



Spring 4-1-2004

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Recommended Citation

Bernie D. Jones, *INTERNATIONAL AND TRANSRACIAL ADOPTIONS: TOWARD A GLOBAL CRITICAL RACE FEMINIST PRACTICE?*, 10 Wash. & Lee Race & Ethnic Anc. L. J. 43 (2004).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol10/iss1/4>

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INTERNATIONAL AND TRANSRACIAL ADOPTIONS: TOWARD A GLOBAL CRITICAL RACE FEMINIST PRACTICE?

Bernie D. Jones*

ABSTRACT

The practice of international adoption places feminist legal scholars of family law in a quandary. Adopted orphaned and abandoned children in impoverished developing countries immigrate to the United States and Europe, gaining families and a higher standard of living. But these improved circumstances come at a cost. Their mothers suffer the effects of poverty while a wealthier woman gains a child at the birth mother's expense. International adoption raises not only sensitive class issues but also cultural and racial issues; so many of the adoptees are from Asia and Latin America, but their adoptive parents are white. This article questions whether a practice of international adoption based on the theory of "global critical race feminism" and crafted to reinforce the cultural and racial ties of adoptees can resolve conflicts between these perspectives. This new approach to international adoption, tied to notions of dual nationality, is predicated upon incentives and preferences for expatriates in the United States to adopt children from their countries of origin.

I. INTRODUCTION

Critics describe international adoption as a regime in which middle and upper class North Americans and Western Europeans participate in the commodification of South American and East Asian children.¹ They are in the privileged position of being able to find and raise children at the expense of the birth mothers who cannot afford to raise them in societies where there

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¹ Although 40% of the orphans adopted by United States citizens in 2001 came from Eastern Europe, the commodification issue does not appear to be as glaring. The adoption of Eastern European children by American whites does not raise the controversy of transracial adoption, as compared, for example, to the situation of Chinese babies, primarily girls, who are being adopted. The commodification issues exist in the European situation, nonetheless, pointing to the significance of class and hierarchy. For a discussion of the case of Chinese orphans, see KARIN EVANS, *THE LOST DAUGHTERS OF CHINA: ABANDONED GIRLS, THEIR JOURNEY TO AMERICA, AND THE SEARCH FOR A MISSING PAST* (2000).

are inadequate social services for poor women, abandoned children and orphans.

Critics argue that sending countries are forced to give up the children that comprise their nations' futures in a massive brain drain to the West. American and European wealth and status permit adoptive parents to circumvent the biological constraints that might have made natural parenthood impossible for them, while the birth mothers whose children they adopt cannot avoid the economic and social strictures that have made motherhood difficult. The children are raised outside of their countries and cultures of origin, becoming privileged with respect to their compatriots in their native lands. They become foreigners. On the other hand, international adoption might not amount to a "drain" insofar as the sending countries permit the emigration of children for whom there are limited resources. Their families could not care for them and social services might have been inadequate compared to the resources of the adoptive parents.

Because the nature of international adoption in the American context places a sophisticated Anglo woman in the position of mother to a Latin or Asian child, it interests feminist legal scholars of family law. The topic presents them with the tensions of commodification juxtaposed against its benefits:² children who cannot be cared for by their parents or by their native countries' social services are being cared for by others who can afford to take care of them, rearing them in a higher socioeconomic bracket compared to their families of origin. They become American children; however, their adoptive parents are of a different cultural and racial background, which opens debate on the issue of transracial parenting of children of color in a country where race and ethnicity persist as identifiers.³

² See, e.g., Sandra Patton-Imani, *Redefining the Ethics of Adoption, Race, Gender and Class*, 36 LAW & SOC'Y REV. 813 (2002) (reviewing HAWLEY FOGG-DAVIS, *THE ETHICS OF TRANSRACIAL ADOPTION* (2002) and RICKIE SOLINGER, *BEGGARS AND CHOOSERS: HOW THE POLITICS OF CHOICE SHAPES ADOPTION, ABORTION AND WELFARE IN THE UNITED STATES* (2001)); Bridget M. Hubing, Note, *International Child Adoptions: Who Should Decide What is in the Best Interests of the Family?*, 15 NOTRE DAME J. L. ETHICS & PUB. POL'Y 655 (2001); Elizabeth Bartholet, *International Adoption: Propriety, Prospects and Pragmatics*, 13 J. AM. ACAD. MATRIM. LAW 181 (1996); Twila L. Perry, *Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory*, 10 YALE J. L. & FEM. 101 (1998).

³ See, e.g., JOAN HEIFETZ HOLLINGER, ABA CENTER ON CHILDREN AND THE LAW: A GUIDE TO THE MULTIETHNIC PLACEMENT ACT OF 1994 AS AMENDED BY THE INTERETHNIC ADOPTION PROVISIONS OF 1996, at <http://www.acf.dhhs.gov/programs/cb/publications/mepa94> (last visited Oct. 3, 2003). Scholars and commentators come out on different sides of the debate about the benefits of transracial adoption. *Id.* The National Association of Black Social Workers has opposed whites adopting black children for over 30 years, but under current law, federally funded private and state child care agencies are banned from prohibiting transracial adoptions. *Id.* Some social scientists argue that children adopted transracially experience no developmental problems, but anecdotal evidence suggests that children of color raised by white parents may lack connections to their racial heritage and culture while growing up. See GAIL STEINBERG & BETH HALL, *INSIDE TRANSRACIAL ADOPTION* 160 (2000), for a discussion of anecdotal evidence on the children's experiences, including that of international adoptees:

Children raised by parents who do not share their heritage might be placed at a disadvantage in coping with racial prejudice.⁴

In this article, I discuss a means of reconciling the conflicts of international adoption through global critical race feminism, a feminist legal theory that considers the significance of women's lives cross-culturally.⁵ International adoption is both a nationalist and a feminist issue because it is predicated upon one woman's inability to mother her child and another's ability to take the child overseas and become a parent. Based upon current statistics, it is likely to be a woman of color living in Asia or Latin America who has relinquished her daughter.⁶

"the children, no matter how well cared for—in an orphanage, in their birth family or by a foster family—are making a transition that relates not only to their attachment to care givers but is also cultural in nature." *Id.* They describe the experience as traumatic. *Id.* The children grieve for the people and life they left behind, fear abandonment by their new caretakers and experience cultural shock. *Id.* See also CHRISTOPHER BAGLEY, INTERNATIONAL AND TRANSRACIAL ADOPTIONS: A MENTAL HEALTH PERSPECTIVE (1993); ELIZABETH BARTHOLET, FAMILY BONDS: ADOPTION, INFERTILITY, AND THE NEW WORLD OF CHILD PRODUCTION 94–106 (1999) (discussing the opposition of The National Association of Black Social Workers to transracial adoption and studies of transracial and international adoptees that support the practice); INTERCOUNTRY ADOPTION: A MULTINATIONAL PERSPECTIVE (Howard Alstein & Rita J. Simon eds., 1991); RITA J. SIMON ET AL., THE CASE FOR TRANSRACIAL ADOPTION (1994).

⁴ I do not mean here to make an argument against transracial adoption. I believe that those who are capable of providing homes for children who would otherwise not have parents should be able to adopt, but these parents should understand the nature of the issues that will arise when parenting takes place across cultural and racial lines.

⁵ ADRIEN KATHERINE WING, GLOBAL CRITICAL RACE FEMINISM 2 (2000). Adrien Katherine Wing coined the term to denote the following:

Despite constituting a plurality of the world's people, women of color are usually situated on the bottom rung of each society, whether they live in developed or developing countries. The concept goes beyond mere color or racial identification. What these women may have in common is their potential relationship—likely an oppositional one—to sexist, racist and imperialist structures.

