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A New Class of Persons: Intercountry Adoptees and Postcolonial Theories of Cultural Hybridity

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The recent earthquake in Haiti thrust the debate over intercountry adoption into the mainstream media. ABC News reported that before the earthquake devastated Haiti on January 12, 2010, there were 380,000 parentless Haitian children. Estimates reported in the New York Times suggest that the earthquake has orphaned hundreds of thousands of additional Haitian children who are now in need of being placed with adoptive families. 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. Further, the actions of the Baptist missionaries whom the Haitian government charged with human trafficking, have intensified the bitter debate over western political, economic, and cultural influence in developing countries.

This paper explores the cultural and political narratives that underlie the frequently fraught debate over intercountry adoption. I argue that despite the vast economic disparities that are manifest 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, I claim that the practice of intercountry adoption exemplifies

1 George Waddington received his Ph.D. in English from the University of Texas at Austin and is currently enrolled as a third-year student at the University of Maryland School of Law. He has published articles on British imperialism and on postcolonial theory in peer-reviewed journals.
4 Id.
the process of linguistic, technical, material, and artistic exchange that has traditionally shaped world cultures and facilitated their advancement. I situate “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 that resists the conventional notion that individuals belong to a single cultural community.

I maintain that attempts to restrict intercountry adoption in order to insulate developing nations from western cultural influences perpetuate imperial notions of cultural identity as these notions assume that 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 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 essay is divided into six major parts. First, I situate 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, I document the resistance among sending countries and non-government institutions to removing children from their birth cultures. Third, I examine
how imperial conceptions of culture as “authentic” and “pure” inform opponents and advocates’ views of intercountry adoption. Fourth, I critique how legal scholars have employed postcolonial theory to interrogate some of the cultural assumptions that inform the debate over intercountry adoption. I also examine the postcolonial theory of cultural hybridity as it rejects the idea that individuals possess an essential, unique cultural identity. Fifth, I suggest how postcolonial theories of cultural hybridity might manifest themselves in the context of intercountry adoption. I argue that the postcolonial paradigm for intercountry adoption celebrates the adopted child’s multifaceted, or hybrid cultural identity as this identity defies easy categorization and is emblematic of the larger processes of cultural interaction and exchange that have shaped world cultures for centuries.

Before I begin my critique of intercountry adoption, I wish to clarify my use of certain scholarly terms whose meanings have been obscured through popular use. I use the words “imperial” and “colonial” repeatedly and often interchangeably throughout this article, but not without respect for their different definitions. Imperialism connotes “an ideological concept which upholds the legitimacy of the economic and military control of one nation by another.”5 Colonialism, on the other hand, is “one form of practice which results from the ideology of imperialism, and specifically concerns the settlement of one group of people in a new location.”6 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”7 is more applicable to colonialism than it is to imperialism. Both “imperialism” and “colonialism” denote aggressive systems of economic and cultural control; colonialism has,

5 John McLeod, BEGINNING POSTCOLONIALISM 7 (2000).
6 Id.
however, a more tangible application than imperialism. Also, I use the term “postcolonial” to refer to the critical and artistic movement that is 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.

**The Increasing Significance of Intercountry Adoption**

Intercountry adoption has traditionally straddled disparate national and economic interests. It emerged in the mid-twentieth century as a response to the devastation wreaked on Europe by 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.\(^8\) The Korean War also prompted a wave of intercountry adoptions by American families who adopted several thousand Korean children who were left parentless by the war.\(^9\) 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\(^10\) and China is the principal sending country.\(^11\) As


\(^10\) 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).

\(^11\) Martin, *supra* note 9, at 177.
the surge in interest in adopting children left parentless by the earthquake in Haiti reveals,\textsuperscript{12} 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 adoptions. Jacqueline Bhabha claims that “adoption in developed countries is still primarily a domestic affair” with intercountry adoptions accounting for about one-sixth of adoptions in the United States.\textsuperscript{13} Despite recent declines in the annual number of intercountry adoptions orchestrated by families in the United States,\textsuperscript{14} long-term patterns indicate that the number of intercountry adoptions is steadily increasing. Elizabeth Bartholet observes that the overall trend shows “the numbers of children from other countries coming into the U.S. rising over the years.”\textsuperscript{15} Similarly, Notesong Thompason claims that “international adoptions have gained enormous popularity and the momentum for going overseas to find an adoptable child continues to build.”\textsuperscript{16} 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.\textsuperscript{17}

