A NEW CLASS OF PERSONS: INTERCOUNTRY ADOPTEES AND POSTCOLONIAL THEORIES OF CULTURAL HYBRIDITY

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INTRODUCTION

The recent earthquake in Haiti thrust the debate over intercountry adoption into the mainstream media. The Associated Press reported that before the earthquake devastated Haiti on January 12, 2010, there were 380,000 parentless Haitian children.1 Estimates reported in the New York Times suggest that the earthquake orphaned hundreds of thousands of additional Haitian children who are now in need of adoptive families.2 The fact that vast numbers of children lost their families during the earthquake in Haiti has reinvigorated debate over the merits and dangers associated with intercountry adoption.3 Further, the actions of the Baptist missionaries, whom the Haitian government charged with human trafficking after they seized thirty-three Haitian children and attempted to bus them to the Dominican Republic, have intensified the bitter debate over western political, economic, and cultural influence in developing countries.

This Article explores the cultural and political narratives that underlie the frequently fraught debate over intercountry adoption. It argues that despite the vast economic disparities manifested in the intercountry adoption process, intercountry adoption does not constitute a contemporary form of western cultural imperialism. Using the postcolonial theory of cultural hybridity as a critical framework, this Article claims that the practice of intercountry adoption exemplifies the process of linguistic, technical, material, and artistic exchange that has traditionally shaped world cultures and facilitated their advancement. This Article situates “culture” as a series of multifaceted relationships—relationships that cannot be reduced to core elements or rooted in a specific physical location—to suggest that cultural identity is neither lost nor found, but rather is modified and developed through cultural interaction. Intercountry adoption exemplifies the process of cultural and intellectual exchange that has traditionally led to growth and prosperity and resists the conventional notion that individuals belong to a single cultural community.

This Article maintains that attempts to restrict intercountry adoption to insulate developing nations from western cultural influences perpetuate imperial notions of cultural identity as these notions assume cultures exist within a specific geographical and social context. Specifically, attempts to curb intercountry adoption out of fear that the practice devalues and depletes poorer countries’ cultural resources operate within the same intellectual and social paradigms that perpetuated European notions of racial and cultural superiority throughout the

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3 Id.
colonial era. Arguments in favor of “protecting” indigenous cultures in developing nation states from the influences of a dominant western culture are paternalistic: they underestimate the resilience of non-western cultures and these cultures’ ability to survive (and even flourish) in the face of western cultural hegemony. In contrast, the postcolonial paradigm for intercountry adoption challenges scholars and policy-makers to establish new practices that will nourish the hybrid identities of children who are adopted by foreign families.

This Article is divided into six Parts. First, this Article situates intercountry adoption as an increasingly popular option for couples living in the United States and other western countries who wish to establish a family. Second, this Article documents the resistance among sending countries and non-government institutions to remove children from their birth cultures. Third, this Article examines how imperial conceptions of culture as “authentic” and “pure” inform opponents and advocates’ views of intercountry adoption. Fourth, this Article discusses how postcolonial theory reveals and ultimately complicates some of the cultural assumptions that inform the debate over intercountry adoption—namely that individuals possess an essential, unique cultural identity that is anchored to a particular geographic location. Fifth, this Article suggests how postcolonial theories of cultural hybridity might manifest themselves in the context of intercountry adoption and how the postcolonial paradigm for intercountry adoption promises to accommodate, and ultimately to validate, the adopted child’s multifaceted, or hybrid cultural identity as this identity continues to defy easy categorization within our society.

Before this Article critiques intercountry adoption, several scholarly terms whose meanings have been obscured through popular use deserve clarification. The words “imperial” and “colonial” are used repeatedly and often interchangeably throughout this Article, but not without respect for their different definitions. Imperialism is an ideological concept that supports one country’s economic, political, and military control over another. Colonialism, on the other hand, is a form of imperialism and involves the settlement of a new territory by a group of people. In this context, Edward Said’s definition of imperialism as “an act of geographical violence through which virtually every space in the world is explored, charted, and finally brought under control” is more applicable to colonialism than to imperialism. Both “imperialism” and “colonialism” denote aggressive systems of economic and cultural control; colonialism has, however, a more tangible application than imperialism. Also, this Article uses the term “postcolonial” to refer to the critical and artistic movement founded, in large part, on the work of the literary and cultural critic, Edward Said, and that seeks to undo the binary categories that characterized European imperial thought and discourse.

I. THE INCREASING SIGNIFICANCE OF INTERCOUNTRY ADOPTION

Intercountry adoption traditionally straddled disparate national and economic interests. It emerged in the mid-twentieth century as a response to the devastation in Europe during the Second World War. The U.S. Committee for the Care of European Children spearheaded a humanitarian effort that brought approximately 300 children to the United States from countries as diverse as Poland, Germany, and Italy. The Korean War also prompted a wave of

4 JOHN MCLEOD, BEGINNING POSTCOLONIALISM 7 (2000).
5 Id.
7 Notesong Srisopark Thompson, Note, Hague is Enough?: A Call for more Protective, Uniform Law Guiding
intercountry adoptions by American families who adopted several thousand Korean children left parentless by the war. Most contemporary intercountry adoptions still involve the placement of parentless children from poor, developing countries with families living in prosperous, western countries like the United States. Today, the United States is the principal receiving country for intercountry adoptees and China is the principal sending country. As the surging interest in adopting children left parentless by the earthquake in Haiti reveals, intercountry adoption continues to function as a response by western nations to crises abroad.

Intercountry adoption represents a small, but increasing percentage of the total number of U.S. adoptions. Most parents in so-called developed countries select domestic adoption; for example, intercountry adoption only accounts for approximately one-sixth of all adoptions in the United States. Despite recent declines in the annual number of intercountry adoptions orchestrated by families in the United States, long-term patterns indicate that the number of intercountry adoptions is steadily increasing. Elizabeth Bartholet observed that the overall trend reveals that the number of children who arrive in the United States from other countries increased over recent years. Similarly, Notesong Thompson claimed, “international adoptions have gained enormous popularity and the momentum for going overseas to find an adoptable child continues to build.” For example, the number of intercountry adoptions completed by couples in the United States in 2006 (20,679) remains significantly higher than the 16,369 intercountry adoptions completed by U.S. couples in 1999.

