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TRANSRACIAL AND INTERNATIONAL ADOPTION: MOTHERS, HIERARCHY, RACE, AND FEMINIST LEGAL THEORY

Twila L. Perry†

INTRODUCTION

Although in recent years substantial attention has been devoted to both transracial and international adoption, there has been comparatively little discussion of how adoption, and more specifically, how transracial and international adoption might be analyzed from a feminist perspective. It seems clear, however, that transracial and international adoption raise many issues that should be of interest to feminist scholars and others whose work concerns issues such as poverty, the economic status of women, the nature of mothering, and the relationships between women of different classes, races, and nations.

In an earlier article on transracial adoption, I argued that the controversy over that subject in the United States exposes the fault lines that persist between Black and white Americans about the perception of race in larger contexts in this society. There I argued that the different approaches often taken by Blacks and whites to the question of transracial adoption reflect different racial experiences.


Earlier versions of this Article were presented at the North American Conference of the International Society For Family Law in Quebec City, Canada on June 15, 1996 and at a Symposium entitled Challenging Boundaries, sponsored by the Yale Journal of Law and Feminism and held at Yale Law School, on November 9, 1996. I also presented a draft of the paper at Professor Vicky Schultz's Feminist Legal Theory Seminar at Yale Law School on November 8, 1996, and gave a lecture based on it for the 1997 Symposium on Race, Culture and the Law at Brooklyn Law School on March 10, 1997. I wish to thank the participants in each of these events for their many thoughtful comments. I also thank Karen Patterson, Lucy Chavis, Mari Madyun, and Miguel Pozo for their research assistance.


4. See Perry, Transracial Adoption, supra note 2.

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and understandings about the significance of race. In this Article, I seek to take my exploration of the political, racial, and cultural issues raised by adoption a step further. I argue that within the racial schism on adoption lies another divide that warrants exploration—one that implicates the relationships between diverse groups of women.

One troubling aspect of both transracial and international adoption is that each often results in the transfer of children from the least advantaged women to the most advantaged. At the same time, such adoptions, per se, do nothing to alleviate the conditions in the societies or communities from which the children come and thus do nothing to change the conditions that place some women in the position of being unable to care for their children themselves. Perhaps for these reasons, at least in part, recent scholarship by women of color on transracial adoption suggests that many of them are less than enthusiastic about the practice.

The purpose of this Article is to encourage more discussion of how transracial and international adoption might be analyzed from a feminist perspective. The subject of adoption has received little attention from feminists in general, but there are many reasons why this important subject warrants further exploration. First, much of the writing on adoption has been done by women. Women scholars are clearly interested in issues concerning motherhood, including the different ways in which women can become mothers. The issue of surrogacy, for example, has received significant attention from feminists.

5. See id. I analyzed the debate on transracial adoption as coming from two competing perspectives. The first perspective I described as colorblind individualism. I argued that this perspective is based on first, optimism about the ultimate eradication of racism in America, second, a belief in the colorblindness as the ultimate societal goal with respect to the issue of race, and third, a belief that the individual should serve as the unit for analyzing rights and interests. I contrasted this with what I called a perspective based on color and community consciousness. This perspective is based on first, a more pessimistic view of racism as an enduring problem in America, second, a belief in multiculturalism rather than colorblindness or assimilation as the preferred societal goal, and third, the view that in analyzing rights and interests, the group as well as the individual must be taken into account. I argued that the these different perspectives stem from the different experiences Blacks and whites have with respect to race, and that the colorblind individualist perspective often underlies positions in support of transracial adoption, while the perspective of color and community consciousness underlies skepticism of or opposition to transracial adoption.

6. See, e.g., Howe, supra note 2; Perry, Transracial Adoption, supra note 2.

7. For some possible reasons why feminists have devoted so little attention to analysis of adoption from a feminist perspective, see infra notes 112-20 and accompanying text. For one article discussing the need to develop a feminist approach to adoption, see Nancy E. Dowd, A Feminist Analysis of Adoption, 107 HARV. L. REV. 913 (1994) (book review).

8. See, e.g., Bar, supra note 2; Perry, Transracial Adoption, supra note 2.


Second, issues involving the welfare of children, who figure prominently in women’s lives, also occupy a central place in feminist analysis. Finally, while much of feminist analysis addresses troubling aspects of the relationship between men and women, and the relationship between women and the government, there is a need for more feminist analysis that focuses on the relationships among women.

Many questions need to be addressed. Is there or should there be something that we think of as a feminist approach to adoption? Should a woman who identifies herself as a feminist ask different questions about adoption than a woman who does not identify with that perspective? If so, what are those questions? Is it enough for a feminist who wishes to adopt a child from overseas, or to adopt transracially in this country to focus only on the goal of obtaining a child, or does she also have an obligation to become involved in seeking to change the conditions that lead to many children being available for adoption in the first place? In a sense, then, this article raises the very question of what feminism is, and, perhaps, what it can or should be. It explores these issues in the context of an enterprise many women value very highly—the raising of children. While much of the focus of the discussion will be on Black women, the Article also addresses issues relevant to other women of color in the context of international adoption. Moreover, I hope that any insights I offer in the contexts of transracial and international adoption will assist in the development of a feminist analysis of adoptions which do not necessarily involve a racial or ethnic difference between the adoptive parent and child.

Part One of this Article first briefly discusses why the issue of a disparity in status between birth mothers and adoptive mothers in many transracial and international adoptions warrants specific attention. Part One then discusses issues relevant to other women of color in the context of international adoption. Moreover, I hope that any insights I offer in the contexts of transracial and international adoption will assist in the development of a feminist analysis of adoptions which do not necessarily involve a racial or ethnic difference between the adoptive parent and child.


12. Since the dissolution of the Soviet Union, many Americans have sought to adopt children from Eastern European nations. See, e.g., Kathleen Hunt, The Romanian Baby Bazaar, N.Y. Times, Mar. 24, 1991 at §6 (Magazine), at 24 (describing the attempts of Americans to adopt a Romanian baby); Julie Rubin, From Russia With Love—Children: The Former Soviet Republic Has Become a Hot Spot for Americans Seeking to Adopt, L.A. Times, Dec. 9, 1992, at A3 (reporting that many Americans are seeking to adopt Russian children since the collapse of Communism). These adoptions too, may raise issues of status, hierarchy, and privilege that feminists should address. First, to the extent that the children are those of unmarried women, there is the issue of patriarchy, which continues, albeit less than before, to stigmatize births outside of marriage. Second, in international adoptions where there is no racial difference between adoptive parents and children, children have often become available for adoption because of political upheaval or war. See Christopher Bagley, International and Transracial Adoptions 136, 167 (1993). In what ways are these causes analogous to the poverty and racism that often leads to the availability for adoption of so many children of color, and what kind of commitments, if any, should a feminist analysis of adoption urge on the adoptive parents? Finally, how should the issue of culture be analyzed when the differences between parent and child are what we tend to think of as ethnic rather than racial? Although many people would probably feel comfortable with the idea that a Korean adopted child of American parents should be encouraged to maintain some connection with Korean culture, what should the analysis be with a child from, for example, the former Yugoslavia, where nationalism has incited the very wars that have caused dislocation of many children? These and other issues relevant in same-race adoptions warrant analysis but are beyond the scope of this Article.
question I believe is central to the construction of a feminist approach to transracial and international adoption—the question of whether women from diverse backgrounds might have different attitudes toward transracial and international adoption. In order to examine this issue, I explore some of the reasons why Black women often seem less than enthusiastic about transracial adoption. I argue that the ambivalent, or even negative reaction some Black women express toward transracial adoption is a function of perspectives and experiences derived from their status at the intersection of race and gender. Black women react to transracial adoption not simply as Black people, but also specifically as Black women, and their reservations are based on more than mere doubts about the ability of whites to competently raise Black children. I argue that because many Black women approach transracial adoption with an acute awareness of their own historical and contemporary struggle to raise Black children in a racist society, they often feel that arguments minimizing the role of race in parenting devalue their historical as well as their present day struggles as mothers. Also, rather than viewing transracial adoption as an isolated issue, Black women often see transracial adoption as one of many contexts that reflect the continuing subordination of Black women in this society. Part One concludes by arguing that the perspectives of minority women on transracial and international adoption must be addressed in any viable mainstream feminist analysis of adoption.

One dispute in the controversy over transracial adoption has centered on the question of the competence of whites to raise Black children in a racist society—what has become known as the debate over "survival skills." Since, as a practical matter, women do much of the parenting in this society, the "survival skills" debate prompts an examination of the relationship among race, mothering, and societal attitudes toward transracial adoption. In Part Two of this Article, I argue that societal perceptions of the relationship between competent mothering and race correspond closely to hierarchies of women by race. All too often, society portrays Black women as inadequate to the task of mothering Black children. They are portrayed as competent caretakers of white children, but only in the role of domestic worker, rather than legal mother. At the same time, society seems to presume the adequacy of white women to competently mother children

13. See NATIONAL ASSOCIATION OF BLACK SOCIAL WORKERS, POSITION PAPER (1972), quoted in RITA J. SIMON & HOWARD ALTSTEIN, TRANSRACIAL ADOPTION 50-52 (1977). See, e.g., Bartholet, Where Do Black Children Belong?, supra note 2, at 1219-21. Opponents of transracial adoption have argued that Black adults' own experiences of coping with racism can provide critical and unique insights and provide Black children with complex skills for dealing with the racism that exists in the society. See Perry, Transracial Adoption, supra note 2, at 61-65. Professor James Bowen gave the following description of survival skills:

"These survival devices include several learned abilities: to ignore [racial] insults, to decipher the appropriateness of fighting back or submission, to emphasize Black strength, beauty and worth as a countermeasure to the denigration of Blacks in America...to evaluate objectively and subjectively the level of nepotistic advantage or same-group favoritism which precludes opportunities and advancement in education, employment and business.

Bowen, supra note 2, at 510.

of any race. In the final section of Part Two, I seek to put a different spin on the question of "survival skills." I argue that rather than focusing, as the transracial adoption debate does, on what it means for white women to raise Black children in a racist society, more focus must be placed on the question of what it means for white women to raise white children in a racist society. This is an important inquiry for two reasons. First, it is central to what should be, and what I presume to be, a feminist agenda for social justice—the eradication of racism. Second, the ability of white mothers to deal comfortably and effectively with questions of race and racism with white children is clearly relevant to their ability to address those issues with Black children who may be transracially adopted.

Part Three moves the discussion about adoption from the domestic to the international sphere. In recent years, an increasing number of whites in the United States have adopted children from foreign countries, with many children coming from Asia and South America. Part Three explores the links between domestic transracial adoptions and international adoptions of children of color. While domestic transracial adoptions and international adoptions of children of color are usually treated as though they are completely unrelated, I argue that the two contexts raise some similar issues with which feminists should be concerned. In each context, there is a transfer of children from the least privileged women to the most privileged. The imbalance in the circumstances of the two women involved in international adoptions presents a troubling dilemma: in a sense, 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.

15. I have made a deliberate choice in this Article to focus on mothers and not on fathers. Although clearly in many families the job of parenting is shared between women and men in varying degrees, it is still true that women tend to shoulder more of the day-to-day burdens of childcare. See id at 1-10. Focusing on mothers for the analysis of particular areas does not deny the importance or the influence of fathers in their children’s lives.


18. In using the terms “Black” and “children of color,” I am aware that there is a substantial amount of scholarship that challenges the validity of the whole concept of race, arguing that race is not a biological fact, but a mere social construct. See, e.g., MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES FROM THE 1960'S TO THE 1990'S 68-69 (2d Ed. 1994) (arguing that race is a fluctuating, decentered complex of social meanings that are formed and transformed under the constant pressures of political struggle). However, as Professor John Calmore has observed, it may or may not be clear whether races exist, but it is clear that the phenomenon of racism exists. See John O. Calmore, Our Private Obsession, Our Public Sin: Exploring Michael Omi’s ‘Messy’ World of Race: An Essay for Naked People Longing to Swim Free, 15 L. & INEQUALITY J. 25, 28 (1997) (arguing that in discussing whether distinct races exist, it is important to discuss the oppressive conditions of racism). I am also aware of the view that Hispanics may be individuals of any race.
Most law review articles on the subject of international adoption are essentially apolitical. Often the focus of concern is the plight of white Americans seeking to negotiate the adoption of a child from a third world country, and the goal of the article is usually to find a way to facilitate the process. I argue that a feminist analysis must go farther than the mere issue of how such adoptions can be made to proceed more smoothly. A feminist analysis must confront broader issues, such as the relationship between social and economic inequality and the decisions of birth mothers to surrender their children. If Western feminists are sincere in their desire to forge international links among women's struggles, a feminist theory of adoption must address the question of what kind of connections the issue of motherhood should provide between women of different races, classes, and nations, and what this should mean for the feminist agenda as a practical matter.

Part Four explores several issues that have been important in the evolution of feminist theory and examines their potential for contributing to a feminist approach to transracial and international adoption. These issues include the relevance of law and economics analysis and the centrality to feminist theory of concepts of caretaking and nurturing. Part Four also examines issues of autonomy and choice, the privatization of family law, the relationship of material wealth to parenting, and the relevance of “feminist method,” particularly the use of first person narratives. Finally, it argues for the development by feminists of both new terminology and new conceptual tools to address issues such as transracial and international adoption that may not fit neatly into existing analytical frameworks.

My arguments throughout this Article are based on the premise that a feminist analysis of adoption must view adoption as more than an individual transaction in which one or two adults legally become the parent or parents of a particular child. Just as feminists view marriage as an institution warranting an analysis that goes beyond individual couples, adoption must be approached with a similarly broad perspective. Adoption, like marriage, involves issues of hierarchy and power; unlike marriage, however, adoption involves these issues among women. These issues must be retrieved from the background, where they have existed largely in silence, and must be confronted in the open.

Because my focus is on issues of hierarchy and privilege, I have chosen to place Black women, other women of color, and poor women at the center, rather than at the margin of my analysis. All too often, when issues are approached from a feminist perspective, it is the concerns of white, middle class women that dominate, and the concerns of women who do not fit this model are included as a variation, a footnote, or an afterthought. In placing poor women of color at the center, I argue that a feminist analyzing adoption must take into account the political and economic circumstances in which parenting takes place and the

19. See, e.g., Carlson, supra note 3, at 245 (stating that “for those who adopt foreign-born children, the process is needlessly complex, risky and uncertain for a transaction in which so much is at stake”).
difficulties that often lead to the surrender of children. It requires taking into account the political and cultural meaning of motherhood and it must confront the possibility that women from minority groups may have ambivalent or negative feelings about transracial or international adoptions. A feminist analysis must consider the past and present effects of racism, capitalism, colonialism, neocolonialism, and patriarchy, and recognize that elimination of racism, patriarchy, and poverty would likely diminish the availability of adoptable children. Ultimately, a feminist approach should have the goal of working toward a world in which the choice of women to place their children for adoption is not dictated by oppressive circumstances.

Writing critically about adoption is not easy. For some women seeking adoption, adoption is a first choice, and an affirmative one. For others, it may be the last resort—the only option they have left to become a parent. Some of the latter may feel that raising troubling issues about adoption might in some way threaten the viability of this option. Some may resent these issues being raised by women who are biological, rather than adoptive, mothers. On the other hand, women who have given birth to children may be reluctant to raise troubling issues about adoption, feeling that they might be perceived as seeking to deny the opportunity to become a parent who cannot or did not conceive biologically. Finally, women seeking to raise troubling issues about adoption may fear being perceived as cold, uncaring individuals willing to sacrifice the interests of innocent children in pursuit of a remote political agenda. All of these feelings can easily function as subtexts, creating hidden tensions in explorations of issues surrounding adoption. Obviously, adding issues involving race, class, and culture only further complicates an already complicated analysis.

I am not opposed to transracial or international adoption. Many women experience a powerful desire to become mothers. Not all women can conceive children biologically, and not all women choose to. It is also probably true that some women who place their children for adoption do not, in any sense, see their choice as dictated by anything other than their own free will. It must be remembered that adoption is an institution with ancient roots, and I suspect that even in a more humane and egalitarian society than the one that we now have, the most liberal, progressive and righteous among us.** Skin Deep: Black Women and White Women Write About Race, 2** (Marita Golden & Susan Richards Shreve, eds., 1995).

In raising what I consider to be some troubling issues about transracial and international adoption, I feel a bit like the proverbial messenger who is the bearer of bad news. Many of the issues raised here are seldom discussed among women of different backgrounds. Yet the issues, and the tensions are there, whether or not people are comfortable acknowledging them. Discussion seems preferable to silence.

20. Author Marita Golden has noted that that part of women's training which teaches them to be polite and never rock the boat contributes to the reluctance to discuss racial matters: "... even bolstered by women's actual, yet often mythologized talent for intimacy and revelation, race remains taboo even among the hippest, the most liberated, progressive and righteous among us." Skin Deep: Black Women and White Women Write About Race, 2 (Marita Golden & Susan Richards Shreve, eds., 1995).

21. See Ruth-Arlene Howe, Adoption Practice, Issues, and Laws 1958-1983, 17 Fam. L.Q. 173, 173-175 (1983) (noting that the practice of adoption can be traced back to antiquity and that adoption was recognized in the Codes of Hammurabi and legally regulated in ancient Greece, Egypt and Rome); see also Burton Z. Sokoloff, Antecedents of American Adoption, 3 The Future of Children: Adoption 17, 17 (1993) (noting that reference to adoption can be found in the Bible and in the ancient codes, laws and writings of Babylonians, Chinese, Egyptians, Hebrews, and Hindus).
there would still be women who would choose to surrender their children. Finally, for some children, transracial or international adoption may be the option that is in their best interests at the particular time.  