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

\begin{itemize}
\item \textsuperscript{13} Jacqueline Bhabha, \textit{The Future of International Regimes: Organizations and Practices: Moving Babies: Globalization, Markets, and Transnational Adoption}, 28 FLETCHER F. WORLD AFF. 181, 189 (2004). See also Kleiman, \textit{supra} note 10, at 328 (noting that some studies estimate that intercountry adoptions constitute sixteen percent of all non-relative adoptions in the United States).
\item \textsuperscript{14} Bartholet, \textit{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).
\item \textsuperscript{15} \textit{Id.}
\item \textsuperscript{16} Thompason, \textit{supra} note 9, at 446.
\item \textsuperscript{17} Bhabha, \textit{supra} note 13, at 188.
\end{itemize}
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 industrial nations. At the same time, demand for children remains strong: “fewer children are available for domestic adoption, while there remain large numbers of people eager to adopt.” Bartholet argues that the increasing acceptance of adoption within the United States combined with rising infertility rates (she approximates that 6.1 million or 10% of future parents are infertile) has created “a large population of prospective international adoptive parents” within the United States alone. 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. The Convention recognizes “that 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 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.

**Insulating the Developing World Against the Affects of Western Culture and Society**

Despite the general increase in the number of intercountry adoptions that take place throughout world, the recent decline in the number of children available for adoption from

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18 Thompason, *supra* note 8, at 446.
19 *Id.*
20 Bartholet, *supra* note 10, at 164. *See also* Thompason, *supra* note 8, at 446 (“American citizens, in particular, are seeking to adopt children overseas in ever increasing numbers because the reduction in children available for adoption in the United States.”).
22 *Id.* at Ch. 33, Introduction.
traditional supply nations like China and Russia\textsuperscript{23} suggests a growing unease with and even opposition to the practice of intercountry adoption. Bartholet reports that as of 2003 almost half of the forty countries that had appeared within the last fifteen years on the top-twenty list of countries sending children to the United States for adoption had closed, or effectively closed, their intercountry adoption programs.\textsuperscript{24} Recent declines in the number of foreign-born children adopted by American families also suggest a growing resistance on the part of developing nations to supplying children for international adoption.\textsuperscript{25} Martin writes: “many countries (predominantly potential sending countries) refuse to participate in intercountry adoptions.”\textsuperscript{26} For example, India passed legislation that radically reduced the number of children available for intercountry adoption\textsuperscript{27} and Russia is establishing new regulations that will make adopting a child from Russia more difficult for American parents.\textsuperscript{28}

The international laws that govern 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”

\begin{itemize}
  \item Martin, \textit{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). \textit{See also} Clifford Levy, \textit{Russia Seeks Ways to Keep Its Children}, \textit{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).
  \item Bartholet, \textit{supra} note 10, at 153.
  \item \textit{Id.} at 153-154.
  \item Martin, \textit{supra} note 9, at 175. \textit{See also} Bhabha, \textit{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”).
  \item Bartholet, \textit{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).
\end{itemize}
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 its State of origin.” The Convention also states that sending countries should “give due consideration to the child’s upbringing and to his or her ethnic, religious and cultural background.” As Martin observes, the Convention does not represent “a means of developing families along cross-cultural lines”; instead, it reflects “the high priority many countries place on culture and national identity.” 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

29 Office of the High Commissioner for Human Rights, Convention on the Rights of the Child, art. 21(b), Sept. 2, 1990. See also Bartholet, supra note 10, at 171-72 (observing that “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 Id.

31 Hague Convention, supra note 21, Introduction. See also The Permanent Bureau, Guide to Good Practice Under the Hague Convention of May 29, 1993 (Guide to Good Practice) 73 (August 2005) (“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.”).

32 Id. 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.”).

33 Martin, supra note 9, at 192.

34 Id. at 200.
and preserve the adopted child’s cultural heritage. The guidelines suggest that sending countries may wish to limit intercountry adoptions to countries that share “close cultural links” such as “a common language.”

The United Nations (UNICEF) and the European Union (EU) both advocate for restricting intercountry adoption. UNICEF has consistently opposed intercountry adoption except in the most dire of circumstances. The organization considers 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 that “national (domestic) solutions are generally preferable to those involving another country” and that intercountry adoption is “subsidiary” to programs that provide permanent family-based solutions within the child’s native country. The European Union assumes a similarly skeptical view of international adoption: Romania ended its intercountry adoption program as a prerequisite for 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.

