
International Adoption: Current Status and Future Prospects

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Abstract

Throughout the poorer countries of the world, millions of children live out their young lives in substandard institutions or in the streets. In times of war or political and economic upheaval, added numbers of children become homeless. At the same time, thousands of couples in the more advantaged countries of the West have demonstrated their eagerness to offer permanent homes to many of these children through adoption and have been doing so for more than four decades.

As a result of political pressure and rising nationalism, there has been growing hostility to international adoption in many countries that have previously been willing to free some of the homeless children for adoption by foreigners.

The laws regulating adoption are varied among the "sending" countries and numerous obstacles stand in the way of foreigners who wish to adopt. Aspects of the U.S. Immigration laws pose additional obstacles in the path of adoption of foreign-born children by American citizens.

Declarations by the United Nations in recent years and current progress toward the completion of "Convention on Intercountry Adoption" by the Hague Conference on private international law offer some hope for facilitating the process of international adoption so that at least some of the children may be able to find permanent homes. At the same time, modifications of U.S. Immigration laws will also be needed.

International adoption is a very important part of the total adoption picture.¹ How various nations of the world shape the rules governing international adoption will define to a great degree adoption's future role as a parenting alternative. This is because the world divides into essentially two camps for adoption purposes, one consisting of countries with low birthrates and small numbers of children in need of homes, and the other consisting of countries with high birthrates and huge numbers of such children. In the United States and other Western, industrialized countries, the number of babies surrendered or abandoned by birthparents has been limited in recent decades by contraception, abortion, and the increased tendency of single parents to keep their children. As a result of these and other factors, very few children are available for adoption in comparison with the large numbers of people who, for

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infertility and other reasons, are eager to adopt.² In the poorer countries of the world, war, political turmoil, and economic circumstances contribute to a situation in which there are very few prospective adopters in comparison with the vast numbers of children in need of homes.

For the infertile people who want to parent, international adoption constitutes the major alternative to infertility treatment and infertility "by-pass" arrangements such as donor insemination and surrogacy. These prospective parents are frustrated and discouraged by the common assertion that "there are no babies available for adoption." There is some truth to this assertion, if the focus is limited to babies born in the United States. But there are many infants and young children in other countries available for adoption and many more in need of homes. For potential adopters ranked low on domestic adoption agency eligibility lists, international adoption significantly increases the range of parenting choices. Other countries have their own screening systems, but the criteria vary enormously from one country to another. As a result, the single person or the over-40 couple, often precluded from adoption in the United States, can usually find at least some countries abroad where they can adopt. From the child's perspective, international adoption is also advantageous. For most of the homeless children of the world, international adoption represents the only realistic opportunity for permanent families of their own.

There is, however, great controversy about the benefits and dangers of international adoption. To some, international adoption presents in extreme form some of the problematic issues that are at the heart of all adoption. It can be viewed as the ultimate in the kind of exploitation inherent in every adoption, namely the taking by the rich and powerful of the children born to the poor and powerless. It tends to involve the adoption by the privileged classes in the industrialized nations of the children of the least privileged groups in the poorest nations, the adoption by whites of black- and brown-skinned children from various Third World nations, and the separation of children not only from their birthparents, but from their racial, cultural, and national communities as well.

To others, however, international adoption is a particularly positive form of adoption. Prospective parents reach out to

children in need, rather than fight over the limited number of healthy infants available for adoption in this country. The fact that these families are built across lines of racial and cultural difference can be seen as a good thing, both for the parents and children involved and for the larger community. These are families whose members must learn to appreciate one another's differences, in terms of racial and cultural heritage, while at the same time experiencing their common humanity. As discussed in this article, the evidence indicates that they succeed in doing so.

The tensions between the different visions of international adoption are evident in recent developments. There has been a vast increase, during the past few decades, in the number of children placed for adoption across national borders.³ Close to 10,000 children per year have come into the United States from abroad for adoption in recent years. They comprise one-fifth to one-sixth of all non-relative adoptions in this country and a

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somewhat larger portion of all infant adoptions.⁴ Worldwide, there are an estimated 15,000 to 20,000 international adoptions per year.⁵

This increasing interest in international adoption is colliding with a new hostility to such adoption. The politics are similar to those involved in the debate about transracial adoption in this country.⁶ Children are said to belong with their "roots" and in their communities of origin. Political forces in the "sending countries" have been condemning in increasingly loud voices the practice of giving their countries' children to the imperialist North Americans and other foreigners. South Korea, the country responsible for sending more than half the children who have ever come to this country for adoption, has in the last few years begun phas-

ing out its foreign adoption program in response to such pressures. In combination with other developments, this resulted in a dramatic decrease in the number of international adoptions in 1992. Preliminary data provided by the U.S. Immigration and Naturalization Service indicate that in fiscal year 1992 there were only 6,500 such adoptions. These numbers may bounce back up, as countries such as Russia and China begin to send children abroad for adoption in increasing numbers. But it is hard to know what the long-term trend will be. The notion that there is, today, something shameful in sending homeless children abroad rather than taking care of "one's own" has gained widespread acceptance.

This article takes the position that the benefits of international adoption far outweigh any negatives and that international adoption should be encouraged with appropriate protections against abuses. From this perspective, it reviews current barriers to international adoption, discusses developments in international law regarding adoption, and addresses both myths and problems surrounding international adoption. Then this article presents recommendations for future directions in international adoption reform.