The interest in intercountry adoption is likely to increase in the foreseeable future as demand for children, particularly infants, increases among families in the United States and other western countries. Advances in contraception, the legalization of abortion, and the increased tendency of single parents to raise their biological children have, in combination, dramatically reduced the number of children available for adoption in the United States and other western countries. At the same time, the number of parents who want to adopt remains high. Bartholet observed that the increasing acceptance of adoption within the United States combined


9 Erika Lynn Kleiman, Caring for Our Own: Why American Adoption Law and Policy Must Change, 30 COLUM. J.L. & SOC. PROBS. 327, 365 (1997). See also Elizabeth Bartholet, International Adoption: Thoughts on the Human Rights Issues, 13 BUFF. HUMS. RTS. L. REV. 151, 166 (2007) (“The United States has long been the major receiving country in the world, with some two-thirds of all internationally adopted children coming to the U.S.”); id. at 164 (noting that the United States provides about 20,000 homes for international adoptees compared with 10,000 homes in other receiving countries).

10 Martin, supra note 9, at 177.


13 Bartholet, supra note 10, at 158 (reporting that the number of international adoptions in 2006 decreased by 2,205 from 2004 when the total number of international adoptions reached 22,884).

14 Id.

15 Thompson, supra note 8, at 446.

16 Bhabha, supra note 13, at 188.

17 Thompson, supra note 8, at 446.

18 Id.
with rising infertility rates (she approximated 6.1 million or ten percent of future parents are infertile) has created “a large population of prospective international adoptive parents” within the United States.\(^{19}\) Further, the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption identifies intercountry adoption as a means of benefitting orphaned children throughout the globe.\(^{20}\) The Convention recognized “intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.”\(^{21}\) The large number of individuals and couples in the western world who wish to adopt will likely increase the frequency of intercountry adoption and ensure that intercountry adoption continues to assume a significant role within future discussions of family and international law.

II. INSULATING THE DEVELOPING WORLD AGAINST THE AFFECTS OF WESTERN CULTURE AND SOCIETY

Despite the general increase in the number of intercountry adoptions taking place throughout world, the recent decline in the number of children available for adoption from traditional supply nations like China and Russia\(^{22}\) suggests a growing unease with, and even opposition to, the practice of intercountry adoption. As of 2003, almost half of the forty countries that appeared within the last fifteen years on the top-twenty list of countries sending children to the United States for adoption closed, or effectively closed, their intercountry adoption programs.\(^{23}\) Recent declines in the number of foreign-born children adopted by American families also suggest developing nations’ growing resistance to supplying children for international adoption.\(^{24}\) Many sending countries in the developing world have refused to facilitate intercountry adoption.\(^{25}\) For example, India passed legislation that radically reduced the number of children available for intercountry adoption\(^{26}\) and Russia’s new regulations will make adopting a child from Russia more difficult for American parents.\(^{27}\)

The international laws governing intercountry adoption indicate that the international community harbors major concerns regarding the cultural displacement that seemingly occurs as part of the intercountry adoption process. For example, the United Nation’s Convention on the Rights of the Child prefers in-country institutional care to intercountry adoption; it “recognizes”

\(^{19}\) Bartholet, supra note 10, at 164. See also Thompson, supra note 8, at 446 (“American citizens, in particular, are seeking to adopt children overseas in ever increasing numbers because [sic] the reduction in children available for adoption in the United States.”).


\(^{21}\) Id. at Ch. 33, Introduction.

\(^{22}\) Martin, supra note 9, at 186 (noting that China and Korea have recently bowed to internal pressure to curb intercountry adoption and that in 2006 Russia placed a ban in intercountry adoptions). See also Clifford J. Levy, Russia Seeks Ways to Keep Its Children, N.Y. TIMES, April 15, 2010, at A4 (reporting that Russia aims to eliminate international adoption and provide domestic programs that will care for parentless children).

\(^{23}\) Bartholet, supra note 10, at 153.

\(^{24}\) Id. at 153–54.

\(^{25}\) Martin, supra note 9, at 175. See also Bhabha, supra note 13, at 195 (noting that at “varying times, countries as different in their political systems as Romania, South Korea, and India have denounced foreign adoptions and defended state ownership of the nation’s children.”).

\(^{26}\) Bartholet, supra note 10, at 193 (explaining that India’s Parliament passed a law that requires fifty percent of all adoptions in India to be in-country adoptions; given the low level of adoption within Indian society, the law will severely limit the number of Indian children available to foreign adoptive parents).

intercountry adoption as “an alternative means of 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.”

The Convention entered into force in September 1990 and has been ratified by every country in the international community except for the United States and Somalia. Additionally, the Hague Convention—the leading international agreement on intercountry adoption—prioritizes domestic adoption over placing an orphaned child with foreign adoptive parents: “intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.” The Convention also stated that sending countries should “give due consideration to the child’s upbringing and to his or her ethnic, religious and cultural background.” In this respect, the Convention reflected the emphasis many countries place on cultural and national identity and marginalizes the influence and effect of cross-cultural exchange. Finally, in 1995 the Permanent Bureau of the Hague Convention issued guidelines for intercountry adoption that reinforced the popular notion that actors associated with intercountry adoption should prioritize and preserve the adopted child’s cultural heritage. The guidelines suggested that sending countries may wish to limit intercountry adoptions to countries that share “close cultural links” such as “a common language.”

The United Nations Children’s Fund (UNICEF) and the European Union (EU) both advocated for restricting intercountry adoption. UNICEF consistently opposed intercountry adoption except in the most dire of circumstances. The organization considered intercountry adoption “a very exceptional measure” and supports limiting the practice to children “for whom no suitable care can be identified and arranged in his or her country of origin.” UNICEF also claims domestic solutions are preferable to solutions that involve other countries and that intercountry adoption is “subsidiary” to programs that provide permanent family-based solutions within the child’s native country. The European Union assumed a similarly skeptical view of international adoption: Romania ended its intercountry adoption program as a prerequisite for

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28 Convention on the Rights of the Child art. 21(b), Office of the High Commissioner for Human Rights, Sept. 2, 1990. See also Bartholet, supra note 10, at 171–72 (observing “Article 21 . . . places international adoption lower on the hierarchy than in-country foster care, and apparently even lower than institutional care that might be deemed ‘suitable.’”).
30 Hague Convention, supra note 21, at Introduction. See also The Permanent Bureau, Guide to Good Practice Under the Hague Convention of May 29, 1993 73 (August 2005) (hereinafter Guide to Good Practice) (“The child should ideally be raised in his or her family of birth. If that is not possible, then a family should be sought in his or her country of origin. When that is also not possible, then intercountry adoption may provide the child with a permanent, loving home.”).
31 Hague Convention, supra note 21, at art. 16(1)(b). See also Martin, supra note 9, at 193–94 (noting that sending countries were determined to establish that intercountry adoption was contingent on the availability of a domestic placement: “Again and again, during the debates surrounding the drafting of the Convention, sending countries emphasized the idea that intercountry adoption must occur only after corresponding measures at home proved fruitless.”).
32 Martin, supra note 9, at 192.
33 Id. at 200.
34 Guide to Good Practice, supra note 31, at 100.
35 Thompson, supra note 8, at 453 (“UNICEF . . . strongly opposes severing a child’s native ties with their country of origin through international adoption.”).
37 Id.
admission into the EU. The reluctance of organizations like UNICEF and governing bodies like the EU to embrace intercountry adoption suggests both a growing skepticism regarding the benefits of intercountry adoption and a trend toward cultural isolationism within developing nations, many of which were former European colonies.