Id. These issues, she suggests may not be directly addressed by nationalist and race-based discourses, particularly at the intersections of race, gender and nationality: "existing legal paradigms under U.S., foreign, and international law have permitted women of color to fall through the cracks—becoming literally and figuratively voiceless and invisible." *Id.* And yet

even women of color, who are disproportionately impoverished, may have some identities that relatively privilege them. To assist women of color, we need to delineate their multiple identities, examine how those identities intersect to privilege or lead them to face discrimination, and then design multidimensional programs that would enhance their life situations.

Id. at 7–8.

⁶ See IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION & NATURALIZATION SERV. 63–64 (2001), at <http://uscis.gov/graphics/shared/aboutus/statistics/Yearbook2001.pdf> (last visited Jan. 29, 2004). In 2001, United States citizens adopted 19,087 immigrant orphans from throughout the world, about 40% of whom came from Europe and 56% from Asia and Latin America: 7637 were European, 8642 were Asian, 343 were African, 19 came from Oceania, 2 were Canadian, 105 were Mexican, 266 came from the Caribbean,

Under a global critical race feminist legal theory, women and men of color who have cultural and familial links to sending countries should be tapped as a source of adoptive parents.⁷ However, under current law, such an adoption practice necessitates change by requiring preferences for expatriates which do not exist presently under American adoption law or under the laws of sending countries. Such a modified adoption practice would reinforce cultural ties and answer the concerns of those who argue against the international adoption "brain drain." Nonetheless, to the extent that prospective expatriate adoptive parents are American, a global critical race feminist adoption practice may reinforce class privileges. However, I argue that cultural ties and a shared racial identity supercede the tensions of class and that expatriates are truly capable of reinforcing their native cultures in a foreign land.

As immigration from developing countries in Asia, Africa, and Latin America has risen over the past few decades, many of these new residents have become citizens.⁸ They possess relatively higher standards of living compared to what they once had at home. They also remain multicultural by retaining ties to their countries of origin and speaking their native languages at home. Their children grow up hyphenated Americans. This population of immigrants is in an ideal position to adopt internationally because they share the racial heritages and ethnicities of the children who come to America. Such adoptive parents could support the cultural ties of international adoptees, easing the adoption process. The present adoption law contains no preference for expatriates in international adoption. Additionally, the

1642 were Central American, and 429 were South American. *Id.* With respect to sex, 12,069 or 63% were female and 7017 were male. *Id.* 8739 were less than a year old. *Id.* 8233 were toddlers aged 1–4. *Id.* 1531 were children of school age, 5–9 years old, and 917 were over 9 years of age. *Id.*

⁷ Those with cultural and familial links are likely to be first- or second-generation immigrants, although it is not impossible for a prospective adoptive parent with more distant ancestry to have those links. For the purposes of this article, I am focusing on recent immigrants because the nationality issues raised by international adoption apply only to recent immigrants and their children. See *infra* for a discussion of dual citizenship and nationality.

⁸ See, e.g., *THE CHANGING FACE OF HOME: THE TRANSNATIONAL LIVES OF THE SECOND GENERATION I* (Peggy Levitt & Mary C. Waters eds., 2002).

In 2000 an estimated 27.5 million residents, or 10 percent of the nation's population, were children of immigrants, born primarily to the Latin American and Asian migrants who began arriving in the 1960s In 2000 approximately 56 million residents, or 20.5 percent of the population, were foreign stock (first and second generation individuals combined). In that same year immigrant children and the U.S.-born children of immigrants accounted for one out of every five children in the United States. They were the fastest-growing segment of the population under eighteen years of age.

adoption laws in effect in sending countries do not necessarily differentiate between foreigners seeking to adopt versus expatriates.

This issue has current significance due to the steadily increasing numbers of international adoptees since the 1980s with no indication that the numbers might fall in the near future.⁹ As long as glaring disparities persist among women globally in their access to health care, social services, education, and economic opportunity, women in less developed parts of the world will continue to find that they cannot care for the children to which they give birth. Children living in war-torn nations and those wracked by natural disasters and famine will continue to suffer as they lose their parents. These conditions will increase the numbers of children available for Westerners to adopt. It thus behooves those with multicultural international backgrounds to consider the possibility of adoption because they have the closest cultural links to needy children in the developing world who do not have families.¹⁰

II. WOMEN IN THE CROSS-CULTURAL MATRIX

North Americans and Western Europeans have the greatest life expectancy rates, the lowest infant mortality rates, and the lowest rates of fertility. Combined with high gross national products, women from those countries are living lives of privilege in relation to the rest of the world.¹¹ But elsewhere, women are disproportionately represented among the world's poor. Their poverty lessens their access to health care, increases maternal death at childbirth, and decreases their life expectancies and those of their children. Thus, "improving health care, education, and opportunities for women is a matter of human rights . . ."¹²

⁹ IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERV. 30 (1981); IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERV. 55 (1991). In 1981, United States citizens adopted 4868 orphans from overseas, and in 1991, the number was 9008. *Id.*

¹⁰ Note that in arguing for international adoption, I do not mean that the right of natural mothers to parent their children should be minimized or that access to reproductive services should not be of equal priority to women's access to social services, education, health care, and economic opportunity. Neither do I intend to privilege children over their parents. See, e.g., Jordana P. Simov, Comment, *The Effects of Intercountry Adoptions on Biological Parents' Rights*, 22 LOY. L.A. INT'L & COMP. L. REV. 251 (1999); Proceedings of the Conference on the International Protection of Reproductive Rights at American University School of Law (Nov. 10–11, 1994); Mahmoud F. Fathalla, *The Impact of Reproductive Subordination on Women's Health*, 44 AM. U. L. REV. 1179 (1995); Sandra Coliver, *The Right to Information Necessary for Reproductive Health and Choice Under International Law*, 44 AM. U. L. REV. 1279 (1995); Rebecca J. Cook, *Human Rights and Reproductive Self-Determination*, 44 AM. U. L. REV. 975 (1995).

¹¹ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 835, 840 (2001).

¹² UNITED NATIONS POPULATION FUND, STATE OF THE WORLD POPULATION 2002, at 5 (2002). Note that the AIDS pandemic has further complicated reproductive health because family planning in

Barbara Stark argues for a "postmodern perspective" on international law in which lawyers and legal scholars look to the "superstore, a warehouse of treaties, customs, international institutions and norms, as well as national laws intended to implement or to avoid them" as a means of enforcing women's human rights on an international level.¹³ As Stark notes, the free flow of capital under globalization represents the latest manifestation of a longstanding geopolitical trend with roots in imperialism and colonization, in which some nations have grown wealthy at the expense of others.¹⁴ The removal of trade barriers has not only increased world income but "also increased the polarization of the 'haves' and the 'have-nots.'"¹⁵ With so much capital moving around the globe,

[t]he risks are greater . . . because globalization has increased both market volatility and market interdependence. In other words, markets are soaring to new highs and plunging to new lows, bouncing from one to the other faster—and less predictably—than ever before, and dragging others with them, sometimes, with ruinous consequences¹⁶

Additionally, the shortcomings of potentially corrupt commercial and political leaders can lead a nation to the brink of disaster.¹⁷ Even when a nation's economy is growing, problems still exist: "[u]nder NAFTA, for example, the Mexican 'economy grew at a rate of 4.8% [in 1999], adding 100,000 new manufacturing jobs. [Nonetheless], the number of people living in extreme poverty[,] earning less than \$2 per day[, grew] by four

developing countries can become a matter of life and death for women and their children. See Edward C. Green, *A Plan as Simple as ABC*, N.Y. TIMES, Mar. 1, 2003, at A19 (referring to abstinence as AIDS policy); Kati Marton, *Protect Women, Stop a Disease*, N.Y. TIMES, Mar. 1, 2003, at A19 (discussing AIDS education as crucial for women's health in Africa).