Barriers and the Role of Law

Significant barriers now exist between the children in other countries in need of homes and those in this country eager to become their parents. A central issue for the future is whether these barriers should be reduced or made even more impregnable. In the author's opinion, the law poses as the protector of children, but in the end functions as their enemy. The problem is that the law focuses only on the negative potential of international adoption and ignores its positive potential. The law addresses the dangers to children and birthparents that might be involved in removing them for adoption abroad, but the law turns its back on the dangers to children involved in growing up on the streets or in institutions. Few supporters of the law seem aware of its cost. The common assumption is that more law will mean more protection for more children against abuse. Few recognize that legal procedures designed on paper to protect children against abuse often become in practice legal barriers that deny children

the loving homes that they need to escape a life of abuse.

When international adoption is allowed, the foreign country applies its law to decide what children are available for adoption and which shall be freed for adoptive placement.

There is, of course, a need for law to ensure that children are not improperly taken from their birthparents or transferred to situations in which they will be mistreated or exploited. But the law should also guarantee children the fundamental right to grow up in a nurturing environment. By focusing exclusively on the negative potential of international adoption, the law fails in its overall obligation to serve children's best interests.

Foreign Laws and Policies

Although there is great variation among nations in the way they deal with international adoption, few countries have designed their laws in a way that facilitates the placement of children in need of homes with adoptive parents in other countries. Islamic countries prohibit all adoption, whether foreign or domestic. Some countries prohibit international adoption, and others place special restrictions on it. And although today most countries apparently allow such adoption, their laws and policies are not designed to accommodate its unique features, and therefore effectively prevent many prospective parents who would be interested in adopting across borders from doing so.

When international adoption is allowed, the foreign country applies its law to decide what children are available for adoption and which shall be freed for adoptive placement. It decides whether adoptive parents must come to the child's country to be screened and to process the adoption, or whether the child can be sent abroad for adoption. Requirements that the adoption take place in the child's country of origin add significantly to the financial and other costs of an international adoption, particularly when lengthy or uncertain periods of time abroad are

involved, or multiple trips. Many Latin American countries require that adoptive parents from abroad go through essentially the same process as is required in the context of a domestic adoption. The process that might not be unduly burdensome for the person who lives locally may be overwhelmingly difficult for the foreigner who will be required to leave home and family and job to live abroad for the duration of the adoption, which may range from two weeks to several months.

South Korea stands out as the country that has made the most significant effort on the governmental level to facilitate the adoption of its homeless children by foreigners. It is, of course, in large part because this effort has been so successful that the South Korean government came under pressure to close down its foreign adoption program.

U.S. Laws and Policies

Most of the countries that function primarily as "receiving" rather than "sending" countries have done little to adapt their adoption, immigration and citizenship laws to accommodate the realities of inter-

national adoption. As a result these laws pose unnecessary hurdles in the foreign adoption process. The United States' restrictive approach to immigration, together with the complications of the federal system, mean that would-be adoptive parents face a particularly challenging series of hurdles in accomplishing a foreign adoption. They must satisfy the laws and policies of their home state and of the U.S. government, in addition to those of the foreign country at issue. Because of the absence of coordination among these jurisdictions, the parents and their future child will be screened repeatedly, subject to overlapping and often inconsistent standards.

At the state level, prospective parents must initially satisfy their home state's requirements with respect to parental fitness and other matters. A satisfactory home study is a prerequisite under federal law for all international adoptions.

At the federal level, immigration rules must be satisfied before a child placed by a foreign country for adoption will be permitted to enter the United States with its adoptive parents. These rules allow the issuance of the "preferential visas" that permit the immediate entry of foreign-born adoptees⁷ only where adoptive parents can demonstrate that they satisfy *federal* criteria for assessing parental fitness and that they have fulfilled all requirements under the applicable laws of the parents' home state and of the child's country of origin. These requirements create additional levels of significantly duplicative processing.

The Orphan Restriction

Congress has severely limited the scope of foreign adoption by permitting entry only to foreign adoptees who fit a narrow "orphan" definition. For an adoptee to qualify, both parents must have died or have abandoned the child, or the "sole or surviving" parent must be unable to care for the child.⁸ Children may be disqualified simply because they appear to have two living "parents," even if the only evidence of the father's existence is a name on a birth certificate⁹ and even if the parents are demonstrably unable or unwilling to care for the child and are interested in adoptive placement. Even children who have been left in an orphanage for purposes of adoption or deserted on the streets may not qualify as "unconditionally abandoned" for U.S. immigration law purposes.¹⁰ Furthermore, those children who

have already been adopted in foreign countries in accordance with the laws of those countries, are permitted to enter the United States with their legal adoptive parents only if they are found to satisfy the orphan definition.

The orphan restriction is an anomaly. Virtually all jurisdictions within this country and throughout the world permit children to be surrendered for adoption without regard to whether a child has one parent or two, or whether the parents are able to care for the child.¹¹

The orphan restriction causes many problems. It prevents the adoption of many children who are in need of homes and free for adoption under the laws of their own country. It means that birthparents may feel compelled to abandon their children rather than surrender them in an orderly way, in the hope of making them eligible for adoption in the United States. And it can add significantly to the emotional difficulties involved when the adoption takes place abroad. The visa decision will not be made until the parents have completed the adoption and are ready to return home. And the facts that determine whether a child satisfies the definition often cannot be known until late in the adoptive process. Adoptive parents must therefore go through the entire process of becoming the child's emotional and legal parents without knowing for sure whether at the end they will be permitted to bring the child home with them to the United States.

