther, which involves her cousin or uncle Mordecai taking her as a daughter after the death of both of her parents. Yet,Esther is consistently identified as the child of her birth father Abihail, with the text also highlighting the family relationship between Abihail and Mordecai. At Esther's critical point of decision, when she must decide whether to go to the King to advocate for her people, Mordecai reminds her of her duty to her birth father.[24] The normative principles of the Moses and Esther adoption narratives are an obligation to recognize and honor natural family relationships and the persistent significance of those relationships, even in those instances where others also perform parental or family functions. The story of Esther also exemplifies the role of the extended family in providing parenting when both of a child's parents are dead, but doing so in a way that honors the child's original parentage. Interestingly, the word "adoption" itself is not used in these stories, nor in the Hebrew Bible as a whole.

There are no adoption stories in the New Testament and no examples of Christians adopting children. The relationship of Joseph to Jesus is not to the contrary, for as the marital father at the time of Jesus' birth, Joseph was Jesus' legal father without need of any kind of adoption. Of course, if Joseph is analogized to an adoptive step-father, this would have no meaning for the movement, which is about the adoption of unrelated children into a family. It is, after all, fundamental that Mary remains always Jesus' mother.[25] Similarly, Jesus' statement on the cross to his mother Mary, "behold your son!," is sometimes taken by some in the movement as Biblical support for the movement's emphasis on adoption

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[23.] *See ibid.*, at 276–79; Hebrews 11:24-27.
[24.] *See* Smolin, Regent*, supra* note 2, at 279–81; Esther 2:15, 4:13-14.
[25.] *See* Smolin, Regent*, supra* note 2, at 283–85.

of vulnerable young children.[26] This illustrates again the fundamental blindness of the movement to widow care in the Bible. Jesus, as Mary's son, is providing at his death for the care of his widowed mother; John will be taking care of Mary within his household. This interaction has nothing to do with the adoption of vulnerable young children envisioned by the movement.[27]

There is thus no foundation in scripture for the practice of full "as if" adoption, with its legal and social pretense that the natural parents are never the father or mother of the adoptee, and should not matter to the adoptee. Further, this form of adoption is contrary to fundamental scriptural principles regarding natural family relationships and obligations and truth-telling. From the Biblical perspective, it would appear that the fifth commandment to "honor your father and your mother"[28] applies to the natural parents even if the child is raised by others, and is given other "parents."

It is strange that many pro-life evangelicals have embraced a form of adoption that expects a woman to go through nine months of pregnancy, then childbirth, and then freely accept a status as a non-mother—indeed, a never-mother—a complete legal stranger to her child. Similarly, the evangelical adoption movement seems to expect poor mothers and fathers in developing nations to turn over their infants, toddlers, and older children for intercountry adoption under an arrangement which permanently eliminates their identity and role as parents, despite the obvious bond that exists between them and their children. Yet, evangelicals generally are a part of a pro-life movement which tells women that they are already mothers beginning at conception. The failure of adoption to serve as an effective alternative to abortion, statistically speaking,[29] lies in part in the unnatural legal and social paradigm of adoption in the United States, which effectively aborts a woman's motherhood. "As if" adoption violates natural law in a profound way that

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[26.] *See* John 19:26–27; Russell D. Moore, *Adopted for Life: The Priority of Adoption for Christian Families & Churches* (Wheaton, IL: Crossway Books, 2009).

[27.] *See* Smolin, Regent, *supra* note 2, at 296; John 19:26-27; Moore, *Adopted for Life*.

[28.] Deuteronomy 5:16.

[29.] *See* National Council for Adoption, "Adoption Fact Book," V 4-9 (2011) (index of domestic infant adoptions per 1,000 nonmarital live births and abortions combined in U.S. is 6—less than one in one hundred).

the evangelical adoption movement has yet to critique in any serious way. Intercountry adoption systems link adoptive parents acting from this unnatural American conception of adoption, and original family members who cannot believe that merely signing a piece of paper could permanently and irrevocably sever their natural and permanent bonds as mothers and fathers of their children. Unfortunately, these conflicting paradigms open the door to fraud, misunderstanding, exploitation, and tragedy.

C. The Movement's Teaching on Vertical Adoption Distorts the Fundamental Christian Teaching of God as Father, and Creates a Distorted Understanding and Practice of Horizontal Adoption

The movement's primary use of the New Testament, beyond citation of the James 1:27 passage on assisting the widow and orphan, is to build a theology of "vertical" adoption—the purported adoption by God of the Christian—out of which it then builds a theology of horizontal adoption— the adoption of orphan children by Christians.[30] The movement has focused on the five uses in the New Testament of the Greek word *huiothesia*, meaning literally to put in the place of a son, which can be translated as either sonship or adoption. These are the only uses in the New Testament of a word which can be translated adoption, and occur only in the Pauline corpus: Romans 8:15; 8:23; 9:4; Galatians 4:5; Ephesians 1:5. Four of these texts concern the relationship of the Christian to God, and one concerns the relationship of Israel to God.[31] Based primarily on these five texts, some in the movement use rhetoric claiming or implying that adoption is the primary way for Christians to understand their relationship to God as Father and indeed re-interpret other texts, such as the prodigal son narrative, as adoption stories.[32] Millions of American Christians have been told that they are adopted by God, in a context where it is implied that this is the primary way of understanding their relationship to God as Father.

[30.] *See, e.g.,* Dan Cruver, et al, *Reclaiming Adoption: Missional Living through the Rediscovery of Abba Father*, ed. Dan Cruver (CreateSpace Independent Publishing Platform, 2011); Smolin, Regent, *supra* note 2, at 269–73.

[31.] Smolin, Regent, *supra* note 2, at 286–87.

[32.] *See* Cruver, *supra* note 30, at 27.

This rhetoric of adoption as the primary way of understanding our relationship to God as father inverts the clear meaning of scripture and subverts two millennia of Christian teaching. The Fatherhood of God is one of the primary teachings of Christianity, coming into particular prominence in the New Testament with the revelation of Jesus as the incarnate, eternally begotten Son of God, and of God as Trinity. Hence, in the New Testament there are over two hundred references to God as Father, with forty in the Pauline corpus alone. Of course, Jesus taught in the Lord's Prayer that Christians should pray by addressing God as "our father."[33] Throughout the church's history, the references to God as Father, whether they have concerned the Trinity or have concerned the relationship of human beings to God, have been understood as an analogy to natural family relationships. Replacing such a fundamental part of Christian orthodoxy and spirituality with the much more minor theme of adoption—a theme not even mentioned in any of the four gospels—is an obvious and significant distortion of scripture. The distortion is made worse by the fundamental misinterpretation of the Pauline adoption texts themselves.