III. INTERCOUNTRY ADOPTION AS LOSS OF “AUTHENTIC” CULTURAL IDENTITY

Both opponents and advocates of intercountry adoption assume intercountry adoption displaces the adopted child’s birth heritage and therefore compromises the child’s “authentic” cultural identity. Opponents charge that intercountry adoption constitutes an attack on indigenous cultures. They argue that intercountry adoption forces the adopted child to assimilate into western society in a manner that is reminiscent of colonial attempts to indoctrinate indigenous peoples into European values and learning. Advocates acknowledge that the adopted child loses an essential aspect of the child’s identity by being removed from his or her birth country. However, advocates argue that the benefits associated with intercountry adoption counterbalance the child’s loss of cultural identity. Although some advocates question the extent to which intercountry adoptees experience a “loss” of cultural identity, they accept the premise that the adopted child’s birth culture constitutes the child’s primary and “authentic” cultural identity and that this identity is somehow displaced by intercountry adoption.

A. PERPETUATING THE IMPERIAL PARADIGM

The attempt by Laura Silsby and her fellow Baptist missionaries to remove Haitian children to the Dominican Republic illustrates how the imperialist narrative continues to frame intercountry adoption. Some statements made by Silsby reflect the same Eurocentric assumptions regarding morality and culture that prompted European missionaries to travel throughout the colonized regions of South Asia, Africa, and the Americas. Silsby explained, “God wanted us to come here to help children.” She also commented that she “wanted to give them [Haitian children] lives of joy and dignity in God’s love.” Ms. Silsby’s statements evoke the example of “the Clapham evangelist,” Charles Grant, who established a series of missionary schools in Bengal in the late eighteenth century for the “improvement” of the indigenous population. Grant wrote: “The Hindoos err, because they are ignorant; and their errors have never fairly been laid before them. The communication of our light and knowledge to them, would prove the best remedy for their disorders.” The Baptist missionaries’ enterprise in Haiti all-too-closely paralleled attempts by Grant and other Christian missionaries during the colonial era to displace indigenous customs and traditions and convert native peoples to Christianity.

The actions of the Baptist missionaries in Haiti prompted critics of intercountry adoption to reaffirm their position in favor of increased regulation of intercountry adoption so the practice

38 Martin, supra note 9, at 187.
40 Id.
42 CHARLES GRANT, OBSERVATIONS ON THE STATE OF SOCIETY AMONG THE ASIATIC SUBJECTS OF GREAT BRITAIN 83 (1792).
does not operate as a form of human trafficking. David Smolin is a long time critic of intercountry adoption and has consistently advocated for a deliberate approach toward intercountry adoption. Speaking to the crisis in Haiti, Smolin warned that “illicit schemes” like children trafficking can thrive in the chaos that plagued Haiti in the immediate aftermath of the earthquake.

The concern over human trafficking in connection with intercountry adoption reflects a broader fear of exploiting people from poor nations to benefit affluent adoptive parents living in the United States and Europe. Bhabha argued that the market for children who have been approved for adoption by foreign parents and the human trafficking market are not separate entities, and she warns that these markets increasingly overlap. Critics of intercountry adoption claim that the process of taking children from their native countries is subject to rampant abuse and risks encouraging the unsavory practice of baby stealing and selling.

The debate over human trafficking in relation to intercountry adoption reveals sending countries’ deep-rooted misgivings about western power and imperial aspirations. Twila Perry observed how intercountry adoption presented a “troubling dilemma” because western families’ access to international children for adoption relies on the continued impoverishment of women in developing countries. Critics of intercountry adoption regularly argue that the power imbalance between sending and receiving nations evokes imperialist and paternalistic narratives of subordination and even genocide. Smolin comments that international adoption has

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43 See generally Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 160. Nov. 15, 2000 (defining human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”).

44 Haiti’s Children, supra note 3.

45 Nicole Bartner Graff, Note, Intercountry Adoption and the Convention of the Rights of the Child: Can the Free Market in Children by Controlled?, 27 SYRACUSE J. INT’L L. & COM. 405, 405 (2000) (“While such adoptions might work out well for the adoptive parents, it is doubtful that the practice is nearly as positive, across the board, for the children and birth mothers involved.”).

46 Bhabha, supra note 13, at 184. See also Bartholet, supra note 10, at 161–62 (noting that the stoppage of intercountry adoptions from Romania in 2000 was “triggered by . . . concerns about payments allegedly made to birth parents in connection with international adoption.”).

47 Solangel Maldonado, Discouraging Racial Preferences in Adoptions, 39 U.C. DAVIS L. REV. 1415, 1448, 1445 (2006) (commenting that “one of the most serious risks surrounding international adoption is the possibility that the child was stolen or sold” and noting that the United States and the United Kingdom “recently banned adoptions from Cambodia after learning that scouts and adoption agencies were paying birth parents for their children”).

48 Martin, supra note 9, at 204 (“[C]ulture and cultural exploitation underlies many of the pros and cons on intercountry adoption. There is much acrimony inherent in the process because of the cultural differences between sending and receiving countries and the historical involvement of receiving countries in the domination and exploitation of sending countries.”).

49 Twila Perry, Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory, 10 YALE J.L. & FEMINISM 101, 105 (1998). See also Kleiman, supra note 10, at 338 (noting that many blacks harbored “[a]n overarching concern of . . . white imperialism” prior to the acceptance of transracial adoption).

frequently been criticized as “child trafficking or as a neo-colonialist child grab.” 51 Another critic of intercountry adoption analogizes adopting foreign-born children to securing a mail-order bride:

Mail-order brides and intercountry adoptions are both by-products of Western/U.S. colonial and imperial activities in Asia and enduring Orientalism within U.S. culture. Differentiating between mail-order brides and intercountry adoptions obscures the imperialism and commodification underlying intercountry adoptions . . . . Mail-order brides make explicit what is implicit in intercountry adoptions—the purchase of Third World citizens to complete the families of a (former) colonial and imperial power.52