¹³ Barbara Stark, *Women and Globalization: The Failure and Postmodern Possibilities of International Law*, 33 VAN. J. TRANSNAT'L L. 503, 508 (2000).

¹⁴ *Id.* at 510.

¹⁵ *Id.* at 511.

¹⁶ *Id.* at 512.

¹⁷ Stark discussed the collapsed economies of Thailand, Brazil, and Mexico during the 1990s; however, the effects of September 11, 2001, the American corporate scandals of the past year, and the dot.com bust have all contributed to the international recession. Stockholders lost money, employees lost their jobs, and those who participated in employer-sponsored 401(k) plans lost their retirement benefits. See, e.g., Howard Kurtz, *Who Blew the Dot-Com Bubble?*, WASH. POST, Mar. 12, 2001, at C1; Victoria Thieberger, *Economic Toll of September 11 Less than Thought—NY Fed*, FORBES, Feb. 26, 2003, <http://www.forbes.com/work/newswire/2003/02/26/rtr891309.html> (last visited Mar. 3, 2003) (addressing the effects of September 11 upon New York City's economy and the effects of the recession that began in Mar. 2001); John C. Coffee, Jr., *What Caused Enron: A Capsule Social and Economic History of the 1990s*, Symposium, *Enron and the Future of U.S. Corporate Law and Policy*, 89 CORNELL L. REV. (forthcoming Jan. 2004).

million."¹⁸ Based on current statistics, it is quite likely that the majority of those extraordinarily low paid workers are women.

In contrast to these economically disenfranchised women, their expatriate relatives living in the United States as legal immigrants experience a very different reality.¹⁹ They are relatively privileged and arguably experience a higher socio-economic bracket than those left at home: "for would-be immigrants, the prize is huge. It may include a life free of danger and an escape from ubiquitous corruption, or the hope of a better chance for their children. But mainly it comes in the form of an immense boost to earnings potential."²⁰ Thus, these immigrants are at the forefront of the "brain drain" that has drawn so many to the United States where skilled workers are given immigration preferences. They also draw their friends and relatives at home into an international network of remittances by sending back goods and money, which generates economic growth.²¹ The sending of remittances is indicative of a larger phenomenon, the retention of connections that immigrants have to their native lands although they no longer live there. Adoption of children from their countries of origin provides another means of helping those they left behind.

However, suggesting adoption raises a number of potential problems. First of all, in the post-9/11 world, the United States is not as supportive of open immigration policies. Nonetheless, immigration policy is relatively more open with respect to adoption of orphans from overseas.²² There are other countervailing factors that make international adoption by immigrants less likely. Since the immigrant population already has a higher birth rate relative to the birth rate of white Americans, adoption might not be

¹⁸ Stark, *supra* note 13, at 514 (citation omitted). Consider too, the gross national income per capita for various nations throughout the world: Tanzania, \$520; the Republic of the Congo, \$570; the Sudan, \$1520; Lesotho, \$2590; Sierra Leone, \$480; China, \$3920; Cambodia, \$1440; Haiti, \$1470; Jamaica, \$3440; Guatemala, \$3770; Mexico, \$8790; Kazakstahn, \$5490; compared to Norway, \$29,630 or the United States, \$34,100. UNITED NATIONS POPULATION FUND, *supra* note 12, at 72-74.

¹⁹ *Special Report: Outward Bound—Emigration*, ECONOMIST, Sept. 28, 2002, at 24. Approximately 75% of Africa's emigrants have higher education, and roughly half of Asia's and South America's. *Id.* Of the 1 million people from India living in the United States, more than 75% of those of working age have a bachelor's degree or better. *Id.* About 30% of all educated Ghanians and Sierra Leoneans live abroad. *Id.* With respect to Mexicans, 12% of those with higher education live in the United States, compared to 75% of Jamaicans. *Id.*

²⁰ *The Longest Journey: A Survey of Migration*, ECONOMIST, Nov. 2, 2002, at 4.

²¹ *The Longest Journey: A Survey of Migration, The View from Afar*, ECONOMIST, Nov. 2, 2002, at 11. Immigrants also play a role in their native countries' politics if voting is an option. *Id.* Those who return to their native countries with capital and skills or remain overseas but create trade and business opportunities "back home" help stem the tide of the "drain." *Id.*

²² See, e.g., Victor Romero, *The Child Citizenship Act and the Family Reunification Act: Valuing the Citizen Child as well as the Citizen Parent*, 55 FLA. L. REV. 489 (2003).

an issue for them.²³ In the case of people of Latin or African descent, there are African-American and Latino children available for adoption in greater numbers than white children; thus, international adoption might not be a route they would pursue.²⁴ Moreover, many immigrants' cultures might not be open to formal adoption as it is practiced in the United States; as a result, the numbers of children adopted might be low as such a proposal means rejection of cultural practices in favor of "Americanization."²⁵

Despite these obstacles, policymakers' perspectives should broaden to include formal adoption by expatriates as an alternative to adoption by foreigners. Policymakers could educate their citizens in the United States that adoption provides a means of retaining ties to their countries of origin and satisfies the altruistic interest they have in the country "back home." International adoption could even cultivate ties with those who no longer have immediate relatives in their countries of origin to whom they might send remittances.

Consideration of economic rights and women's subordination in the global economy also proves pertinent to the subject of international adoption. The growth in international adoption is a product of globalization,²⁶ considering Adrienne Katherine Wing's interpretation of multiplicity of identities, people of color in the West who feel kinship to the mothers of international adoptees have a special role to play in the international adoption arena. A woman who is a foreign national living in the United States may be privileged in relation to her friends and family living in her country of origin. She may not even consider herself fully American because she remains constantly aware that her "dual" identity results in conflicting allegiances: the United States passport she holds versus the birth certificate that lists her,

²³ See, e.g., *Half a Billion Americans? Demography and the West*, ECONOMIST, Aug. 24, 2002, at 21. "The fertility rate for non-Hispanic whites is just over 1.8, for blacks 2.1. For Latinos, it is nearly 3.0." *Id.*

²⁴ See, e.g., Elisabeth M. Landes & Richard A. Posner, *The Economics of the Baby Shortage*, 7 J. LEGAL STUD. 323 (1978); Patricia J. Williams, *Spare Parts, Family Values, Old Children, Cheap*, 28 NEW ENG. L. REV. 913 (1994) (discussing the racial politics of adoption in the United States, as they influence the availability of children and the cost of their adoption).

²⁵ See, e.g., Claudia Fonseca, *Inequality Near and Far: Adoption as Seen from the Brazilian Favelas*, 36 LAW & SOC'Y REV. 397 (2002). Within the cultural context of working-class Brazilians, mothers placed their children in the care of relatives and close family friends who recognized and respected the bond between mother and child but agreed to care for the child on a temporary basis. *Id.* Those who decided to place their children up for adoption circumvented the official state policy that removed biological parents from participation in the process of choosing the adoptive parents. *Id.* Instead, they chose the adoptive parents, which made it possible for the biological mother to maintain some presence in the child's life even though she would no longer be the social mother who raised the child. *Id.* Extended kinship networks resulted from these practices. Thus, where cultural practices encourage informal fostering and adoption, official adoption might not be the norm. *Id.*

²⁶ See Nicole Bartner Graff, Note, *Intercountry Adoption and the Convention on the Rights of the Child: Can the Free Market in Children be Controlled?*, 27 SYRACUSE J. INT'L L. & COM. 405 (2000).

or her parents, as being born in China, Mexico, or Grenada in the West Indies.²⁷

The existence of dual identities is all the more significant in light of research indicating that for contemporary immigrants, particularly those of color, the second generation has become very much "transnational." This generation has not fully assimilated into its new culture in the way earlier generations of European immigrants once did, becoming "American." Globalization through ease of travel between nations and the politics of ethnicity and race has meant that children of immigrants of color more likely retain a strong hyphenated identity. They speak their parents' language at home, keep in touch with friends and relatives who remained behind, and keep abreast of the political and social situations "back home."²⁸ Returning to Barbara Stark, these generations with "post-modern" multiple identities created through the forces of globalization, who are seeking to integrate those identities, are in the position to begin a new practice of international adoption. Their participation in the global networks that nourish their interest in their parents' countries of birth might provide the link to adopting overseas and the forging of greater bonds between international women in the West and those in developing countries.