Duplicative Adoption and Citizenship

After a child has been brought into the United States, additional legal steps are required to fully protect the child and regularize the new parent-child relationship. A U.S. adoption is necessary if the child has not been adopted abroad and is advisable even if such an adoption has taken place. A foreign adoption decree is not entitled to the same "full faith and credit" accorded a decree issued by courts within the United States. A U.S. adoption is therefore important to guarantee the child fully protected legal status as an adoptee. In addition, the U.S. decree will generally be necessary to obtain a U.S. birth certificate. It can be very important as a practical matter for adoptees to have their key birth and adoption documents issued by U.S. agencies in a language and style that will be familiar to other U.S. agencies and to be able to obtain copies

of these documents with relative ease should the need arise. Although a second adoption in the United States is usually no more than a formality, state law requirements will have to be satisfied. Only a few states have designed their adoption laws to facilitate recognition of foreign adoption decrees.¹²

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For most adoptive parents, the final step in the foreign adoptive process involves helping their child acquire U.S. citizenship. Foreign adoptees do not become citizens by virtue of their adoption by U.S. citizens. They must apply for citizenship, a process that ordinarily takes from six months to a year. This final bureaucratic hurdle appears to have no substantive meaning. Quite clearly the goal is not to determine which of these foreign-born infants and young children are fit to become U.S. citizens, but simply to provide citizenship status for all foreign-born adoptees who apply.

From start to finish international adoption involves an enormous amount of process with very little substance. Parent and child must be screened on multiple occasions by numerous agencies, dozens of documents must be accumulated, notarized, certified, stamped with official stamps, copied, and translated. For prospective parents with sufficient resources and determination, international adoption can be accomplished.¹³ There are many who are able and willing to endure a great deal for the opportunity to adopt. Moreover, many U.S. adoption agencies have established ongoing programs with foreign agencies, and for parents who are able to work through these programs, a foreign adoption may be no more difficult than many domestic adoptions. But the bureaucratic process creates very significant costs in financial and other terms. The expenses generally range upwards of \$10,000, with many international adoptions costing \$15,000 to

\$25,000 even when no major obstacles arise. Prospective parents can easily devote years of their lives to adoptive efforts that turn out to be futile. The children who are eventually adopted will generally have spent long periods of their young lives in orphanages or other institutions waiting for adoptive placement. Most important, large numbers who could have been adopted will not be since, for most prospective adoptive parents, the barriers are too great to surmount.

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Despite its complexities, the process provides less protection than it should for the children who manage to get adopted. The lack of coordination between the different jurisdictions means that some children fall through the cracks and are denied fully protected adoptive or citizenship status. Furthermore, the difficulties of the process provide incentives to find ways to take short cuts around the legal system.¹⁴

International Law and the Hague Convention

There is very little international law governing adoption across borders. Most of what exists is designed primarily to protect against potential abuses in international adoption, rather than to establish standards to facilitate such adoption.

The United Nations has in recent years taken some significant action, with the passage by the General Assembly of the *Declaration on Social and Legal Principles Relating to Adoption and Foster Placement of Children Nationally and Internationally* in 1986,¹⁵ and the *Convention on the Rights of the Child* in 1989¹⁶ (hereafter the *U.N. Adoption Declaration* and the *U.N. Convention*). These documents recognize the legitimacy of international adoption and demonstrate the international community's support for a number of basic principles regarding such adoption, for example, that there should be safeguards against abduction and against trafficking for profit and that there should be guarantees of citizenship and

other appropriate legal status for the children when adopted. But these documents do not establish standards for the processing of international adoptions, and they relegate such adoptions to "last resort" status, with the preferred options being adoption or foster care or other "suitable" care in the child's country of origin.¹⁷

Some countries have, in the past few decades, developed bilateral treaties or other agreements designed to govern adoption between a particular sending and a particular receiving country.¹⁸ But most of the significant intercountry cooperation that exists today occurs not on the governmental but on the adoption agency level.

The Hague Conference on private international law recently embarked on a project designed to produce a "Convention on Intercountry Adoption," agreed to by the major sending and receiving countries of today's world.¹⁹ Current plans call for agreement on a final draft in the spring of 1993, following which the various countries involved would make their internal decisions as to whether to adopt the Convention. This represents the first effort to bring together the countries principally involved in international adoption to try to get beyond the very general principles incorporated in the *U.N. Adoption Declaration* and the *U.N. Convention*.

The Hague effort was originally designed, at least in part, to facilitate the international adoption process, by establishing a legal framework that would maximize the potential for cooperation among different nations and reduce irrational barriers to the placement of children across borders. However the Conference proceedings have been dominated largely by the concerns of those who focus on the negative rather than the positive aspects of international adoption. The current draft Convention reflects this orientation. It endorses the "subsidiarity" principle noted above, permitting international adoption only as a last resort, after possibilities for in-country care have been exhausted. Its provisions are designed primarily to address the classic dangers associated with adoption—the risk that children will be improperly removed from their birthparents and the risk that children will be placed with unfit adoptive parents. There has been vigorous opposition to any notion that the Convention

might serve to facilitate international adoption.

At one time the Hague project offered significant promise for reforms that would make international adoption work more effectively. Now there is a risk that it will simply establish additional barriers to the placement of children. But there is reason to hope that the Hague effort will result in no significant harm to international adoption. The final Convention draft may demand no more than some relatively minor procedural changes in the process for accomplishing an international adoption. It is also not clear that any Convention agreed to will actually be adopted by a significant number of countries.

It is still possible, of course, that the Hague effort will result in some changes to facilitate international adoption. Recent drafts suggest a model for international adoption which would vastly simplify the process. It would give sending countries responsibility for decisions related to freeing children for adoption and would give receiving countries responsibility for decisions related to screening prospective parents, thereby eliminating the duplicative decision making typical of today's procedures. A Convention might help create an atmosphere in which it is more politically acceptable than it is today for sending and receiving countries to work together to establish the cooperative arrangements that are essential to make international adoption work better than it does presently. In addition, the Convention effort may stimulate reform on the national level. In the United States the Convention effort has already focused new attention on ways in which our immigration, citizenship, and adoption laws should be changed to make international adoption work better.