Intercountry adoption evokes powerful emotional and fearful responses from (sending) countries53 as well as from legal scholars who are concerned intercountry adoptions represent another form of western economic and political hegemony.54 Critics’ concerns regarding economic and political exploitation within the context of intercountry adoption evoke popular and historical opposition to western cultural imperialism.55 In “Imperialism, Culture, and International Adoption,” Perry observed “colonialism is not simply military and economic—it also has a cultural component.”56 Citing to Said’s early work on cultural imperialism,57 Perry explained that imperial discourse labeled the people living in subjected countries as inferior and exploited this perceived inferiority in order to justify European colonial dominion and expansion.58 Perry concluded, the “conception of poor, third-world countries as subordinate nations fits very comfortably with the practice of international adoption.”59 More recently, Martin characterized intercountry adoption as a form of reverse imperialism: instead of imposing cultural values from outside of a particular community, intercountry adoption immerses the adoptive child in a new, seemingly superior culture, which it expects the child to embrace.60

Introduction to Intercountry Adoption: A Multinational Perspective

1, 2 (Howard Alstein & Rita J. Simon eds., 1991)) (“[W]hat the West has generally viewed as charitable, humane—even noble—behavior, developing countries have come to define as imperialistic, self-serving, and a return to a form of colonialism in which whites exploit and steal natural resources.”).

51 Haiti’s Children, supra note 3. See also Bartholet, supra note 10, at 153 (“[M]any see international adoption as one of the ultimate forms of human exploitation, with the rich, powerful and white taking children from poor, powerless members of racial and other minority groups.”).


53 See Margaret Lui, International Adoptions: An Overview, 8 TEMP. INT’L & COMP. L.J. 187, 195 (1994) (“Citizens of developing countries who also oppose international adoption do so as a result of their history of colonialism. ‘First you want our labor and raw materials; now you want our children,’ is a common response of developing nations to the practice of international adoption.”).

54 Dillon, supra note 51, at 187 (expressing sympathy for the position that intercountry adoption is an imperial endeavor).

55 Martin, supra note 9, at 204 (claiming “culture and cultural exploitation underlies many of the pros and cons on intercountry adoption” and that the “acrimony inherent in the process” largely derives from “the historical involvement of receiving countries in the domination and exploitation of sending countries.”).

56 Perry, supra note 50, at 134.

57 Id. (quoting from Edward Said’s first book-length critique of European imperialism entitled Orientalism).

58 Id.

59 Id. at 135.

60 Martin, supra note 9, at 185.
sense of self, and self-worth. Finally, for many opponents of intercountry adoption the prospect of losing one’s cultural heritage is enough to outlaw intercountry adoption altogether.  

B. ACCOMMODATING THE IMPERIAL PARADIGM

Advocates of intercountry adoption insist that the “benefits” associated with intercountry adoption outweigh the “loss” of the adopted child’s birth heritage, as the terms in quotation marks are subject to interpretation and debate. Bartholet, for example, argued that parentless children are best raised by loving families instead of in “harmful” and “damaging” institutions, such as orphanages, that can care for children in their native countries. She suggests that the risk of abuse or other harms increases when parentless children are not placed for adoption; consequently, countries that claim to protect children by restricting or outlawing intercountry adoption are in fact placing children at greater risk. Similarly, Thompson argued that intercountry adoption promises to solve the global problem of homeless children by placing children, for whom domestic adoption is not a viable option, within a loving and stable family. Advocates prioritize the child’s need for a loving and stable family; they are willing to compromise the child’s possible attachment to his or her birth heritage to ensure the child will be raised by a family rather than an institution.

In addition to emphasizing the benefits of raising the adopted child within a family setting, advocates of intercountry adoption question the extent to which the adopted child is affected by the “loss” of his or her birth heritage. Bartholet, a self-identified proponent of international adoption, suggested that most parentless children do not benefit from remaining within their birth culture. She believed children who grow up in institutions or on the streets of their native countries do not have meaningful access to their cultural heritage. Further, Bartholet argued that adopted children hardly suffer for being adopted by parents who have a different racial and/ or cultural background. She wrote:

While almost everyone tends to assume that children should be placed with birth parents of similar cultural and ethnic background, the issue has been examined fairly extensively in the area of domestic transracial adoption within the U.S., and there is not a shred of evidence in the entire body of social science studies . . . that any harm comes to children from being raised by parents of a different racial or ethnic background.

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61 Id. at 203. See also Linda J. Olsen, Comment, Live or Let Die: Could Intercountry Adoption Make the Difference?, 22 PENN ST. INT’L L. REV. 483, 510 (2004) (“Opponents of intercountry adoption argue that rather than promoting a child’s identity, the practice strips it away and replaces it with a name and identity chosen by the adoptive parents.”); Haiti’s Children, supra note 3 (including an editorial by Professor Cynthia Mabry who cautions that Haitian children who are adopted by families in the United States risk losing their racial and national identities: “they will be placed with people who do not share their race, culture, heritage or language.”).
62 Id. at 203.
63 Bartholet, supra note 10, at 180 (emphasizing “how devastatingly harmful institutional life is for children” and commenting that “[r]esearch on children who started their early life in institutions demonstrates vividly the damage such institutions do even when the children are lucky enough to escape the institutions at relatively early ages.”).
64 Haiti’s Children, supra note 3.
65 Thompson, supra note 8, at 442. See also Martin, supra note 9, at 181 (arguing intercountry adoption “literally save[s] children from such fates as child pornography, prostitution, or forced labor.”).
66 Bartholet, supra note 10, at 178 (“I place myself at the most enthusiastic end of the spectrum of supporters. I find it overwhelmingly clear that international adoption serves the best interests of existing children in need of homes.”).
67 Id. at 180–81.
68 Id. at 192. See also Martin, supra note 9, at 203 (noting that many advocates of intercountry adoption claim that
Thus, advocates generally accept that intercountry adoption displaces the child’s birth heritage, but argue that the affects of this displacement on the adopted child are minimal.

Some advocates challenge the assumption that intercountry adoption severs the child’s ties with his or her birth heritage and thus requires the adopted child to forfeit his or her cultural heritage. Olsen, for example, claimed that adoption proponents support efforts by intercountry adoptive families to affirm a child’s cultural heritage, and that most families encourage their adopted child to embrace his or her birth heritage. Similarly, Bartholet suggested that intercountry adoption may increase cultural awareness and sensitivity by facilitating exchanges across national, socio-economic, and racial boundaries. From this perspective, intercountry adoption does not engender the loss of cultural identity, but rather inspires interest in foreign cultures and peoples.

Despite Bartholet’s claim that intercountry adoption facilities greater cultural awareness, most attempts to label intercountry adoption as a vehicle for cultural exchange are tempered by concerns over cultural authenticity and belonging. Martin, for example, questioned whether adopted children will ever be able to reconnect with their cultural heritage:

Many in favor of intercountry adoption believe that it is important to expose the child to the cultural aspects of the place of his or her birth. But what does that mean exactly? Since the child will have moved to a new country, the parent inevitably exposes the child to these cultural aspects through a Western perspective.