At the time of the Apostle Paul, adoption still did not exist in Jewish law, and hence it is generally agreed that Paul, to the degree he was referring to adoption rather than sonship, was referring to Roman adoption.[34] This is underscored by the fact that three of the five uses of the adoption analogy are in the Book of Romans and the other two are in letters to churches in locations living under Roman rule. At that time, Roman emperors and the heads of wealthy Roman families used adoption to designate a young man as their heir—in the case of the emperors as a means of designating the next emperor.[35] Adoption was an act involving only the father, and not the mother. Young children generally were not adopted since the goal was to pick someone of known and established character who would have the ability to fulfill the designated role of emperor and/or head of a great family. Girls usually were not adopted because they were not eligible to fulfill these designated roles as heirs and eventually heads of the family.[36] Typically, emperors picked someone they were already related to, sometimes in multiple ways, such as being the great-uncle, step-father, or father-in-law of the young man they chose.[37] Adoption, therefore, had

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[33.] *See* Luke 11:1-4.
[34.] *See* Smolin, Regent, *supra* note 2, at 287, and sources cited at notes 91–94.
[35.] *See ibid.*, at 290–92, and sources cited at notes 108–16.
[36.] *See ibid.*, at 289–91, and sources cited at notes 102–13.
[37] *See ibid.,* at 291–92, and sources cited at notes 109, 116.

nothing to do with providing a home and family for a vulnerable child orphan, and instead was more like a will in designating inheritance. The adoptee was in legal terms taken out of the family of his original father, but in social terms the adoptee still related to his original family, and indeed kept a cognate of his original name as a part of his adopted name.[38] Adoption was an honor, rather than a secret. Under these circumstances, the primary meaning of the Pauline adoption texts is a message to gentile Christians living under Roman rule that the inheritance and honor they received as children of God was greater than the inheritance and honor that could be bestowed by the Roman emperor himself. Hence, adoption finds its context in the Pauline use of imperial rhetoric to challenge the supremacy of Caesar and the empire with the greater supremacy of the Triune God and the kingdom of God.[39] It is a fundamental distortion of the Pauline adoption texts to read into them a legal practice of "as if" adoption of unrelated orphan children embraced by the movement, for this kind of adoption did not exist in Paul's world, and indeed in most places for most of human history.

The adoption of unrelated orphan children is a fundamentally flawed analogy of the Christian's relationship to God as Father for another reason: the analogy fundamentally distorts the primary Biblical pattern of redemptive history—and indeed of our personal history, as human beings, with God. In the kind of adoption embraced by the movement—adoption of unrelated children—the adoptive parents have no relationship to the child prior to the adoption. American adoption stories often begin with the child, already an orphan, in an institution or on the streets, as though this was the beginning point of the child's life. Both original parents and adoptive parents are absent at the starting point of such narratives. Or, more accurately, some adoption narratives begin with the child being born into a family and then the child's loss of the original mother, father, and family—a loss that is never reclaimed in the movement's standard adoption script. Redemption history, to the contrary, begins with humankind being created by God, in His image, and hence as being in inherent relationship with God. God truly is humankind's "natural" Father, for God created us. The pattern is creation, fall, redemption: or as some

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[38] *See ibid.*, at 290–92, 294-95, and sources cited at notes 112, 113, 122, 123.

[39.] *See ibid.*, at 287–95; David M. Smolin and Kar Yong Lim, "Living as Christians Under Civil Law: The New Testament Letters, Law and Politics," in *Law and the Bible: Justice, Mercy and Legal Institutions*, ed. David M. VanDrunen and Robert F. Cochran, Jr. (Downers Grove, IL: InterVarsity Press 2013).

put it, creation, fall, redemption, restoration.[40] Humankind "falls" away from God, such that we become alienated from the God who made us—from our natural Father. Our salvation is found in a return to the God who made us, not in giving us to some substitute Father![41]

To the degree that one wants to pattern mission and ministry after the pattern of our relationship to God, the more obvious ministry would be one that re-unites and restores children to their families, as well as one which preserves families against the threat of such loss and separation. This much better fits the creation, fall, redemption, restoration pattern of the Bible, as well as reflecting the Biblical mandate to protect the widow and orphan as a unit against threats of separation and exploitation. Of course, this is precisely what Jesus, Elijah, and Elisha do in the Biblical narratives—restore children to their families and prevent the separation of the children from their families. And, apart from the Christian adoption movement, this has long been the normal pattern of Christian mission and ministry addressing the situation of poor and vulnerable families, through ministry to the entire family unit.

There are, in fact, no adoptions in the New Testament, no evidence of a practice of adoption in the New Testament church, and no admonitions to adopt orphan children in the New Testament. The movement's attempt to justify a practice of full, "as if" adoption of unrelated children through the purported horizontal corollary to "vertical" adoption fails not only because of this record of absence, but also because of the presence of a competing "horizontal" application in the New Testament: not only family preservation ministry, but also the use of family and household terminology to describe relationships among Christians, despite ethnic, racial, gender, class, and class boundaries. In Christ we are already brothers and sisters, fathers and mothers, sons and daughters. Christian unity and love among Christians across the many divisions and boundaries that otherwise divide is another Biblical "horizontal" application that

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[40] *See, e.g.*, Timothy Keller, *The Reason for God: Belief in an Age of Skepticism* (Riverhead Trade, 2008): 214.