Nonetheless, it seems clear that the Hague Convention will do little to establish the kind of new legal framework needed to make the international adoption process work effectively. It will be left to the various nations of the world to take the initiative, either under the aegis of a vague Convention or in the absence of a Convention.

Real Problems and Mythical Concerns

The problems that should be seen as central to the international adoption debate are the misery and deprivation that char-

acterize the lives of huge numbers of the children of the world. Millions of children die regularly of malnutrition and of diseases that should not kill. Millions more live in miserably inadequate institutions²⁰ or on the streets.²¹ Their situations vary: some institutions are worse than others; some "street children" maintain a connection with a family while others are entirely on their own. But there can be no doubt that overwhelming numbers of children in the poor countries of the world are living and dying in conditions which involve extreme degrees of deprivation, neglect, exploitation, and abuse.²² International adoption should be seen as an opportunity to solve some of these real and desperate problems for some children. It should be structured to maximize this positive potential by facilitating the placement of children in need of nurturing homes with people in a position to provide those homes.

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International adoption can, of course, play only a very limited role in addressing the problems that the children of the world face. Solutions lie in reallocating social and economic resources both among countries and within countries, so that more children can be cared for by their birthfamilies. But, given the fact that social reordering on a major scale is not on the immediate horizon, international adoption clearly can serve the interests of at least those children in need of homes for whom adoptive parents can be found.

Adoption and Underlying Social Ills

Some have suggested that international adoption programs might conflict with programs designed to improve the lives of the millions of children now in need or with efforts to accomplish the kind of social reordering that might help the children of the future. For example, some argue that instead of promoting and pursuing adoption, governments and individuals in the well-off, industrialized countries should devote increased re-

sources to more cost-effective programs designed to promote the well-being of children in their native lands. These efforts could include improving foster care arrangements, sponsoring orphanages, and supporting various UNICEF projects.

Such efforts, however, are not inconsistent with supporting foreign adoption. Indeed, the opposite is true. Foreign adoption programs are likely to increase awareness in the United States and other receiving countries of the problems of children in the sending countries. These programs give those who adopt reason to identify, through their children, with the situations of other children not lucky enough to have found homes. Foreign adoption is thus likely to help create a climate more sympathetic to wide-ranging forms of support for children abroad.

Adoption must not be used to break up viable birthfamilies, and those who want to adopt must not be allowed to use their financial advantage to induce impoverished birthparents to surrender their children.

Another argument voiced against international adoption is that it might relieve pressure within some sending countries to deal with social problems that need attention. But this argument also collapses upon analysis. Sending children abroad for adoption tends to highlight rather than to hide the fact that there are problems at home. Indeed, it seems likely that a major reason for the hostility exhibited by many sending countries toward foreign adoption relates to their governments' embarrassment at having domestic problems spotlighted by this public confession of their inability to take care of their own children.

Although speculative arguments can always be mounted, it is unlikely that adoption of a relatively small number of the world's homeless children will significantly interfere with the efforts to assist those other children who remain in their native countries. Indeed, the nations of the world are in general agreement that "the best interests of the child" should be the paramount principle governing the placement of children outside their biological fami-

lies.²³ Given the real problems confronting the world's children, it should be clear that this principle requires laws and policies designed to facilitate the international placement of children in need of homes.

The Risk of Abuse and Exploitation

Care should be taken, of course, to prevent international adoption from creating new problems. Adoption must not be used to break up viable birthfamilies, and those who want to adopt must not be allowed to use their financial advantage to induce impoverished birthparents to surrender their children. There is a need for laws that prohibit baby buying, and for rules governing the process by which a child is removed from one parent to be given to another. The rules should ensure that the birthparents have voluntarily surrendered or abandoned their child, or have had their parental rights terminated for good reason. There is also a need for rules designed to ensure that adoptees receive loving, nurturing adoptive homes, and are protected against any form of exploitation.

But it is patently absurd to talk as if the real dangers for children were the dangers that they might be taken from their birthparents for purposes of abuse and exploitation. Nonetheless, public discourse about international adoption focuses overwhelmingly on its alleged risks. Concern is regularly expressed in this country and abroad about the dangers that children will be kidnapped or bought from their birthparents for sale to rich North Americans; the media in this country give headline coverage to stories of "kidnapping rings" or "baby trafficking." There are, of course, some documented instances of kidnappings and of improper payments to birthparents. But there is no evidence that these practices are widespread, and it is quite unlikely that they are.²⁴ Current law makes it extremely risky for adoption intermediaries and would-be adopters to engage in baby buying or kidnapping. Even if some might be willing to engage in such activities if this were the only way or the easiest way to accomplish an adoption, the fact is that it is not. The world is, sadly, all too full of birthparents desperate to find homes for the children they cannot care for, and of children who have already been surrendered or abandoned. When one looks beneath the surface of most media and other stories of "child trafficking," it becomes clear that the term "trafficking" is used very loosely. The stories sometimes

involve claims that what is characterized as a “bribe” has been paid to an official, without disclosing the fact that small payments are traditional in the conduct of official business in the country at issue. Often the trafficking stories say simply that the adoptive parents paid a great deal of money to agencies or other adoption intermediaries without indicating whether anything beyond legitimate fees for services were involved. Rarely is there any evidence that birthparents have been paid or that children have been taken from birthparents capable of and interested in raising them.