III. AMERICAN ADOPTION LAW AND THE INTERNATIONAL CONTEXT

Adopting a child from overseas is a complicated process involving much red tape and expense, a disincentive for many.²⁹ Those who decide on international adoption must fulfill the requirements set forth by the child's country of birth and the United States Immigration and Naturalization Service (INS). The Department of State negotiates the rules and regulations that apply between the sending country and the United States, granting visas. Officials in the INS decide who can enter and American law permits orphans

²⁷ See Hope Lewis, *Global Intersections: Critical Race Feminist Human Rights and Inter/National Black Women*, 50 ME. L. REV. 309 (1998); Hope Lewis, *Lionheart Gals Facing the Dragon: The Human Rights of Inter/National Black Women in the United States*, 76 OR. L. REV. 567 (1997); Camille Nelson, *Carriers of Globalization: Loss of Home and Self within the African Diaspora*, 55 FLA. L. REV. 539 (2003). Hope Lewis and Camille Nelson address this duality in the Jamaican American and Jamaican-Canadian-American context.

²⁸ See, e.g., Peggy Levitt et al.; MILTON VICKERMAN, *CROSSCURRENTS: WEST INDIAN IMMIGRANTS AND RACE* (1999).

²⁹ See KARIN EVANS, *supra* note 1, at 23 ("Americans who go to China in search of a child tend to be well-educated, financially secure professionals in their late thirties and forties. The average Chinese adoption costs between \$10,000 and \$20,000, expenses divided between various agency fees in the United States and government fees and travel expenses in the People's Republic. A donation to the orphanage of \$3,000 is required of all adoptive parents by the Chinese officials. In Guandgdong province, the richest province in China, that \$3000 can be equal to a couple years' worth of wages for a factory worker.").

to be adopted.³⁰ *The Hague Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption* can also apply, provided the child is from a country that is a signatory to the agreement. Acknowledging that children belong in families, preferably their families of origin, the signatories decided that if a child cannot live with her parents and a suitable family cannot be found in her home country, international adoption provides a viable alternative over not having a permanent family.³¹ The Convention aimed to "prevent abuses such as the abduction or sale of, or the trafficking, in children, ensure proper consent to the adoption, allow for the child's transfer to the receiving country, and establish the adopted child's status in the receiving country."³² The drafters addressed specific issues: not all countries had a single source of information on adopting internationally, and prospective adoptive parents needed a means of ensuring that the children they adopted would be able to immigrate. The children's native countries wanted assurance that adoption facilitators would be legitimate and that pre-adoption and post-placement services would be provided to adoptive parents.³³

³⁰ 8 U.S.C. § 1101(b)(1)(F) (2004). Note, however, that the agency is now called the Bureau of Citizenship and Immigration Services within the Department of Homeland Security. See BUREAU OF CITIZENSHIP & IMMIGRATION SERV., U.S. DEP'T OF HOMELAND SECURITY, ABOUT US AND FOIA, at <http://uscis.gov/graphics/aboutus/index.htm> (last modified Nov. 3, 2003).

³¹ Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, May 29, 1993, pmbl., 32 I.L.M. 1134, <http://www.hcch.net/e/conventions/text33e.html> (last visited Jan. 29, 2004).

³² IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, FACT SHEET, INTERCOUNTRY ADOPTION ACT OF 2000 (2001), <http://uscis.gov/graphics/publicaffairs/factsheets/adoption.htm> (last visited Jan. 29, 2004). See various articles that discuss the specific problems that were common prior to the enactment of the convention, pointing to the move towards uniformity and regulation: Susann M. Bisignaro, Comment, *Inter-country Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow*, 13 DICK. J. INT'L L. 123 (1994); Jennifer M. Lippold, Note, *Transnational Adoption from an American Perspective: The Need for Uniformity*, 27 CASE W. RES. J. INT'L L. 465 (1995); Stephanie Zeppa, Note, "Let Me In, Immigration Man:" An Overview of Inter-country Adoption and the Role of the Immigration and Nationality Act, 22 HASTINGS INT'L & COMP. L. REV. 161 (1998). Some scholars question the need for global regulation in the international business context. See, e.g., Jonathan R. Macey, *Regulatory Globalization as a Response to Regulatory Competition*, EMORY L.J. (forthcoming) (manuscript on file with the author). In the international adoption context, regulation is necessary when individuals are negotiating bureaucracy on the local and international levels. *Id.*

³³ IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, POWERPOINT ON THE HAGUE CONVENTIONAL ON INTERNATIONAL ADOPTION (2002), at <http://uscis.gov/graphics/services/HagueConvention.pdf> (last visited Jan. 29, 2004). The United States signed the convention in 1994 and passed the Inter-country Adoption Act of 2000 in fulfillment of the convention. Pub. L. 106-279, ch. 42, 114 Stat. 825 (2000). Congress designated the State Department as the central authority responsible for coordinating adoption policy internationally and for accrediting agencies. *Id.* The INS role remained unchanged, but the convention did not require that a child be an orphan in order to immigrate. *Id.* Thus, if a child is from a signatory country, the parent or guardian that has a legal relationship with the child and is responsible for her care must provide freely given written irrevocable consent to the termination of parental rights and responsibilities and to the child's emigration and adoption. *Id.* In addition, the country's central adoption authority must issue an adoption certificate.

Only married American citizens or single adults of at least twenty-five years of age can file a petition to adopt an orphan from overseas.³⁴ The spouse of the citizen filing the petition need not be a citizen; however, she or he must have legal immigrant status.³⁵ Petitioners must provide proof of citizenship and marriage and fingerprints are taken.³⁶ Filing can require a two-step process in which the petitioner proves that she or he is capable of providing an adequate home for a child.³⁷ Proof includes a "home study" in which a social worker visits the prospective parents' home and investigates for parenting ability, discusses finances, observes the home environment, and considers the parents' physical, mental, and emotional capabilities.³⁸ Social workers check for histories of crime, domestic violence, child abuse, and substance abuse.³⁹ Once the petitioners have identified a child, the second step in the process takes place, in which the petitioners prove that the child is an orphan eligible for adoption.⁴⁰ The prospective parents must provide proof of the child's age, a birth certificate, and a death certificate of the natural parents, if available.⁴¹ If a natural parent is alive, the petitioners must prove that the natural parent cannot care for the child and that parental rights were revoked, the child was abandoned, or the child was placed in an orphanage.⁴² If the petitioners adopted the child abroad, they must provide a final decree of adoption showing that they have met pre-adoption requirements in preparation for the final adoption in the United States.⁴³ The adopted child can automatically become a citizen upon arrival in the United States.⁴⁴

Given new names by their adoptive families and classified as citizens, adoptees experience the phenomenon described by Barbara Yngvesson, where through abandonment or the death of a child's parents, one finds

See 8 U.S.C. § 1101(b)(1)(G) (2004). If a country is not a signatory, the child must be an orphan under 8 U.S.C. § 1101 (b)(1)(F) (2004). See Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 32 I.L.M. 1134 (May 29, 1993), at <http://www.hcch.net/e/status/adoshite.html> (last visited Oct. 3, 2003). Sixty-five countries have signed, ratified, or acceded to the convention, as of February 2003, including the countries that have sent the most orphans to the United States in 2001, the Russian Federation, and China. *Id.*

³⁴ 8 C.F.R. § 204.3 (2002).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* The IR-3 visa is granted to children adopted abroad. *Id.* Those to be adopted in the United States receive IR-4 visas. *Id.*

⁴⁴ The Child Citizenship Act of 2000, Pub. L. 106-395, 114 Stat. 1631 (codified at 8 U.S.C.). For discussion of the ramifications of the act, see Romero, *supra* note 22.

the erasures of belonging—the effacement of traces that would link the child to a specific social, cultural, and political surround—that have accompanied the emergence of adoption as a practice for creating families among infertile [white] couples in the north and for managing a political or economic "excess" of [brown] children in the south.⁴⁵

Traces of birth identity can persist, particularly in the case of transracial adoption. "Transracial adoption is more complex than same-race adoption. Visible differences between parents and children increase challenges to their acceptance as a family unit Issues regarding racial or ethnic awareness and development of positive racial identity must be addressed."⁴⁶ Thus, Steinberg and Hall wrote a guidebook for those contemplating transracial adoption and for parents who have already adopted transracially, identifying the issues that arise when white parents adopt across racial lines. As whites, race might never have played any role in their lives until the experiences of their family and the conflicts faced by their children forced them to confront it. As Steinberg and Hall note, white parents might not know what to do, or they might have thought that providing a loving environment was enough.