Martin’s comment illustrates how the discussion of cultural identity in the context of intercountry adoption overwhelmingly focuses on restoring the child’s “authentic” or “genuine” cultural identity, which was supposedly compromised during intercountry adoption. According to Martin, attempts to facilitate cultural exchange after the adoption is finalized will likely never rekindle the child’s attachment to the cultural community of his or her birth; rather, it will reinforce the child’s sense of loss and, more importantly, compromise the child’s ability to come to terms with his or her (hybrid) identity as it encompasses, rather than straddles, a minimum of two cultural spheres.

IV. INTERCOUNTRY ADOPTION AND POSTCOLONIAL CRITIQUES OF EMPIRE

A. BEGINNING TO INTEGRATE POSTCOLONIAL THEORY INTO THE DEBATE OVER INTERCOUNTRY ADOPTION

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the transition between cultures has little affect on the adopted child’s wellbeing).

69 Olsen, supra note 62, at 510.
70 Id. at 511. See also Bhabha, supra note 13, at 193 (“Parents of transnationally-adopted children frequently emphasize the links to the child’s country of origin in a search for closure or authenticity, through education, travel, and associational activities.”).
71 Bartholet, supra note 10, at 153.
72 Martin, supra note 9, at 203. See also Bhabha, supra note 13, at 193 (arguing that “[c]hildren, adopted at or shortly after birth and brought up in a developed country, are not really ‘returning’ to a ‘home’ culture, but rather encountering a reified and essentialized construct . . . the country of origin is a distant, foreign land, not ‘home’ in any meaningful sense;” elaborating to note that “[s]uch travel can emphasize the adoptee’s sense of displacement and hybridity, rather than confirming any feeling of belonging.”).
73 See Susan Sterrett, Special Issue on NonBiological Parenting: Introductory Essay, 36 LAW & SOC’Y REV. 209, 222 (2002) (explaining that “incorporating facets of diverse cultures in the way [foreign-born adopted] children are reared never erases the fact that these children do not quite feel they belong where they are.”).
In her recent discussion of “monohumanism” and a child’s right to be raised within his or her birth culture, Shani King exposed some damaging stereotypes in the debate over intercountry adoption. Drawing from Edward Said’s reading of Empire in Orientalism, King argued that (western) proponents of intercountry adoption engage in the same process of cultural and racial “othering” as European scholars employed to discount the worth of non-European peoples and to justify European colonial expansion throughout the nineteenth century. She wrote:

the picture of the ‘international child’ accepted by Western society . . . is the picture that we have painted to suit our own needs, a picture that does not always reflect the true needs of the sending countries or uncover the children who are truly most in need of parents.

For example, King argued that the “rescue narrative” often evoked by advocates to support intercountry adoption is a gross distortion: it unfairly denigrates the competency of foreign governments and perpetuates the false impression that all children in the so-called “third world” are in desperate need of being rescued. For King, the process of exposing western stereotypes about the “other” promises to locate contentious debate over the merits of intercountry adoption within the broader, more robust debate over how best to care for parentless children throughout the world as this debate addresses issues like the distribution of domestic resources and the impact of foreign investment and aid on developing countries.

King’s assertion that children have a right to be raised within the culture into which they were born comes dangerously close to mimicking the assumptions regarding culture and cultural development that informed European colonial expansion during the nineteenth and early twentieth centuries. Her insistence that the adopted child’s birth culture should act as a counterweight to the influence of the adoptive parents’ cultural identity, contradicts postcolonial theories of cultural hybridity, which posit cultures are interrelated and develop, not in isolation, but through interaction. Her assumption that cultures can be compared and contrasted perpetuates the notion of an “authentic” and essential cultural identity, which perpetuates the oppositional paradigms—us/ them, black/ white, center/ periphery, colonizer/ colonized (the child’s cultural identity/ the parent’s cultural identity) that shaped imperial discourse.

74 King, supra note 51, at 470 (asserting that our present failure to “to come to terms with our imperialist orientation toward the world” has lead to grievous violations of children’s rights).
75 EDWARD W. SAID, CULTURE AND IMPERIALISM 41 (1993) (explaining that he wrote Orientalism “to show the dependence of what appeared to be detached and apolitical cultural disciples upon a quite sordid history of imperialist ideology and colonialist practice.”).
76 King, supra note 51, at 414–15 (“The narrative of identity that accompanies MonoHumanism subscribes both universality and superiority to Western knowledge and discourse, which effectively results in the exclusion and displacement of the knowledge and discourse of historically oppressed peoples.”).
77 Id. at 425.
78 Id. at 439.
79 Id. See also id. at 440 (debunking the common assumption that all sending countries are impoverished: “China and Russia, the two leading ‘sending’ countries, have recently experience consistent economic growth . . . . China, the largest sending country, has been described as an economic powerhouse.”); Martin, supra note 9, at 205 (noting that the Hague Convention defines family in terms of the western nuclear family and imposes this definition on sending countries, many of whom define family in broad terms).
80 King, supra note 51, at 463.
81 Id. at 470 (arguing, “the right of a child to be raised in the context of her family and her culture is essential to pulling us back from the simplistic and ethnocentric notion that it is always in the best interest of a child to be raised in a more affluent and formally educated family”).
82 SAID, supra note 76, at xxv.
King’s self-identified postcolonial critique proves the difficulty, but also the importance, of extracting scholarly discourse from the imperial principles that have informed academic disciplines for well over two hundred years. Her article highlighted the imperial underpinnings of the present debate over intercountry adoption only to rely on the “binary opposition[s]” that, by King’s own account, assumes the “hierarchical inferiority of the previously colonized populations.”

This Article takes a different approach. It affirms the “obvious” relevance of postcolonial theory to the debate over intercountry adoption and the need for increased self-reflection and scrutiny on behalf of legal scholars to avoid inadvertently perpetuating cultural stereotypes. It resists, however, assuming that cultural identity is anchored to a specific geographic location as this assumption automatically and permanently associates intercountry adoption with the loss of cultural identity and perpetuates theories of cultural difference.

B. POSTCOLONIAL THEORIES OF CULTURE: EDWARD SAID AND CULTURAL HYBRIDITY

In Culture and Imperialism, Edward Said argued that traditional conceptions of “national culture” inherently involve a sense of difference:

You read Dante or Shakespeare in order to keep up with the best that was thought and known, and also to see yourself, your people, society, and tradition in their best lights. In time, cultures come to be associated, often aggressively, with the nation or the state; this differentiates ‘us’ from ‘them,’ almost always with some degree of xenophobia. Culture in this sense is a source of identity, and a rather combative one at that.