Romanian Adoption

The point is not to justify everything that has been done in the name of international adoption, but to look at even such abuses as occur in perspective. Recent events involving Romanian adoption are illustrative. The foreign adoptions that followed the fall of the Communist regime in Romania in 1989 became the source of the major adoption “scandal story” of the early 1990s. The story became a focal point for media discussions of international adoption²⁵ and has been used effectively by opponents of such adoption in the context of the Hague Convention negotiations and more generally. Would-be adopters from the United States and other countries were described as wandering through Romanian villages offering payments to induce baffled villagers to give up their children for adoption. There undoubtedly were some number of cases involving illicit payments to Romanian birthparents for their children, and there is no question that such transactions deserve condemnation. But the real story of the children in Romania, and the role of international adoption in their lives, is one in which baby buying deserves a limited amount of space. It has to do with a country in which tens of thousands of children lived in orphanages and state hospitals, where thousands acquired AIDS. It has to do with institutional conditions so horrible as to stun even the jaded reporters who first revealed them to the world.²⁶ It also has to do with the fact that once news of the situation in Romania got out, thousands of people came forward who were eager to adopt some of the children they read about and saw on television. Thousands of children were adopted, some from these institutions and some directly from birthparents who were unable to care for them.²⁷

It is true that international adoption was mishandled in Romania and that some abuses occurred. But the real scandal was that, when would-be adopters came forward, there was no system in place to handle adoptions in a way which would have facilitated placement while preventing abuses. Moreover, international adoption did not represent tragedy for the children of Romania or for their birthparents, although it has been described that way. The tragedy has to do with the conditions in which Romanian children were and are living and dying. The current move to restrict international adoption may or may not eliminate certain abuses, but it will almost surely prevent large numbers of Romanian children from escaping the desperate situations of their lives to live in loving adoptive homes.²⁸

Loss of Roots versus Opportunities for Better Lives

Critics of international adoption often voice concern that children will not receive appropriate care in their new families and countries. Arguments are made that it is unfair to separate children from their racial, ethnic, cultural, and national groups of origin. Loss of the group link and sense of group heritage is said to be a deprivation in itself. And growing up in a foreign land is said to pose risks of discrimination.

There is a need for rules designed to ensure that adoptees receive loving, nurturing adoptive homes, and are protected against any form of exploitation.

Those who voice these concerns again ignore the realities of children’s current situations. International adoption represents an extraordinarily positive option for the homeless children of the world, compared to all other realistic options. Most of these children will not be adopted otherwise. They will continue to live in inadequate institutions or on the streets. Foster care is available only to a limited degree and sometimes results in little more than indentured servitude. The homeless children who survive to grow up often will face virulent forms of discrimination in their own country, based on their racial or eth-

nic status, or simply on the fact that they are illegitimate or orphaned.

The research studies on the outcome of international adoption show that these children and their families function well and compare favorably on various measures of emotional adjustment with other adoptive families, as well as with biological families.²⁹ This is strikingly positive evidence since most international adoptees have had problematic preadoptive histories which could be expected to cause difficulties in adjustment.³⁰ The studies show that adoption has, for the most part, been very successful in enabling even those children who have suffered extremely severe forms of deprivation and abuse in their early lives to recover and flourish.³¹

Some of the research hints at the complex issues involved in being part of a biracial, bicultural, binational family.³² But the studies provide no evidence that the challenge of establishing a satisfactory ethnic and cultural identity causes any harm to the international adoptee.³³ The findings are consistent with those in the transracial adoption studies. Black children who grow up in white families emerge with a strong sense of black identity. At the same time they tend to have a bicultural or multicultural orientation. They apparently enjoy an unusual degree of comfort in both black and white worlds, and are unusually committed to a future life in which they can relate to both those

worlds. They are flourishing in all the terms in which psychic health and social adjustment are typically measured.³⁴ There is no evidence that a multicultural identity is problematic from the perspective of the children involved.

There has been no focus in the studies on determining what special positives might be inherent in international adoption for the children, their adoptive families, or the larger society. But some studies hint at the rich quality of the experience involved in being part of an international adoptive family and the special perspective its members may develop on issues of community.³⁵

It seems clear that the debate over international adoption has little to do with genuine concerns over risks to children. Children are being sacrificed to notions of group pride and honor. As Tizard has described:

It is argued that the practice is a new form of colonialism, with wealthy Westerners robbing poor countries of their children, and thus their resources. National pride is involved. However poor the country, they find the implication that they cannot care for their own children to be undignified and unacceptable.³⁶

Thus poor countries feel pressure to hold on to what they term "their precious resources," and rich countries feel embar-

rated to do anything that looks like colonialist exploitation.

But there is no real conflict between the interests of the sending and those of the receiving nations. International adoption serves a symbolic function for those in power. Sending countries can talk of their homeless children as “precious resources,” but it is clear that the last thing these countries actually need is more children to care for. At the same time, the well-off countries of the world have no burning need for these children. Their governments might be willing to permit the entry of adoptees from abroad to enable those struggling with infertility to parent, but international adoption is not seen as serving any strong national interest. So the homeless children end up as “resources” that the receiving countries of the world are quite willing to forgo to improve relations abroad.

Directions for the Future

The starting point should be agreement that children are not to be thought of as “resources,” belonging in some fundamental way to their racial or ethnic or national communities of origin. The world should take seriously the sentiments enunciated in international human rights documents that children are entitled to a loving, nurturing environment, and that their best interests should be the guiding principle in the structuring of international adoption.

Receiving countries need to take action to build trust. They must recognize that there are genuine concerns about exploitation, as well as a long history of resentment. Good faith could be demonstrated and children’s interests served through offers to develop and fund programs to benefit children’s welfare within a sending country, in conjunction with any international adoption programs that are instituted. Mechanisms could be developed to provide sending countries with regular feedback on what has happened to the children sent abroad for adoption. Regular reports could help assure sending countries that their children are receiving good treatment and are thriving in their new adoptive homes.