Still, there is a need for feminist theory to look more closely at the issues raised by adoption. As long as factors such as race, class, and patriarchy powerfully affect so many women's lives and choices, they must be a part of any meaningful analysis of this important and long-standing societal practice.

I. ADOPTION AND HIERARCHY

22. An obviously important issue in any analysis of adoption is the interests of children. A great deal of research has already been done on the impact of both transracial and international adoption on the children who have been adopted. See Perry, Transracial Adoption, supra note 2, at 57-59. Most of the research has concluded that children are not detrimentally affected by these adoptions, although the methodology in the research on transracial adoption has been criticized and the researchers agree that same-race placements are preferable where possible. See id. Opponents of transracial adoption have argued that it is in the best interests of Black children to be raised by Black families, while advocates of transracial adoption argue that a preference for placing Black children in Black adoptive families has deprived many Black children of the chance to be adopted at all. See id. In this controversy, there are many factual disputes over questions such as whether or not there is actually a shortage of Black adoptive homes, and what the precise reasons are for the disproportionate number of Black children in foster care. See id. at 82-89. This Article will not focus on the numerous important issues concerning the best interests of children, but will focus on the relationships among the women who are involved in the adoption transaction.

23. I wish to offer some caveats. First, I believe that people hold views along a continuum, rather than at extreme poles, and I do not argue that people of any racial or ethnic group hold identical views about this or any other issue. I am certain that there are Black women who are neutral toward transracial adoption; there are likely some women of color who affirmatively favor it. See, e.g., Hawley Fogg-Davis, A Race-Conscious Argument for Transracial Adoption, 6 B.U. Pub. Int. L.J. 385 (1997); Julie Lythcott Haims, Where Do Mixed Babies Belong? Racial Classification in America and Its Implications for Transracial Adoption, 29 HARV. C.R.-C.L. L. REV. 531 (1994).

Second, this Article does not purport to be an empirical analysis of the attitudes of Black women toward transracial adoption. I have attempted to rely on research and scholarship where it is available, but much of my analysis relies heavily on my own insights, analysis, and observations. I also do not purport to represent the views of other women of color or women of other ethnic groups. I understand that the relationships between women of different ethnicities are both complex and varied as a consequence of both history and present realities. I anxiously await the analysis by Latina and Asian women of issues involving both the domestic and the international adoption of Latino and Asian children. The adoption of Native American children, which is not a focus of this Article, is governed by a separate statutory scheme which gives rise to some different issues. See 25 U.S.C. 1901-1963 (West 1983 & Supp. 1998). In this Article, I simply offer my own perspectives of some possible similarities among women who share some common circumstances with respect to their struggles in connection with motherhood.

Third, in addressing the issue of hierarchies among women in connection with the issue of adoption, I am not arguing that the only hierarchies possible are those based on race, class, and ethnicity. Indeed, it is clear that in connection with adoption, there is a hierarchy that also exists on the other side of the transaction—a hierarchy among prospective adoptive mothers. Thus, it has long been true that agencies have long preferred married women over single women as adoptive mothers. There is clearly a need for this issue to be addressed, as well, but it is beyond the scope of this Article.

Fourth, I am not suggesting that all women who adopt children transracially or internationally do not have a commitment to social change. Certainly there are adoptive mothers who have viewed their commitments as both maintaining their child's connection with her birth culture and contributing in some way to the struggles of the group from which the child comes. I do argue that a more conscious acknowledgment of this kind of wider commitment should be a part of a feminist analysis of transracial and international adoption.
It would indeed be comforting to be able to think about adoption as simply a transaction in which one woman transfers her child to another to raise. In adoption thus conceived, the surrendering mother experiences both the sadness of relinquishment and relief that she has probably given her child a better life than she, herself, would have been able to provide. The adopting mother experiences great personal joy at becoming a parent, as well as satisfaction in the knowledge that she has given a home to a child who needs one.

However, in the real world, adoption is not so simple. Not only are the emotional responses of the individuals involved likely to be more complex than the above description, but adoption also takes place within the context of a wider world, in which factors such as race and class give rise to other troubling issues. The next Section of this Article will describe some of these complications and will seek to articulate why it is important for a feminist analysis of adoption to address them.

A. Adoption and Disparities in the Status of Mothers

Why is it important to focus on the disparities in status between birth mothers and adoptive mothers when race, in particular, is a factor in adoption? The reaction of many people might be that most adoptions, almost by definition, involve the transfer of a child from a less advantaged woman to a more advantaged one. Does transracial or international adoption present any issues that are new or that warrant a special analysis?

The answer to this question requires some background on the history of adoption in this country. Prior to World War II, adoption was not a common event among whites in America. A child born out-of-wedlock was considered a "child of sin" and the product of a genetically flawed, mentally deficient mother. The child was considered tainted and undesirable, and the mother was expected to raise the child herself, with both the mother and child marginalized and stigmatized by society.

After World War II, when more and more Americans sought to adopt children, and white newborns became scarce, the white, unwed mother was transformed in public consciousness from a genetically tainted individual to a person who happened to be psychologically maladjusted and was therefore unsuited to raise her own child. Society erased the stigma that white newborns previously carried and they became marketable commodities.

Was there a disparity in status between the two women involved in these adoptions? In other words, did adoption in fact involve the transfer of babies from disadvantaged white women to more advantaged white women? As a factual matter, we do not know the answer to this question because there does not

25. See id. at 149.
26. See id. at 8-9.
appear to be any systematic research on the social and economic status of the women who surrendered their children. Indeed, from 1975 until 1991, the federal government did not keep statistics on adoption. Even prior to 1975, very little data was collected—efforts to do so have been described as incomplete, non-comprehensive and unreliable.\textsuperscript{27} As a result, we do not have definitive information on the class status or any other demographics of the white women who placed their children for adoption.

Nevertheless, there have been attempts to address the class issue. According to Rickie Solinger, "the white unwed mother described by academic studies, government officials, agency personnel and the media was, in general, middle class—she was perceived as having parents who could help to negotiate with institutions and underwrite their daughter’s care."\textsuperscript{28} However, Solinger also argues that with respect to these women, the question of class was not central. Instead, it was the factor of race that functioned as a common denominator between those women who surrendered their children and those women who adopted them. Solinger notes that:

\begin{quote}
[P]oliticians, social workers and others who addressed or responded to illegitimate pregnancy in the postwar years distinguished between blacks and whites, but not between rich, poor and middle class. Thus, the difficulties and options before, for example, an upper middle class pregnant high school senior in Scarsdale, New York, and a pregnant, white working-class girl from Mobile, Alabama, were not publicly distinguished from each other by government officials, social workers, psychiatrists, educators or clergy. This was the case, in part, because anybody’s white baby had become valuable in the postwar era. With the rise of the psychological explanation of white single pregnancy and the decline in the belief of the genetically flawed illegitimate mother and child, white babies born out of wedlock were not only untainted but unclassed as well. Thus, the salient demographic fact about white unwed mothers was that they were white.\textsuperscript{29}
\end{quote}

It may be that this analysis obscures class factors that were, in fact, existing and relevant in adoptions in which both the birth mother and the adoptive mother were white. Such an analysis also does not address the fact that patriarchy, which subordinates all women, was also a likely factor in the decision of many

\textsuperscript{27} See Adoption: Overview and Recommendations, 3 The Future of Children: Adoption 4, 6 (1993).
\textsuperscript{28} See SOLINGER, supra note 24, at 8. Other demographic research has also suggested that:
[W]omen who choose to make an adoption plan are often from backgrounds of higher socioeconomic status and express higher educational aspirations than their counterparts who choose to parent their child. Additionally, women who relinquish their babies tend to come from intact families which are supportive of the placement decision and have not experienced teenage pregnancies of other women in the family.
Stolley, supra note 17, at 32.
\textsuperscript{29} Id. at 9.
unmarried women to surrender their children for adoption to women who were married. Still, it does suggest, first, that many of the women who surrendered their children may, in fact, have been middle class, and second, that all white women were still valued by the society, at least for what they could produce—the much in-demand adoptable white newborn. Thus, although the question of hierarchies among women in adoption transactions is not irrelevant when the woman surrendering a child and the woman adopting it are of the same race, it may be less compelling than in the case of transracial adoption where, as I shall argue, the birth mother may be devalued precisely because of her race. Indeed, advocacy for transracial adoption has, unfortunately, sometimes taken the form of attacks on the competence of Black mothers as a group.

This point raises the question of whether there were disparities in status between birth mothers and adoptive mothers in cases in which both were Black, and if so, whether this too is a matter that warrants concern.

The history of adoption among Blacks is different from that of whites. During and after slavery, Black children orphaned by the sale or death of their parents were often taken in by the families of slaves or former slaves among Blacks, informal adoption has a very long history. At the same time, relinquishment of children for adoption because of birth outside marriage has been rare. For many years the formal adoption system utilized criteria for adoption that excluded most Black families. Also, although birth within marriage may have been considered

30. Of course, some of the Black children available for transracial adoption are the biracial children of white mothers. Here obviously, the adoption consists of a transfer from a white woman to a white woman although the child is considered by the society to be Black. We might ask whether such an adoption constitutes the transfer of a child from a disadvantaged woman to a more advantaged woman, putting aside, at least for the moment, the question of economic status. This raises the complex question of whether, and if so how, the race of the child mediates the analysis of the question of hierarchy when an adoption takes place between women of the same race. (i.e. does bearing a biracial child compromise the status a white woman would otherwise have in this society?) I have focused this Article on Black women and women of color who have surrendered their children for adoption, or who have had their children taken from them, because most of the public discourse about transracial adoption is based on a paradigm in which the birthmother is non-white. This is clear in, for example, the argument that transracial adoption is necessary because of the large numbers of Black children in foster care. The assumption is that these are the children of Black mothers, not white mothers who wish to surrender biracial newborns for adoption.

31. See Perry, Transracial Adoption, supra note 2, at 89-99 and discussion infra Section IIA Black and white women bearing children outside of marriage have long been regarded differently. As Rickie Solinger notes:

Public and private agencies and government policies viewed both black and white women as breeders, but with a major and consequential distinction. The former were viewed as socially unproductive breeders, constrainable only by punitive, legal sanctions. Proponents of school segregation, restrictive public housing, exclusionary welfare policies, and enforced sterilization or birth control all used the issue of relatively high rates of Black illegitimacy to support their campaigns. White unwed mothers in contrast were viewed as socially productive breeders whose babies, unfortunately conceived out of wedlock, could offer infertile couples their only chance to construct proper families.

SOLINGER, supra note 24, at 24.


the ideal, because of the rape and sexual exploitation of Black women by their white masters during slavery, historically Black children born out of wedlock have never been stigmatized in the same way as the children of white women. As sociologist Joyce Ladner has observed, the Black child born out of wedlock was considered a child who had a right to live in the community without stigmatization.35

There may or may not have been class differences between the Black women who surrendered their children for adoption and the Black women who adopted them. What is clear, however, is that such a transaction was one that took place between two women both of whose lives were subordinated by the common factor of racism. Thus, a Black woman adopting a child was making a contribution not only to the life of an individual child, but also to the welfare of Blacks as a group in the sense that she was providing benefits to a future adult member of the community. Moreover, because most Black families were at the lower end of the economic ladder in this country, any economic disparity between the two women may not have been substantial.

Perhaps, ultimately, the question is whether there are different political, cultural, and even moral implications in adoptions in which both women are members of the same subordinated group as opposed to adoptions in which the adoptive mother is a member of the dominant group and the woman surrendering her child is from the subordinated group. This is not an easy question to answer. Hopefully, the discussion which follows will shed some light on the issue.36

B. Black Women and Transracial Adoption

Race is a factor that affects the experiences of Black women and white women in very significant ways. Racial differences can be found in the experiences of women in terms of employment, income,37 and economic status,38 the statistical chances of being married or divorced,39 and access to health

35. See Joyce Ladner, Tomorrow’s Tomorrow: The Black Woman 2, 8 (1971).
36. During World War II, would the adoption by a German family of a Jewish child orphaned by the genocide of her parents have no implications different than the adoption of that child by a Jewish family? It is likely that many people would view the two adoptions as raising different issues.
38. See, e.g., Aida Hurtado, Relating to Privilege: Seduction and Rejection in the Subordination of White Women and Women of Color, 14 Signs 833, 837 (1989) (stating that “White women also suffer economically, but their economic situation is not as dire as that of women of Color. More specifically, white women’s relationship to white men (the highest earners in society), as daughters, wives, or sisters gives them an ‘economic cushion’”).
Transracial and International Adoption

services, among other areas of life. Not surprisingly, the experiences of Black women frequently lead them to have different perceptions of the society than those that might be held by women who are white.

The schism between the views of white and Black women recently received attention in the aftermath of the O.J. Simpson trial. After the verdict acquitting Simpson of the murder of his ex-wife was announced, numerous newspapers juxtaposed pictures of angry or glum white women proclaiming Simpson guilty of murder, domestic violence, or both, with pictures of groups of Black women rejoicing over Simpson’s acquittal. While white women seemed to focus on the issue of gender, conceptualizing the case as one about domestic violence, Black women seemed to focus on the issue of race, and saw in Simpson’s acquittal a victory for Black people, especially Black men, over a racist system of criminal justice. Moreover, it is likely that many Black women believed that had Simpson been accused of murdering his first wife, who was Black, as opposed to his second wife, who was white, the case would not have commanded the same media attention. The reason for Black women’s complex response to the verdict in the Simpson case reflects the status of Black women in this country at the intersection of race and gender. For Black women “the struggle for women’s liberation cannot be divorced from the struggle for Black liberation . . . .” For many Black women, the analysis of an issue that affects women does not end with sexism—racism is a factor that must also always be taken into account.

The relationship between Black women and white women in America is a complex and often uncomfortable one. Close and enduring friendships appear to be rare. Instead, relationships seem frequently marked by overt clashes or silently harbored feelings of anger, guilt, entitlement, or resentment—Professors Gloria Joseph and Jill Lewis have described in detail the “ . . . myths and prejudices, assumptions and misunderstandings that encompass and separate Black and white women.” Strong emotions, disagreements and different perspectives can arise with respect to a range of issues, including those relating to

42. See id. For a collection of essays by several scholars of the racial issues raised by the Simpson case, see BIRTH OF A NATION’HOOD: GAZE, SCRIPT, AND SPECTACLE IN THE O.J. SIMPSON CASE (Toni Morrison & Claudia Brodsky Lacour eds., 1997).
44. See, e.g., GOLDEN & SHREVE, supra note 20; PATRICIA RAYBON, MY FIRST WHITE FRIEND: CONFESSIONS ON RACE, LOVE AND FORGIVENESS (1996). For a recent work of fiction dealing with the subject of friendship between Black and white women, see BEBE MOORE CAMPBELL, BROTHERS AND SISTERS (1994).
the workplace, relationships with the opposite sex, or any number of other personal or political issues in which race complicates an analysis that might be simpler if only the issue of gender was involved.46

It should be surprising to no one, then, that the complex and sometimes troubling relationship between white and Black women in America would be reflected in the controversy over transracial adoption. Even a cursory examination of legal scholarship on transracial adoption suggests that white and Black women scholars often take very different approaches to the issue. While the work of white women scholars often focuses on the individual parent/child relationships created in adoption and tends to view the political and racial issues in transracial adoption as somewhat peripheral, the issue of race often occupies a central place in the work of Black women scholars. In the writing of the latter, the focus generally goes beyond the issue of the need for homes for individual children, or the dynamics of individual parent-child relationships. Rather, it also emphasizes the structures of subordination that destabilize Black families, the political ramifications of transracial adoption for the welfare of Black communities, and the needs of all Black children, not only those who might possibly be adopted transracially.

For example, my earlier article on transracial adoption focuses not on the social science data exploring the social adjustment of transracially adopted Black children, but on the political implications of the legal discourse surrounding the issue.48 In a later article, Professor Ruth-Arlene Howe, agreeing with this analysis, further explored the argument that the transracial adoption controversy is less about meeting the needs of Black children than it is about meeting the needs of whites who wish to adopt.49 She urges the child welfare system to focus on addressing a wide range of needs of Black children. Expressing a very different point of view, Professor Elizabeth Bartholet, who is white, continues to insist that race should not be a factor in adoption and argues that a preference for

46. Other women of color have also described feelings of alienation from white women and the mainstream feminist movement. See AIDA HURTADO, THE COLOR OF PRIVILEGE: THREE BLASPHEMIES ON RACE AND FEMINISM (1996) (arguing that gender subordination, as imposed by white men, is experienced differently by white women and by women of color, and that this is the source of disunity in the women’s movement.)
47. See, e.g., GOLDEN & SHREVE, supra note 20 (collection of fiction and non-fiction on relationships between white and Black women); MIDGE WILSON & KATHY RUSSELL, DIVIDED SISTERS: BRIDGING THE GAP BETWEEN BLACK WOMEN AND WHITE WOMEN (1996) (discussing relationships in the workplace, images in the media, standards of beauty, and tensions around marriage and intimate relationships). For a discussion of the relationship between Black women and white women from a historical context see ELIZABETH FOX-GENOVESE: WITHIN THE PLANTATION HOUSEHOLD: BLACK AND WHITE WOMEN OF THE OLD SOUTH (1988). A split where the issue of race is relevant can occur even among women who consider themselves to be progressive, or even radical. An example of this is illustrated by the schism that developed after the Civil War between abolitionists and feminists over the issue of suffrage. Many feminists, including Susan B. Anthony and Elizabeth Cady Stanton, refused to support Black male suffrage unless the right to vote was also extended to women. Black feminist Sojourner Truth, who moved prominently in both feminist and abolitionist circles, ultimately faced the dilemma of choosing between the two groups. When the time came to make a choice, she chose to side with the abolitionist camp that supported universal male suffrage. For a discussion of this historical episode, see NELL IRVIN PAINTER, SOJOURNER TRUTH: A LIFE, A SYMBOL 220-233 (1996).
48. See generally Perry, Transracial Adoption, supra note 2.
49. See Howe, supra note 2, at 138-52.
same-race placements is contrary to the interests of Black children.\textsuperscript{50} Taking a similar approach in a different, but related context, Professor Susan Estrich strongly criticized the Indian Child Welfare Act, national legislation which strongly promotes the placement of American Indian children in need of homes with Indian families for adoption.\textsuperscript{51} She argued that the Act treats children "like property" and she criticized the power the legislation accords to Indian tribes in connection with adoptions involving Indian children.