**Intercountry Adoption as Loss of “Authentic” Cultural Identity**

Both opponents and advocates of intercountry adoption assume that intercountry adoption displaces the adopted child’s birth heritage and therefore compromises the child’s “authentic”

36 Thompason, supra note 8, at 453 (“UNICEF... strongly opposes severing a child’s native ties with their country of origin through international adoption.”).
38 Id.
39 Martin, supra note 9, at 187.
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 also 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 of the 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 that, “God wanted us to come here to help children.”40 She also commented that she “wanted to give them [Haitian children] lives of joy and dignity in God’s love.”41 Ms. Silsby’s statements evoke the example of “the Clapham evangelist,”42 Charles Grant, who, in the late eighteenth century, established a series of missionary schools in Bengal for the “improvement” of the indigenous

41 Id.
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 that the practice 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 “flourish amid 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 that intercountry adoption exploits people from poor nations to the benefit affluent adoptive parents living in the United States and Europe.

Bhabha argues that the market for children who have been approved for adoption by foreign parents and the

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44 *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.”).
45 The Editors, *supra* note 3.
46 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.”).
human trafficking market “are not as separate as has been traditionally thought, and, most worryingly, the overlaps may be increasing in scope and significance.” Critics of intercountry adoption caution 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 regarding western power and imperial aspirations. Twila Perry observes that intercountry adoption presents a “troubling dilemma”: “the access of affluent white Western women to children of color for adoption is often dependent upon the continued desperate circumstances of women in third world nations.” Critics of intercountry adoption regularly argue that the power imbalance between sending and receiving nations evokes “colonialist and paternalistic” narratives of subordination and even genocide.

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47 Bhabha, supra note 13, at 184. See also Bartholet, supra note 10, at 161-162 (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.”).

48 Solangel Maldonado, Discouraging Racial Preferences in Adoptions, 39 U.C. DAVIS L. REV. 1415, 1448 and 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”).

49 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.”).

50 Twila Perry, Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory, 10 YALE J.L. & FEMINISM 101, 105 (1998). See also Martin, supra note 9, at 339 (noting that many blacks harbored “[a]n overarching concern of . . . white imperialism” prior to the acceptance of transracial adoption).

comments that international adoption has frequently been criticized as “child trafficking or as a neo-colonialist child grab.” 52 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. 53

Intercountry adoption evokes powerful emotional and fearful responses from (sending) countries 54 as well as from legal scholars who are concerned that intercountry adoptions represent another form of western economic and political hegemony. 55

Critics’ concerns regarding economic and political exploitation within the context of intercountry adoption evoke popular and historical opposition to western cultural imperialism. 56

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.”).

52 The Editors, 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.”).


54 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.”).

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

56 Martin, supra note 9, at 204 (claiming that “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”).
In her discussion of “Imperialism, Culture, and International Adoption,” Perry observes that “colonialism is not simply military and economic—it also has a cultural component.” Citing to Said’s early work on cultural imperialism, Perry explains that imperial discourse considered “the country that is being militarily and economically subjugated” to be “comprised of an inferior people, and in the eyes of the conqueror, this inferiority justifies the conquest and continued domination.” Perry concludes that the “conception of poor, third-world countries as subordinate nations fits very comfortably with the practice of international adoption.” More recently, Martin characterized international adoption as a form of reverse imperialism: “Instead of imposing a set of cultural values from the outside in, this form of imperialism takes a child and forces him to adjust to a new, seemingly better way of life.” Opponents charge that intercountry adoption facilitates “the loss of a child’s cultural heritage” and that this loss “leads to the loss of the child’s identity,” sense of self, and self-worth. Finally, for many opponents of intercountry adoption “the threat of loss of cultural heritage can be enough to proscribe intercountry adoption altogether.”

b) Accommodating the Imperial Paradigm

57 Perry, supra note 50, at 105.
58 Id. (quoting from Edward Said’s first book-length critique of European imperialism entitled Orientalism).
59 Id. at 135.
60 Id.
61 Martin, supra note 9, at 185.
62 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, 511 (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.”); The Editors, 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 loosing their racial and national identities: “they will be placed with people who do not share their race, culture, heritage or language”).
63 Martin, supra note 9, at 203.
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, argues 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 states: “it is hypocritical to delay or shut down . . . [intercountry] adoption in the name of protecting children. The real risk of abuses occurs when unparented children are not placed for adoption.”