[41.] In this paragraph, and the next, I respond to Dan Cruver's argument that the redemptive-historical and meta-narrative aspects support his interpretation of the Pauline adoption texts, and more generally of the New Testament. *See* Dan Cruver, "The First Step in the Way Forward: A Response to David M. Smolin's 'Of Orphans and Adoption,'" *Journal of Christian Legal Thought* 2, no. 2 (Spring 2012): 11–14, available at http://www.clsnet.org/page.aspx?pid=473.

stems from the common Fatherhood of God, whether it is the predominant image of natural Fatherhood or the Pauline use of sonship/adoption.[42]

The movement's vertical/horizontal adoption analogy sometimes reinforces negative attitudes already existing in American culture toward the birth families, cultures, and nations of adoptees. According to the analogy, the adoptee is being saved from sin, spiritual darkness, abandonment, and enslavement, which can imply that the adoptee's original family, nature, and culture should be understood through those negative perspectives. This perspective, in combination with the traumatic backgrounds of many adoptees, can be used to minimize the adoptee's loss of their original family and culture, as exemplified by one Christian commentator writing in defense of the evangelical movement in National Review:

> "[k]ids are not taken out of some kind of Epcot Center of rich native culture only to land in America's banal consumerism – their 'culture' is one of the most extreme poverty and often desperate illness and disability. Their "culture" is the culture of starvation, of rags, of disease, and of abandonment.[43]

The problem with this kind of perspective is that even children who come from traumatic backgrounds of deprivation can still have strong attachments to their original family, language, friends, and culture and hence experience deeply-felt loss when transported to the United States. Even the poor have a language and a way of life, however deprived; even the poor can love one another. Describing the poor as having only a "culture …of rags"[44] is neither Christian nor accurate. Poverty and love, deprivation and culture, are not mutually exclusive.

The vertical/horizontal adoption analogy also places adoptive parents in the position of "saviors and angels,"[45] while the United States becomes a kind of implicit Promised Land. This can lead to a viewpoint that this kind

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[42.] See Smolin, Regent, *supra* note 2, at 295–96, 310–11.

[43.] David French, "Is the Left Launching an Attack on Evangelical Adoption?"*National Review* (April 25, 2013), available at http://www.nationalreview.com/corner/346643/left-launching-attack-evangelical-adoption.

[44.] *See ibid.*

[45.] *See* Joyce, *supra* note 1, at 65 ("'A lot of the religiously affiliated agencies start from the adoptive parents' perspective and cast them as saviors and angels.'", quoting adoption agency director).

of "salvation" justifies even illicit means. Thus, Caleb David, writing out of extensive experience in Ethiopia, writes: "In our eyes, we can't imagine a Christian agency knowingly trafficking children under the guise that "they will be better off in the US anyway," but it happens significantly more frequently than we could have ever imagined."[46]

Some movement leaders are sensitive enough to warn against taking these kinds of implications from the vertical/horizontal adoption analogy. For example, John Piper warns: "Christian adoption disavows that growing up Western and middle class is necessarily better than growing up non-western and poor. Rather, we affirm that there is no sure corollary between prosperity and character, "high" culture and human happiness, Western values and wise living; God can and does make poverty a garden of love (2 Corinthians 8:1–2).[47]"

Unfortunately, Piper's warnings are needed because "some evangelicals, swept up in the adoption ministry movement, are less willing to hear… that living in a comfortable Christian home, with all the accouterments of Western wealth and privilege, may not be the best outcome for vulnerable children."[48]

In addition, for many Christians, intercountry adoption may appear to be justified as a kind of child evangelism whereby children are brought into a Christian family and thereby taught the gospel: a justification that also seems to fit neatly into the vertical/horizontal adoption analogy.[49] Thus, at present, the vertical/horizontal adoption analogy operates very powerfully on a popular level in the American evangelical community, yet reinforces profoundly distorted perspectives. It is a huge step backward for American evangelicals to view foreign nations and cultures as simple embodiments of spiritual darkness and the United States as some kind of Kingdom of God. In fact, evangelicals have become far more aware in recent years of a role reversal in which most Christians in the world live in the global

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[46.] Caleb David, *supra* note 2.

[47.] *See* John Piper, "Christian Adoption: Disavowals and Affirmations," *Desiring God*, May 21, 2013, http://www.desiringgod.org/blog/posts/christian-adoption-disavowals-and-affirmations.

[48.] *See* Melanie Springer Moch, "Why Christians Like Me Should Listen to Critiques of Evangelical Adoption," *The Nation*, May 17, 2013, http://www.thenation.com/article/174399/why-christians-me-should-listen-critiques-evangelical-adoption?page=full#.

[49.] *See ibid.*

South, while Christianity often struggles in the West and global North.[50] Practically speaking, many adoptions occur from nations such as Ethiopia, South Korea, and Uganda[51] where the church is vibrant. In addition, the practice of taking children out of their nations and cultures and bringing them to the United States in order to evangelize them smacks of a kind of retrograde, neo-colonialist Christendom model for the spread of the faith, which is entirely contrary to the original and recurrent Christian vision of the faith being planted and developing indigenously and incarnationally within every culture and nation in the world. Hence, the vertical/horizontal adoption analogy operates in a negative fashion to distort not only perspectives on adoption, but also on the broader relationship of American Christians to the rest of the world.

Debates over the theological meanings of the Pauline *huiothesia* (adoption/sonship) texts of course predate the recent evangelical adoption movement and are relevant to broader theological discourse on the relationship of the Christian to God, salvation, and the usefulness and content of the *ordo salutis* (order of salvation). Thus, theologian John Frame explains that in the Reformed tradition, "the purpose of the *ordo* is to list the events in the life of every saved person that join him to Christ. Typically, the list of events looks like this: effectual calling, regeneration, faith, repentance, justification, adoption, sanctification, perseverance, glorification."[52]

It is unfortunate that the recent evangelical adoption movement made the unwarranted jump from vertical adoption to horizontal adoption and read into the *huiothesia* texts a ratification of the modern practice of American "as if" adoption. Indeed, the theological leaps of the Christian adoption movement have obscured rather than illuminated these broader issues about the theological meaning of *huiothesia*. Certainly, there needs to be a rich theological discourse describing God's relationship to His people. Certainly, the Pauline *huiothesia* texts are relevant to that discourse. From

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[50] *See, e.g.*, Philip Jenkins, *The Next Christendom*, 3rd ed. (Oxford, UK: Oxford University Press, 2011).

[51.] For statistics on intercountry adoption to the United States, see U.S. Department of State, "Intercountry Adoption," available at http://adoption.state.gov/about_us/statistics.php.