Sending and receiving countries need to agree on a legal framework for international adoption that would facilitate placement. The model should be one in which each of the key decisions in the adoptive

process is made carefully by a responsible agency and then deferred to by all others. All duplicative processes should be eliminated. Several agreements already exist between particular sending and receiving

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countries which provide examples of how the laws of two nations can be coordinated to facilitate the adoption process.³⁷ Receiving countries should revise their adoption, immigration, and nationalization laws to remove impediments to international adoption, and to ensure fully protected status to all foreign adoptees.

For the United States this would mean the following:

- Development of agreements with other nations on a legal framework facilitating international adoption. This could be done either under the auspices of a new Hague Convention or apart from it.
- Recognition in such agreements of the principle that children’s best interests require that children in need of homes be placed for adoption as expeditiously as possible. Children deserve nurturing homes now and not simply at some distant point in the future. Delay hurts and may do permanent injury.³⁸
- Elimination of the immigration law provisions that now restrict the children available for adoption by U.S. citizens to those satisfying the narrow “orphan” definition.
- Qualification for entry into the United States of all children that appropriate sending country authorities designate as being available for adoptive placement.
- Revision of U.S. laws to ensure that foreign agency decisions releasing children for adoption and foreign adoption decrees are honored by U.S. agencies and courts. This would help ensure fully protected adoptive status to children adopted from abroad and would eliminate the necessity for duplicative adoption proceedings.³⁹

- Development of simple procedures to ensure that every foreign adoptee receives an English-language birth certificate from a U.S. agency upon submission of a foreign adoption decree.
- Revision of U.S. citizenship laws to make citizenship automatic upon completion of a foreign-born child's adoption by a U.S. citizen, just the way citizenship is now automatic upon birth of a child to U.S. citizens whether they are living here or abroad.

Conclusion

The current tendency to glorify group identity and to emphasize the importance of ethnic and cultural roots combines with nationalism to make international adoption newly suspect in this country as well as in the world at large. But restricting international adoption does not put poor countries in a better economic position or a better power position with respect to foreign governments. It is simply a symbolic gesture "for" the nation and "against" the

foreigners that is easy and cheap to make. The children themselves have no political influence, and their voices are not heard.

The nations of the world should move beyond political hostilities and symbolic acts to focus on the real needs of children. If they did, they would accept international adoption as a good solution for at least some portion of the world's homeless children and could begin to restructure their laws and policies so as to facilitate rather than impede such adoption. One side benefit would be that many more of the infertile who want to parent would be given the opportunity to do so through adoption. These people now feel under significant pressure to pursue biological parenthood through high-tech infertility treatment or complicated surrogacy arrangements—pressure that makes little sense in a world suffering in myriad ways from overpopulation. Another side benefit would be enrichment of our understanding of the meaning of family and of community.

1. See Bartholet, E. *Family bonds: Adoption and the politics of parenting*. New York: Houghton Mifflin, 1993. See also Bartholet, E. *International Adoption: Overview*. In *Adoption Law and Practice*, J.H. Hollinger, ed. New York: Matthew Bender & Co., Inc., 1988, Supp. 1992 (hereafter Bartholet, *Overview*), which contains sources and documentation for some of the material discussed here. See also Bartholet, E. Book review, *Harvard International Law Journal* (1992) 33:649. For an excellent discussion of the history and current nature of international adoption, see Hague Conference on Private International Law. *Report on intercountry adoption*. Preliminary Document No. 1. Drawn up by J.H.A. van Loon (April 1990) (hereafter *Hague Report*).
2. It has been estimated that in the United States upwards of a million families are interested in adoption, although only about 200,000 are currently taking steps to pursue it. See Bartholet, E. Where do black children belong? The politics of race matching in adoption, *Pennsylvania Law Review* (1991) 139:1163, 1166 n. 5 (hereafter Bartholet, *Race Matching*). See generally the article by Stolley in this journal issue.
3. See note no. 1, Bartholet, *Overview*, pp. 10-6 to 10-7.
4. See the article by Stolley in this journal issue.
5. See note no. 1, *Hague Report*, p. 62, n. 96. See also Todd, D. Children new commodity in red-hot world market, *Vancouver Sun*, October 1, 1991, at F4.
6. See note no. 2, Bartholet, *Race Matching*.
7. Without the preferential visa the foreign-born adoptee would be subject to the regular quota system limiting immigrants and would, in most instances, not be eligible for entry for many years.
8. 8 U.S.C. section 1101 (b) (1) (F) (1976). Less restrictive requirements are applicable when the adoptee has lived abroad with the adoptive parents for two years: there is then no U.S. home study requirement and no orphan restriction. Immigration and Nationality Act, 8 U.S.C. section 1101(b)(1)(E)(1976).
9. Children whose birthfathers' paternity has been established in countries which have procedures for legitimating such children, as most countries do, cannot qualify as an orphan even if the parents have never married or lived together, and even if the father has never known or has abandoned the child. See U.S. Department of Justice, INS. *The immigration of adopted and prospective adoptive children*, Form M-249Y (1990) pp. 18-19.
10. See note no. 9, U.S. Department of Justice, pp. 19-20.