Said observed that the “us/ them” opposition was the hallmark of European imperial discourse. European colonists simultaneously differentiated and exulted their traditions and values from and over the indigenous cultures they came into contact with and frequently conquered. As Europe’s colonial empires became more established during the nineteenth century, imperial discourse became increasingly dominated by binary paradigms that elevated the colonizer above the colonized.

European imperialists and academics manipulated the historical and scholarly record to perpetuate the notion of European cultural superiority and consequently to facilitate colonial expansion. In Orientalism, Said explained how writers and academics from a variety of disciplines “accepted the basic distinction between East and West as the starting point for elaborate theories . . . and political accounts concerning the Orient, its people, [and] customs.” According to Said these “theories” and “political accounts” allowed Western powers to control and ultimately restructure the histories and cultures of the Orient. For example, in Black Athena Martin Bernal explained how classicists traditionally privileged cultural isolation over cultural integration: they required proof of contact between different peoples and societies to facilitate an exclusively European conception of Ancient Greece. Bernal explained that early

83 King, supra note 51, at 426.
84 Id. at 428.
85 SAID, supra note 76, at xiii.
86 Id. at xxv.
87 King, supra note 51, at 414 n.2 (acknowledging that European scholars during the colonial era frequently substituted their view of indigenous cultures for the view supported by the historical and cultural record).
89 Id. at 3.
classicists and historians minimized the significance of the “profound cross-cultural influences” and “close contacts” between Egypt and Ancient Greece to justify the racist and anti-Semitic attitudes of colonial Europe. Thus, European scholars invented and edited historical narratives to add credence to imperial ideas of cultural difference and superiority. As Terence Ranger explained, colonial administrators in Africa fabricated traditions to cement their authority over considerable numbers of African peoples. Colonialists employed these fabricated traditions to define and justify their positions of authority over local African populations and to encourage subservience to European colonial rule. Notions of a “unique” cultural identity informed and facilitated the European imperial enterprise as it sought to justify colonial expansion in terms of European cultural and racial superiority.

Ironically, despite the fact that colonial administrators perpetuated ideas of cultural difference to justify the colonial enterprise, the colonial encounter facilitated a large-scale exchange of values and technical know-how. Discussing Britain and France’s colonial forays in the “New World,” Jonathan Hart noted that actions ranging from kidnapping to interpretation, translation, trade, and marriage resulted in Native Americans having a considerable cultural impact on the first European settlers in North America. Similarly, early European trade with India resulted in a dialogue that involved both goods and ideas: “the silks and spices imported into Europe’s mercantile economy were accompanied by less tangible cultural commodities which found their way into Europe’s intellectual economy.” European colonial expansion involved a tremendous exchange of goods and knowledge that took place under the myth of European cultural superiority, as this myth prized cultural purity over cultural hybridity.

Later attempts to “educate” colonialists in western ideas and beliefs facilitated the comingling of cultures in defiance of imperial paradigms that distinguished between European and indigenous cultures. Despite Lord Macaulay’s rigorous, if wholly misguided, efforts to establish “a class of [Indian] persons” that embraced English culture and learning, British colonial exploits, like the exploits of other European colonial powers, failed to fully assimilate the colonized into the colonizer’s culture. In reality, the imperial curriculum created a class of persons born into native customs and beliefs, but schooled in the European intellectual tradition. Describing her upper-middleclass Egyptian family, Leila Ahmed wrote, “[w]e were intended . . . to be the brokers of the knowledge and expertise of the West, brokers between the two cultures, raised within the way of our own people yet at ease with the intellectual heritage of

91 Id. at 3.
92 Id. at 2.
93 Id. at 3 (observing, “earlier classicists and ancient historians not only operated in racist and anti-Semitic societies but were sometimes pioneers of these unsavory movements.”).
95 Id.
99 Id. See also SVATI JOSHI, RETHINKING ENGLISH: ESSAYS IN LITERATURE, LANGUAGE, HISTORY 125 (1991) (noting that “[t]hrough the introduction of Shakespeare and Milton . . . British education policy aimed at . . . creating a class which could be ideologically incorporated” into British society).
British attempts “to convince the natives that colonialism came to lighten their darkness” created a hybridized class or community of persons within colonized society, the existence of which complicated European theories of cultural difference. Said acknowledged the devastating effects of imperial narratives of European cultural and intellectual hegemony; however, he insisted colonialism facilitated the rapid, massive, and permanent integration of all major world cultures. European colonialism did not initiate the process of cultural exchange, but it did dramatically increase the rate and intensity of the cultural exchanges that scholars like Bernal suggested routinely occurred throughout the course of human history. Said asserted that empire is significantly responsible for the hybridization of all major world cultures and permanently undermined the imperial conception of culture as singular and monolithic. Thus, Said argued that European efforts to separate the colonizer from the colonized failed: European colonization was “insidious and fundamentally unjust” but also a shared experience that profoundly affected colonizer and colonized alike.

Despite concerted attempts by European countries like Great Britain and France to indoctrinate colonized peoples into European traditions, values, and learning, indigenous peoples never fully submitted to the yoke of European conquest. Indigenous peoples resisted European colonialism with sufficient force to have a profound affect on their colonial masters; “to ignore or otherwise discount the overlapping experience of Westerners and Orientals, the interdependence of cultural terrains in which colonizer and colonized co-existed and battled each other . . . is to miss what is essential about the world in the past century.” Said did not suggest cultural differences do not exist; rather, he emphasizes the similarities between cultures as these similarities result from millennia of exchanges between diverse peoples. From Said’s perspective, postcolonial theory represents a fundamental shift away from imperial conceptions of culture as the unique product of a specific nation or people and toward an understanding of culture that accounts for the many cultural interactions that have occurred throughout history.

The formal divisions within imperial discourse obscured the existence of the types of cultural exchange that have informed and shaped world cultures for thousands of years. As Said observed, the notion of an authentic or essential cultural identity is an imperial fiction rather than an empirical truth. Ironically, European cultural imperialism was itself not a pure product of European thought and imagination:

The discursive forms and ideological configurations of colonialism are not produced monolithically but inevitably in the mesh of collusion and contradiction between the colonizers and the colonized. It is important to recognize this in order to see not only differences and opposition but also affiliations and overlaps between colonial and indigenous interests and perceptions as they have a significant bearing on our subsequent history and cultural formation.
The formal divisions within colonial society masked the intensity of the cultural exchange that occurred during the colonial era and continues to impact how former colonizer and colonized nations define themselves today. Despite the rise of multiculturalism, or cultural hybridity, in western and non-western countries, Said cautioned that colonial paradigms continue to both influence academic discussions and discourse and shape common perceptions of culture.  