Similarly, Thompason argues that intercountry adoption presents “a realistic and viable solution to the plight of homeless children around the world” and “offers the advantage of a permanent family to a homeless child for whom a suitable family has not been found in the child’s country of origin.” 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 that the child will be raised by a family rather than in an institution.

In addition to emphasizing the benefits to the adopted child of being raised 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, suggests that most parentless children do not benefit from remaining

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64 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”).
65 The Editors, supra note 3.
66 Thompason, supra note 8, at 442. See also Martin, supra note 9, at 181 (arguing that intercountry adoption “literally save[s] children from such fates as child pornography, prostitution, or forced labor”).
67 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.”).
within their birth culture: “Children doomed to grow up in orphanages or on the streets cannot
expect to enjoy their cultural heritage in any meaningful way.”68 Further, Bartholet argues that
adopted children hardly suffer for being adopted by parents who have a different racial and/or
cultural background to the adopted child. She writes:

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.69

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 so requires that the adopted child forfeit his or her cultural
heritage. As Olsen observes, “[t]here is little argument from adoption proponents that it is
important for intercountry adoptive families to affirm a child’s culture and heritage.”70 Olsen
adds that in “large measure, adoptive families can, and do” encourage their adopted children to
discover and to learn about their birth heritage.71 Similarly, Bartholet claims that intercountry
adoption can increase cultural awareness and sensitivity: “in international adoption adoptive
parents and children meet across lines of difference involving not just biology, but also socio-
economic class, race, ethnic and cultural heritage, and nationality.”72 From this perspective,

68 Id. at 181-182.
69 Id. at 192. See also Martin, supra note 9, at 203 (noting that many advocates of intercountry
adoption claim that the transition between cultures has little affect on the adopted child’s
wellbeing).
70 Olsen, supra note 62, at 511.
71 Id. See also Bhabha, supra note 13, at 188 (“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.”).
72 Id. at 153.
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 locate intercountry adoption as a vehicle for cultural exchange are tempered by concerns over cultural authenticity and belonging. Martin, for example, questions 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.73

Martin’s comment illustrates how the cultural exchange that accompanies intercountry adoption overwhelmingly focuses on restoring the child’s “authentic” or “genuine” cultural identity as it is supposedly compromised during intercountry adoption.74 As Martin makes clear, the exchange 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.

**Intercountry Adoption and Postcolonial Critiques of Empire**

**a) Beginning to Integrate Postcolonial Theory into the Debate Over Intercountry Adoption**

73 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.”).

In her recent discussion of “monohumanism” and a child’s right to be raised within his or her birth culture, Shani King exposes some of the damaging stereotypes that inform the debate over intercountry adoption. King argues that (western) proponents of intercountry adoption engage in the same process of cultural and racial “othering” that European scholars employed in order to discount the worth of non-European peoples and to justify European colonial expansion throughout the nineteenth century. She writes: “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 argues that the “rescue narrative” that is often evoked by advocate to support of intercountry adoption is “fraught with distortion”: it unfairly denigrates the competency of foreign governments and perpetuates the false impression that “all ‘third-world’ children are in dire need of being rescued.” For King, the process of exposing western

75 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).

76 Edward Said, Culture and Imperialism, 41 (1993) (explaining that he wrote Orientalism in order “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”).

77 King, supra note 51, at 415 (“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.”).

78 Id. at 425.

79 Id. at 439.

80 Id. at 437. See also id. at 441 (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).
stereotypes about the “other” promises to reanimate the “contentious”\(^1\) debate over the merits of intercountry adoption.

King’s assertion that children have a right to be raised within the culture into which they were born\(^2\) 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 that 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 as this notion gave birth to 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.\(^3\)

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 highlights the imperial underpinnings of the present debate over intercountry adoption only to rely on the “binary opposition[s]” that, by King’s own account, assume the “hierarchical inferiority of the previously colonized populations.”\(^4\) This essay takes a different approach. I affirm the “obvious”\(^5\) relevance of postcolonial theory to the debate over intercountry adoption and the need for increased self-

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\(^1\) *Id.* at 463.