[52.] *See* John Frame, "Salvation and Theological Pedagogy," http://www.frame-poythress.org/salvation-and-theological-pedagogy/ (footnote number omitted) (citing John Murray, *Redemption Accomplished and Applied* (William 1955) and John Murray, *Collected Works* 2 (1977)).

this author's perspective, theological discourse on these subjects should stress the central Biblical theme of union with Christ while reconciling the centrality of union with Christ with theological perspectives on the *ordo salutis*.[53]

Ultimately, however, this chapter is not intended to take sides on the intra-Christian theological discourse on how best to describe salvation, the Christian's relationship to God, or the usefulness or content of the *ordo salutis*. Instead, this chapter raises cautions on the language employed in those theological debates. For example, should those who seek to develop a rich theological discourse based in significant part on the *huiothesia* texts use the English language translation of "sonship," and develop a theology of sonship, rather than using the translation of "adoption" and developing a theology of adoption? Linguistically and historically, one can most likely make strong arguments for both "adoption" and "sonship" as English language translations of *huiothesia*, as based on Paul's probable intention in alluding to both the Roman practices of adoption and to the Old Testament concept of sonship. The reason to prefer, in a contemporary American context, a Biblical and theological rhetoric of sonship over a rhetoric of adoption is the likelihood that American Christians will distort the Biblical meaning once they hear the word adoption. The errors of the evangelical adoption movement are the predictable distortions one would expect from the theological usage of the word adoption in an American context. American culture is so suffused with a popular and sentimental mythology of adoption that it is virtually impossible to use the word adoption without seeming to reference these cultural meanings. Sonship is more easily filled with Biblical meaning in an American context because the term has proportionately little cultural baggage (despite some controversies within the church). Thus, even though careful theologians could develop a rich theology of adoption without falling into the errors of the contemporary evangelical adoption movement, once such theologies are popularized it will be very difficult to prevent their distortion in an American context. Thus, while in principle a theology of adoption does not necessarily need to lead to error, in the American context, one using such language should issue a number of warnings and correctives if they do not want to be understood as referencing and ratifying popular American forms of adoption that are foreign to the Biblical message.

[53.] *See Ibid.* at n.1.

D. The Movement Uncritically Participates in and Promotes an Intercountry Adoption System Subject to Systematic Abusive and Corrupt Practices, including Child Trafficking, Child Buying, Placing Children for Adoption Primarily Due to Poverty, Falsification of Documents, and the Intentional or Negligent Provision of Inaccurate Information

The Christian adoption movement of the last decade did not create the systemic weaknesses of the intercountry adoption system.[54] The movement, however, uncritically and naively promotes participation in intercountry adoption without recognizing those systemic weaknesses. Indeed, the movement, even to this day, minimizes the continuing evidence of systemic abusive practices. Thus, the movement has encouraged Christians to adopt internationally with the naïve presumption that abusive practices are rare and can be avoided simply by using a reputable agency.[55] As a public policy matter, the movement has utterly failed to advocate for the kinds of systemic changes necessary to safeguard the system from abusive practices. Instead, the movement has appeared to be on the side of those who argue that regulation of intercountry adoption is usually unnecessary or counterproductive.

The systemic vulnerabilities of the intercountry adoption system to abusive practices have been documented extensively elsewhere.[56] In

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[54.] For a recounting of the weaknesses of the intercountry adoption system, particularly in regard to adoptions to the United States, and how those weaknesses developed, see David M. Smolin, "The Corrupting Influence of the United States on a Vulnerable Intercountry Adoption System: A Guide for Stakeholders, Hague and Non-Hague Nations, NGOs, and Concerned Parties," 15 *Journal of Law & Family Studies* 81, *Utah Law Review* 1065 (2013), *available at http://works.bepress.com/david_smolin/14/.*

[55.] *See* Erik Eckholm, "Eager to Adopt, Evangelicals Find Peril Abroad," *New York Times*, May 31, 2013, http://www.nytimes.com/2013/06/01/us/moved-to-adopt-evangelicals-find-children-and-pitfalls-abroad.html?pagewanted=all&_r=0 ("Leaders of the adoption movement respond that such lapses are uncommon."); Piper, "Christian Adoption," (implying that adoptions done by the "vast majority of Christian adoption agencies" are done properly, while failing to recognize the problem of the construction of intercountry adoption systems subject to systemic abuse).

[56.] *See, e.g.*, Smolin, "The Corrupting Influence," *supra* note 54; David M. Smolin, "Child Laundering and the Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption," *University of Louisville Law Review* 48 (2012): 441, 444, n.19 (collecting sources) [hereinafter cited as "Future"].

summary, the fundamental regulatory failures are: 1. A failure to limit the financial aspects of intercountry adoption, and especially to limit the amounts of money spent in the country of origin and provided to foreign partners, facilitators, and other intermediaries; 2. A lack of United States agency accountability for partners, facilitators, and intermediaries; 3. Allowing United States agencies to disclaim responsibility for the risks of adoption and the accuracy of the information provided through contractual disclaimers; 4. Generalized impunity in regard to fundamental harms such as obtaining children through fraud, kidnapping, or purchase, through a lack of investigation of such wrongs when they occur, and the practice of allowing agencies to pass off responsibility to their foreign partners or intermediaries and through contractual waivers of liability; 5. The normalization of the practice of obtaining children for intercountry adoption due to the poverty of the original family, without any effort being made to provide financial and family preservation assistance to the original family. In summary, these systemic weaknesses provide powerful financial *incentives* for abusive practices while eliminating *safeguards and accountability* regarding such abusive practices.[57]

These regulatory failures lead to two often related kinds of wrongs: 1. Obtaining children illicitly through force, fraud, or funds, providing them with falsified paperwork labeling them as adoptable orphans, and then processing them through the intercountry adoption system (child laundering or child trafficking);[58] and 2. The systemic use of falsified and inaccurate information in critically important documents, such as child study forms, leading to a failure to appropriately match children with homes able to provide for their specific needs.[59] The latter leads to an unnecessarily high rate of various kinds of adoption failures, including

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[57.] *See ibid.*; *see also* David M. Smolin, "Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping and Stealing Children," *Wayne Law Review* 52 (2006): 113 [hereinafter cited as "Child Laundering].