Obviously, in the case of most transracial adoptions, as in the case of most adoptions, the adopted child will be raised by both a mother and a father. However, for many Black women, the controversy over transracial adoption is not simply about white families wanting to adopt Black children; it is also about white women raising Black children.

I became interested in the analysis of transracial adoption as an issue involving differences between women as a result of the many reactions of Black women to my earlier article. Although both many Black men and Black women agreed with my basic analysis in which I focused on the often different perspectives of whites and Blacks on transracial adoption, I noticed a difference between the comments I received from women and those I received from men. While most Black men seemed to agree in general with my political analysis with respect to race, the comments of Black women often brought up the subject of motherhood. A number of women seemed to see advocacy of transracial adoption as an attack on Black women as mothers, and many seemed to feel that the discourse on transracial adoption reflected both arrogance and a sense of privilege on the part of some white women, as well as a failure of some whites to understand the very different challenges involved in raising Black children.

There are probably many reasons why Black women often appear to be ambivalent or even hostile toward transracial adoption. Some of the reasons certainly involve perceptions about the needs of individual Black children—there is skepticism about whether white women can provide Black children with the skills they need to survive in a racist society. Some Black women may also feel that white women often raise white children with a sense of superiority over Blacks and that they will naturally raise Black transracially adopted children to feel the same way. Some Black women may simply believe that white people cannot love a Black child the same way they would love a white one. They understand that however precious Black children may be to Black people, for many whites seeking to adopt, a Black child is a second, third, or last choice, behind children that are white, Asian or Hispanic.\textsuperscript{52} Some Black women are quite

\textsuperscript{50} See Bartholet, supra note 2.
\textsuperscript{52} For a discussion of mistrust as a factor in the attitudes of Blacks about transracial adoption, see Perry, Transracial Adoption, supra note 2, at 57-59. See also Zanita E. Fenton, In a World Not Their Own: The Adoption of Black Children, 10 HARV. BLACKLETTER J. 39, 51-54 (1993). A reporter for the L.A. Times observed that "of dozens of white parents I have interviewed in three years, almost all said they would consider adopting a Latino child abroad before a Black child at home." Mary Jo McConahay, The Baby Trade: Where
critical of the mothering skills displayed by white mothers with respect to their own children, and thus view arguments of some advocates of transracial adoption that white families may be able to parent Black children better than Black families with amused contempt. Others may be concerned that white women are interested in adopting Black children to fulfill their own desires to parent, but have no interest in the condition of Black children in general or in conditions that threaten the stability of so many Black families.

I offer two additional explanations for the feelings some Black women may have toward transracial adoption—feelings unrelated to concerns about the competence of white women to raise Black children. I argue that many Black women feel that arguments in favor of transracial adoption that minimize the role of race in parenting devalue an important part of what motherhood means to them—a historical and contemporary struggle to raise Black children successfully in a racist world. In addition, many Black women may also resent transracial adoption because they see it as part of a larger system of racial hierarchy and privilege that advantages white women while it devalues and subordinates women of color.

In advancing this analysis, I am not arguing that Black women spend a great deal of time thinking about transracial adoption—an issue that, as a practical matter, affects a very small number of Black children. Nor should the conclusion be drawn that Black women would like to exchange places with white women, or they wish that their relationships with Black men would mirror those of white women with white men. However, I do suggest that when the issue of transracial adoption is presented, Black women analyze it from a perspective that incorporates issues of both race and gender, and that this analysis leaves many with concerns and misgivings about the practice.

1. Black Women and the Meaning of Motherhood

Mothering has a great deal of symbolic cultural meaning for many women. Women often enjoy passing on to their children traditions and activities that they


53. For an example of the argument that white parents may be able to do a better job than Black parents of raising Black children, see Bartholet, supra note 2, at 1220-23. Although in public discourse it is Black mothers who are often disparaged, some women of color also have a critique of the mothering skills of white women. For example, interviews with Black domestic workers by Bonnie Thornton Dill led her to conclude that they thought of their white employers "as either inconsistent or afraid of their children or ignorant of child-rearing strategies that would develop obedience and respect." Bonnie Thornton Dill, The Means to Put My Children Through: Child-Rearing Goals and Strategies Among Black Female Domestic Servants, in LA FRANCES RODGERS-ROSE, THE BLACK WOMAN 107, 120 (1980). Professor Elizabeth Iglesias also points out that in Latino culture, the mothering methods of Anglos are often thought to produce children who are materialistic and self-centered. Professor Iglesias describes a clash of values between Anglo culture, which values individualism in the socialization of children, and Latin and Black cultures, which stress the importance of membership in extended family networks. See Elizabeth M. Iglesias, Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 VAND. L. REV. 869, 909-29 (1996).
enjoyed as children. They may especially enjoy sharing with their daughters activities they engaged in as young girls. These activities, such as playing with dolls, or cooking and sewing, may represent an important part of what they view as their socialization as women. Even women who wish to alter some of the socialization patterns they associate with gender subordination may experience a sense of both challenge and pleasure in helping their daughters learn what they consider to be positive about life as a woman, while, at the same time, helping their daughters to overcome limitations that may have restricted their opportunities.

For Black women, part of the symbolic cultural meaning of mothering is tied to race. Like other mothers, Black mothers also find cultural meaning in passing on to their children activities, traditions, and values they associate with their own upbringing. However, in their case, these experiences also reflect their specific status as Black women. For Black women, the cultural traditions that are passed on concern, among other things, food, music, movement, and language. For their daughters, there is also the passing on of traditions such as braided hairstyles and strategies for succeeding in relationships with Black men, who, because of racism in the society, often lack the status and opportunities traditionally associated with male status. There is the transmission, to both sons and daughters, of strategies for survival in the larger society, and of the message that it is important to make a contribution to the advancement of Blacks as a group. Like other women, Black women find value in passing on their own traditions, and may have mixed feelings about adoptions, which they may view as depriving Black children of important experiences which connect them with earlier generations.\textsuperscript{54}

Feminist scholars have discussed many different aspects of mothering.\textsuperscript{55} Motherhood has been described as a "colonized concept"—one that has been given meaning by men.\textsuperscript{56} There has been exploration of the ways in which racism and patriarchy interact in creating the meaning of motherhood.\textsuperscript{57} I am particularly interested in the ways in which Black women see mothering as a political undertaking,\textsuperscript{58} one in which they must do what they can to protect their children

\textsuperscript{54} For discussions of the meaning of motherhood for Black women, see, e.g., Suzanne C. Carothers, Catching Sense: Learning From Our Mothers to be Black and Female, in UNCERTAIN TERMS: NEGOTIATING GENDER IN AMERICAN CULTURE 232 (Faye Ginsberg & Anna Tsing eds., 1990); JOSEPH & LEWIS, supra note 43. See also DOUBLE STITCH, (Patricia Bell-Scott et al. eds., 1991). For a discussion of the cultural and political significance of hair to Black women, see Paulette Caldwell, A Hairpiece: Perspectives on the Intersection of Race and Gender, 1991 DUKE L.J. 365 (1991).

\textsuperscript{55} See, e.g., CHODOROW, supra note 9; FINEMAN, supra note 9; Dorothy Roberts, Racism and Patriarchy in the Meaning of Motherhood, 1 AM. U. J. GENDER & L. 1 (1993); Sanger, supra note 9.

\textsuperscript{56} See Martha L. Fineman, Images of Mothers in Poverty Discourses, 1991 DUKE L.J. 274, 280-290 ("It seems that motherhood has always been, and continues to be, a colonized concept—an event physically practiced and experienced by women, but occupied and defined, given content and value, by the core concepts of patriarchal ideology.").

\textsuperscript{57} See Roberts, Racism and Patriarchy, supra note 55.

\textsuperscript{58} See, e.g., Twila L. Perry, Alimony: Race, Privilege and Dependency in the Search for Theory, 82 GEO. L.J. 2481 (1994) [hereinafter, Perry, Alimony]; Twila L. Perry, Family Values, Race, Feminism and Public Policy, 36 SANTA CLARA L. REV. 345 (1996) [hereinafter, Perry, Family Values].
from a racist society and to teach their children how to survive on their own in a racially hostile world.

Regardless of their educational background or economic status, most Black women are keenly aware that there was a period in American history when Black children were bought and sold as property. During slavery, Black mothers struggled to raise their children in a society in which they had no legal rights relating to the parent/child relationship. They sought to protect their children physically and emotionally in a system where their children could be abused, killed or sold away from them at any time.

Today the mothering of Black children continues to be complicated by the factor of racism. Black children in this society suffer disproportionately from poverty, poor health care, and poor access to quality education.

Black women today understand that they are still mothering against the odds. Even for the Black middle class and the small Black upper class, for whom issues of day-to-day survival may not be central, the challenge of assisting their children in developing a healthy racial identity and coping with racial isolation and hostility can still be daunting.

Thus, regardless of their take on the "survival skills" issue as it pertains to the ability of whites to parent Black children, many Black women may feel that arguments that race is not relevant in parenting Black children devalues their historical and contemporary struggles as mothers. These arguments also suggest that Black mothers' view that racism is a threat to themselves and their children is based on paranoia, rather than the reality that this society does impose burdens on Black children that it does not impose on children who are white. Arguments which suggest that Black children need no special skills or that if they do, anyone can provide them, trivialize or dismiss what many Black women might view as their greatest life challenge and accomplishment.


60. See generally, Gutman, supra note 32 (examining the life of the Black family during and after slavery); Dorothy Burnham, Children of the Slave Community in the United States, 19 Freedomways 75, 75-77 (1979).


62. As noted by Elizabeth Spelman, "[B]lack mothering is different from white mothering in terms of the knowledge mothers have about how their children will be greeted by a racist society." Elizabeth V. Spelman, Inessential Women 99 (1988).


64. The devaluation of Black motherhood that transracial adoption symbolizes to Black women may be especially painful because of the particular importance of motherhood in Black communities. Unlike white women who may often derive social status from husbands who tend to be more affluent than they are, for many
2. Black Women in the Racial Hierarchy

Historically, many Black women have adopted Black children, and many continue to do so. Still, the image of white women adopting Black children is one some Black women find disturbing. This ambivalent or even negative reaction has less to do with the specific issue of adoption, and more with the fact that the one-way pattern of adoption presented by transracial adoption reflects a racial hierarchy that exists in so many other contexts in the society. Thus, Black women may resent transracial adoption because they see it as simply one more context in which white women exercise power, privilege, and choice relative to Black women, particularly with respect to issues surrounding family life.

One area of family life in which white women have long exercised power over Black women is in the area of household labor. Since the time of slavery, there has been an appropriation and exploitation of Black women's domestic labor on behalf of white families. For many domestic workers, more hours have been spent during a week serving white families than caring for their own. The children of many domestics have passed the day unsupervised, fending for themselves, while their mothers fulfilled the physical and emotional needs of white children and their families. The relationship between Black domestics and their white employers is a complex one in which issues of race, gender, and class are played out between women who are in an unequal relationship in which one woman, by virtue of her position in the racial and economic hierarchy, holds substantial power over the other.

Some Black women also see white women as occupying a position of status and privilege in relationship to Black women in the arena of marriage and intimate relationships. Many white women derive a comfortable economic status from their relationships to white men, who constitute the most economically advantaged group in the society. In a society in which race is correlated with economic privilege, some Black women may resent seeing financially comfortable white women offering homes to Black children at a time when many Black families and Black women are finding it increasingly difficult to keep their

Black women, the status of mother may be their most or sole affirming role. Black women are more likely than white women to be single mothers or divorced. See BUREAU OF THE CENSUS, supra note 39.

65. The personal relationships between Black domestics and their employers have been the subject of research in recent years. See, e.g., JUDITH ROLLINS, BETWEEN WOMEN: DOMESTIC AND THEIR EMPLOYERS (1988) (exploring differences in perceptions of the jobs between employer and employee). See also Dill, supra note 53.

66. See, e.g., JONES, supra note 37, at 129 (describing the routine of Black domestic workers with their own children and the children of their employers). See also, Anonymous, I Live a Treadmill Life, in BLACK WOMEN IN WHITE AMERICA 227-28 (Gerda Lerner ed., 1973) (describing the account of a Black domestic who can spend little time with her own children). There are examples of this in the fiction of some Black women writers. See, e.g., TONI MORRISON, THE BLUEST EYE (1970), where the neglect of the domestic worker's own child, while she cared for the child of her employers, led to tragic consequences.

67. See Rollins, supra note 65, at 8 (describing the relationship between domestic workers and their employers as one involving elements of deference and maternalism).
own children out of foster care. Moreover, some Black women may see white women as competitors for Black men as companions, husbands, and potential fathers for hoped-for children. Some may see white women as having an upper hand in this competition because of society's promotion of white women as the standard bearers of beauty, femininity and desirability. Although some white mothers of transracially adopted children are single, and interracial marriage and transracial adoption are not precisely the same issue, the image of white mothers with Black and biracial children may be an inevitable reminder to some Black women of relationships between Black men and white women, at a time when many Black women find it difficult to find Black male companionship or marriage partners. In the eyes of some Black women, then, transracial adoption represents just another context in which white women seem to have easy access to an enviable range of options.

Should the lack of enthusiasm of some Black women for transracial adoption matter in developing an approach to adoption by mainstream feminists? One response would be to argue, as some have, that minority groups, as groups, have no interest in the issue of transracial adoption, and that the important issue is the need of individual children for homes. A different, and I believe more desirable approach would be to try to think about addressing the feelings some minority women have about transracial adoption in a mainstream feminist analysis of adoption. This is obviously a greater challenge.

With the availability of healthy white newborns declining in this country, the number of transracial and international adoptions is increasing. For mainstream feminists to ignore the issues that such adoptions present would be to deny an important reality of adoption today. Moreover, established tenets of feminist theory seem to require at least an attempt to understand the practical and symbolic implications of transracial and international adoption as an issue for minority women. As Professor Christine Littlejohn has observed, "feminist method starts with the very radical act of taking women seriously, believing that

68. See Gray & Nybell, Issues in African-American Family Preservation, 69 CHILD WELFARE 513, 513 (1990) (noting that about half of the children in foster care are Black). Aida Hurtado has noted that:

[T]he loss of children is one of the main reasons for the anger felt by many women of color. There is a contemporary ring to Sojourner Truth's words "I have borne thirteen children and seen them most all sold off to slavery." Drugs, prison, discrimination, poverty, and racism continue to deprive women of color of their children at alarming rates in U.S. society. These losses and their meaning for the survival of future generations often distinguish the concerns of feminists of color from those of white women.

Hurtado, supra note 38, at 853.


71. See Bartholet, supra note 2, at 1247-48.
what we say about ourselves is important and valid, even when (or perhaps
especially when) it has little or no relevance to what has been or is being said
about us. A feminist approach to transracial adoption should be guided by a
similar principle of according respect and relevance to the views of another group
about themselves. The views and concerns of minority women must not be
ignored or be left without meaningful response.

Moreover, the fact that feminist theory places women at the center of analysis
requires that an analysis of adoption focus not only on children, but also on
women. When, for example, the issue of child abuse is approached from a
feminist perspective, the focus is not only on the children, but also on the
circumstances and feelings of the mothers who are involved. In an analysis of the
nuclear family, the focus is not only on the family as a unit, but also on the
position of women as wives and mothers. One way of giving value to the
experiences of women as mothers is to ask what mothering means to women,
rather than asking only what mothering means to those who are mothered. In
asking what mothering means to women, the experiences and perspectives of
diverse groups of women must be considered.

II. MOTHERING CHILDREN IN A RACIST SOCIETY

Because women play a dominant role in caring for children, a subtext in the
debate over transracial adoption involves the issue of mothering. Thus, a question
underlying the debate about giving Black children "survival skills" is: who is
qualified to mother children in a society that even the advocates of transracial
adoption admit is racist? It is interesting that there are ways in which this issue is
discussed, and ways in which it is not discussed. I argue that society's
perceptions of the competence of women to mother children is intricately tied to
the racial hierarchies among women in this society and that these perceptions are
reflected in the controversy concerning transracial adoption. All too often, Black
women are seen as inadequate to the task of mothering Black children, while
white women are seen as competent to raise children of any race.