\(^2\) King, *supra* note 51, at 466 (arguing that “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.”).

\(^3\) *Said,* *supra* note 76, at xxv.

\(^4\) King, *supra* note 51, at 427.

\(^5\) *Id.* at 428.
reflection and scrutiny on behalf of legal scholars in order to avoid inadvertently perpetuating cultural stereotypes. I resist, however, the assumption 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 theories of cultural difference.

b) Postcolonial Theories of Culture: Edward Said and Cultural Hybridity

In *Culture and Imperialism*, Edward Said argues 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 observes that the “us/ them” opposition was “the hallmark of imperialist cultures”:

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 explains how writers and academics from a variety of disciplines “accepted the basic distinction between East and West as the starting point for

86 Said, *supra* note 76, at xiii.
87 *Id.* at xxv.
88 King, *supra* note 51, at fn. 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).
elaborate theories . . . and political accounts concerning the Orient, its people, [and] customs.” 89

According to Said these “theories” and “political accounts” constituted “a Western style for
dominating, restructuring, and having authority over the Orient.” 90  For example, in Black
Athena Martin Bernal explains that classicists have traditionally “given the privileged position to
isolation and required proof of contact between different cultures and societies.  The ideological
reasons for this latter requirement . . . were to preserve a pure, and purely European, image of
Ancient Greece.” 91  Bernal explains that early classicists and historians minimized the
significance of the “profound cross-cultural influences” 92 and “close contacts” 93 that existed
between Egypt and Ancient Greece in order to justify the racist and anti-Semitic attitudes of
colonial Europe. 94  Thus, European scholars invented and edited historical narratives to add
credence to imperial ideas of cultural difference and superiority.  As Terence Ranger explains,
colonial administrators in Africa fabricated traditions in order to cement their “command and
control” over “vast numbers of Africans.” 95  European colonialists “drew upon European
invented traditions both to define and to justify their roles, and also to provide models of
subservience into which it was sometimes possible to draw Africans.” 96  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.

90 Id. at 3.
91 Martin Bernal, Black Athena: the Afroasiatic Roots of Classical Civilization (Volume III: The
92 Id. at 3.
93 Id. at 2.
94 Id. at 3 (observing that “earlier classicists and ancient historians not only operated in racist and
anti-Semitic societies but were sometimes pioneers of these unsavory movements”).
95 Terence Ranger, The Invention of Tradition in Colonial Africa, in THE INVENTION OF
96 Id.
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 notes that “[m]ediation through kidnapping, interpretation, translation, trade and marriage—the mixing of cultures—helped to make up variable and intricate cultural practices. The Native had a great deal of cultural influence, especially on the French and English in the first years of contact.”

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

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persons” born into native customs and beliefs, but schooled in the European intellectual tradition. Describing her upper-middleclass Egyptian family, Leila Ahmed writes, “[w]e were intended, like the preceding generation of professionals and intellectuals, 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 Europe.” 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 acknowledges the devastating effects of imperial narratives of European cultural and intellectual hegemony; however, he insists that 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 suggest routinely occurred throughout the course of human history. Said asserts that “[p]artly due to empire, all cultures are involved in one another; none is single and pure, all are hybrid, heterogeneous, extraordinary differentiated, and unmonolithic.”

Thus, Said argues that European efforts to separate the colonizer from the colonized failed: European colonization was “insidious and fundamentally unjust,” but it was also a shared experience that profoundly affected colonizer and colonized alike.

100 Id. See also Svati Joshi, RETHINKING ENGLISH: ESSAY IN LITERATURE, LANGUAGE, HISTORY 5 (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).
103 Said, supra note 76, at xxv.
104 Id. at xxii. See also Ania Loomba & Martin Orkin, POST-COLONIAL SHAKESPEARES 146
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 had 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.”\textsuperscript{105} Said does not suggest that 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 fact 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 scholars like Said and Bernal suggest have informed and shaped world cultures for thousands of years. As Said observes, the notion of an authentic or essential cultural identity is an imperial fiction rather than an empirical truth: “Far from being unitary or monolithic or autonomous things, cultures actually assume more ‘foreign’ elements, alterities, differences, than they consciously exclude.”\textsuperscript{106} Ironically, European cultural imperialism was itself not a pure product of European thought and imagination:

\textsuperscript{105} Said, \textit{supra} note 76, at xx.
\textsuperscript{106} \textit{Id.} at 15.
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.\textsuperscript{107}

The formal divisions within colonial society masked the intensity of the cultural exchange that occurred during the colonial era and that 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 cautions that we are the “inheritors of that style by which one is defined by the nation, which in turn derives its authority from a supposedly unbroken tradition.”\textsuperscript{108} Said acknowledges, for example, that hybridity has become a defining aspect of American culture: he argues that “the United States contains . . . many histories” that should be embraced rather than “feared since many of them were always there, and out of them an American society and politics were in fact created.”\textsuperscript{109} He cautions, however, that the practice of differentiating between people and cultures continues to influence scholarship both in the western world and in “cultures trying to resist the encroachments of Europe” and the United States.\textsuperscript{110} Although Said celebrates the end of colonial exploitation, he warns of the continued influence of imperial paradigms on

\textsuperscript{107} Joshi, \textit{supra} note 100, at 10.
\textsuperscript{108} Said, \textit{supra} note 76, at xxv.
\textsuperscript{109} \textit{Id.} at xxvi. \textit{See also} Ahmed, \textit{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.”).
\textsuperscript{110} Said, \textit{supra} note 76, at xxv. \textit{See also} Francoise Lionnet, \textit{AUTOBIOGRAPHICAL VOICES: RACE, GENDER, SELF-PORTRAITURE}, 5 (1989) (arguing that “[w]e 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 \textit{otherwise}, to bypass the ancient symmetries and dichotomies that have governed the ground and the very condition . . . of Western philosophy”).
contemporary thought.

**Developing the Postcolonial Paradigm of Intercountry Adoption**

Postcolonial attempts to “redefine the formal criteria and codifications”\(^{111}\) 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 describes postcolonial theory as a “fertile and creative” area of contemporary scholarship that intersects European and indigenous cultures to “effectively dissolve[e] the claim to priority of either.”\(^{112}\) Similarly, Franciose Lionnet claims that postcolonial theories of cultural hybridity provide for pluralistic and democratic personal and scholarly exploration: “To establish nonhierarchical connections is to encourage lateral relations: instead of living within the bounds created by a linear view of history and society, we become free to interact on an equal footing with all the traditions that determine our present predicament.”\(^{113}\) 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


\(^{113}\) Lionnet, *supra* note 110, at 7.
over cultural hybridity. The postcolonial paradigm accommodates the adopted child’s “right to know his cultural and national 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 that was 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 as 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 in order to better integrate their cultural values with the values manifest in the child’s birth culture.

114 Ruth-Arlene W. Howe, Redefining the Transracial Adoption Controversy, 2 DUKE J. GENDER L. & POL’Y 131, 134 (1995) (“Advocates for transracial adoption who naively espouse a ‘Love conquers all’ philosophy may represent an assault on the Black family and Black community.”).
115 Martin, supra note 9, at 210.
116 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”).
Postcolonial approaches to intercountry adoption identify the formal and informal cultural exchanges that currently take place within the context of intercountry adoption as an important first step toward establishing a more open-ended and pluralistic cultural narrative. Bartholet notes that adoption agencies often teach “prospective international adoptive parents about the importance of raising their children with a sense of their cultural heritage.”\(^\text{117}\) She also comments that strong social and economic bonds frequently develop between the adoptive family and the child’s native country.\(^\text{118}\) Further, some sending nations have introduced formal measures designed to encourage cultural exchange. Kleiman observes: “It is common practice for sending countries to require that a prospective adoptive parent escort the child back to the United States; further, they often require the parent to spend anywhere from a few weeks to a few months living in the sending country before the adoption can be finalized.”\(^\text{119}\) Similarly, Bhabha notes that “transnational adoption legislation includes cultural linkages and reference to the ‘child’s ethnic, religious and cultural background’”\(^\text{120}\) in order to facilitate cultural interaction. These initiatives should be supported to the extent that they foster greater cultural exchange and awareness between the families and nations that participate in intercountry adoption.

The postcolonial paradigm for intercountry adoption facilitates cultural exchange that is 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

\(^{117}\) Bartholet, supra note 10, at 196.

\(^{118}\) Id. (noting that 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).

\(^{119}\) Martin, supra note 9, at 332.