Additionally, as Twila Perry suggests, motherhood for a woman of color can have a particular cultural meaning grounded in her sense of self: her family history, ethnicity, nationality, and racial heritage. These can all impact why she wants to become a mother and how she mothers.⁴⁷ In international adoption, that bond can become lost, and the question is how that bond should be reinforced for the sake of the internationally adopted child to know where she or he comes from, to understand the culture of his or her birth, and to reconcile that with his or her American identity. Nurturing and reinforcing these cultural bonds eases the transition from international adoptee to hyphenated American, and adoption practices should reflect that goal.

In the case of American transracial adoptees, America's multicultural and multiracial society presents a different context from that of adoptees raised in homogenous societies such as those of Scandinavia. American identity is not one limited to a specific racial or ethnic group

⁴⁵ Barbara Yngvesson, *Placing the "Gift Child" in Transnational Adoption*, 36 LAW & SOC'Y REV. 227, 243 (2002).

⁴⁶ STEINBERG & HALL, *supra* note 3, at 8–9. Yngvesson suggests in her study of Asian and African transracial adoptees in Sweden that the issues become even more complicated when race and national identity are so inextricably intertwined. Yngvesson, *supra* note 45, at 248–52. Transracial adoptees are not only "othered" by their racial difference from their parents, but they are "othered" as Swedes. *Id.* Their very presence and identities are constantly questioned. *Id.*

⁴⁷ Perry, *supra* note 2.

because "American-ness" can be conferred upon those who have immigrated to the United States by choice or, in the case of African-Americans, by force. In recent times, due to the rising numbers of immigrants to the United States from the Caribbean, Latin America, Africa, and Asia, more people of non-white ethnic and racial groups have asserted American identity by choosing to become part of the society. Yet if as has been suggested, these immigrants retain the cultures of their countries of origin, they are in a unique position to provide a sense of identity and home for the children from their countries of origin that they might adopt.⁴⁸ The children would be American but multicultural at the same time because they would be raised by parents who would have a foundation in the cultures of their birth.

It is certainly possible that a parent who does not share the race or ethnicity of her adopted child can successfully inculcate her child in the history and culture of his natural parents.⁴⁹ Yet there is arguably something different about the result when accomplished by a parent who has lived and experienced the culture because she was born and raised into it. That particular blend enriches the American experience of such an adoptee because her parents would be able to help her in understanding the mix of cultures she is living—that of her natural parents and the hyphenated "American-ness" of the parents who are raising her.

IV. A NEW INTERNATIONAL ADOPTION LAW WITHIN THE GLOBAL CRITICAL RACE FEMINIST CHALLENGE?

Individual states should consider international adoption by expatriates and the way that local laws might be modified to permit that practice. Insofar as the Hague Convention is an international body charged with providing guidance to the states on such policy matters, it should consider this issue because its current position on international adoption does not address the situation of expatriates. They are not encouraged to adopt, and the Convention does not state they should be given preferences in international adoptions. However, language in the convention does support

⁴⁸ Interestingly, Yngvesson suggests that in the case of international adoptees adopted by American parents of the same ethnic or racial background, sharing the same heritage as their parents means that, contrary to transracial adoptees raised in racially homogenous societies, their international identity as adoptees is not apparent and they appear to be their parents' natural children. See Yngvesson, *supra* note 45, at 252. But they are aware, nonetheless, that there is another identity inside of them that they are not connected to in their daily lives. *Id.*

⁴⁹ See, e.g., STEINBERG & HALL, *supra* note 3; EDWARDS, *supra* note 1. The authors urge white parents who have adopted children of color to consider how to raise their children with sensitivity to their native cultures, for example, through living in diverse neighborhoods, exposure to adults and other children who share their heritage, cultural heritage celebrations, and, in the particular case of international adoptees, visits to their countries of birth. *Id.*

these propositions: "If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background"⁵⁰ Egyptian representatives to the convention introduced this novel proposition, which suggests that adopted children should retain links to their past and have an understanding of their background, "taking especially into account all his or her cultural, religious and ethnic elements."⁵¹

Clearly, the issue of children retaining links to their culture is a very important one, which makes international adoption a sensitive subject that nations have responded to in different ways. The State Department, in providing guidance to those seeking to adopt internationally, maintains a comprehensive list of countries throughout the world and their policies on adoption, plus the number of immigrant orphan visas issued.⁵² The policies range from absolute prohibition of all forms of adoption⁵³ to prohibitions on foreign adoptions⁵⁴ to restrictions,⁵⁵ and finally, to acceptance.⁵⁶ The

⁵⁰ Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, art. 16 § (1)(b), 32 I.L.M. 1134, <http://www.hcch.net/e/conventions/text33e.html> (last visited Jan 29, 2004).

⁵¹ Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, Explanatory Report 33, 32 I.L.M. 1134, <http://www.hcch.net/e/conventions/exp133e.html> (last visited Jan 29, 2004).

⁵² BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, OVERSEAS CITIZENS SERV., OFFICE OF CHILDREN ISSUES, at <http://www.travel.state.gov/adopt.html> (last visited Oct. 2, 2003).

⁵³ *Id.* Some of these are Muslim countries, where Shari'a law is followed: Afghanistan, Bahrain, Egypt, Kuwait, Lebanon, Saudi Arabia, Syria, the United Arab Emirates and Yemen. *Id.* Under the Koran, guardianship is permitted, but not adoption. *Id.* A child cannot take the name of a non-biological parent. *Id.* In Pakistan, a child whose origin is unknown but who may have been converted to Christianity by Christian missionaries might be available for adoption. *Id.* But note that Jordan permits international adoption, provided the child has no known parents or relatives. *Id.* Kosovo and Rwanda have placed a moratorium on adoptions, due to political and social upheaval; the priority is on family unification. *Id.* In 2001, 384 children were adopted from Cambodia, but officials have placed a moratorium on adoptions because of abduction and trafficking in children. *Id.* Romania also permitted international adoptions in the past, but a moratorium is also in place, due to corrupt and abusive practices. *Id.* Officials of both nations are in the process of drafting adoption legislation. *Id.* For a discussion of the treatment of Romanian orphans in the early 1990s, see Howard E. Bogard, Comment, *Who are the Orphans?: Defining Orphan Status and the Need for an International Convention on Intercountry Adoption*, 5 EMORY INT'L L. REV. 571 (1991).