I view this racial hierarchy among mothers as having a number of troubling
ramifications. First, if society values the mothering of some women more than it
values the mothering of others, the separation of the devalued mother from her
children is less likely to be a cause of concern. Indeed, children transferred from
devalued women to valued women are deemed to have received a lucky break.
Second, women who know that they are devalued as mothers are likely to resent
a pattern of adoption in which children from their group are always transferred to
the women of higher status. Finally, the perception of the more valued group of
women as competent to mother all children may deflect other important inquiries.
In the context of the controversy over transracial adoption, assumptions about the

ability of white women to mother Black children avoids a different inquiry about mothering, race, and racism that deserves attention.

In the following Section, I explore the question of societal perceptions about race and mothering and its relationship to the controversy over transracial adoption. I identify four different racial combinations of mothers and children. I then explore how perceptions of the adequacy of mothering in these different contexts reflects the racial hierarchy that exists in this society and is reflected in the transracial adoption controversy. Finally, I argue for a shift of the debate from the question of who is qualified to raise Black children in a racist society to the question of what it means to raise white children in a racist society—an inquiry that is seldom made, but that should be of concern to feminists and others who are interested in social change.

A. Black Women Mothering Black Children in a Racist Society

The idea that Black parents must teach Black children how to survive in a racist society was not invented in response to the controversy over transracial adoption. Instead, this view represents the acknowledgment by many Black people of a long history of struggle to ensure that Black children are able to survive physically and emotionally in a racially hostile world. Many Blacks would agree that Black parents face unique challenges in raising Black children, and they celebrate the fact that generations of Black children have been successfully raised against the odds.

However, white society’s view of Black women mothering Black children is often at odds with this perspective. A number of scholars have written extensively about society’s devaluation of Black mothers, noting the widespread stereotypes of the emasculating matriarch, the lazy welfare mother, and the licentious Jezebel. In recent conservative discourse, Black mothers are portrayed as raising a future generation of welfare cheats, violent criminals, and absent fathers.

73. The combinations I have identified involve white and Black mothers and children. I recognize that there are many other possible combinations involving race and ethnicity. I intend this analysis to serve as an illustration, and not as a complete discussion of all of the issues that might be presented with different combinations of ethnicities.


75. See Roberts, supra note 74 (discussing society’s disparagement of Black mothers). See, e.g., Charles Murray, No Point Fiddling With Welfare at the Margin, SUNDAY TIMES, London, July 11, 1993, #1 at 13 (blaming births to single mothers for a rise in crime and unemployment and a decline in the “overall civility” of social interaction); Joan Beck, Nation Must Stem Tide of Births Out of Wedlock, TIMES PICAYUNE, Mar. 6, 1993, at B7 (blaming childbearing by unmarried women for crime, poor health and poor achievement among children) While conservative discourse does not always focus specifically on Black women, terms such as “single mothers,” “inner city,” and “welfare dependency” often become code words for race. See generally, Wahneema Lubiano, Black Ladies, Welfare Queens and State Minstrels: Ideological War by Narrative Means,
I have argued elsewhere that the mothering of Black children by Black women has been devalued in both the public and the legal discourse surrounding transracial adoption.\textsuperscript{76} The media frequently presents the public with scenarios in which screaming, crying Black children are ripped from the arms of loving white foster parents who want to adopt them only to be returned to out of control, drug-addicted Black mothers destined to abuse, or even kill them.\textsuperscript{77} Some legal scholarship advocating transracial adoption incorporates and reifies this approach\textsuperscript{78} to promote the argument that the use of race as a factor in adoption is harmful to Black children.

Films, in particular, have a long tradition of objectifying and misrepresenting the experiences of Black people and they have, through both narrative and imagery, replicated and reinforced a negative portrayal of Black mothers.\textsuperscript{79} Films can tell a story about race and about the intersection of race and the law that can exert a powerful influence on society's view of what the law on a particular issue should be.

A recent movie, entitled Losing Isaiah,\textsuperscript{80} provides a potent example of the way in which the portrayal of Black mothers in film can be used to support the argument that the law should be structured to favor the adoption of Black children by whites.

The plot of Losing Isaiah involves a Black birth mother's attempt to reclaim her three year old son from a white middle class family with whom the child was placed for foster care shortly after birth. The white family is in the process of adopting Isaiah when his mother initiates the case for his return.

The movie opens with Isaiah's birth mother in a crack-induced daze. A voice from another room in a shabby tenement yells out "Get that cryin' baby outta here!" Isaiah's mother staggers with her newborn son out into the street, where she places him in a garbage can while she goes in search of drugs. The next morning Isaiah is rescued by a sanitation worker seconds before he is crushed by the trash compactor of a garbage truck. A few hours later, Isaiah's mother wakes up from her drug-induced haze, remembers where she has left her baby and goes to retrieve him. Seeing that the garbage has been picked up, she assumes, without investigation, that Isaiah is dead and simply goes on with her life. Meanwhile, Isaiah has been placed with a warm, loving, white family with whom he thrives.

They grow to love Isaiah and want to adopt him. Eventually Isaiah's birth mother learns that her son is alive. She enrolls in a drug rehab program, kicks her crack habit, and retains a lawyer to seek her child's return.

\textsuperscript{76} See Perry, Transracial Adoption, supra note 2, at 89-99.
\textsuperscript{77} See id.
\textsuperscript{78} See Bartholet, supra note 2, at 1192.
\textsuperscript{79} See Margaret M. Russell, Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film, 15 LEGAL STUD. FORUM 243, 244 (1991).
\textsuperscript{80} Paramount Pictures (1995).
The movie abounds with negative images of Black mothers. In addition to Isaiah's mother, who left him in a garbage can, there is another young Black mother in the movie who treats her young son with coldness and crudeness. The only exception is in one scene in which the child is breakdancing. In that scene, and in that scene only, the mother beams with warmth and pride.\footnote{81}

The central courtroom scene in the movie promotes numerous negative images of Black women and Black families. Isaiah's mother admits on the witness stand that her son was conceived by accident during an anonymous drugs-for-sex encounter. When asked by the judge whether she has anyone to assist her in the care of her son should he be returned to her, Isaiah's mother replies that the only people she can rely on are also recovering crack addicts. The implication is that there is no family that is in contact with or cares about this young girl, no family that is thrilled that she has overcome her drug habit and is on the road to rehabilitating her life. The movie depicts no concerned and caring sisters, brothers, aunts, or uncles—no loving Black grandmother waiting to shower attention and affection on her newly discovered grandson.

In the end, the court returns Isaiah to his birth mother who can only offer him a life of squalor and chaos. Her frustrations bring her to the brink of child abuse. Finally, in an ambiguous ending, she calls the white adoptive mother for help, and possibly to return Isaiah to her. In this way, Isaiah's mother confirms her own inadequacy and confirms that the white adoptive mother was the better mother after all.

Although Black women may often see themselves as successfully mothering against the odds, this is often not the perception of the larger society. The legal discourse on both foster care and transracial adoption, and the media images represented in a film such as Losing Isaiah are examples of a widespread negative view of the competence of Black mothers in raising Black children.

B. Black Women Mothering White Children in a Racist Society

As noted earlier, Black women have long worked as domestics and nannies for white families. The image of a Black woman as the caretaker of white children is a part of the story of America portrayed on television, in the movies, and in literature.\footnote{82} It is also, unfortunately, a part of the reality of America. The fact that many Black women still hold these kinds of jobs should be obvious to anyone from even the briefest observation of playgrounds in many upper or upper-middle class neighborhoods.

\footnote{81. The movie also promotes negative images of Black men. It provides Isaiah's mother with a romantic interest. However, after several warm and fuzzy scenes, the man turns out to be married—separated—so he claims—but still legally married. Thus, we have the stereotype of the "jive" Black man to accompany the stereotype of the irresponsible and uncaring Black mother.}

\footnote{82. See Deborah Gray White, AR'N"T I A WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH 46-61 (1985) (discussing the development of the stereotype of "Mammy").}
Women who work as nannies clearly serve a mothering function. The nanny's job is to provide the children in her charge with affection, discipline, and physical care. In many instances, a nanny may, in effect, raise the children in the employer's family, and this may be particularly true where both parents work at demanding, time consuming jobs. It would not be unfair or inaccurate, then, to say that there are many white children who, essentially, have been raised by Black women.

However, the relationship of a nanny to the children in her care is not a legal one. A nanny has neither the legal rights nor the social status that society accords to a child's own mother. Indeed, the relationship between the nanny and the children in her care can be severed at any time by the woman who wields the real power in this context—the child's mother, who is the nanny's employer. The nanny thus has no legal rights with respect to a child with whom she may have developed strong emotional bonds. It is interesting then, that although many Black women have functionally served as the mothers of white children, the idea of a Black woman raising a white child as an adoptive mother is one that is seldom explored in the literature on transracial adoption, even for the limited purpose of exploring perceptions about race and parenthood.

The mere contemplation of such a scenario seems to exceed our cultural imagination. Of course, there is the practical reality that most adoptive Black families adopt Black children. However, in order to think about the issue of society's acceptance of a Black woman as the legal mother, rather than as the nanny of a white child, let us explore the following hypothetical: A Black couple decides to build a multiracial family. They decide that they would like to adopt one Black child, one white child, one Hispanic child, and one Asian child—not in any particular order. The couple flips a coin in order to determine which child to adopt first. The result of the coin flip is that they will adopt a white child first. Is it likely that such an adoption would ever actually occur? Would it make any difference if the white child was the second, third, or fourth child sought to be adopted? As reluctant as some might be to admit it, the presumption would likely be that a Black family would be an inappropriate setting for a white child to grow up in.

Now, let us posit the reverse. A white couple has a similar dream of creating a multiracial family. They, too, do a coin flip, and the result is that the first child they will seek is a Black child.

Can it be seriously argued that the white couple and the Black couple in this scenario would be treated the same by an adoption agency? Thus, transracial adoption is, in practicality and also in conception, a one-way street. The

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83. See Dill, supra note 53, at 10, 121-22 (discussing psychological strategies used by Black women in caring for another woman's children); see also, Howard Raines, Grady's Gift, N.Y. TIMES, Jan. 5, 1992, at 50 (noting the reminiscence about the years a Black domestic worker was employed by his family, that "[s]he had been our maid, but she taught me the most valuable lesson a writer can learn, which is to see—honestly and down to its very center—the world in which we live").

84. I have discussed this in detail elsewhere. See Perry, Transracial Adoption, supra note 2, at 103-04.
mothering of a white child by a Black woman is seen as acceptable, perhaps even desirable, as long as the Black woman occupies the subordinate position of domestic servant. It is far more difficult for many whites to imagine what it would mean for a Black woman to mother a white child in a racist society, not as a nanny, but on an equal status to a white woman—as a bona fide legal adoptive mother.

C. White Women Mothering Black Children in a Racist Society

In support of their argument that white adults can effectively raise Black children in a racist society, advocates of transracial adoption sometimes rely on the work of researchers on transracially adopted children who seem to unanimously conclude that transracial adoption is not detrimental to Black children. Another argument that has been advanced is that transracial adoption cannot be detrimental to Black children because many white women have successfully mothered Black children who are their biological children as the result of interracial marriages or relationships.

America has had a long history of thinking of biracial individuals as "tragic mulatto," people painfully caught between the white world and the Black world, and not fully accepted by either. Historically, the person seen as the "tragic mulatto" was usually the child of a Black mother and a white father, conceived in the context of coerced or exploitative relationships during slavery or in its aftermath. The child, often born outside of marriage, was rejected by white society and often went unacknowledged by her white parent. In more recent times, in the post Loving v. Virginia era, bi-racial children have often been the children of interracial marriages involving white women and Black men. As the race of the mother of the bi-racial child has changed over time, the image of the children has also changed—it has become more positive. No longer

85. See, e.g., RUTH G. MCROY & LOUIS A. ZURCHER, JR., TRANSRACIAL AND INRACIAL ADOPTEES: THE ADOLESCENT YEARS (1983); RITA J. SIMON & HOWARD ALSTEIN, TRANSRACIAL ADOPTEES AND THEIR FAMILIES (1987). It should be noted that despite this conclusion, the researchers on transracial adoption are still virtually unanimous in their conclusion that it remains preferable for Black children to be placed with Black adoptive parents, if possible. See Perry, Transracial Adoption, supra note 2, at 59. For a listing of other studies of children who have been transracially adopted and a discussion of some of the limitations of this research, see id. at 57-59.

86. See Bartholet, Where Do Black Children Belong?, supra note 2, at 1194.


88. Examples of this are the movies Pinkie (1949) and Imitation of Life (1959), and the character of Julie in Showboat (1926); see also ZACK, supra note 87, at 127-40 (discussing the "tragic mulatto" stereotype in American literature).


91. In most interracial marriages between Blacks and whites, the husband is Black and the wife is white. See BUREAU OF THE CENSUS, supra note 39, at 57.
seen as tragic misfits, biracial people are now seen by some as being on the cutting edge of the evolution of a rich, multicultural society.

Psychologists have challenged the earlier, negative image of bi-racial people and have argued instead that the lives of such individuals, although complex, can be rich and satisfying. Also, in recent years, some white mothers and their biracial children have begun to write accounts of their own experiences of interracial parent-child relationships. These first person accounts offer a variety of perspectives, and describe relationships that are complex and sometimes difficult, but the authors generally conclude that the mothering relationships in their situations have been successful. Clearly, these views stand in contrast to the arguments proffered by some opponents to transracial adoption that white parents are unable to provide Black children with the skills they need to survive in a racist society.

The skills of white women in mothering Black children in a racist society continues to be the subject of inquiry and discussion. Relatively speaking, it is still a rare phenomenon. Certainly there are white women who have successfully mothered Black children. Moreover, all children who are considered Black in this society must learn to negotiate the question of race if they are to succeed, whether their mothers are white or Black. The focus in this discussion is not on the question of whether or not white mothers actually are or are not competent to raise Black children. Rather this discussion addresses the question of society's perceptions of mothers of different races, and it does seem clear that there is no widespread assumption that white women are not up to the task of mothering Black children, whether adopted or not. Certainly the world faced by white women and their bi-racial children is a different one, and a more tolerant one, than that confronted by Black women and their bi-racial children in earlier times. Still, the positive images of white women raising Black children can be

92. See, e.g., A. Poussaint, A Study of Interracial Children Presents Positive Picture, INTERRACIAL BOOKS FOR CHILDREN BULLETIN 15 (6), at 9-10 (1984); A. WILSON, MIXED RACE CHILDREN: A STUDY IN IDENTITY 176 (1987) (concluding that "[m]ixed race children do not necessarily conform to the stereotype of the social misfit caught between the social worlds of Black and white.").


95. See, e.g., Heidi W. Durrow, Mothering Across the Color Line: White Women, Black Babies, 7 YALE J.L. & FEMINISM 227 (1995) (discussing difficulties and tensions involved in being raised by a white mother but also stating that the argument that Black children need to be raised by Black parents in order to foster a positive racial identity "erases the reality of my experience and the experience of all bi-racial children raised in homes with white, single mothers."). Id. at 236. But see Asher D. Issacs, Interracial Adoption: Permanent Placement and Racial Identity, 14 NAT'L BLACK L.J. 126, 128 (1995) (describing a bi-racial, transracial adoptee's difficulty of white adoptive parents in meeting his need for development of a racial identity by stating, for example, that "being raised in a family that did not appreciate the significance of racial differences and the importance of developing a positive racial identity in a Black child left me unprepared to face the complexities of being an African-American male in this society").
contrasted to the view of many in this society that any problems Black children may have are the fault of the Black mothers who have raised them.

D. White Women Mothering White Children in a Racist Society

It is interesting that the question of what it means to raise children in a racist society is generally raised in the context of discussions about the rearing of Black children or other children of color. Black mothers, and indeed, Black fathers, are constantly put on the defensive. Advocates of transracial adoption argue that white parents are able to give Black children a healthy racial identity and the skills they need to survive in a racist society. At the same time, very little attention is given to the question of what it means to raise white children in a racist society. The assumption seems to be that race is not an important issue in the rearing of white children. Given caring parents who love them and who are willing to make the expected parental sacrifices, white children are expected to take their places of privilege within the status quo and thrive.

The question posed by the controversy over “survival skills”—the ability of white parents to give Black children the tools to cope with a racist society—is an important one. However, there is a more important question that needs to be addressed. What does it mean for white women to mother white children in a racist society? If race is a factor when Black women raise Black children, is race also not a factor when white women raise white children? Is mothering in America ever colorblind? In making the argument that white parents can raise Black children with a healthy racial identity, the question is often asked as to what it means to have a Black identity and how such an identity is acquired. But we also need to ask: What is a white identity and how is it acquired?

While there is a significant amount of feminist literature which takes white mothers to task for allegedly raising daughters who do not challenge gender subordination, it is more difficult to find feminist literature focusing on the need of white women to seek to raise children who are not racist.