\(^{120}\) Bhabha, supra note 13, at 193.
this end, the postcolonial paradigm for intercountry adoption encourages sending countries to establish a presence in major receiving countries, such as the United States, in order to provide cultural resources and information to adopted children and their parents. By establishing a cultural presence in the receiving country, the sending country literary locates its cultural heritage beyond the physical boundaries of the nation state; it provides an alternative location of cultural insight and authority that, although the location is state-sponsored, draws attention to the fact that 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 the resources that are available within and through 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 that has local chapters in the United States, Canada, and the United Kingdom; these chapters sponsor events marking Chinese festivals and holidays and provide Chinese language and culture classes for families who have adopted a child from China.121 Similarly, Families for Russian and Ukrainian Adoption (FRUA), a Virginia-based organization,  

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hosts cultural events as well as an annual education conference for families who have adopted a child from Russia or from a former Soviet-bloc country. FRUA also provides financial support for orphanages in Russia and the Ukraine.\(^{122}\) 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 and integrates 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.\(^ {123}\) Communication between members of a particular list serve may be limited to sharing information about upcoming programs and exhibits that are of interest to list serve members; 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 fact that non-government cultural institutions and organizations abound in receiving countries like the United States emphasizes the vast impact of non-western cultures on western society. Local cultural


\(^{123}\) Eastern European Adoption Coalition, http://eadopt.org/ (last visited: July 22, 2010).
organizations and programs, particularly those that were established by immigrant communities, may offer families a rare opportunity to learn about both 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 culture and to 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 to 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 interrogate their cultural assumptions in much the same way that critical race theory insists that white Americans interrogate “whiteness” as “whiteness” represents an invisible yet repressive force within American culture.124 Barbara Flagg describes “whiteness” as “metaprivilege”—as “a social location of power, privilege, and prestige”125—whose strength lies in its authority to “name and shape identities”126 and then hide

124 Barbara Flagg, Whiteness as Metaprivilege, 18 WASH. U. J.L. & POL’Y 1, 2 (2005) (describing “whiteness” as “a largely transparent construction that constitutes the dominant site of power and privilege”). See also Thomas Ross, Whiteness After 9/11, 18 WASH. U. J.L. & POL’Y 223, 223 (“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 (claiming that the “conflation of privilege with the societal norm” makes the privilege invisible and therefore elusive).

125 Flagg, supra note 124, at 1.

126 Id. 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.”)
this authority “behind structures of silence, obfuscation, and denial.”\textsuperscript{127} For Flagg, “whiteness” is dangerous because it defines what is “normal” within American culture without acknowledging that it operates within a race-specific context.\textsuperscript{128} She concludes that the choice not to be a racist requires white Americans to “undertake meaningful antiracist activity”\textsuperscript{129} by taking responsibility for and dismantling the transparent value structures that perpetuate white privilege. Similarly, the postcolonial paradigm for intercountry adoption encourages parents to reflect upon their cultural mores as these mores commonly assume the appearance of universal norms and therefore elude being easily identified with a specific cultural context.

Finally, adoption agencies and sending countries should instigate 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 to manipulate these parts in ways that accommodate the nuances of their adopted child’s hybrid cultural identity. The mastery that

\textsuperscript{127} Wildman, \textit{supra} note 124, at 256 (“The maintenance of whiteness, the re-creation of that community, remains unseen.”).

\textsuperscript{128} Flagg, \textit{supra} note 124, at 6. \textit{See also} Russell G. Pearce, \textit{White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law}, 73 \textit{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”).

\textsuperscript{129} Flagg, \textit{supra} note 124, at 11. \textit{See also} Wildman, \textit{supra} note 124, at 265 (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).
derives from careful self-critique and reflection will help parents to integrate their cultural values with the values manifest in the adopted child’s birth heritage and, consequently, to foster the adopted child’s hybrid cultural identity.

**Conclusion**

As King suggests, 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 to 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 “nationalist 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 as has become highly polarized and intellectually entrenched. Postcolonial critiques of European colonialism, as they reject the imperial perception of culture as monolithic,

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130 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.”).

131 Martin, *supra* note 9, at 198 (noting that “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.”).

132 *Id.* at 179 (emphasizing that the current debate over intercountry adoption is characterized by “sides” and that 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.”).
encourage—even authorize—legal scholars to venture beyond the confines of imperial discourse in order to examine how cultures can best be shared and explored rather than confined to geographically-determined places.