11. Krause, H. Creation of relationships of kinship, in *International Encyclopedia of Comparative Law*. The Hague: New York, 1976, vol. 4, pp. 85-86.
12. Carlson, R. Transnational adoption of children. *Tulsa Law Journal* (1988) 23:317, 366-70.
13. For information about how to accomplish an international adoption, see note no. 1, Bartholet, *Overview*, section 1003[2], pp. 10-23 to 10-33. See also Gelber, G. International adoption: Legal requirements and practical considerations, pp. 11A-1 to 11A-23 in *Adoption Law and Practice*, cited in note no. 1.
14. See note no. 1, *Hague Report*, p. 188, noting the connection between irrational legal barriers and abusive adoption practices. The report argues that internationally agreed to standards ensuring "straight forward and well-structured procedures for intercountry adoption" should contribute to combating child trafficking and further asserts that "if prospective adoptive parents are offered an alternative which provides them with guidance, avoids needless costs and minimizes bureaucratic procedures, they will be less tempted to have recourse to dubious intermediaries."
15. U.N. General Assembly Resolution 41/85 of December 3, 1986, attached as Annex H to the *Hague Report*, cited in note no. 1.
16. Adopted on November 20, 1989, and attached as Annex I to the *Hague Report*, cited in note no. 1. Articles 20, 21, and 35 deal with the protection of children without families, adoption nationally and internationally, and the sale, trafficking, and abduction of children.
17. See *U.N. Adoption Declaration Article 17* ("If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family"); *U.N. Convention Article 21(b)* (States recognizing adoption shall "recognize that intercountry adoption may be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin").
18. See note no. 1, *Hague Report*, pp. 174-78, which describes agreements between governments, and between governments and nongovernmental organizations, that exist between the Philippines on the one hand, and Australia, Sweden, the Netherlands, and Norway on the other, between Sweden on the one hand and Ecuador and Greece on the other, and between El Salvador and Canada.
19. See note no. 1, *Hague Report*. The author has been serving as a member of an advisory group to the U.S. State Department in connection with its role in representing U.S. interests in the Hague Conference negotiations.
20. Institutionalization is far more common than foster care in the poor nations of the world, as well as in South Korea. See note no. 1, *Hague Report*, p. 64, where it is noted that institutions, "often poorly staffed, managed and supervised, are a major, perhaps the major, 'source' of children being adopted abroad."
21. Estimates of the numbers of street children—children who essentially live in the streets—vary from 31 to 80 million, with roughly one-half located in Latin America. While most of these children are thought to have "continuous" contact with their biological families, it is estimated that some 25% have only "occasional" contact or no contact whatsoever. UNICEF Executive Board. *Exploitation of working children and street children*. U.N. Doc. E/ICEF/1986/CRP.3, p. 16, attached as Annex B to the *Hague Report*, cited in note no. 1. Others have estimated the total number of street children at 100 million, and project that this total will double in the next decade. Estimates of the number of street children in Brazil alone range from 10 to 36 million. In addition there are said to be more than 10 million refugee children.
22. General economic, health, and related conditions for children in Africa and Latin America have been getting worse in recent years, and this trend is likely to continue. UNICEF. *Summary, The state of the world's children*. New York: UNICEF House, 1989.
23. See note no. 5, *U.N. Adoption Declaration Article 5* ("In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration"). See also note no. 16, *U.N. Convention Article 21*.
24. A publication on "Intercountry Adoption and Trafficking in Children" put out by Defense for Children International, an organization that has focused almost entirely on the negative aspects of international adoption, concedes that trafficking cases are extremely limited in number: "[T]he vast majority [of birth parents] do not part with their child for money, but out of despair or with the hope to ensure the child's welfare or survival. . . . [Trafficking] cases are reported from time to time but not well documented. No doubt they constitute only a tiny proportion of the displacements of children for adoption pur-