Still, it would seem obvious that there must be something that could be described as a white identity. In America, a white identity would seem to be

96. See Bartholet, supra note 2, at 1219-23; see also Forde-Mazrui, supra note 94, at 946-55
97. There have been recent efforts to undertake such an analysis. See, e.g., Frankenberg, White Women, Race Matters: The Social Construction of Whiteness (1993). Frankenberg notes that whiteness has a set of linked dimensions. “First whiteness is a location of structural advantage, of race privilege. Second, it is a ‘standpoint,’ a place from which white people look at ourselves, at others, and at society. Third, ‘whiteness’ refers to a set of cultural practices that are usually unmarked and unnamed.” Id. at 1; see also Martha Mahoney, Segregation, Whiteness and Transformation, 143 U. PA. L. REV. 1659 (1995); Martha R. Mahoney, Whiteness and Women, In Practice and Theory: A Reply to Catharine MacKinnon, 5 YALE J.L. & FEMINISM 217, 242 (1993). [hereinafter, Mahoney, Whiteness and Women].
98. It has been noted that there is a recurrent theme in much mainstream feminist writing about mothers of blaming motherhood for social and psychological problems of their daughters. See Nancy Chodorow & Susan Contralto, The Fantasy of the Perfect Mother, in RETHINKING THE FAMILY: SOME FEMINIST QUESTIONS (Barrie Thorne & Marilyn Yalom eds., 1982).
99. There have been some recent efforts toward this goal. See Barbara Mathias & Mary Ann French, 40 Ways to Raise a Nonracist Child (1996).
Transracial and International Adoption

defined in relation to “the other”—Black people. Thus, there is clearly a process that takes place in the lives of white children which results in their acquiring an understanding of what it means to be white. Over time, white children grow to understand that they can expect better treatment than people who are not white, that they are expected to excel beyond people who are not white, and often that they are expected to observe limits in their social relationships with people who are not white. It is evident that there is a point in the development of white children when they learn that in this society a “good” school means a school that has few Black children in it, and that a “good” neighborhood is a neighborhood in which few Black people live.

This state of affairs should be of concern to feminists. Although people may derive their racial identities from a variety of sources, parents clearly must play some significant role in their development. In examining the question of how white children acquire a white identity, feminists must be willing not only to engage in theoretical discussions about the welfare of children and the need for social justice, but also to examine their own lives and to reflect on the choices they make that influence their own children’s development of a racial identity and racial consciousness. Obvious issues include decisions about neighborhoods, schools, and personal social relationships. For white feminists committed to social change, the question is whether it is enough to have the goal of simply raising a “well adjusted” individual who can assume his or her place of racial privilege by becoming a doctor, lawyer, or other professional person, or whether the goal in raising a white child in a racist society is to nurture the kind of person who will see racism as a problem he or she has a commitment to address.

Perhaps there should be less concern about whether white mothers can teach Black children about what it means to be Black and more concern about what white mothers teach white children about what it means to be white. And finally, if we are willing to question the skills of white mothers in imparting ideas about race and racial justice to children who are white, why should we assume that they

100. In discussing American literature, Nobel Laureate Toni Morrison has noted that: The contemplation of this black presence is central to any understanding of our national literature and should not be permitted to hover at the margins of the literary imagination. . . . The very manner by which American literature distinguishes itself as a coherent entity exists because of this unsettled and unsettling population . . . [o]ne can see that a real or fabricated Africanist presence is crucial to their sense of Americaness. 


101. Martha Mahoney, another white feminist who has challenged whiteness notes that: Many white people live predominately white lives without being more than intermittently conscious of “choosing whiteness”—or may live this way without ever consciously choosing whiteness, if instead the person is choosing a “good neighborhood.” The cultural value surrounding this segregation—the set of values which in white neighborhoods and “good” neighborhoods come together—are part of the oppression of people of color, and these values are part of the construction of race itself.

Mahoney, Whiteness and Women, supra note 97, at 242.

can do this effectively with children who are Black?° This slant on the “survival skills” issue warrants further discussion by the advocates of transracial adoption.

III. INTERNATIONAL ADOPTION

International adoptions began primarily as a humanitarian response by North Americans to the problem of European children orphaned by World War II. After the war, when Europe was rebuilt and its economic condition stabilized, the problem of orphaned children was resolved.° Since that time, birthrates have fallen in the West, abortion and reliable methods of contraception have become available,° and the stigma against women bearing children outside of marriage has declined,° resulting in fewer white women surrendering babies for adoption.° These factors have led to a decline in the number of children available for adoption in the West.° At the same time, birthrates in the Third World have increased.° The result has been a rise in the adoption of children from Third World countries by Westerners.°

The following section will address some issues raised by this recent trend in international adoption. I argue that transracial adoption and international adoption raise a number of similar issues. I also argue that a feminist approach to international adoption must go beyond conceptualizing adoption only as the

103. I am not arguing that the approaches to teaching children about race and racism would be the same regardless of the children’s racial status. White children live in a world in which their experiences are affected by racism, but racism is not directed toward them as individuals. Still, if a person is uncomfortable in talking about race and racism with children for whom these issues are less immediate and personally painful, it seems unlikely that that person would be effective in dealing with those issues with a child who may be facing them everyday at an intensely personal level.

104. INTERCOUNTRY ADOPTION: A MULTINATIONAL PERSPECTIVE 1 (Howard Alstein & Rita J. Simon eds., 1991) [hereinafter INTERCOUNTRY ADOPTION].

105. See id. at 8.

106. See SOLINGER, supra note 24, at 224-28.

107. For example, before 1973, 19.3% of never-married women relinquished their children for adoption, as compared to 3.2% in the years from 1982-1988. See Unwed White Mothers Seen Much Less Likely Now to Offer Babies for Adoption, WASH. POST, Mar. 1, 1992, at A11.

108. See INTERCOUNTRY ADOPTION, supra note 104, at 8-11; ALSTEIN & SIMON, TRANSRACIAL ADOPTION, supra note 13, at 8-11.


110. In recent years a large number of international adoptions by American families have been of children from Asia and Latin America. See Stolley, supra note 17, at 36. Very few children from African countries are adopted by Americans. Where international adoptions take place between two countries, usually three factors exist. First, a civil or international war, second, an imbalance in the socioeconomic conditions between the sending and the receiving countries, and third, cooperative links between the social and child welfare agencies of the countries in question. See INTERCOUNTRY ADOPTION, supra note 104, at 2. In general, African countries have not sanctioned the adoption of African children by foreigners. According to Rita Simon, only 137 African children were adopted by U.S. citizens between 1979 and 1987. See id. at 3. She notes that in 1989, a small agency was established in the United States to promote the adoption of children from Africa, particularly from Ethiopia and Mali, but she notes that although precise figures are not available, the number of children adopted through the agency is probably rather small. See id. at 3; see SPIRIT OF ADOPTION REACHES INTO AFRICA, L.A. TIMES, Aug. 20, 1989, at 3 (discussing the founding of Americans for African Adoptions, an agency established to promote the adoption of African children by Americans). In Rwanda, the government has staunchly opposed the adoption of children by foreigners. See Homeless Children Stuck in Rwanda: Hasty Actions in the Past Have Resulted in Stricter Rules on Foreign Adoptions, PEORIA JOURNAL STAR, Aug. 29, 1994, at A1.
creation of individual parent-child relationships and should, in addition, incorporate concerns about the social and economic conditions in the countries from which the children come.

A. Transracial and International Adoption: A Comparison

To some extent, transracial adoption and the international adoption of children from Latin America and Asia raise different issues. Some of the countries involved in international adoptions, at least in the past, actively supported or promoted such activity.111 Many of the children adopted are infants whose mothers presumably gave them up knowing that they were to be adopted by Westerners. Indeed, some of these mothers may be pleased that their children will have a chance to have a more economically comfortable life in America than they would have been able to offer in their often impoverished circumstances. Finally, in the United States, the adoption of children from Asia and Latin America may pose fewer social difficulties than the adoption of Black American children. There is, in America, a greater resistance to interracial marriages and interracial families where the non-white party is Black rather than Asian or Hispanic.112 If Asian or Hispanic children are more accepted by white society than are Black children, the “best interests” and/or “survival skills” issues that are so controversial in the transracial adoption of Black children may not seem as controversial with respect to children from these groups.

Still, international adoptions have also been subject to controversy and criticism.113 It has been argued, for example, that such adoptions run the risk of creating problems of adjustment in older children who must adapt to a new culture and language, and that they sometimes create problems of identity in children who are of a different ethnic group than their parents.114 It has also been claimed that the continued practice of intercountry adoption retards the growth of child welfare services in the sending countries.115 Furthermore, it has been argued that wealthy adopters come to poor countries in the wake of wars, earthquakes, and famines and take many healthy children, leaving behind older and disabled children for institutional care.116

111. Ecuador is one of several countries in Latin America that has encouraged such adoptions. See Dean E. Hale, A Viable Alternative for Clients Who Are Stymied by the American Scene, 4 FAM. ADVOC. 31 (1982). From the 1950s until the mid 1980s, South Korea allowed almost unrestricted adoption of its orphaned and abandoned children by foreigners. See INTERCOUNTRY ADOPTION, supra note 104, at 4-5.

112. See Isabel Wilkerson, Black-White Marriages Rise, But Couples Still Face Scorn, N.Y. TIMES, Dec. 2, 1991, at Al (citing study indicating that 66% of whites stated that they would oppose the marriage of a close relative to a Black person, but only 45% stated that they would oppose the marriage of a close relative to a person who was Hispanic or Asian.).

113. See BAGLEY, supra note 12, at 136.

114. See id. at 136.

115. See id.

116. See id.
Some people in third world countries analogize international adoption to colonial exploitation. Rita Simon and Howard and Altstein, who have written extensively on transracial and international adoption, have observed that:

[W]hat the West has generally regarded 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. In the 1970s and 1980s, children were the natural resources being exploited and out of which developing nations were being cheated.\(^\text{117}\)

Moreover, recent incidents in some Latin American countries indicate that not everyone in those countries is favorably disposed toward international adoption. A few years ago, for example, there were rumors in some Central and South American countries that Americans were seeking children for the purpose of using them as household servants or prostitutes, or killing them and using them as organ donors for sick children in America. In several instances, the rumors sparked violence against Americans.\(^\text{118}\) Such incidents, while not always protests specifically against international adoption, suggest that some people in third world countries suspect that Americans may devalue children who are not white Americans. Such beliefs are likely to lead to critical views of international adoption.

1. The Links of Poverty, Racism and Patriarchy

There are important links to be drawn between the transracial adoption of Black children in the United States and the adoption of children of color from Asia and Latin America. The factors of racism and economic discrimination that result in large numbers of Black children being separated from their biological parents in this country have counterparts in the international context, where a history of colonialism, neocolonialism, cultural imperialism, and economic exploitation often results in mothers being unable to keep the children to whom they have given birth. Thus, both domestically and internationally, transracial and international adoption often result in a pattern in which there is the transfer of

\(^{117}\) INTERCOUNTRY ADOPTION, supra note 104, at 93 (1991). The reaction of some poor countries to international adoption has also been described as “first you want our labor and raw materials; now you want our children” Jane Rowe, Perspectives on Adoption, in ADOPTION: INTERNATIONAL PERSPECTIVES 3, 6 (Euthytmia Hibbs ed., 1991).

\(^{118}\) See, e.g., Foreigners Attacked in Guatemala, N.Y. TIMES, Apr. 5, 1994, at A10; Vidal Silva, Archbishop Says Latin American Children Killed for Organs, UPI, May 2, 1991, available in LEXIS, World Library, UPI File. For a detailed description of the rumors and their aftermath see, Carro, supra note 3, at 121; William R. Long, Adopting a Tougher Policy: Foreign Adoptions are Being Curtailed in Many Latin American Countries: Alarm at Corruption and Rumors of Ruthless Americans on the Prowl for Tiny Organ Donors are Behind the Crackdown, L.A. TIMES, Apr. 16, 1994, at 1, which discusses the recurring rumors of children being adopted by foreigners who want to exploit them not only for “spare parts” but also for use as prostitutes or household servants.
children from the least advantaged women to the most advantaged women. Despite the differences between the specific circumstances of Black women in America and some other third world women, there is a connection in terms of a struggle by both to function as mothers under political and economic conditions which severely challenge their ability to adequately parent their own children. Moreover, many transracial adoptions, international adoptions, and adoptions in which racial and ethnic differences are not a factor, also share another connection—a link to the institution of patriarchy. Because poverty, racism and patriarchy are often factors when children become available for adoption, consideration of each of them is essential to the development of a feminist approach to adoption.

a. Poverty

Just as poverty is a reason why Black children in America are disproportionately represented among those available for adoption, poverty is often a factor in international adoption. Many women who surrender their children live in dire circumstances where disease, lack of education, and poor housing are part of everyday existence. Although the United States certainly cannot be held solely responsible for these conditions, there are relationships that exist between the United States and some of the countries from which internationally adopted children often come that should be troubling to feminists thinking about international adoption. These relationships have aspects that are economic, political/military, and cultural.

This is the era of the global economy. There is a recent trend for large corporations to shift manufacturing jobs from the United States, where labor costs are high, to poor countries, where labor costs are low. Professor Chandra Mohanty has described the relationship between multinational corporations and the circumstances of poor women in third-world countries: “… the 1960’s expansion of multinational export producing labor intensive industries to the third world and the U.S.-Mexican border is the newest pernicious form of economic and ideological domination.”

World markets relocate in search of cheap labor and find a home in countries with unstable (or dependent) political regimes, low levels of unionization, and high unemployment. What is significant about this particular situation is that it is young, third-world women who overwhelmingly constitute the labor force.

119. There are increasing efforts of third-world women to find their commonalities. See, e.g., Chandra Talpade Mohanty, Introduction: Cartographies of Struggle: Third World Women and the Politics of Feminism 7 (noting that what “seems to constitute women of color” or “third world women” as a viable oppositional alliance is a common context of struggle rather than color or racial identifications”) in THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM (Chandra T. Mohanty et al. eds., 1991) [hereinafter THIRD WORLD WOMEN].

120. Mohanty, supra note 119, at 28.

121. See Mohanty, supra note 119, at 28. Recently, New York Times columnist Bob Herbert wrote a number of articles describing the conditions under which women in El Salvador work in factories which are under contract to produce clothing for companies such as the Gap, J. Crew, Liz Claiborne, Eddie Bauer and
In recent years, some poor women, particularly in countries in Latin America, have found employment in factories which produce goods for companies in the United States. Unfortunately, the wages for which many of these women work are pitifully low, sometimes as low as forty cents per hour. What are the implications for international adoption of this trend of economic globalization? Clearly the wages these women earn are inadequate. Even if they are the highest wages the women have ever earned, they are not sufficient to lift the women out of poverty, and poverty is clearly a factor in so many children in Latin American being available for adoption by Americans. Indeed, many of the Latin American women who work for American businesses work for companies such as Liz Claiborne, J.C. Penney and J. Crew, who specifically market their clothing to middle and upper-middle class American women.122

b. Imperialism, Culture, and International Adoption

A number of countries from which children of color come have a history of colonialism—military and economic domination by western nations at some point in their histories.123 Obviously, colonial relationships exist to serve the needs of the colonizing countries; the result is generally exploitation of the people and resources of the country that is dominated.124 However, colonialism is not simply military and economic—it also has a cultural component.125 This cultural component often finds expression in the belief that the country that is being militarily and economically subjugated is comprised of an inferior people,126 and in the eyes of the conqueror, this inferiority justifies the conquest and continued domination. A phenomenon occurs wherein over time, as Edward Said has noted, the dominant group substitutes its own view or representation of the other culture for positive knowledge about it,127 and the relationship becomes one of “power, of domination, of varying degrees of a complex hegemony. . . .

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J.C. Penney. See, e.g., Bob Herbert, Children of the Dark Ages, N.Y. TIMES, at A25 [hereinafter Children of the Dark]. Often these factories are established in free-trade zones. Wages are low, hours are long. Herbert notes that:

The vast majority of maquiladora workers are poverty-stricken girls and young women . . . The companies make no secret of their preference for young females. A common explanation is that girls at about the age of 16 are at their peak of hand and eye coordination, perfect for the factories. A more persuasive explanation is that young girls are the most docile of all workers, less likely to object to abuse or to fight for any rights.

Id. at A25. The article discusses recent efforts to establish unions in the factories and how these efforts resulted in the firing of many workers. See also Bob Herbert, In America: In Deep Denial, Oct. 13, 1995, at A33 (describing work conditions in factories in Central America producing goods for American companies) [hereinafter Deep Denial].

122. See Deep Denial, supra note 121, at A33.

123. Asian countries such as Vietnam and Korea, and Latin American countries such as Peru, Argentina and Ecuador have such histories, and have been sources for children for international adoption.


126. See id. at ix (describing European views at the time of colonial expansion as “bringing civilization to primitive or barbaric people who deserved to be ruled”).

While the era of actual colonialism may be over in much of the world, the racist and ethnocentric rationales for it linger.\textsuperscript{129}

The United States has never formally held colonies in Latin America. Nevertheless, our government has had strong military ties to numerous governments in that area of the world. It has often financed military endeavors favorable to United States' interests, and it has developed economic interests and relationships that favor American businesses.\textsuperscript{130} The United States has also been a dominant military force in a number of the Asian countries, such as Korea and Vietnam where many internationally adopted children have been born. The kind of economic and military relationships that the United States has had with some third-world countries can engender the same kind of cultural imperialism that results from more formal colonial relationships.\textsuperscript{131}

As troubling as it may be for many to admit, a conception of poor, third-world countries as subordinate nations fits very comfortably with the practice of international adoption. This kind of view translates easily into the idea that Western adoptive parents are simply saving unfortunate third-world children by bringing them out of primitive, impoverished and disease-ridden countries into the more affluent life that the West can offer.\textsuperscript{132} It permits a discourse that allows Westerners to take the high ground and portray their international adoptions as simple acts of humanitarianism and altruism.