⁵⁴ BUREAU OF CONSULAR AFFAIRS, *supra* note 52. Examples include Argentina, the Federated States of Micronesia, Finland, Guyana, Iraq, Laos, and Qatar. Adoptive parents in Argentina must be Argentine citizens or permanent resident aliens who intend to continue living there. *Id.* Guyanese Americans may adopt if they maintain a permanent residence in Guyana, and most cases involve the adoption of a child by a relative. *Id.*

⁵⁵ *Id.* Examples include Austria, the Bahamas, Barbados, Belize, Denmark, Estonia, France, Germany, Greece, Grenada, Guinea, Iceland, Iran, Ireland, Italy, Kenya, Malawi, Malaysia, the Netherlands, Nicaragua, Niger, Nigeria, Oman, Spain, St. Kitts and Nevis, St. Lucia, Sudan, Sweden, Trinidad, Tunisia, Uruguay, and Venezuela. *Id.*

⁵⁶ *Id.* Examples include Albania, Azerbaijan, Belarus, Bolivia, Brazil, Bulgaria, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Ethiopia, Georgia, Guatemala, Haiti, Hungary, Hong Kong, India, Jamaica, Japan, Kazakhstan, Latvia, Liberia, Lithuania, Mexico, Moldova, Pakistan,

restrictions on international adoption can include special preferences for nationals interested in adopting,⁵⁷ requirements that prospective parents be of the same race or religion as the adoptee,⁵⁸ restrictions that limit adoptions to family members,⁵⁹ requirements that foreign nationals seeking to adopt live in the country,⁶⁰ or requirements that all prospective adoptive parents meet special residence requirements.⁶¹ There might be so few children available

Peru, Philippines, Poland, Slovak Republic, South Africa, South Korea, Russia, Taiwan, Thailand, Ukraine, Vietnam, and Zimbabwe. *Id.*

⁵⁷ *Id.* Bahamian law permits adoption by anyone with legal status in the Bahamas. *Id.* The number of children available is small and the waiting list is long. Bahamian citizens or residents are given preference, particularly blood relatives. *Id.* French couples are given adoption preferences in France and the number of children available is small. *Id.* In Greece, only those who are Greek citizens or who are of Greek origin and reside in Greece can adopt. *Id.* In Iceland, only foreigners who reside in Iceland or who have a special connection to the country can adopt. *Id.* Nicaraguan law permits adoption by Nicaraguan citizens or permanent residents. *Id.* Iranian citizens who live outside of Iran are permitted to adopt children from Iran; applications from close family members are more likely to be approved. *Id.* Preferences are given to Uruguayan adoptive parents in Uruguay and there are few children available for adoption by foreigners. *Id.* It is desirable but not mandatory that the adoptive parents live in Uruguay while the adoption is pending. *Id.*

⁵⁸ *Id.* Kenya has a race restriction: the prospective parent and child must be of the same race. *Id.* Non-Muslims may not adopt Muslim children in Malaysia, but non-Muslims may adopt non-Muslim children. *Id.* The adoptive parent must be a resident working and living in Malaysia for two years prior to the application. *Id.* The adoptive parent of an Omani child must be a Muslim national of Oman. *Id.* Adoption is not allowed for Sudanese Moslem children but may be allowed for those who are not. *Id.* A child whose religion is not known is presumed to be Moslem. *Id.* Only a Muslim may adopt a child in Tunisia. *Id.* In Israel, few children are available for adoption, and the adoptive parents must be of the same religion as the adoptee. *Id.* Hindus may adopt children under Indian law, and although there is no provision for foreigners to adopt, foreigners may petition for legal custody of a child to be taken abroad for adoption. *Id.* Non-Indians are required to work through a licensed agency in their home country approved by the Indian government. *Id.* Bangladeshi law does not permit the adoption of Muslims, but Hindus may adopt Hindu children. *Id.*

⁵⁹ *Id.* Although Guinea permits adoption by non-Guineans, the parents must consent to the adoption or the child's relatives if the parents are dead. *Id.* In Niger, only married couples can adopt and the prospective parents must not have biological children of their own. *Id.* In the state of Abuya in Nigeria, at least one parent must be Nigerian for an adoption to take place. Foreigners who are foster parents may adopt after having cared for the adoptee for a certain period of time, ranging from three months to several years, depending upon the state the child is from. *Id.* Thus, residence requirements must also be fulfilled. *Id.* It is difficult for those without family or kinship ties to adopt a child in Venezuela. *Id.*

⁶⁰ *Id.* It is unclear how expatriates are treated. *Id.* Non-Barbadians may adopt in Barbados only if they are domiciled in Barbados. *Id.* Only residents domiciled in St. Kitts and Nevis may adopt. *Id.* Non-nationals must reside and own property in St. Lucia in order to adopt. *Id.* Only foreigners domiciled and residing permanently in Trinidad may adopt. *Id.*

⁶¹ *Id.* These policies tend to favor domestic adoption. *Id.* In Belize, the applicant must have resided in the country for a minimum of six months or must be a citizen. *Id.* The infant must reside in Belize and be a Belizean citizen. *Id.* In Grenada, an applicant must be a resident who is at least 25 years old and is at least 21 years older than the infant, or is 21 and is a relative of the infant, or is a biological parent. *Id.* The applicant must be domiciled in the country, and the infant must be a resident who had been in the care of the prospective adoptive parent for the three consecutive months preceding the adoption order. *Id.* A prospective adoptive parent in Ireland must have been a resident for a year; moreover, only a few Irish children are placed for adoption. *Id.* In Malawi, applicants and adoptees must be residents and the applicant must have been the child's foster parent for at least 18 months. *Id.*

for adoption that international adoption is not encouraged,⁶² and nationals are more likely to adopt internationally.⁶³ Even with respect to countries that appear to permit international adoption with no apparent restrictions, they may not be considered places from which children can be adopted because few American citizens have adopted children from those countries.⁶⁴

It is significant that the nations that have set into place preferences for nationals to adopt do not differentiate among nationals living within the country, expatriate citizens, and expatriates who are no longer citizens. There is a difference, and it is impossible to determine such status from the State Department and Immigration and Naturalization Department statistics, which only account for United States citizenship. There is no record of how many naturalized citizens adopted as compared to native-born Americans. A native-born American might have roots in foreign countries that are important to her. She might be interested in adopting a child from her home country too, but she might not be permitted under the other country's laws.⁶⁵ Adoption that is limited to natives and domiciles, or to the relatives of orphans, might be broadened to specify those naturalized U.S. citizens or

⁶² *Id.* Examples include Austria, Denmark, Germany, Iceland, the Netherlands, and Spain. *Id.* Spanish adoptive parents must be legal residents who remain in Spain throughout the adoption proceeding. *Id.* They cannot adopt their own descendants or immediate blood relatives and may not adopt second-degree relatives, such as nieces or nephews, by blood or marriage. *Id.* In Estonia, only those children whose parents are deceased or whose parental rights have been terminated can be adopted. *Id.* There are few such children and long waiting lists. Officials believe that healthy Estonian children should remain in Estonia. *Id.*

⁶³ *Id.* Italy has a low birth rate; most Italian adoptive parents adopt children from other countries, particularly Latin America. *Id.* In Sweden, a high standard of living, effective family planning, and lack of stigma upon single mothers means that few children are available for adoption. *Id.* Swedes are thus

native-born Americans with roots in the countries where they seek to adopt, even though they do not live there. In any given situation, however, family members in the United States should be given priority.