[58.] *See* Smolin, "Child Laundering, *supra* note 57; Smolin, "The Corrupting Influence," *supra* note 54.

[59.] *See* David M. Smolin and Desiree Smolin, "The Aftermath of Abusive Adoption Practices in the Lives of Adoption Triad Members," (Plenary Presentation, Annual Symposium, Joint Council on International Children's Services Annual Symposium, April 18, 2012), available at http://works.bepress.com/david_smolin/12/.

disruptions, and the abuse and even killing of adoptive children by their adoptive parents.[60]

Intercountry adoption has declined sharply during the same period of time that the Christian adoption movement has emerged.[61] I have repeatedly argued that a primary reason for the decline is the cycle of abuse, in which nations that become prominently involved as sending nations become subject to shutdowns or slowdowns due to abusive practices. The proponents of intercountry adoption in the United States are largely responsible for the decline in intercountry adoption, by consistently arguing against the reforms necessary to safeguard the system from abusive practices. The proposals of this author and others for limitations on the financial and monetary aspects of intercountry adoption practice, for making U.S. adoption agencies accountable for the actions of their facilities and foreign partners, and for not permitting waivers of liability in agency contracts,[62] have not been supported by purported intercountry adoption proponents (whether evangelical Christian or of other religious viewpoints) such as the Christian Alliance for Orphans, Senator Mary Landrieu, or Professor Elizabeth Bartholet. In a context where the adoption movement on a whole has been resistant to, rather than supportive, of these kinds of changes, the extensive capacity of the evangelical adoption movement for education and mobilization has never

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[60] *See, e.g.*, Pat Wingert, "When Adoption Goes Wrong," *Newsweek*, December 8, 2007, http://www.thedailybeast.com/newsweek/2007/12/08/when-adoption-goes-wrong.html; Rachel L. Swarns and David M. Herszerhorn, "World of Grief and Doubt After an Adoptee's Death," *North York Times*, August 31, 2013, http://www.nytimes.com/2013/09/01/us/widening-ripples-of-grief-in-adoptees-death.html?pagewanted=all&_r=0 (doubts remain as adoptive parents are cleared in death of son troubled by severe emotional issues, but Russia claims twenty other Russians adoptees have died from abuse or neglect in U.S. homes); "Woman Guilty of Murdering Adopted Girl Who Starved and Froze to Death," *The Guardian*, Sept. 9, 2013, http://www.theguardian.com/world/2013/sep/10/mother-murder-adopted-daughter-freeze (Washington State adoptive parents found guilty in death of Hana Williams, who had been adopted from Ethiopia).

[61] *See, e.g.*, Smolin, "Future," *supra* note 56, 441-442 and nn.3–5; U.S. Department of State, "Intercountry Adoption," http://adoption.state.gov/about_us/statistics.php.

[62] *See, e.g.*, Smolin, "Child Laundering," *supra* at 171–200; Ethica, "Comments on the Final Regulations Implementing the Hague Adoption Regulations" (March 2006); Trish Maskew, "The Failure of Promise: The U.S. Regulations on Intercountry Adoption Under the Hague Convention," *Administrative Law Review* 60 (2008): 488, 493–94.

been employed to support these kinds of reforms. Without these kinds of reforms, the system—especially in regard to intercountry adoptions involving the United States—will continue to be subject to abusive practices, scandals, shutdowns, slowdowns, and decline.[63] From this perspective, the Christian adoption movement has been a consistent part of the problem, rather than part of the solution.

II. Assessment of Current Reform Efforts from Within the Movement and Proposals for Additional Reform

This section highlights and assesses some reform efforts being implemented from within the movement, whether self-initiating or in response to outside criticism. This section also highlights positive aspects of the movement, whether they can be called "reform" efforts or not. After assessing these efforts, this section makes proposals for additional reforms.

A. Movement Ministries Unrelated to Intercountry Adoption

1. Positive/Reform Efforts

There are many parts of the movement that concentrate on aspects of "orphan care" totally unconnected to intercountry adoption, or indeed any kind of adoption. Thus, movement proponents correctly point out that a major part of the movement seeks to address the issue of foster children in the United States by urging Christians to become foster and adoptive parents.[64] In addition, the Safe Families for Children movement concentrates on church-based family re-unification and family preservation efforts apart from the governmental welfare system—although, notably, working in partnership with the child welfare system. The Safe Families model is a kind of church-based respite care in which Christian families temporarily provide a safe home for a child, working cooperatively with the parents, with a primary goal of helping the family to re-unite. The original parents retain full parental rights and thus work with the ministry on a volunteer basis.[65] In addition, some parts of the movement seek to promote forms of orphan care in other nations outside

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[63.] *See* Smolin, "The Corrupting Influence," *supra* note 54; Smolin, "Child Laundering," *supra* note 57; Smolin, *supra* note 56 "Future."
[64.] *See* Christian Alliance for Orphans, "A Frank Analysis of The Child Catchers," 5, http://www.christianalliancefororphans.org/childcatchers/.
[65.] *See* http://www.safe-families.org/.

of the United States, apart from intercountry adoption.[66] For example, Saddleback Church's orphan care work in Rwanda, done in cooperation with the Rwandan government, has often been noted for its emphasis on finding solutions within Rwanda and for contributing to Rwanda's success in sharply reducing the number of children in institutional care.[67]

2. Assessment

My assumption is that many of the movement's orphan care ministries that are unrelated to adoption are laudable and well-executed and have very positive impacts. Moreover, it is positive that the movement has begun to emphasize these kinds of ministries to a greater degree. Some movement leaders seem to understand that the movement made a mistake in beginning with a primary emphasis on adoption—and especially intercountry adoption—and are seeking to gradually correct that emphasis.

Unfortunately, the movement has not repudiated the adoption-focused theology and rhetoric that launched the movement. The recent promotion of the movie Stuck[68] shows a movement that is still "stuck" on the naïve narrative that intercountry adoption would be a primary solution for very large numbers of children throughout the world, if only governments would act more cooperatively. Although the movie was not created by the movement, its promotion by the movement nonetheless continues the naively intercountry adoption-centric rhetoric with which the movement began.[69]

It is also important that the movement not try to take credit generally for most forms of Christian assistance on behalf of children nor use those Christian efforts existing outside of the contemporary adoption movement as a rebuttal against critiques of the new adoption movement.[70] Indeed, the

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[66] See "A Frank Analysis," *supra* note 64, at 5-7.