Admittedly, there is a humanitarian aspect to many international adoptions. Obviously, there are children adopted from poor countries who would face a very bleak life or even death in their homelands. However, a feminist analysis of international adoption should go farther than a simple altruism narrative. Indeed, an appropriate question might not be what Westerners are giving to the children of impoverished countries, but what they are taking from those countries or from the poor women who live in them. “Taking” might appear to be a harsh word in the context of a situation in which women have voluntarily surrendered their children. However, the “voluntariness” of these surrenders must be examined in light of the economic, social, and political circumstances under which the mothers often live.\textsuperscript{133}

\begin{itemize}
\item \textsuperscript{128} Id. at 5.
\item \textsuperscript{129} In recent years, there has been a development of the area often called “post-colonial studies,” which focuses on the material and cultural effects of European colonialism and the responses to it by the people in the dominated nations. For a volume of essays on the subject, see THE POST-COLONIAL STUDIES READER (Bill Ascroft et al. eds., 1995).
\item \textsuperscript{130} See, e.g., C.I.A. Plotted Killing of 58 in Guatemala, N.Y. TIMES, May 28, 1997, at A5 (describing recently released intelligence agency files involving C.I.A. plot to overthrow freely elected President of Guatemala in order to install a right-wing leader friendly to U.S. interests).
\item \textsuperscript{131} See generally ANDERS STEPHANSON, MANIFEST DESTINY: AMERICAN EXPANSION AND THE EMPIRE OF RIGHT (1995) (discussing the expansion of American political, military, and economic influence in various regions of the world with an accompanying view of right and entitlement).
\item \textsuperscript{132} See, e.g., Bartholet, supra note 2, at 13 (“the last thing most poor countries need is more poor children”).
\item \textsuperscript{133} An article in Time magazine sheds some light on the relationship between poverty and the decision of some women in poor third world countries to surrender their children for adoption:
\end{itemize}
c. Patriarchy and Racism

Patriarchy and racism can also be important factors in the availability of children for international adoption, although these phenomena take different forms in different countries. In some countries, patriarchy may be the dominant factor. In Asian countries such as Korea, adoption historically has only been considered as a means to perpetuate family lines in families without a male heir.\(^{134}\) Because adoption has been unpopular as a general practice, it has been difficult to place children for adoption within the country.

In China, the availability of many baby girls for adoption is also largely a function of patriarchy. The Chinese tradition of favoring male children, combined with the policy limiting families to one child, results in many families choosing to keep a male child and putting female infants in orphanages, or sometimes even putting them to death.\(^{135}\) Adoption by foreigners has sometimes been a fortunate alternative to these fates. In Vietnam, children fathered by foreigners, often by American soldiers, have not been easily accepted by the society.\(^{136}\) Where the children have obviously been fathered by Blacks, racial prejudice can compound the factors of foreign blood and birth outside of

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Five years ago, police in the resort town of Madduwa, Sri Lanka, raided a seaside hotel occupied by a German and his Sri Lankan wife. The building was occupied not by tourists but by 20 young Sri Lankan women and their 22 infants, some just a few weeks old. The hotel was a "baby farm," where foreigners looking for children to adopt could come to browse, and for a fee of $1,000 to $5,000, have their pick of the babies. The mothers, all desperately poor, would get about $50 in exchange for each of their children. The Wadduwa baby farm was shut down, but the international traffic of children for adoption remains a big business. Every year, unscrupulous baby brokers in Asia, Latin America and now Eastern Europe hand over hundreds of children to North American and West European parents willing to pay large sums for a healthy child—and ignore evidence that the infant was obtained illegally. In Peru, the traffic is so open that some mothers have been known to stop foreigners in the street and ask if they are interested in adopting a baby.


134. See BAGLEY, supra note 12, at 177.

135. For a discussion of the factors that give rise to a large number of female infants becoming available for adoption by foreigners, see BAGLEY, supra note 12, at 188-90. He notes that:

[A] complicating factor in the one-child policy is the preference of many Chinese people for sons rather than daughters. This preference (shared with many other Asian cultures, including India) is a reflection of economic need as well as traditional values. A couple whose first child is female are faced with a quandary, since there is pressure for them to have no more children. The sanctions for having a second child include loss of state benefits, housing and employment. Yet the couple who earnestly desire a son must, when a son is born, put their daughter into alternative care, or else abandon any female child as soon as she is born.

Id. at 188.

The author also notes that almost all of the children formally adopted in China by Chinese families are male, the adopters being infertile couples who want a son. See id at 189.

136. See id. at 208 (describing rejection of mixed-race children in Vietnam who were fathered by American soldiers). Such children, who often remained in institutional care, were brought to the United States in the late 1980's and early 1990's where they were placed in foster or adoptive homes and in various kinds of supported living arrangements. In Vietnam, children obviously fathered by Black or white U.S. servicemen often experienced discrimination and rejection. See American War Orphans Come to U.S., N.Y. TIMES, Apr. 1, 1994, at A1.
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placing on these children a triple burden. Simon and Altstein have noted that many West German children who have been adopted by Americans are racially mixed—fathered by Black servicemen stationed in Germany. These children too, have had difficulty being fully accepted into German society.  

Both racism and patriarchy play a role in making children available for adoption in the United States as well. One result of racism in society and specifically in the child welfare system, is that a disproportionate number of children of color become separated from their parents. Even where white infants, the most sought after children for adoption are available, patriarchy is often a factor. Both economics and marital status can be relevant in a woman’s decision to give a child up for adoption—a woman who is pregnant and single may feel that the economic future for herself and her child is bleak. As a general matter, unmarried women are economically less well-off than married women, and single mothers are disproportionately poor. The poor economic status of women who are not attached to men as financial providers is a reflection of a patriarchal system that still denies to women the same opportunities it accords to men.

The stigma attached to bearing a child outside of marriage has long been a factor in the availability of babies for adoption. This stigma too, is largely a function of patriarchy in its quest to control the sexuality and reproductive powers of women. Although the stigma of unwed pregnancy and motherhood is clearly not what it once was, it is likely still a factor in the decisions of some women to give their babies up for adoption.

Finally, racism and patriarchy may operate in tandem in the surrender of some children. A single white woman giving birth to a bi-racial child may anticipate multiple difficulties. First of all, the child herself is a public announcement that the woman has been involved in a relationship with a Black man. This may result in some social stigma which may devalue the status a white woman would otherwise have on the basis of race. Second, the day-to-day difficulties of raising a child who will be considered to be Black in a racist

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138. See INTERCOUNTRY ADOPTION, supra note at 104, at 4.
139. See, e.g., Santosky v. Kramer, 455 U.S. 745, 763 (1982) (stating that termination proceedings “are often vulnerable to judgments based on cultural or class bias”); Gray and Nybell, supra note 68, at 516-17 (describing how childrearing patterns in Black communities may be considered deviant).
140. See BUREAU OF THE CENSUS, supra note 39, at 467.
141. Single parent families on the average earn only 40% of the income of two parent families, and almost half of the families headed by women are in poverty compared with only slightly more than 2% of families headed by men. See Nancy E. Dowd, Stigmatizing Single Parents, 18 HARV. WOMEN’S L.J. 19, 27 & 34 (1995).
142. Ricki Solinger has noted that during the post World War II years, “the cultural proscriptions against premarital sex and particularly non-marital childbearing remained strong. . . . adoption was established as the rule for white, unmarried mothers.” SOLINGER, supra note 25, at 26.
143. For a detailed history of unwed motherhood and adoption in the United States, see generally SOLINGER, supra note 25. Most of the infants placed for adoption are the babies of unmarried women. See Stolley, supra note 17, at 32
society may also be daunting. Finally, the stigma of out-of-wedlock birth and the financial difficulties many single mothers face may combine with these other factors to persuade some white birth mothers to surrender their bi-racial children for adoption.

IV. TOWARDS A FEMINIST ANALYSIS

There have been surprisingly few attempts to analyze adoption from a feminist perspective. Some attention was directed to the issue at the height of the debate on surrogacy when critics of the practice argued that surrogacy posed a danger that affluent women might exploit women who are poor. Recently, there have been calls for the development of a feminist analysis of adoption, which would include focus on the relationship of the adoptive mother to the birth mother, the consent of birthfathers and the protection of family stability. In general, however, feminists have been mostly silent on the implications of adoption not involving surrogacy.

Why have feminists been so silent on the question of adoption? Professor Carol Sanger has speculated that many in the women’s movement have adopted a dichotomy of adoption as the alternative to abortion, so that favoring adoption becomes equated with opposing abortion. Professor Elizabeth Bartholet describes the response of feminists to adoption as one of “a combination of hostility and silence.” She also argues that hostility to adoption is the result of a reaction by feminists “against the anti-abortion apparent embrace of adoption as the preferred alternative to abortion.” Making the argument that a feminist orientation is consistent with support for adoption, she argues that “it makes perfect feminist sense to extend our understanding of reproductive rights to include... adoption rights—the birth mother’s right to surrender her child for others to raise, the infertile woman’s right to adopt children in need of nurturing, and the child’s right to a home.”

It is interesting that so much attention has been focused by feminists on surrogate mothers and so little on mothers who ostensibly give their children up


145. See Dowd, supra note 7, at 915, 925-36. In another recent law review article, written by a lawyer who, years ago, had surrendered her newborn son for adoption, the author calls for a new vision of adoption “that arises from within an ethic of care for and responsibility to all those whose lives are indelibly changed by the adoption experience.” Maureen A. Sweeney, Between Sorrow and Happy Endings: A New Paradigm of Adoption, 2 YALE J.L. & FEMINISM 329, 335 (1990).

146. See Sanger, supra note 9, at 24-25.


148. Id. at 12; see also Sweeney, supra note 145, at 333 (arguing that feminists have been silent on the issue of adoption because adoption has been advocated as the alternative to abortion).

149. Bartholet, supra note 147, at 12.
for adoption for free. Most surrogate mothers are paid for their services—other birth mothers are supposedly not paid. It is notable that feminists would choose to devote so much attention, and have so much sympathy for women who may have made a deliberate decision to conceive and bear a child for money, but seem less concerned about women who give their children up without a profit motive.

Surrogacy is not the only adoption context in which there is a disparity in status between the woman surrendering a child and the woman receiving him. Is there not an issue of disparity worthy of concern where one woman is simply too poor to care for her child and therefore gives the child to a woman who does have the means to provide for him? Thus, while feminists have expressed concern about the link between adoption and abortion, it would seem to be equally important to express concern about the relationship between adoption and poverty.

In contrast to the views expressed by Professors Sanger and Bartholet, it is not my impression that there is any particular feminist position on adoption. However, it seems to me that many women who consider themselves feminists would be sympathetic, rather than hostile, toward the practice. Women writing about feminism are likely to be middle or upper-middle class women who have devoted a great deal of time to their careers over a period of many years. Often, they have delayed childbearing until their mid-thirties or later. Such women might become, or are at least likely to see themselves, as possible adoptive mothers.

Identification with the women seeking children rather than with the women surrendering them might result in a reluctance to confront some of the issues that a feminist analysis of adoption would inevitably pose. As Professor Nancy Dowd has noted in her call for a feminist analysis, existing adoption laws generally favor the adoptive mother over the birth mother.150 Thus, a feminist analysis of adoption would have to address issues such as increasing procedural safeguards concerning surrender, or open adoption, that might be seen as increasing the power of birth mothers.151

It is likely that there is not, and will not be, a single feminist position on adoption. My point is that in a movement that purports to concern itself with the interests of a diverse group of women, the position cannot simply be one of silence. The relationship between women giving children up and the women adopting them must, at least, be confronted and discussed.

150. This is a proposition that some would dispute. In two recent cases that received a great deal of media attention, birth parents were successful in having children returned to them after the children had been adopted based on claims that the birth father's rights had been violated. See, e.g., In re Kirchner, 649 N.E.2d 324 (Ill. 1995) (known as the "Baby Richard" case); In re Clausen, (DeBoer v. Schmidt), 501 N.W.2d 193 (Mich. Ct. App. 1993), aff'd, 502 N.W.2d 649 (Mich. 1993). See also, Hard Choices: In Today's Adoptions, the Biological Parents are Calling the Shots, WALL ST. J., Sept. 14, 1989, §1, at 1 [hereinafter Hard Choices].

151. Some feminists have begun to address these issues. See Jane Maslow Cohen, Posnerism, Pluralism, Pessimism, 67 B.U. L. REV. 105, 155-73 (1987) (discussing how poor mothers might be induced to give up their babies under Posner's proposal for a free market in babies).
Since feminists have seldom addressed the subject of adoption in general, it is not surprising that they have not examined transracial or international adoption from a feminist perspective. The next section of this Article explores some of the issues that should be considered in such an undertaking. I offer some observations as to both substantive issues and methodological approaches that might be incorporated into such a feminist analysis. In thinking about various areas of feminist theory that might apply in a feminist analysis of adoption that would be relevant to transracial and international adoption, the critical question is: how does a particular concept or doctrine help feminists to broaden their understanding of and approach to adoption? As I argued in the introduction to this Article, adoption, like marriage, involves issues of status and hierarchy, but in this case, among women. Therefore, adoption must be understood as more than altruistic, apolitical, individual transactions in which women become the parents of particular children. The inquiry must go beyond issues such as consent, that focus on the relationship between the two individual women involved in any one adoption, and extend to the larger political, economic, and racial context in which adoptions take place.

A. The Scope of Feminist Analysis

The definition of feminism is, of course, critical to the development of a feminist approach to adoption. Indeed, as I have already stated, the project of attempting a feminist analysis of adoption highlights the very question of what feminism is and what links it does, or should, provide between diverse groups of women. It seems clear that there is no one definition of feminism, and instead, there appear to be many schools of thought.

Many people would probably agree that feminism has as a goal equality between men and women in areas such as education and employment. There would probably also be agreement that feminism has, as its goal, freedom and dignity for women generally in both the public and private spheres of their lives. Beyond this, perspectives on feminism probably diverge a great deal. Many women of color have criticized mainstream feminism for too often failing to direct attention to issues that involve race and class. Professor Chandra Mohanty has observed that:

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152. Indeed, the feminist analysis of international law is generally still in a very early stage. See generally Hilary Charlesworth, Christine Chinkin & Shelley Wright, Feminist Approaches to International Law, 85 AM. J. INT’L L. 613, 613-33 (1991).

153. For discussions of different approaches to feminism including liberal, Marxist, psychoanalytic, and post-modern, see ROSEMARIE TONG, FEMINIST THOUGHT: A COMPREHENSIVE INTRODUCTION (1989).

Deborah Rhode has defined feminism as having the elements of three core assumptions: 1) that gender is a central category of analysis; 2) that equality between men and women is a critical objective; and 3) that such equality cannot be achieved without fundamental social transformation. See Deborah L. Rhode, Feminist Critical Theories, 42 STAN. L. REV. 617, 619 (1990).
The major analytic difference in the writings on the emergence of white, Western, middle-class liberal feminism and the feminist politics of women of color in the U.S. is the contrast between a singular focus on gender as a basis for equal rights, and a focus on gender in relation to race and/or class as part of a broader liberation struggle.\(^{154}\)

Professor Cheryl Johnson-Odim has also described the feminism of women in third world countries as having a focus that goes beyond issues of gender:

In undeveloped societies it is not just a question of internal redistribution of resources, but of their generation and control; not just equal opportunity between men and women but the creation of opportunity itself; not only the position of women in society, but the position of the societies in which Third World Women find themselves.\(^{155}\)

Thus, for many women of color, feminism means not only the end of male privilege and the patriarchal culture that so often causes women to be economically and psychologically dependent on men, but also a commitment to the eradication of racism, homophobia and economic exploitation.\(^{156}\)

What should this kind of a broad definition of feminism mean for the analysis of transracial and international adoption? It must mean, at the very least, that the analysis of adoption must go beyond the sphere of individual relationships to incorporate larger political issues involving race, class, and culture. Thus, the history of racism in the case of transracial adoption and the history of

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154. **THIRD WORLD WOMEN**, supra note 119, at 11.

bell hooks has defined feminism as:

not simply a struggle to end male chauvinism or a movement to ensure that women will have equal rights with men; it is a commitment to eradicating the ideology of domination that permeates Western cultures at various levels—sex, race, and class, to name a few—and a commitment to reorganizing [the United States] so that the self-development of people can take precedence over imperialism, economic expansion, and material desires.


156. Although to date there does not appear to be an extensive discourse among third world women outside of western countries on the issue of international adoption, it is clear that Western women and third-world women do not always share the same approaches to issues that pertain to women's lives. See, e.g., Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, 30 FEMINIST REV. 61 (1988); Marilyn Strathern, *An Awkward Relationship: The Case of Feminism and Anthropology*, 12 SIGNS 276 (1987).