One significant factor in considering whether an expatriate might be able to adopt a child from her country of origin relates to the issue of dual citizenship. Is she considered a national even though she is an American? Does her country of origin recognize her as a citizen? Because "there is no uniform rule of international law relating to the acquisition of nationality, [each] country has its own laws on the subject, and its nationality is conferred upon individuals on the basis of its own independent domestic policy."⁶⁶ Dual citizenship results when a person has allegiances to two nationalities at the same time. She might have been given it automatically upon being born to foreign parents living in the United States. She herself might be a foreigner who did not lose the citizenship of her country of origin upon naturalizing in the United States.⁶⁷

United States immigration law has traditionally been hostile to the notion of dual citizenship:

the U.S. Government recognizes that dual nationality exists but does not encourage it as a matter of policy because of the problems it may cause. Claims of other countries on dual national U.S. citizens may conflict with U.S. law, and dual nationality may limit U.S. Government efforts to citizens abroad.⁶⁸

Under current law, a person who acquires a foreign citizenship by applying for it may lose her U.S. citizenship, provided she intended to relinquish it. Intent is indicated by statement or conduct.⁶⁹ It is presumed, however, that

⁶⁶ U.S. DEP'T OF STATE, DUAL NATIONALITY, 68 No. 30 INTERPRETER RELEASES 1027 (1991). Note that it is possible to have more than two nationalities. *Id.* A child could have been born to immigrants in a foreign country, thus gaining dual citizenship; as an adult, she could have been naturalized in a third country. *Id.*

⁶⁷ See T. ALEXANDER ALENIKOFF, BETWEEN PRINCIPLES AND POLITICS: THE DIRECTION OF U.S. CITIZENSHIP POLICY 26-27 (1998). Other situations include marriage to a foreign national, birth outside the United States to native-born Americans, birth to parents where one is a citizen and the other is a foreign national, or loss of citizenship upon naturalization in a foreign country followed by resumption of citizenship in the country of birth. *Id.*

⁶⁸ U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, DUAL NATIONALITY, at <http://travel.state.gov/dualnationality.html> (last visited Oct. 3, 2003).

⁶⁹ *Id.* For discussion of what such expatriating acts might be, see *Dual Nationality: A Brief Review*, 71 No. 1 INTERPRETER RELEASES 16-17 (1994). See Eugene Goldstein & Victoria Piazza, *Naturalization, Dual Citizenship and Retention of Foreign Citizenship*, 73 No. 16 INTERPRETER RELEASES 517-19 (1996) (discussing 8 U.S.C. § 1481(a) (2004)), listing various ways to renounce U.S. citizenship, such as taking up arms against the U.S., formally renouncing citizenship at a U.S. Consulate abroad, declaring allegiance to a foreign state, or working for a foreign government. See Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L. J. 1412, 1453-54 (1997), for an explanation of how the latter two categories have fallen into disfavor as officials have become reluctant to use behavior as a basis for denaturalizing a citizen where there was no corresponding renunciation of

Americans naturalized in other countries intend to keep their U.S. citizenship.⁷⁰

The status of dual citizen is thus more of an issue for an expatriate living in the United States who is considering whether to become a United States citizen. When one becomes a citizen in the United States, the applicant is required to take an oath of allegiance to the United States in which she forswears all allegiances to all foreign countries to which she might have once owed allegiance. She promises to support and defend the United States Constitution and laws of the United States, bear arms if called upon, or perform non-combatant services in the armed forces, while swearing that she has undertaken this obligation freely and without reservation.⁷¹ This is a decision she makes for herself and family, including her spouse and any children she might have who also naturalized under her status.⁷² But growing trends toward dual nationality⁷³ make citizenship available to more expatriates and their children living in the United States, providing them eligibility to adopt internationally under the laws of their countries of emigration.

In considering the question of dual citizenship as a means of expatriates maintaining ties to their countries of origin and gaining international adoption preferences, who should have dual citizenship? Should the adoptive parents be the only dual citizens? Should the adoptees

citizenship. See also *Vance v. Terrazas*, 444 U.S. 252 (1980) (holding that although a U.S.-born dual citizen of Mexico filed for Mexican citizenship and signed documents in which he swore allegiance to Mexico and renounced his U.S. citizenship, this alone was insufficient to prove renunciation of U.S. citizenship); *Afroyim v. Rusk*, 387 U.S. 253 (1967) (holding that a naturalized U.S. citizen with Israeli dual citizenship who voted in an Israeli election did not demonstrate assent to loss of U.S. citizenship).

⁷⁰ U.S. DEP'T OF STATE, *supra* note 66.

⁷¹ Goldstein & Piazza, *supra* note 69, at 518.

⁷² See 7 CHARLES GORDON ET AL., IMMIGRATION LAW & PROCEDURE §§ 98.02–98.03 (2002).

⁷³ Even though a naturalized American citizen swears allegiance to the United States and renounces her prior citizenship, some countries don't recognize the oath as amounting to relinquishment. See ALEINIKOFF, *supra* note 67, at 30–36; Eugene Goldstein & Victoria Piazza, *Naturalization, Dual Citizenship and Retention of Foreign Citizenship: A Survey* 75 No. 45 INTERPRETER RELEASES 1613 (1998); Goldstein & Piazza, *supra* note 69, at 517; Spiro, *supra* note 69, at 1457. See also IMMIGRATION AND NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, BUREAU OF CONSULAR AFFAIRS, at <http://www.travel.state.gov> (last visited Oct. 2, 2003). The Bureau of Consular Affairs provides foreign and American consulate information for Americans traveling overseas. *Id.* The following countries recognize dual citizenship: Albania, Antigua and Barbuda, Argentina, Australia, Barbados, Belize, Benin, Brazil, Burkina Faso, Cambodia, Canada, Colombia, Costa Rica, Croatia, Dominica, Dominican Republic, Ecuador, El Salvador, France, Ghana, Greece, Grenada, Guatemala, Haiti, Hungary, Iran, Ireland, Israel, Italy, Kyrgyz Republic, Latvia, Lesotho, Liechtenstein, Malta, Mexico, Morocco, Namibia, New Zealand, Nigeria, Panama, Peru, Poland, Portugal, Russia, St. Christopher and Nevis, St. Lucia, Slovenia, Sri Lanka, Switzerland, Turkey, the United Kingdom, and Uruguay. *Id.*

See also Spiro, *supra* note 69, at 1456–58. The European trend in the past was toward disfavor of dual nationalism, but that trend has been reversing and might have ramifications for those with citizenship in membership countries of the European Union. *Id.* The largest population of dual nationals in the United States might result, however, from Mexico's push toward acceptance of dual nationality in 1998. *Id.*

share this status? Should their rights to their countries of origin result from birth in their countries of origin or the dual citizenship status of their adoptive parents?

Addressing the issue of international adoptees and dual citizenship, should they be permitted to return to their countries of origin and assert the rights of citizens? With respect to those countries that recognize dual citizenship, it might very well be an option. Some countries do not recognize dual citizenship or recognize it only under limited circumstances. Among these countries are nations that send adoptees to the U.S.⁷⁴ Of those international adoptees able to assert citizenship in their countries of origin, many may not even desire to proclaim such a right. Officials gave these children permission to emigrate because their government thought it was in their best interest. They were abandoned and had no families, or their parents just could not take care of them. Granted, they might have been from poor countries with inadequate social resources, but why should these children feel allegiance to a country that gave them away? Their interest in returning may only extend to curiosity about their countries of origin and the identities of their parents. Moreover, these children may have no one to which they can return if surviving relatives prove unidentifiable. Nonetheless, learning about their cultures of origin is important, and upon reaching adulthood, an adoptee may also evince interest in adopting a child from her native country, demonstrating her interest in children who were born into circumstances like those she experienced. To that extent, she might also be viewed as an expatriate, but dual citizenship might not be the answer.

Dual citizenship could better serve adoptive parents if they have been raised in the countries the children emigrated from or if they are second-generation immigrants with identifiable ties to the children's countries of birth. These first- and second-generation immigrants are in an ideal position to petition for priority in international adoptions from their countries of origin and they should demand the rights that would permit them to adopt, and dual citizenship might be an approach. Although an adoptive parent with no ties can do a great job of raising an international adoptee, one with ties might be more capable of guiding an adoptee in the culture of her birth and take her back to visit when she is old enough to understand the circumstances of her immigration to the United States.