[67] *See, e.g.*, Joyce, *supra* note 1, at 241–66 .

[68.] *See* Mission News Network, "Stuck: A Movie about International Adoption," *Both Ends Burning*, March 26, 2013, https://bothendsburning.org/initiatives/stuck/.

[69] *See, e.g.*, Jedd Medefind, "'Step Forward for Orphans' March in DC," *CARO* (Christian Alliance for Orphans), May 18, 2013, http://www.christianalliancefororphans.org/2013/05/18/step-forward-for-orphans-march-in-dc/; http://www.christianalliancefororphans.org/?s=Stuck.

[70.] *Cf.* "A Frank Analysis," *supra* note 64 (CAFO response to Child Catchers states that "The lion's share of Christian engagement in caring for orphans worldwide is

church has perennially been involved with efforts to assist the widow and orphan, and the poor, apart from adoption; it would be inappropriate for a movement that started in 2004 in the United States to take credit for what is, in fact, a set of concerns that has occupied the global church for two millennia. Of course, the vast majority of Christian efforts to children and vulnerable families, even stemming from the United States, began long before the movement and continue to operate primarily outside of the movement. Groups like World Vision, which started decades ago and operate apart from adoption, assist millions of people.[71] The movement, in short, did not invent an emphasis on assisting vulnerable and poor children and families, and Christian efforts originating outside of the movement are not a proper defense to critiques of the movement

As the numbers of intercountry adoptions have fallen rapidly, the issue of intercountry adoption agencies and organizations re-inventing themselves as broad-based child welfare and poverty alleviation ministries has arisen. However, poverty alleviation and family assistance have most often operated on a completely separate track from intercountry adoption. The most prominent global anti-poverty NGOs, whether Christian or otherwise, have normally kept themselves completely separate from intercountry adoption, and indeed at times have been critical of intercountry adoption.[72] Although many intercountry adoption agencies have some orphan care programs outside of adoption, only a few of the very largest intercountry adoption agencies operate at significant scale. Indeed, the charitable work of some intercountry adoption agencies may operate at times as a supportive adjunct to the intercountry adoption programs through providing grants to adoptive parents to pay adoption fees and costs or funding to organizations that also make children available for intercountry adoption.[73] There are severe barriers of

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not via inter-country adoption" to argue that critique of the adoption movement is unbalanced.).

[71] *See, e.g.,* "Our Impact," *World Vision*, http://www.worldvision.org/our-impact.

[72]. *See, e.g.*, Sandra Laville and Jeevan Vasagar, "Madonna Adoption Baby Flown out of Malawi," *Guardian*, October 16, 2006, http://www.theguardian.com/society/2006/oct/17/adoptionandfostering.childrensservices (quoting views of World Vision UK on intercountry adoption); Maria MacKay, "World Vision's Child's Rights Advisor on Madonna and Intercountry Adoption," *Christianity Today*, October 18, 2006, http://www.christiantoday.com/article/world.visions.childs.rights.advisor.on.madonna.and.intercountry.adoption/8034.htm.

[73]. *See* Smolin, "The Corrupting Influence," *supra* note 54.

expertise, scale, and conflicts of interest that have to be overcome before an organization financially dependent on intercountry adoption can run an effective set of programs to address issues like poverty and family preservation. Hence, there are severe barriers to agencies that have been financially dependent on intercountry adoption, re-making themselves as successful anti-poverty or family assistance programs.

While the movement's emphases on domestic adoption within developing nations and domestic adoption of children from the U.S. child welfare system are positive, in any adoption-based intervention it is important to be aware of the differences between a Biblical model of additive adoption and the unbiblical U.S. model of "as if" adoption. "As if" adoption is foreign to the cultures of many other nations, and United States evangelicals should not import this foreign and unbiblical model to those nations. In instances of children adopted from the child welfare system in the United States, it will generally be true that parental rights have been terminated due to abuse, neglect, or abandonment, which in some instances may make a clear separation from original family members necessary for the child's protection. Nonetheless, many natural parents who lose parental rights in the child welfare system loved their children and were loved by their children, but lost their parental rights primarily because of their inability to conquer substance abuse, poverty, mental health, and instability issues within the short window of time necessary to retain parental rights. In addition, children adopted from the child welfare system often have important ties to other natural family members. The movement thus should in all of its adoption-related activities actively and self-consciously be trying to understand and practice a Biblical model of adoption, even if this means applying a model of adoption that is in some tension with the legal and cultural model of adoption in the United States. The growing practice of open adoption in the United States is already providing an opportunity to challenge the clearly "fictional" nature of "as if" adoption, which should make it easier for Christians to develop a more Biblical practice and model of adoption.

3. Proposed Reform Efforts

Theologically, in order for the movement to get beyond a primary focus on adoption, it will need to explicitly correct its theological errors. The movement should explicitly embrace an interpretation of James 1:27 and the Old Testament widow/orphan texts as a directive to assist the widow and orphan as a unit and, more broadly, as a mandate to assist vulnerable

families in remaining together. The movement should abandon the attempt to ground assistance to orphans in vertical adoption, for so long as the movement focuses on vertical adoption as the primary way of understanding the Fatherhood of God, it will lead to horizontal adoption as the primary and best intervention. Instead, the movement will need to develop a theology of restoration of families and family relationships grounded in the creation, fall, redemption, restoration pattern of scripture, and the analogy between natural fatherhood and the Fatherhood of God. The movement should also use the Bible to critique the American form of "as if" full adoption. The movement will also need to re-emphasize traditional theologies of assistance to the poor and hospitality in order to have a broader Biblical basis for the diverse kinds of ministries relevant to the movement.

These changes of theology will need to be accompanied by changes in rhetoric that clearly convey a change in emphasis. The movement has been known for its adoption-centric rhetoric; it will need to become known instead for other kinds of rhetoric.

Practically speaking, as the movement becomes less adoption focused it will need to address the difficult relationship and potential tension between adoption, on the one hand, and poverty alleviation and family preservation efforts on the other hand—a relationship that becomes far more complex when intercountry adoption is involved. This relationship is particularly sensitive for organizations that are financially dependent on adoption (or intercountry adoption) because as poverty alleviation and family preservation are done more effectively, there is less need for adoption.