One of the charges that has been leveled against Western feminists by third-world women is that Western feminists tend to analyze women's issues only in terms of gender and tend to ignore powerful influences such as race and economic exploitation that often shape the lives of women in poor countries. For example, some third-world feminists argue that Western women are eager to assist in the eradication of non-Western cultural practices, such as clitorectomies, in countries where it is practiced, but fail to show the same enthusiasm about eradicating the economic exploitation of some of the same countries by Western economic relationships. See, e.g., Marie-Angélique Savane, *Why We Are Against the International Campaign*, 40 INT'L CHILD WELFARE REV. 37, 39 (1979) (discussing the tension between Western and third-world women with respect to the issue of female genital surgeries). See generally, Isabelle R. Gunning, *Arrogant Perception, World- Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1992).
colonialism, neocolonialism and economic exploitation, in the case of international adoption, must be a part of the analysis. Feminism must interrogate the issue of racial and economic privilege that results in a pattern of adoption in which children are transferred from poor women to richer women. It means incorporating a long-term view of what needs to be done to work toward a more just society for all children, rather than simply focusing on the needs of those children being sought for adoption.

In the domestic context, a feminist analysis of adoption must conceptualize adoption as more than either an individual act of altruism or the fulfillment of individual desires to parent. Most importantly, an analysis that focuses on issues of race and class should lead to an understanding that the interests of individual Black children cannot be separated from the conditions that Black children as a whole face in this society. It means a commitment to better the lives of Black children as a whole in order to decrease the kind of family disruption that results in disproportionate numbers of children being placed in foster care and having their legal relationships with their parents involuntarily terminated. This goal, rather than a simple focus on the narrow goal of providing white adoptive homes for a small number of children, must merit a higher place on the agenda.

A perspective which narrowly focuses on the goal of placing Black children with white families can lead to dangerous approaches and alliances. It has been troubling, for example, to see some advocates of transracial adoption ally themselves with conservative groups that have sought to strike down statutes promoting a preference for placing children with families of the same or similar ethnic heritage. These conservative organizations made it clear that challenging such statutes was a part of their wider agenda, and that their real agenda was attacking affirmative action. How odd it was to see those who describe themselves as advocates for the interests of Black children, working in alliance with those whose primary goal is to strike down the very programs that will provide the key to opportunities for many Black children in the future. A feminist

157. See Perry, Transracial Adoption, supra note 2, at 43, 66.
158. See, e.g., Jill Smolowe, Adoption in Black and White; An Odd Coalition Takes Aim at the Decades-Old Prejudice Against Transracial Placements, TIME, Aug. 14, 1995, at 50 (describing work of Harvard Professors Elizabeth Bartholet, Randall Kennedy, and Laurence Tribe with conservative organizations to defeat laws providing a preference for same-race placement). In 1994, Congress passed the Howard M. Metzenbaum Multietnic Placement Act (MPA), which prohibited state and federally funded agencies from delaying or denying an adoption or foster care placement on the basis of race. Howard M. Metzenbaum Multietnic Placement Act of 1994, 42 U.S.C. § 5115 (1994). The Act did, however, explicitly permit consideration of the cultural, ethnic, or racial background of the child as one of a number of factors in an adoption. In 1996, this Act was repealed and in a measure that was part of the Small Business Jobs Protection Act (SBIPA), 42 U.S.C. § 1996(b)(1)(A) (West Supp. 1997), a new statute was passed which eliminated the language explicitly permitting the consideration of race. It is still unclear, however, whether the new Act permits agencies to deny an adoption where it is believed that the prospective adoptive parents do not possess sufficient racial or cultural sensitivity to cope with a child’s needs. See Recent Legislation, 110 HARV. L. REV. 1352, 1354-55 (1997). Also, because alleged delays or denials of adoptive placements were some of the primary motivating factors of the Acts, it would also appear that race could still be considered in a situation in which there were two qualified families actually available to adopt a child. See Adoption Promotion Act (1996); Hearings on H.R. 3286 Before the Comm. on Ways and Means, 105th Cong. 1996 (statement of Bill Archer, Chairman).
159. See id.
analysis of transracial adoption that includes as a goal social and economic equality should forcefully reject such approaches and coalitions.\textsuperscript{160}

The question of focus on the individual child versus a commitment to the group from which a child comes is also present in the context of international adoption. This was illustrated in the recent controversy over the conditions of babies in Chinese orphanages. Recently, Chinese dissidents and some Western journalists charged that some children in orphanages were being systematically neglected, abused, and even deliberately starved to death in order to control the population of the institutions.\textsuperscript{161} The Chinese government denied the allegations.\textsuperscript{162}

Although some Americans seeking or advocating the adoption of Chinese children by Americans vigorously sought to expose these conditions, others were reluctant to have the situation publicized for fear that it would anger the Chinese government and cause them to put an end to the adoptions.\textsuperscript{163} However, suppressing the controversy would not have been in the interests of the majority of children in these orphanages—children whose futures were in China and who were not going to be adopted by Americans. Obviously, there are questions as to whether the charges are true, and whether, or to what degree, it is appropriate for the United States to become involved in the matter.

In thinking about international adoption, I do not contend that American women alone have the power to change the complex circumstances that result in so many children needing homes. These circumstances stem from a complex mix of history, economics, patriarchy, and racism that has roots going back many

\textsuperscript{160} Conservatives have also sought to link adoption to other political agendas such as welfare reform. See, e.g., Charles Murray, \textit{Stop Favoring Unwed Mothers}, \textit{N.Y. Times}, Jan. 15, 1992, at A23 (arguing that welfare removes the financial incentives for poor women to put their children up for adoption).

In recent Congressional testimony in connection with welfare reform legislation, William J. Bennett stated:

I believe that making adoption easier is an essential and compassionate part of welfare reform. Adoption is the best alternative we have to protect a child's interest in a post-welfare world. The demand is virtually unlimited (at least for very young children), but current laws make adoption exceedingly difficult. Lifting restrictions on interracial adoption and easing age limitations for adoptive parents will help insure that large numbers of children will be adopted into good, stable, loving homes.

\textit{Welfare Revision: Hearing Before the Subcommittee on Human Resources of the Committee on Ways and Means, 104th Cong.}, 1995 (testimony of William J. Bennett, Co-Director of Empower America).

\textsuperscript{161} See, e.g., \textit{Human Rights Watch, Death by Default: A Policy of Fatal Neglect in China's State Orphanages} (1996); Steven Mufson, \textit{Chinese Orphans Reported Dying From Abuse: State Run Institutions Allegedly Singled Out Children to Starve, Falsified Medical Records}, \textit{Wash. Post}, Jan. 6, 1996, at A1. See also Holly Burkhalter, Editorial, \textit{American Parents and Chinese Babies}, \textit{Wash. Post}, Feb. 21, 1997, at A19. This article noted that following the extensive news coverage of alleged official policies of neglect and abuse in Chinese orphanages, the government of China contacted adoption agencies in the United States to assist in a media campaign designed to counter the reports. See id. The article stated that an avalanche of mail followed—much of it from prospective adoptive parents waiting to pick up their babies in China or fearful that the negative publicity about the orphanages would cause a slowdown or an end to the adoptions. See id.


\textsuperscript{163} See, e.g., Mufson, supra note 161, at A1. This article stated that "fear of reprisals prevents the people with the most access to Chinese orphanages from discussing conditions. Many are working for adoption agencies or are parents of adopted children who fear that speaking out about orphanage conditions will endanger adoption programs." \textit{Id.}
centuries, and they admit of no easy solution. I do believe, however, that a feminist analysis must consist of more than the simple willingness to adopt the children of women who cannot care for them. Instead, there must be some acknowledgment that a Western woman’s happiness in transacting an adoption may have been built upon a third-world woman’s misery, and this must lead to some commitment to change the conditions that have created that state of affairs.\footnote{In Race, Identity and Feminist Struggle, Ann Russo calls for other white feminists to acknowledge that they have benefited from and participated in the oppression of third world women in the United States and abroad. She states, “[I]t is necessary for us to acknowledge our privilege and understand how the conditions of our lives are connected to and made possible by the conditions of other women’s lives, and use what we have gained from that privilege in the service of social change.” Ann Russo, Race, Identity and Feminist Struggle, in Third World Women, supra note 119, at 297, 299.}

What might be the benefits of thinking about transracial and international adoption in this kind of a wider context? First of all, it might lead to action to improve the lives of children of color, both in this country and in some of the foreign countries from which many internationally adopted children come. Secondly, the demonstration of concern about the groups and societies from which adopted children come might diminish some of the reservations that women of color in this country and third world countries sometimes express about the white, western feminist movement not appearing interested in the problems faced by poor women of color. Any resulting improvement in solidarity between women, both worldwide and in this country, could increase the power of women to address a wide range of issues.

The argument for feminists focusing on the needs of all women rather than only on the desires of those who wish to adopt was expressed well by feminist writer Barbara Smith, who observed that:

Feminism is the political theory and practice that struggles to free all women: women of color, working class women, poor women, disabled women, lesbians, old women—as well as white, economically privileged heterosexual women. Anything less than this vision of total freedom is not feminism, but merely female self-aggrandizement.\footnote{Barbara Smith, Racism and Women’s Studies, in All the Women Are White, All the Blacks Are Men But Some of Us Are Brave 48, 49 (Gloria T. Hull et al. eds., 1982).}

B. The Relevance of Existing Theory and Doctrine

It is critical for feminists to begin to think about how currently evolving ideas in feminist theory might apply to the analysis of adoption. The next section will focus on some ideas that have gained currency and will explore their relevance to the development of a feminist theory of adoption that acknowledges the centrality of both transracial and international adoption.
1. *The Feminist Critique of Law and Economics*

It would probably be fair to say that feminist theory is generally hostile to the law and economics movement in legal scholarship. Although the feminist view of the utility of economic analysis is one that is in a state of evolution rather than a state of completion,\(^{166}\) the focus of law and economics proponents on concepts such as “supply and demand,” “cost/benefit analysis,” “efficiency” and “wealth maximization” would seem to be at odds with the emphasis placed by many feminists on nurturing, caring, the connections between people, and concerns about social justice. Yet, there are ways in which advocacy of transracial and international adoption connect quite comfortably with some law and economics principles that feminists would probably find troubling if applied in other contexts.

Several years ago, former law professor and now U.S Circuit Judge Richard Posner proposed a solution to the problem of the shortage of healthy, white newborns available for adoption. Posner proposed, essentially, that birth mothers should be permitted to sell their babies to meet the consumer demand.\(^{167}\) Rather than describing this as a radical proposal, Posner described his recommendation as “entailing only modest changes in the existing market for babies in adoption.”\(^{168}\)

Although most feminist scholars have probably rejected as immoral and preposterous Posner’s proposal for a market in babies,\(^{169}\) it is not always clear that the analysis of advocates of transracial and international adoption actually differs very much from what Posner suggests. Thus, with respect to both transracial and international adoption, the basic argument often advanced is this: there are many poor women who need or want to give their children up for adoption (supply). There are allegedly not enough poor (or Black) families available to adopt these children (supply). There are many middle-class white North American families who want to adopt these babies (demand). The argument that there are many poor women who want to give their children up for adoption and many well-to-do women who want to adopt them is, in essence, a kind of supply and demand, free-market approach that converges nicely with the interests of women seeking to adopt transracially or internationally.\(^{170}\)

\(^{166}\) Rather than ceding the use of economic analysis to the often conservative traditional law and economics scholars, feminist theorists are exploring ways both to challenge this mode of analysis where appropriate, and to use it affirmatively in feminist theory. Recently, the Feminism and Legal Theory Workshop at Columbia Law School devoted several conferences to the topic of economic analysis in feminist theory.


\(^{168}\) Posner, *supra* note 167, at 60.


\(^{170}\) I am not arguing that Posner’s approach would itself encourage transracial adoption. Quite the contrary, his proposal would have the likely effect of decreasing transracial and international adoptions because more white newborns would be produced to meet the high demand.
Feminist theory must find a way to think about transracial and international adoption beyond this kind of simple numbers game. A major criticism often leveled at law and economics analysis is that it fails to accord sufficient importance to concerns such as social justice, morality, and factors such as human emotions. In order for a feminist analysis of transracial and international adoption not to fall into a similar trap, it must confront the issues of social and economic injustice and inequality that lead to the surrender of many children for adoption, and it must confront as problematic the structure of transracial and international adoption as transactions in which children are transferred from less privileged women to those who are more privileged. Incorporating factors of race, class, culture, and patriarchy should certainly lead to a different analysis of transracial and international adoption than an analysis that is based only on the concepts of supply and demand.

2. Feminist Theory

a. The Centrality of Themes of Care, Connection and Nurturing

Feminism is not monolithic. There are many schools of thought, including radical feminism, Marxist feminism, psychoanalytic feminism, liberal feminism, and other analytical frameworks. The psychologist Carol Gilligan has been very influential. Gilligan’s argument that women reason in ‘a different voice’—that the focus of women’s lives gravitates toward issues of care, connection and nurturing, in contrast to the focus of men on rules, abstraction, and autonomy—while controversial, has played a significant role in the development of feminist theory and feminist legal theory.

Clearly, there is much of value in Gilligan’s approach. While it certainly can be argued that her approach goes too far in generalizing about the intellectual and emotional differences between men and women, Gilligan’s analysis does recognize and describe important feelings and experiences that are probably shared by many women. Thus, the kind of analysis in which she engages—focusing on the different approaches men and women often have to issues—has

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172. See CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982).

173. See, e.g., Martha T. Mednick, On the Politics of Psychological Constructs, 44 AM. PSYCHOLOGIST 1118, 1119-20 (1989) (criticizing Gilligan’s empirical work as well as her dichotomy between men and women in terms of moral reasoning); CAROL SMART, FEMINISM AND THE POWER OF LAW 75 (1989) (arguing that identification of women with caring, nurturing and relationships “slides uncomfortably and exceedingly quickly into sociobiologism which merely puts women back into their place”). See generally Kerber et al., On In a Different Voice: An Interdisciplinary Forum, 11 SIGNS 304 (1986).

been extremely valuable to feminists in thinking about a variety of areas in the law. However, there is also reason for concern that Gilligan's portrait of women as emotive, nurturing, caring souls who emphasize caretaking and personal relationships over legal rules or rights threatens to minimize the ways in which women are, and should be, thought of as political actors.

I have already argued that many Black mothers see mothering not only as an activity involving nurturing and love, but also as political activity. To such mothers raising children in a racist society, issues such as autonomy and rights are never far from mind. The legal rights that their children possess are a major concern because those rights will determine their children's access to material benefits, such as educational opportunity, as well as the right to be treated with dignity in their everyday lives. I have also argued that there has not been enough focus on the ways in which the mothering of white children by white mothers is also political. The mother-child relationship between whites in a society dominated economically, politically and culturally by whites also involves the transmission of lessons about rights, status, obligations and expectations.

I am concerned that in the analysis of transracial and international adoption the focus in feminist theory on individual relationships of nurture and caretaking encourages an analysis of the transracial and international adoption that is essentially apolitical. The emphasis on the need of individual children for adoptive homes in which they will be nurtured on a one-on-one basis comes at the expense of thinking harder about the political and economic circumstances that shape the lives of so many more children in this society and in the world. The pattern of the transfer of children from poor women to women who are economically better off or from women who suffer racial subordination to women who possess racial privilege raises questions that must go beyond the need for nurturing in individual relationships. For feminists, adoption, like marriage, must be analyzed as a political institution in which issues of rights, inequality and the potential for exploitation must be central.
Autonomy, the power of an individual to make important life decisions, is another central concept in feminist theory. The idea of autonomy is at the core of the analysis of many issues that affect the lives of women, including the right of women to make decisions about matters such as reproduction, marriage and other intimate relationships. Still, autonomy remains a complicated issue. While, like Carol Gilligan, many feminists may be troubled by traditional individualistic ideas about autonomy, there has not been the development of an alternative theory that links feminist concepts such as care, connection and nurturing to larger political realities.

The issue of autonomy is an important one in the feminist analysis of adoption and in particular in transracial and international adoption. It is an issue that may arise in a number of different contexts.

1. Autonomy and Choice in the Surrender of Children

The surrender by a woman of her child for adoption obviously implicates the issue of autonomy. Should such an act by a birth mother be regarded as a free choice that others should have no right to question or should that choice be deconstructed in light of the political, social and economic realities of the birth mother’s life? What should the implications of such an analysis be?

The choice to surrender a child for adoption poses complex issues in, for example, countries in which women do not have free access to contraception and abortion. In the United States, women who choose not to become mothers might use contraception to prevent becoming pregnant. Women who have become pregnant might choose to terminate the pregnancy by abortion. There is also the option of adoption after the child has been born. Contraception, abortion and adoption can all be thought of as options for women who wish to exercise a right of autonomy with respect to reproduction.

However, in some third world countries, women do not necessarily have the access to contraception or abortion that women in western countries have. For these women, often in poorer countries, it could be argued that the only way they can exercise the option not to be a mother is to surrender their children for adoption. Following this line of reasoning, arguments critical of international adoption do not accord appropriate respect to the only choice that might be available to these women. Under this analysis, adoption would be the equivalent

180. See GILLIGAN, supra note 172, at 17.
181. See Jennifer Nedelsky, Reconceiving Autonomy: Sources, Thoughts, Possibilities, 1 YALE J.L. & FEMINISM 7, 8 (1989). (arguing that feminism is equivocal in its stance toward liberalism because it simultaneously demands respect for women’s individual selfhood and rejects the language and assumptions of individual rights, and has failed to develop a theory that reflects both the individual and the social nature of human beings).
182. It should be noted that even in the United States there are increasing restrictions on abortion. See, e.g., Planned Parenthood v. Casey, 112 S. Ct. 2791 (1992) (upholding various restrictions on abortion).
of abortion in terms of autonomy on the question of reproductive decisionmaking.