He cautioned, however, that the practice of differentiating between peoples and cultures continues to influence scholarship both in the western world and in nations that continue to resist the cultural and economic encroachments of Europe and the United States. Although Said celebrated the end of colonial exploitation, he warned of the continued influence of imperial paradigms on contemporary thought.

V. DEVELOPING THE POSTCOLONIAL PARADIGM OF INTERCOUNTRY ADOPTION

Postcolonial attempts to redefine the paradigms and codifications that characterize imperial discourse support intercountry adoption, even as they re-imagine the process of adopting children from abroad as a lateral cultural exchange in which no one culture dominates. Thomas Cartelli described postcolonial theory as a “fertile and creative” area of contemporary scholarship that intersects European and indigenous cultures and removes any suggestion that one culture is superior to another. Similarly, Franciose Lionnet claimed postcolonial theories of cultural hybridity provide for pluralistic and democratic scholarly exploration by pointing to lateral, as opposed to hierarchical, connections between cultures and their common histories. The dismantling of colonial paradigms by postcolonial theorists allows legal scholars to re-imagine intercountry adoption as emblematic of the cultural hybridization that these theorists argue has occurred for centuries.

The postcolonial paradigm for intercountry adoption supports programs that attempt to integrate the multiple cultural influences that inform the adopted child’s unique sense of personal identity. It rejects the “love conquers all” approach to intercountry adoption, as this approach marginalizes the significance of the adopted child’s birth heritage and emphasizes assimilation over cultural hybridity. The postcolonial paradigm accommodates the adopted child’s right to

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107 Said, supra note 76, at xxv. 
108 Id. at xxvi. See also Ahmed, supra note 101, at 131 (“Now, in the wake of immigrations that came with the ending of the European empires, tens of thousands of Muslims are growing up in Europe and America, where they take for granted their right to think and believe whatever they wish.”). 
109 Said, supra note 76, at xxv. See also Franciose Lionnet, Autobiographical Voices: Race, Gender, Self-Portraiture 5–6 (1991) (“We can be united against hegemonic power only by refusing to engage that power on its own terms, since to do so would mean becoming ourselves a term within that system of power. We have to articulate new visions of ourselves, new concepts that allow us to think otherwise, to bypass the ancient symmetries and dichotomies that have governed the ground and the very condition . . . of Western philosophy.”). 
112 Lionnet, supra note 110, at 7. 
113 Ruth-Arlene W. Howe, Redefining the Transracial Adoption Controversy, 2 Duke J. Gender L. & Pol’y 131,
know his or her cultural identity; however, it construes this right as a means of nurturing and enhancing the adopted child’s multicultural identity rather than merely recovering a specific cultural identity somehow lost during the process of intercountry adoption. The paradigm frames cultural exchange as a horizontal rather than vertical motion; it celebrates cultural diversity while resisting imperial notions of cultural difference in which one cultural identity is prized above another cultural entity.

Postcolonial theory embraces individual families’ efforts to develop ties with their adopted child’s native country as well as domestic and international efforts to provide adoptees and their families with institutional support. It resists, however, the common perception of culture as an exclusive entity, as this perception emphasizes cultural differences rather than similarities. The postcolonial paradigm challenges the common practice of equating culture with geographical location since this equation perpetuates the idea that nation-states have a monopoly on cultural identity and authenticity. Instead, the paradigm encourages adoptees to explore their multifaceted cultural identities without confining this exploration to the relatively tidy (and immovable) parameters of geographic space. Finally, the theory of cultural hybridity encourages adoptive parents to identify and critique their cultural assumptions, and to better integrate their cultural values with the values manifest in the child’s birth culture.

Postcolonial approaches to intercountry adoption identify the formal and informal cultural exchanges that occur within the context of intercountry adoption as an important first step toward establishing a more open-ended and pluralistic cultural narrative. As Bartholet noted, adoption agencies often encourage prospective intercountry adoptive parents to raise their child with an understanding of his or her cultural heritage. Bartholet also commented that strong social and economic bonds frequently develop between the adoptive family and the child’s native country. Further, some sending nations have introduced formal measures designed to encourage cultural exchange. For example, many sending countries require prospective adoptive parents stay in the sending country for a period of time—ranging from a few weeks to a few months—before the adoption can be finalized. These types of private and governmental initiatives should be supported because they foster greater cultural exchange and awareness between the families and nations in an intercountry adoption.

The postcolonial paradigm for intercountry adoption facilitates a cultural exchange founded on principles of inclusivity rather than difference. The paradigm refuses to conflate culture with country as the concept of the “nation state” is a product of imperial discourse and the antiquated perspective that cultures are distinguishable (and, in turn, easily conquered). To this end, the postcolonial paradigm for intercountry adoption encourages sending countries to establish a presence in prominent receiving countries, such as the United States, and provide cultural resources and information to adopted children and their parents. By establishing a cultural presence in the receiving country, the sending country literally locates its cultural heritage beyond the physical boundaries of the nation state. This cultural presence provides an

114 Martin, supra note 9, at 210.
115 LIONNET, supra note 110, at 243 (identifying postcolonial theory as an attempt to establish “a reality that emphasizes relational patterns over autonomous ones . . . [and] interconnectedness over independence”).
116 Bartholet, supra note 10, at 196.
117 Id. (noting adoption agencies and adoptive parents often donate money to orphanages in foreign countries and that parents of adopted children assume a responsibility for the “children left behind” in their child’s native country).
118 Kleiman, supra note 10, at 332.
alternative location of cultural insight and authority that, although the location is state-sponsored, shows cultures frequently transgress national borders. Sending countries could and should draw from existing resources in the receiving country—museums, universities, even restaurants—to highlight previous cultural transgressions and foster the idea that cultures can and do function in partnership with one another.

Further, the postcolonial paradigm for intercountry adoption advocates that families and adoption agencies forge individual and cooperative alliances with non-government organizations, such as cultural organizations and social groups that may serve as alternative locations of cultural meaning for adopted children and their families. Although local resources may not be as extensive as those available within and throughout the sending country, local resources have the practical advantage of being relatively easy to access and can avail themselves to families in multiple ways. For example, Families with Children from China is a non-profit organization with local chapters in the United States, Canada, and the United Kingdom; these chapters sponsor events celebrating Chinese festivals and holidays and provide Chinese language and culture classes for families who adopted a child from China. Similarly, Families for Russian and Ukrainian Adoption (FRUA), a Virginia-based organization, hosts cultural events and an annual education conference for families who adopted a child from Russia or from a former Soviet-bloc country. FRUA also provides financial support for orphanages in Russia and the Ukraine. The fact that these organizations serve as cultural resources for parents who have adopted a foreign-born child undermines the assumption that nation-states are the primary and exclusive source of authentic cultural meaning by integrating foreign cultural traditions and ideas into the adoptive family’s immediate community.