⁷⁴ IMMIGRATION & NATURALIZATION SERV., *supra* note 73. These countries include Australia, Austria, Azerbaijan, Bahrain, Belgium, Bolivia, Brunei, Chile, China, Czech Republic, Denmark, Finland, Germany, Honduras, Iceland, India, Japan, Korea, Kuwait, Kyrgyz Republic, Luxembourg, Malawi, Malaysia, Monaco, Nepal, Netherlands, Nicaragua, Norway, Pakistan, Papua New Guinea, Philippines, Rwanda, Saudi Arabia, Singapore, Slovak Republic, South Africa, Spain, Swaziland, Sweden, Tonga, Uganda, Venezuela, and Zimbabwe. *Id.*

Perhaps the ultimate distinction should be between nationality and citizenship. In his discussion of dual nationality, Aleinikoff explained that in Mexico, persons born in Mexico are nationals, but "nationality and citizenship are distinct concepts. Nationality—a broader concept than citizenship—connotes belonging to the state; it entitles one to basic membership rights short of political rights. Citizenship is accompanied by full political rights."⁷⁵ An expatriate and her children are considered nationals, just as an international adoptee should be considered one too. Each was born into a particular country and each one "belongs," but neither one lives there as a citizen seeking to exercise the rights of citizenship, such as rights to the franchise. The expatriate chose to move overseas and the international adoptee emigrated due to circumstances beyond her control. Those national ties might be lost if her adoptive parents do not maintain them, but if her parents are themselves expatriates, those ties are reinforced.

Incentives are in place for Americans to adopt both domestically and internationally,⁷⁶ but the sending countries should develop their own incentives to encourage their expatriates to adopt. Expatriates might be given priorities under the adoption laws promulgated by their countries of origin. It might be important for them to demonstrate that they have had continuing ties to the country by having relatives who live there and by proving that they have visited on a regular basis and kept in touch through the sending of remittances. The children of expatriates and international adoptees raised by expatriates could be required to submit the same proof.

A policy of dual citizenship for international adoptees might not be desirable on the part of both the sending and receiving countries insofar as it would raise the myriad tensions and complexities of nationality that made dual citizenship unpopular in the past. On the part of sending countries, it could mean the return of expatriates demanding citizenship rights, thus straining already overburdened resources. Educated in the West and raised in a higher standard of living, expatriates could constitute a population of elites in a better position to take advantage of opportunities their compatriots might not be able to access. On the other hand, they might be in the same

⁷⁵ ALEINIKOFF, *supra* note 67, at 30 n.51. He discusses further what the difference means in practice:

The amendment's use of the word "nationality" is intentional and is not coterminous with citizenship. Mexicans who retain nationality will be able to travel anywhere on a Mexican passport, to own coastal and border land forbidden to aliens, and to benefit from other rules regarding inheritance, business opportunities, and property ownership that treat Mexicans more favorably than non-Mexicans.

Id. at 31.

⁷⁶ INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, TAX TOPICS: TOPIC 607—ADOPTION CREDIT, <http://www.irs.gov/taxtopics/page/0,,id=16260,00.html> (last visited Oct. 2, 2003).

position as expatriates who are seeking to promote growth by sending remittances and starting businesses. Without biological family ties and connections, however, international adoptees might be in a different position, one that might lead to resentment and rejection rather than acceptance. Nonetheless, they might find those connections if their adoptive parents were expatriates.

On the part of receiving countries, dual nationality might mean that children once thought to be orphans with no biological parents or biological relatives might discover in their adulthood that they do have biological relatives capable of making claims upon them. These relatives could be genuine or fraudulent. They might seek to immigrate on the basis of family status under the immigration law,⁷⁷ even though they never had a true family relationship with the adoptee relinquished as a child. They might have never undertaken the responsibilities of family but seek to assert its rights.⁷⁸ For these reasons, international adoptees cannot petition and bring their biological relatives into the United States.⁷⁹ That does not mean, however, that I am arguing against open adoptions where the birth and adoptive parents know each other. If a birth parent is known and she wants her child to learn about her as she grows up, an open adoption should be an option available for the child to exercise,⁸⁰ but the parent with rights and responsibilities must be the adoptive parent.

The Child Citizenship Act ensures that adoptees become American citizens upon their arrival in the United States.⁸¹ Yet in the case of transracial international adoptees, that should not mean that they are no longer considered nationals of the country of their birth. As the children of parents who do not look like them, their foreign heritage is immediately

⁷⁷ See IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, BUREAU OF CITIZENSHIP AND IMMIGRATION SERV., at <http://www.ins.gov/graphics/services/residency/family.htm> (last visited Jan. 21, 2003). A U.S. citizen can petition for a husband or wife, an unmarried child under 21 years old, an unmarried son or daughter over 21, a married son or daughter of any age, or a brother or sister or a parent, provided the petitioner is at least 21 years old. *Id.*

⁷⁸ See Fonseca, *supra* note 25. Claudia Fonseca's discussion of informal child fostering and adoption demonstrates the continuum of parental care and presence in a child's life that can mitigate claims that children were abandoned or orphaned and thus eligible for adoption. *Id.*

⁷⁹ Under the Intercountry Adoption Act of 2000, Pub. L. 106-279, ch. 42, 114 Stat. 825, a non-orphan can be brought into the United States as the immigrant child of an American citizen, pursuant to 8 U.S.C. § 1101(b)(1)(G). If the natural parents are alive, they must be incapable of providing proper care to the child, the purpose of the adoption must be to form a bona fide parent-child relationship between the child and the adoptive parents, and the parent-child relationship with the natural parents must have been terminated. See IMMIGRATION & NATURALIZATION SERV., *supra* note 32. But as per 8 U.S.C. § 1101(b)(1)(F), adoptees and orphans cannot petition for their biological parents or any other prior adoptive parents. They are also barred from filing petitions on behalf of their biological siblings. See *Young v. Reno*, 14 F.3d 879 (9th Cir. 1997); *Matter of Li*, 20 I. & N. Dec. 700 (1993).

⁸⁰ See, e.g., Naomi Cahn, *Birthing Relationships*, 17 WIS. WOMEN'S L.J. 163 (2002); ADAM PERTMAN, *ADOPTION NATION* (2002).

⁸¹ See 8 U.S.C. § 1101(b)(1)(F) (2004).

apparent to all, particularly in the case of Asian adoptees, the largest proportion arriving from China. Policy should reflect that reality and support adoption by expatriates living in this country who share the racial and cultural heritages of these children. Although they emigrated from their countries of birth, those who later wish to create ties through the assertion of nationality should be able to do so. Such policies would ensure that cultural ties are not lost and would lay the foundation for a population of expatriates contributing to development in their countries of birth.

V. CONCLUSION

The commodification issues inherent to adoption, whether domestic or international, can never be resolved. One mother's parenthood will always be sacrificed for another, whether across national lines, class differences, or both. Expatriates who adopt internationally might very well reinforce the boundaries of class as they raise Americanized children of a social status greater than the parents they left behind. Unless policy makers find an immediate means of ensuring that all women in the world have enough resources to take care of their children, women throughout the world will continue to abandon their children or place them for adoption. The question in international adoption thus remains: How can the practice be effectuated to optimize the children's experiences?

Encouraging international adoption by expatriates provides an answer because international adoption as it is currently practiced in the United States does not support the links between adoptees and their cultures of birth. Through international adoption, sending countries have found a means of caring for children whose parents could not. Americans desiring to adopt, as a result of their own altruistic feelings or infertility, welcome children into their homes. The children gain families but at the expense of trauma. They have not only lost their parents but also been taken to a foreign country with strangers who have agreed to become their parents. Their new parents might not look like them, might not speak their language or, in the case of those old enough to speak, might not understand their culture. The trauma could be eased, I suggest, if their adoptive parents shared their heritage. Such parents would be able to ease their transition and maintain the children's cultural links to their countries of origin. These children would only benefit in the long run from such a policy.