- poses." Lucker-Bubel. *Inter-country adoption and trafficking in children: An initial assessment of the adequacy of the international protection of children and their rights*, D.C.I. Geneva: Defense for Children International, 1990, p. 2.
25. See, for example, *60 Minutes* (CBS News television broadcast, April 14, 1991); Hunt, K. The Romanian baby bazaar, *New York Times*, March 24, 1991, section G (magazine); Todd, D. International baby-buying rampant, says U.N. study, *Ottawa Citizen*, August 1, 1991, at A7. See generally Pollitt, J. Intercountry adoption: Serving the welfare of children, March 1992, pp. 49-53, concerning international adoption issues in the Romanian context, an unpublished paper on file with the author).
 26. See note no. 25, Pollitt, pp. 45-49. See also Cantwell, Who said "Best interests"? *International Human Rights Monitor* (1990) 7,1/2:4 (165,000 children in Romanian orphanages, with the conditions ranging "from being unacceptable to constituting grossly inhuman treatment"). A recent documentary film is moving testament to some of the horrors. *Lost and Found*, directed and produced by Joshua Seftel, premiered at the Museum of Fine Arts in Boston, Massachusetts, on May 8, 1992.
 27. See note no. 25, Pollitt, pp. 49-50. Some 5,000 children were adopted from December 1989 until July 1991; 1,500 of these were adopted by people from the United States, with roughly half the children coming from institutions.
 28. For a description of legal "reform" moves in Romania, see note no. 25, Pollitt, pp. 58-63. See also Cantwell, N., and David, P. Romania: Is the adoption jungle a thing of the past? *International Children's Rights Monitor* (1991) vol. 8, special issue: 29-30. And see Farrow, M. Romanian orphans suffer by new rules, supporter says. *Vancouver Sun*, August 9, 1991, at A11 (new regulations will cause thousands to languish unnecessarily in institutions); Farrow, M. Romania's children continue to struggle. *Vancouver Sun*, December 4, 1991, at B2 (20% increase in number of children in Romanian orphanages in brief period since government halted adoptions in summer of 1991 with view toward new adoption restrictions).
 29. See, for example, Tizard, B. Intercountry adoption: A review of the evidence. *Journal of Child Psychology and Psychiatry* (1991) 32,5:743-56 (review of studies on international adoption outcomes concludes "results similar to those found in studies of in-country adoption"); Linowitz, J., and Boothby, N. Cross-cultural placements. In E. Ressler, et al., eds. *Unaccompanied children* (New York: 1988), pp. 181, 183-85 (review of the research, finding that all the major follow-up studies "stress the successful adaptations of most adoptees"). Simon, R.J., and Altstein, H. *Intercountry adoption* (New York: 1991), p. 184 ("Studies of intercountry adoptees in the United States suggest that children who are adopted as infants make positive adjustments to their new environments"). Feigelman and Silverman's study of Korean adoptees in the United States dealt with adoptees in their adolescent and young adult years, when it is generally thought adoptee identity and other problems are likely to surface if they have not before. The study revealed extremely successful adjustment, with the Korean adoptees measuring as better adjusted than their white American counterparts. Feigelman, W., and Silverman, A. *Chosen children* (1983) pp. 159-62. Earlier studies of Korean adoptees had shown consistently high success rates. See note no. 1, Bartholet, *Overview*, p. 10-20 to 10-21 and nn. 23, 25; note no. 1, *Hague Report*, p. 76 and n. 118. A major nationwide study undertaken in Denmark dealt with foreign adoptees 19 to 25 years old, and concluded that they had adjusted well to their Danish environment, that the great majority had not been subjected to discrimination, and that they had experienced satisfactory identity development. M. Rorbeck. *Mit land er Danmark* Copenhagen: Social Forsknings Instituttet, 1989. English abstract *Denmark—My Country* (1990), described in *Hague Report*, cited in note no. 1, pp. 76-78. For other major studies, similarly positive in their findings, see Melchior, T. Adoption in Denmark. In R.A.C. Hoksbergen, ed. *Adoption in worldwide perspective* (1986), pp. 218-19. Andersson, G. The adopting and adopted Swedes and their contemporary society. In R.A.C. Hoksbergen, ed. *Adoption in worldwide perspective*, p. 27.
 30. See note no. 29, Tizard, pp. 747-51. Thus Feigelman and Silverman found that Colombian children with medical problems requiring extensive treatment at the time of adoption, who were raised by U.S. adoptive parents, adjusted "remarkably well" and better overall than did white children born in the United States and raised by adoptive parents. See note no. 29, Feigelman and Silverman, pp. 140-42, 144-45.
 31. See Dalen, M., and Saetersdal, B. Transracial adoption in Norway. *Adoption and Fostering* (1987) 11:41-46, as reported in Tizard, cited in note no. 29, pp. 747-48, 749-50. See also Harvey, I. Adoption of Vietnamese children: An Australian study, *Australian Journal of Social Issues* (1983) 18,1:55, 59-61, 65-68 (major study of international adoptees in Australia, finding high rates of adoptive success among Vietnamese adoptees who arrived suffering from malnutrition, deprivation, and other traumatic early experiences). The

- studies generally indicate that age at placement and preadoption trauma are the most powerful indicators for problems in adoptive adjustment. See note no. 29, Simon and Altstein, p. 190; note no. 1, *Hague Report*, p. 78 and nn. 122-24. These studies tend nonetheless to show that, after some period of time for adjustment, the adoptees and their families function very well. See note no. 29, Linowitz and Boothby, pp. 183, 185. See also Harper, Intercountry adoption of older children in Australia. *Adoption and Fostering* (1986) 2:27-28, 30-31.
32. See note no. 29, Tizard, pp. 52-54; note no. 29, Feigelman and Silverman, pp. 141-43, 145, 154-62 (indicating that Colombian and Korean adoptees involved had developed limited sense of identity with culture of origin).
 33. See note no. 29, Tizard, p. 755. The only study Tizard cites as providing such evidence is inapposite because it is a study making some negative findings about the in-country adoption of Native children in Canada. (This study has serious methodological problems which undercut the significance of its findings in any event. It is reported in Bagley, C. Adoption of Native children in Canada: A policy analysis and a research report, in Simon and Altstein, cited in note no. 29, pp. 55-79.) The Feigelman and Silverman study referred to in notes no. 29 and 32 found that the Korean and Colombian adoptees involved had high rates of adoptive success.
 34. See discussion entitled "The Empirical Studies," in chapter 6, *Adoption and the role of race*, in Bartholet, Family Bonds, cited in note no. 1. See also Bartholet, *Race Matching*, cited in note no. 2, pp. 1216-21. See generally Silverman in this journal issue.
 35. See note no. 29, Rorbeck, described in the *Hague Report*, cited in note no. 1, pp. 76-78. See also Register, C. *Are those kids yours? American families with children adopted from other countries*. New York, 1991, pp. 205, 207.
 36. See note no. 29, Tizard, p. 746.
 37. See note no. 18. See also Hague draft Convention model, discussed on page 95 in this article.
 38. The adoption studies demonstrate uniformly that delay in placement is a key factor negatively affecting adjustment. See the studies cited in notes no. 29-35.
 39. A variety of proposed and existing laws dealing with the registration, recognition, and enforcement of judgments entered by foreign jurisdictions could be looked to as models. New Hampshire has legislation which specifically provides for recognition of a "Foreign Decree Affecting Adoption": "A decree of court terminating the relationship of parent and child or establishing the relation by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree was issued by a court of this state." New Hampshire RSA Public Safety and Welfare, section 170-B: 23 (1973). See also The Uniform Adoption Act (1969 Revised Act), section 17, "Recognition of Foreign Decree Affecting Adoption" (same); Uniform Enforcement of Foreign Judgments Act (1964 Revised Act) (providing for filing and enforcement of judgments entered by other courts within the United States); Uniform Foreign Money-Judgments Recognition Act (providing for recognition and enforcement of judgments entered by non-U.S. courts). See generally discussion in Carlson, cited in note no. 12, on recognition of foreign decrees regarding relinquishment and adoption.