B. Family Preservation and Subsidiarity

1. Positive Reform Efforts

Some in the movement now "talk the talk" of family preservation as a priority and rhetorically embrace the substance of the subsidiarity principle, whereby family preservation and re-unification efforts should take first priority and precede adoption. [74] Similarly, some now note the portion of the subsidiarity principle that prioritizes domestic adoption over

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[74] *See* "Analysis," *supra* note 64;Jen Hatmaker, "Examining Adoption Ethics:Part One," May 14, 2013, http://jenhatmaker.com/blog/2013/05/14/examining-adoption-ethics-part-one.

intercountry adoption.[75] Movement leaders can point to the many movement ministries unrelated to adoption, such as the Safe Families Movement, as real efforts implementing the subsidiarity principle.

2. Assessment

The rhetorical acceptance of family preservation and subsidiarity is a very positive development. The promotion of ministries that are, in effect, family preservation ministries, discussed in Part IIA above, is also very positive. In regard to intercountry adoption itself, however—the subject of this book—the situation is much different. Even mainstream and reputable intercountry adoption agencies, Christian and non-Christian alike, very commonly do not implement the subsidiarity principle in most of their intercountry adoption programs. The standard processes by which children are determined to be adoptable orphans in many programs typically do not include family preservation efforts and do not include the offer or provision of financial assistance to allow children to remain or reunite with their families. It is commonplace for there to be no active re-unification efforts for children once they arrive in an orphanage or care setting. In addition, large financial inducements for intercountry adoption typically undercut domestic adoption, with the result that, in practice, intercountry adoption is prioritized over domestic adoption. Indeed, the financial incentives for intercountry adoption often pull children into orphanages who otherwise would have remained with their families. This is a part of a broader problem in which foreign funding for orphanages cause children to be placed and kept at orphanages, even though at much lesser cost it would have been possible for those children to have been maintained or returned to their families.[76]

In a world of many vulnerable children and families, intercountry adoption typically exists disconnected from family preservation efforts. Thus, the existence of many family preservation ministries and efforts does not guarantee that the children sent for intercountry adoption had appropriate access to those family preservation efforts—and typically they did not. Intercountry adoption and family preservation programs tend to run on

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[75] *See, e.g.*, "Frank Analysis, *supra* note 64.

[76] *See, e.g.*, "WEST AFRICA: Protecting Children from Orphan-Dealers, May 27, 2009, *IRIN*, http://www.irinnews.org/report/84582/west-africa-protecting-children-from-orphan-dealers; "Does Funding Orphanages Create Orphans?" 1/26/2010, available at http://goodintents.org/orphanages/does-funding-orphanages-create-orphans; http://www.news.replace-campaign.org/ (multiple postings on issue).

completely separate tracks and pathways, and a child who comes into the intercountry adoption track typically never comes through a family preservation track or program. Thus, the only way to have the subsidiarity principle appropriately applied to intercountry adoption is to build in requirements of family preservation and re-unification efforts being made prior to the child being declared adoptable, which is a step that typically has not yet been done.

3. Proposed Reform Efforts

The obvious next step would be for the movement to recognize, publicize, and protest the commonplace failure for intercountry adoption agencies to implement the subsidiarity principle. Silence about this continuing gap leads prospective adoptive parents to wrongly assume that most children made available for adoption through reputable agencies have come through a system that applied the subsidiarity principle by prioritizing family preservation and domestic adoption alternatives ahead of intercountry adoption.

Of course, it would also be important for the movement to work at actual implementation of the subsidiarity principle. This would require very substantial changes in the structure of many intercountry adoption programs and would require agencies to take responsibility for the processes by which children come into care and are declared eligible for intercountry adoption. The movement should advocate for standards that make family preservation and re-unification efforts a prerequisite to adoption. The movement should advocate for strict controls on the financial aspects of intercountry adoption in order to eliminate incentives for obtaining children illicitly for intercountry adoption or for placing children internationally rather than domestically.

In seeking to implement the subsidiarity principle, the movement can look to particular intercountry adoption programs in a limited number of nations which have been more active in implementing subsidiarity principles and controlling financial incentives. In some instances, this occurs because the nations in question have established capacities to implement family preservation efforts and have also established effective controls over agencies and the financial aspects of adoption. It is thus often the nations of origin, rather than the United States adoption agencies, that have successfully implemented subsidiarity. However, in some circumstances, some agencies may have also done so successfully, where

they were able to establish effective control over the processes by which children are deemed eligible for intercountry adoption. Typically, programs and nations that have effectively implemented family preservation efforts and subsidiarity into a child welfare system, while also engaging in intercountry adoption, place only moderate numbers of children, who mostly are much older and special needs children, for intercountry adoption, with healthy infants and toddlers typically placed domestically.

More broadly, the movement will need to assess the question of when funding orphanages has the counterproductive impact of pulling and retaining children away from their families and communities by providing financial incentives for placing and retaining children in orphanages.[77] This is an issue on which the movement in practice has been quite divided, with some parts of the movement heavily funding orphanages while other parts of the movement are focused on sharply reducing reliance on orphanage and institutional care. Even if orphanages, group homes, or other forms of institutional or quasi-institutional care may sometimes be necessary, it is important to construct interventions that incentivize and support raising children as much as possible within their own families and communities.

C. Recognition of the Reality and Scope of Abusive Intercountry Adoption Practices

1. Positive Reform Efforts

The Christian adoption movement became prominent at a time after and proximate to a series of major intercountry adoption scandals, including the closure of Guatemalan adoptions amidst significant child trafficking scandals.[78] Yet the movement largely ignored the issues of abusive intercountry adoption practices. Where such were even mentioned, movement proponents commonly advised that so long as one used a legitimate and reputable agency there was very little risk of such

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[77.] *See, e.g.*, "WEST AFRICA: Protecting Children,"; "Does Funding Orphanages Create Orphans?"; http://www.news.replace-campaign.org/ (multiple postings on issue).