Cooperation between local cultural organizations and parents who have foreign-born adopted children may be limited to merely facilitating communication between different sets of adoptive parents. For example, the Eastern European Adoption Coalition manages a number of list serves that allow families who have adopted a child from Russia or a country in Eastern Europe to locate other families who adopted a child from the same region. Communication between members may be limited to sharing information about upcoming programs and exhibits; alternatively, communication may facilitate close personal relationships that serve as viable locations of cultural and personal meaning as this meaning is not always easily parcelled into distinct national categories.

Encouraging parents who adopted children from foreign countries to seek out alternative locations of cultural meaning, however informal these locations prove to be, has the added benefit of reinforcing the idea that culture is both diverse and dynamic. The wide-spread prevalence of non-government cultural institutions and organizations in receiving countries like the United States reveals the integration of many non-western cultures into western society and, subsequently, demonstrates how seemingly disparate cultures merge to produce new, hybrid sources of cultural identity. Local cultural organizations and programs, particularly those established by immigrant communities, may offer families a rare opportunity to learn about their adopted child’s birth heritage and how cultures develop through exposure to outside influences.


For example, a local Chinese cultural organization may be able to introduce an American family who adopted a daughter from China to Chinese and Chinese-American culture, as the latter embodies aspects to two major world cultures. In this respect, non-government cultural organizations promise to teach families about their adopted child’s birth culture and help parents integrate their cultural values with the values manifest in their child’s birth heritage.

On a more subjective level, the postcolonial paradigm for intercountry adoption demands that parents examine their cultural assumptions and beliefs at the same time that they attempt to understand, appreciate, and accommodate their adopted child’s cultural heritage. The postcolonial paradigm requires adoptive parents to question their cultural assumptions in much the same way that critical race theory insists white Americans identify the privileges that accompany “whiteness” in our society.\footnote{Flagg, supra note 123, at 6. See also Wildman, supra note 123, at 256 (“The maintenance of whiteness, the recreation of that community, remains unseen.”).} Barbara Flagg described “whiteness” as “a social location of power, privilege, and prestige”\footnote{Flagg, supra note 123, at 6. See also Russell G. Pearce, White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law, 73 FORDHAM L. REV. 2081, 2083 (2005) (criticizing the legal community for tending to both “treat whiteness as a neutral norm or baseline, and not a racial identity, and . . . view racial issues as belonging primarily to people of color”).} that shapes our personal and social identities,\footnote{Flagg, supra note 123, at 2. (“The first metaprivilege of Whiteness is the ability to control the social construction of racial identity. Whiteness has the authority not only to define who is and is not White, but also to delineate the boundaries of non-White racial identities.”)} but that hides its influence “behind structures of silence, obfuscation, and denial.”\footnote{Flagg, supra note 123, at 2. (“Race is not a natural, self-evident, or timeless idea. It exists as a social construction. Its primary work is to express two parallel and intertwined conceptions—the inferiority of the non-White and the always corresponding superiority of the White race.”); Stephanie M. Wildman, The Persistence of White Privilege, 18 WASH. U. J.L. & POL’Y 245, 247 (2005) (claiming that the “conflation of privilege with the societal norm” makes the privilege invisible and therefore elusive).} In this sense, “whiteness” represents an invisible yet repressive force within American culture. For Flagg, “whiteness” is dangerous because it defines what is “normal” within American culture without acknowledging that it operates within a race-specific context.\footnote{Flagg, supra note 123, at 11. See also Wildman, supra note 123, at 264–65 (arguing that white Americans need to “pay more attention” to and to become “more self-conscious” of the “socio-cultural patterns and the material conditions that maintain the white privilege reality” even as this process evokes considerable discomfort within whites).}

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Finally, adoption agencies and sending countries should create and maintain guidance and counseling programs that help parents to become more aware of the cultural contexts in which they live. Parents’ intimate knowledge of their own cultural background will likely make them conscious of the gaps or inconsistencies within their cultural identity; these “gaps” are significant in so far as they make parents more receptive to new cultural influences (that promise to fill the gaps) and encourage parents to embrace their adopted child’s unique cultural and personal needs. The cultural interrogation facilitated through specialized counseling programs
will help parents take control of their cultural identity; it will help parents to separate their seemingly cohesive national identity into its various parts and manipulate these parts to accommodate the nuances of their adopted child’s hybrid cultural identity. The mastery of careful self-critique and reflection will help parents to integrate their cultural values with the values manifested in the adopted child’s birth heritage and, consequently, to foster the adopted child’s hybrid cultural identity.

CONCLUSION

As King suggested, postcolonial theory challenges legal scholars to question their assumptions regarding culture and cultural identity to engage in expansive and transparent discussions of the challenges facing intercountry adoption. Postcolonial theories of cultural hybridity promise to displace the protectionist and paternalistic attitudes toward sending nations that inform contemporary critiques of intercountry adoption. Postcolonial theory also promises to reverse the trend toward cultural isolation and resist attempts to restrict intercountry adoption based on nationalist fears of western imperialism. Further, the postcolonial paradigm for intercountry adoption will likely facilitate debate over pressing issues such as how national pride or different conceptions of family affect intercountry adoption, as these issues are frequently overshadowed by concerns over western imperialism. Overall, postcolonial theories of cultural hybridity have the potential to reanimate the debate over intercountry adoption, which has become highly polarized and intellectually entrenched. Postcolonial critiques of European colonialism, as they reject the imperial perception of culture as monolithic, encourage—even authorize—legal scholars to venture beyond the confines of imperial discourse to examine how, within the context of intercountry adoption, cultures are best shared and explored, rather than confined to geographically-determined places.

128 Bartholet, supra note 10, at 152. See also Martin, supra note 9, at 186 (“Internally, many sending countries have increasingly shied away from intercountry adoption, demonstrating a deep-seated, fundamental discomfort with the notion. For these countries, intercountry adoption is a source of shame that highlights their limited resources.”).

129 Martin, supra note 9, at 198 (noting “advocates, primarily from developing countries, tend to view children with non-traditional family ties as abandoned, instead of examining whether other, more expansive caretaking roles are fulfilling the child’s need for a family.”).

130 Id. at 179 (emphasizing the current debate over intercountry adoption is characterized by “sides” and the “rhetoric on these two sides allows little room for accommodation.”). See also id. at 174 (“[F]ocusing on the positives or negatives in the debate amounts to a stand-off in which neither side is willing to compromise any ground, a perpetual lose-lose situation.”).