[78] *See, e.g.*, Smolin, "Child Laundering," 135–70; Smolin, "Future,"; Erin Siegel, *Finding Fernanda: Two Mothers, One Child, and a Cross-Border Search for Truth* (Boston,MA: Beacon Press, 2012).

problems.[79] Coupled with the rhetoric of an almost limitless number of global orphans in need of intercountry adoption, and a defensive posture toward any criticisms of intercountry adoption and the movement, the assumption was that removing obstacles to intercountry adoption was far more important than erecting safeguards against abusive practices.

The movement's progress in addressing abusive and corrupt intercountry adoption practices has been minimal. As late as May 2013, movement leaders were quoted by the New York Times as stating that abusive practices were "uncommon."[80] An extensive reaction to Kathryn Joyce's book, *The Child Catchers*, by the Christian Alliance for Orphans ("CAFO"), raises the question of whether abusive adoption practices are exceptional and seems to lean toward that conclusion. The CAFO critique also emphasizes that there are no error proof systems or movements.[81] Similarly, so far as this author can ascertain, there seems to have been very little treatment of the problems of abusive practices at any of the CAFO national conferences through 2013, unless one counts the presentations by government officials that tend to minimize those difficulties. On the positive side, the CAFO response to *Child Catchers* does treat the problem of adoptions and relinquishments based on poverty as a significant problem.[82]

Under these circumstances, the major progress comes from a number of evangelicals who have been participants in the movement, or who, apart from the movement, are deeply involved in orphan care and acknowledge the reality and scope of problems like child trafficking. Such public and private expressions of concern have been increasing, not merely because of outside criticism, but more concretely because a significant proportion of evangelicals who adopt, or who work in the field, encounter abusive practices.[83] The continuing stream of bad news about intercountry adoption, including scandals, press coverage of abusive practices, nations closing or slowing down intercountry adoptions, and the significantly

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[79] *See, e.g.*, Russell D. Moore, *Adopted for Life: The Priority of Adoption for Christian Families & Churches* (Wheaton, IL: Crossway Books, 2009): 122 ("Going through a reputable, licensed agency will avoid putting oneself in this kind of ethically reprehensible situation.").

[80.] *See* Eckholm, "Evangelicals."

[81.] *See* CAFO, Frank Analysis, supra note 64.

[82.] *See* "Frank Analysis."

[83.] *See, e.g.*, "Evangelical Trafficking?"; Riley, "The Child Catchers, Review and Interview."

declining overall numbers, also creates a context where there is a sharp disjunction between the official rhetoric of the movement and events inside the intercountry adoption world. While many proponents of intercountry adoption continue the same old defensive rhetoric, blaming enemies of intercountry adoption and the press for negative events or reports,[84] or claiming that Christians are being persecuted by such criticism,[85] other proponents have begun to recognize the self-defeating nature of such a defensive posture.[86] Some within the movement therefore are starting to seek a deeper engagement with the problems of abusive and illicit practices, even as the official rhetoric has only moved from largely ignoring the problem to increased commentary minimizing abusive practices.

2. Assessment

The deeper engagement by some within the movement of the problems of child trafficking and other illicit practices, while positive, still has a number of weaknesses. First, the public face of the movement, as reflected by conference events, websites, etc., still largely ignores or minimizes abusive practices. This public face of the movement is particularly significant in regard to adoption because there is a constant stream of new prospective adoptive parents, many of whom look to the movement for education and guidance. The propensity of many Christians to discount mainstream and secular media and authors, particularly when they are critical of Christian ministries, makes the public teaching of the movement even more significant. The leaders of the movement are responsible for misleading the constant stream of new prospective adoptive parents into dismissing and minimizing reports of abusive practices. When such adoptive parents themselves become involved in adoptions tainted by such practices, the movement leaders themselves bear a significant share of responsibility. In my role as a movement critic, I receive a constant stream of communications from adoptive parents traumatized by their involvement in questionable or unethical adoptions, including the adoption of children who were taken by force or fraud from

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[84.] *See, e.g.*, Elizabeth Bartholet, "The International Adoption Cliff: Do Child Human Rights Matter?" (elsewhere in this volume); Elizabeth Bartholet, International Adoption: The Human Rights Position, *Global Policy* 1, no. 1 (January 2010): 91; Elizabeth Bartholet, "International Adoption: The Child's Story," *Georgia State University Law Review* 24, no. 2 (2007): 333.

[85.] *See, e.g.*, French, "Attack on Evangelical Adoption?"

[86.] *See, e.g.*, Moch, "Christians Like Me,"; David, Evangelical Trafficking?"

their families or who were procured by monetary incentives. It is disturbing to see well-meaning adoptive parents of various religious commitments, including evangelicals, go naively and enthusiastically into intercountry adoption, only to be caught up year after year in the same kinds of corrupted and unethical adoptions, with profound harm and injustice done to all members of the adoption triad.

Second, the minimization of abusive adoption practices makes the movement a missing or counterproductive participant in the broader policy debates over intercountry adoption. Abusive practices are not just an uncommon error of an otherwise positive system, but are a predictable result of a system in decline and crisis, corrupted by money, which is being undone by these abusive practices.[87] The movement cannot positively participate in these public policy debates until and unless it takes abusive practices seriously.

3. Proposed Reform Efforts

The movement should use its substantial platform to publicize not only particular instances of abusive practices, but more broadly the systemic weaknesses in the intercountry adoption system. The movement should actively explain the threats to the intercountry adoption system created by these systemic weaknesses. Based on these publicized concerns with the systemic weaknesses of the intercountry adoption system, the movement should be an active participant in efforts to remedy those weaknesses.

Conclusion

The evangelical Christian adoption and orphan care movement has energized and engaged a significant number of people and organizations in its short history. While a significant portion of the programs and efforts, which operate under its banner, are presumably helpful and effective, the parts of the movement pertaining to intercountry adoption are quite problematic, due both to the distorted theologies of the movement, and also due to the failure to take account of the realities of intercountry adoption law and practice. While reforming tendencies within the overall movement have begun, progress in the area of intercountry adoption has lagged behind that in other areas. Therefore, if the movement is to have a

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[87] *See* Smolin, "Child Laundering," *supra* note 57; Smolin, "Future," *supra* note 56; Smolin, "The Corrupting Influence, *supra* note 54.

positive impact in the area of intercountry adoption, substantial reform in the movement's theology, rhetoric, and practice will be necessary.