The connection between the availability of abortion and the decision to place a child for adoption is complex. While most feminists probably take the position that abortion should be the legal right of women everywhere, the question of abortion in some countries is a complex mixture of political, religious, and cultural questions that raise issues foreign to western conceptions of rights. These can be delicate matters. Charges of cultural imperialism can be the result when Westerners seek to impose their own values on societies which operate on different cultural premises. Moreover, since feminists are not clear about the relationship between adoption and abortion, even in the context of the United States, it would seem a difficult task for them to have a clear understanding about the relationship between the two matters in countries in which the social, religious and cultural context may be very different.

It is important for feminists to support reproductive freedom here, as well as abroad. At the same time, I am troubled by any attempt to equate adoption and abortion in a way that releases women who adopt children from poor countries from confronting the circumstances under which many women live that influence their decisions to surrender their children.

This discussion, of course, raises the question of what “choice” actually means. Feminists have examined the question of choice in a variety of contexts, including reproductive rights and decisions about the balance between career and family. The tension surrounding the issue arises from the problem of reconciling a view of women as agents, capable of making decisions about their own futures, with the reality that women often make decisions about their lives within numerous social, cultural and economic constraints.

In thinking about choice in connection with adoption, again we must be careful not to assume that all women wish to be mothers. It can be a true choice, even if an unconventional one, for a woman to choose to give her child up for adoption simply because she does not wish to be a mother. Thus, it is undoubtedly true that some women would still place their children for adoption even if conditions of racism, economic exploitation and patriarchy were abolished tomorrow. It is important that this choice be accepted as a “true” choice for some women.

On the other hand, we do not really know what choices women would exercise with respect to placing their children for adoption in a world that operated without the constraints of racism, patriarchy and poverty. What is important is that a close examination of the issue of “choice” and the constraints

183. See Gunning, supra note 156 (discussing the issue of cultural relativity with respect to female genital surgeries that take place in certain non-Western countries).
under which choices are made be part of a feminist analysis of adoption just as it has been considered central to the analysis of issues in other areas, such as choices about the balance between career and family.

2. Autonomy and Choice in the Selection of Adoptive Parents

A different issue involving autonomy in the context of transracial and international adoption concerns the power of the birth mother to choose, or to participate in choosing, adoptive parents for her child. In recent years, at least in the case of private adoptions, the birth mother has sometimes been given the chance to have some input with respect to this matter, and it would seem that a feminist approach would be sympathetic to this kind of empowerment.

However, giving the birth mother power to choose adoptive parents can create some thorny political concerns, especially in adoptions that take place across racial or ethnic lines. For example, an expressed desire on the part of a birth mother to place her child with a parent of a different ethnic group can potentially conflict with the support of some minority groups for laws such as the Indian Child Welfare Act (ICWA), or with the practice of many adoption agencies of preferring to place children with adoptive parents of the same racial or ethnic heritage. In such situations, members of minority groups have sometimes argued that a preference for placing children for adoption with members of the children’s own ethnic group is in the interests of both the children and the minority groups.

As a practical matter, the problem of a possible conflict between a mother’s wishes and the concerns of a minority group does not usually arise in the context of private adoptions, but it can be an important issue in agency adoptions. The issue has not been explored extensively in the context of the adoption of African-American children, but it has been discussed and litigated in the context of Native American children. Although the adoption of the latter is governed by a separate statutory scheme, a similar issue is presented in both contexts.

The question of whether a Native American mother has the right to place her child with a white family if she wants to, even over the objections of the tribe, was presented in Mississippi Board of Choctaw Indians v. Holyfield. In Holyfield, a young, unmarried Indian couple who were enrolled as members of a tribe and as residents and domiciliaries of the reservation placed their newborn twins for adoption off the reservation, with a white family. The tribe moved to vacate the adoption decree on the ground that under the ICWA exclusive

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188. See 42 U.S.C. § 1996(b) (West Supp. 1997). The new law prohibits the use of race to delay or deny adoption. It does not indicate whether or not race may be used as a factor to choose between available potential adoptive parents. See id.
jurisdiction is vested in tribal courts for custody proceedings involving Indian children who reside or are domiciled within an Indian reservation. The United States Supreme Court, interpreting the law to be that children share the domicile of their parents, held that the state court was without jurisdiction to enter the adoption decree, even though the children had been voluntarily surrendered by their parents who went to great lengths to see that they were born outside of the reservation. The Court noted that Congress enacted ICWA because of concerns going beyond the wishes of individual parents, finding that the removal of Indian children from their cultural setting seriously impacts on long term tribal survival and has a damaging social and psychological impact on many individual children.

In Holyfield, the autonomy of the child’s mother and father came into clear conflict with the tribe’s view of its own interests. While the transracial adoption of children from other ethnic groups is not governed by the same legislative scheme as the adoption of Indian children, a similar issue arises when groups such as the Association of Black Social Workers argue that transracial adoption is not only contrary to the interests of Black children, but also contrary to the interests of the Black community. A feminist approach to adoption would need to address the question of a potential conflict between maternal autonomy and the argument that there should be some deference to the desires of ethnic groups to see children placed intra-ethnically.

3. The Privatization of Family Law

Feminist legal theory continues to struggle with the issue of privatization in family law. In the last twenty-five years, there has been a distinct trend toward privatization, and there is continuing debate about the desirability of this trend. The issue of private versus public regulation of family matters spans many issues, from antenuptial contracts and surrogacy agreements to issues concerning domestic violence, marital rape and child abuse. Views as to the appropriate level of state regulation or intervention vary depending on the issue.

Not surprisingly, there is disagreement about the desirability of private adoptions. A growing number of commentators view private adoptions as superior to agency placements, arguing that private adoptions minimize state intervention into the lives of individuals and that they permit a greater degree of control over the adoption process by both the birthparents and the adoptive

191. See id. at 37-38. Different rules apply where the child is not considered to be domiciled on the reservation. See 25 U.S.C. § 1911(b) (West 1983 & Supp. 1998) (giving either parent a veto to prevent the transfer from state court to the tribal court under those circumstances).
192. See Holyfield, 490 U.S. at 50.
193. See Perry, Transracial Adoption, supra note 2, at 41-42.
194. See generally Jana B. Singer, The Privatization of Family Law, 1992 WIS. L. REV. 1443 (tracing the evolution of privatization and analyzing the arguments for and against it in a number of areas of family law: consensual alternatives to marriage, the financial consequences of divorce, mediation and surrogacy).
195. See id.
families. On the other hand, critics of private adoptions argue that such adoptions may not adequately protect the interests of all parties to the transaction—especially the children. They also argue that a system of private adoption encourages the sale of babies.196

Transracial and international adoptions may be done through public agencies, licensed private agencies,197 or private attorneys.198 There are several problems that should concern feminists when prospective adoptive parents forgo the use of agencies and use private attorneys. First, as a practical matter, non-agency adoptions enable the most privileged women to circumvent a substantial part of public regulation of the adoption process. Agencies handling adoptions provide parents with a professional staff with specialized knowledge, and may have access to a pool of prospective adoptive homes from which to select, allowing them to best meet the needs of a particular child.199 It can be argued that, at least ideally, such a system contributes to insuring that a child's best interests are met with respect to an adoption.200

The ability of an adopting parent to legally circumvent government policies seeking to protect children's ties to their birth cultures can be a consequence of an adoptive family's access to private adoption. In the case of adoption, just as in the case of drug abuse or alcoholism, affluence can buy protection from

196. For a discussion of the arguments for and against private adoption, see Singer, supra note 194, at 1481-86.
197. International adoptions are generally done through licensed adoption agencies or independent agents. Licensed agencies are usually private institutions that have been given official permission to operate from either an administrative or judicial government body. They usually have a professional staff, non-profit status, and contacts with other agencies. Some countries also permit child welfare services and orphanages to place children. See Holly C. Kennard, Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of Intercountry Adoptions, 14 U. PA. J. INT'L BUS. L. 623, 626-27 (1994).
198. The majority of international adoptions by United States citizens are handled by private adoption agencies rather than governmental authorities or individual service providers. See Pierce, supra note 16, at 547.
200. It should be noted that the Child Welfare League of America takes the position that all adoptive placements should be preceded by an authorized child welfare agency approval and that there should be no independent, non-agency adoptions. See L. Jean Emery, Agency versus Independent Adoption: The Case for Agency Adoption, 3 THE FUTURE OF CHILDREN: ADOPTION 139, 139. It might be interesting for feminists to think about the role of the best interests test in this context, putting aside all of the questions that have been raised concerning the indeterminacy of that standard. See, e.g., Robert H. Mnookin, Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy, 39 LAW & CONTEMP. PROBS. 226, 247 (1975). Some may still ask why feminists would not want the child's best interests to be considered. In the context of custody disputes, some women scholars have rejected the best interests test in favor of a primary caretaker standard, i.e. giving custody to the parent who has already been caring for most of the child's needs on a day-to-day basis. See Martha Fineman, Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking, 101 HARV. L. REV. 727, 770-72 (1988). Is there a principle that warrants turning away from a consideration of the child's best interests in the case of adoption? It would seem that the mere desire of prospective adoptive parents to obtain a particular child, and their financial ability to pay the expenses that the transaction might entail, should not in and of itself be sufficient to justify making the best interest standard irrelevant. To support a system in which there is virtually no inquiry as to the ability of prospective adoptive parents to meet the needs of the child they seek to adopt lends credence to the argument of scholars that adoption has been transformed from a system designed to meet the needs of children to a system designed to meet the desires of adults. See Howe, supra note 2, at 149.
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In the case of transracial adoption, affluence can buy the potential adoptive parents a shield from any meaningful examination designed to determine whether they are capable of meeting the needs of a child of color. Regardless of one’s ultimate view of the relevance of race to parenting, there is an equality issue here that should be of concern. Feminists should be concerned if privatization provides the opportunity for the more affluent to take themselves completely out of the public policy debate over the role that race, ethnicity and culture should play in connection with adoption and to otherwise shield themselves from the scrutiny the less affluent would have to undergo.

Another concern about privatization is that it encourages the treatment of adoption as just another market enterprise. Although most feminists are probably appalled at Posner’s proposal for a market in babies, his proposal is not very far from what already exists with respect to private adoptions. This is troubling with respect to adoption in general, but it raises some additional concerns in the context of transracial adoptions.

First, because the most desired babies—healthy, white newborns—would obviously sell for the highest prices, a market-driven system of adoption would reaffirm the idea that white children are the most valued children in this society. This has the obvious effect of devaluing children of color. But the market system has other pernicious effects. Since whites in this society are generally more affluent than Blacks, in a price war, white families would generally be in a position to outbid Black families for children of color. Since it is newborns who are most desired for adoption, regardless of race, the market approach could enable white families to corner the market on all babies, including healthy newborns of color. This would virtually shut out Black families from having the chance to adopt these children.

A final concern, especially in international adoption, is that privatization encourages the development of a Black market. A substantial amount of attention has recently been devoted to this issue. In a system that essentially permits children to be sold, mothers can be pressured to sell their children because they are poor and need the money. Another by-product of the Black market in international adoption is the problem of children being obtained by fraudulent

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201. See, e.g., Bagley, supra note 12, at 145 ("The rich, determined and childless American couples, with powerful lawyers at their disposal in both their home country and the country in which they wish to adopt a child are often a match for under-financed and under-staffed regional offices of international bodies concerned with child welfare").

202. See supra text accompanying notes 166-68.

203. As Jana B. Singer has noted:

Judge Posner’s advocacy of market principles thus makes explicit what has largely been implicit in the growing acceptance of private-placement adoption: that the primary purpose of adoption reform should be the satisfaction of “consumer” demand for more (and better) adoptable babies... Posner’s explanation of how a (regulated) baby market would work also reveals that our current independent adoption system already contains significant market elements. Thus, Posner may not be far wrong in claiming that his baby selling proposal entails only modest changes in “the existing market in babies for adoption.”

Singer, supra note 194, at 1487.
means or even through theft and kidnapping. Regardless of the position of feminists on issues of the "voluntariness" of the choices of women who knowingly give up their children for adoption, there must be concern for women whose children are stolen and sold, and the unpleasant reality is that this does happen. Concern about the so-called "Black market" in babies has led some countries to terminate the practice of private adoptions and require that all international adoptions be handled through a system administered by the government.

4. Material Wealth and Parenthood

Women scholars have strongly opposed the use of wealth as an important factor in custody disputes between parents. The argument has been that factors such as economic wealth often favor fathers because the gender roles in marriage usually result in men being in a better economic position than their wives in the event of a divorce. It has been argued that rather than transferring the care of the children from the mother (who has usually been the primary caretaker during the marriage) to the father after the marriage, economic wealth, in the form of adequate child support, should be transferred from the father to the mother in order to enable her to continue to care for the children.

A rationale often offered for international adoption is that economically advantaged people in Western countries can offer the children of poor, third world women a materially better life than their birth parents would be able to provide. In thinking about adoption, however, feminists should consider the role that unequal distribution of material wealth plays in the transfer of children

204. There are numerous stories of children being stolen. In Brazil, newspapers reported that a pregnant woman in Rio's poor North Zone was kidnapped, induced into labor, and then set free without her baby. See Kidnappers Induce Labor, Steal Baby, L.A. TIMES, Mar. 29, 1992, at A15; see also, DEFENSE FOR CHILDREN INTERNATIONAL, TRAFFICKING AND SALE OF CHILDREN IN ARGENTINA: REPORT OF AN INVESTIGATION (1989). This report contains both statistics and anecdotal information on the problems created by the Black market for babies in Argentina. For example, in one interview a staff member of a child care agency related the following story:

I know the case of a child who was stolen in Clinic X in the Federal Capital where a women was told after giving birth that the child had died during the delivery. The woman's mother had serious doubts about this and when the clinic handed them the baby's coffin, the woman's mother looked inside and found that her grandchild was not in it.

Id. at 29.

205. Romania and Colombia are examples of countries that have moved to a government-controlled system. See Mary Ann Candelario McMillan, Comment, International Adoption: A Step Toward a Uniform Process, 5 PAGE INT'L. L. REV. 137, 140-45 (1993). A number of countries are ending private adoptions. See Adopting a Tougher Policy: Foreign Adoptions are Being Curtailed in Many Latin American Countries, L.A. TIMES, Apr. 16, 1994, at A1.

206. See, e.g., LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICAN 240-43 (1985) (discussing the courts' consideration of financial resources); Nancy D. Polikoff, Why Mothers are Losing: A Brief Analysis of Criteria Used in Child Custody Determinations, 7 WOMEN'S RTS. L. REP. 235, 237 (1982) (arguing that the courts have shifted to the ability to support as a determining criterion).

207. A similar argument has been made in the context of transracial adoption. See Bartholet, supra note 2, at 1222 (arguing that "for black children growing up in a white-dominated world, there would be a range of material advantages associated with having white parents").
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from one household to another, not only in the context of custody, but also in the context of adoption. Could it be argued that, rather than transferring the children of the poor to economically better-off people in other countries, there should be a transfer of more wealth from rich countries to poor ones to enable the mothers of poor children to continue to take care of their children themselves?

The analogy of the relationship of husbands and wives in the context of a marriage to the relationship of rich nations to poor ones could be challenged on several grounds. First, it could be argued that the transfer of wealth at the end of a marriage is justified by the prior relationship between the parties. However, in divorce law, courts distinguish between alimony for an ex-spouse and child support—which has an independent basis. Arguably, the analogy between parties to a marriage and rich and poor nations still fails because, in the context of custody, a father has an obligation to support his biological children and there is no comparable relationship between rich and poor countries.

Perhaps the analogy can be sustained if one thinks of both marriage and the relationships between rich and poor countries as situations in which one party may have advanced economically at the expense of the other. Just as husbands often build their wealth and career assets, at least, on the domestic labor of their spouses, wealthy nations have often benefited economically through exploitation of the resources and labor of people in poorer countries.\(^\text{208}\) The transfer of economic wealth, in some form, from richer countries to less well-off countries could be seen as a form of reparations and could assist in providing poor parents in these countries with the economic means necessary to raise their own children.\(^\text{209}\)

Justification for the transfer of wealth, rather than the transfer of children, is also consistent with some ideas already quite established in feminist theory. Drawing upon ideas of caretaking and connection, the care of all children in the world could be viewed as a collective, rather than an individual, responsibility. Indeed, the transfer of wealth, rather than children, is consistent with the approach some feminists have urged with respect to the creation of a duty to rescue in tort law. It has been argued that the current law, which imposes no duty on individuals to come to the assistance of others in need, is inconsistent with feminist notions of caretaking and a sense of responsibility toward fellow human beings.\(^\text{210}\)

Clearly, for some children, the issue is not simply one of whether or not it is desirable to transfer them to a more comfortable environment. The situation of some children is so desperate that there is a substantial chance that they may not

\(^{208}\) See ETERINGTON, supra note 124, at 2-5.

\(^{209}\) There are already a number of programs such as CARE and UNICEF which have as their purpose improving the material conditions in the lives of children in poor countries. I am suggesting not only that these programs be strengthened, but also that other efforts be undertaken to improve the economic status of the people in these countries. I am thinking in broad terms about economic justice, not simply the infusion of money viewed as "charity," but also paying an adequate wage to workers in U.S. businesses and developing programs designed to promote economic development and self-sufficiency.

survive at all if they remain in their countries of birth. It would be very difficult to argue that such children are not better off adopted by a well-educated, economically comfortable American family. The question, however, is how to balance short-term solutions with a long-term vision. A long-term vision must address the question of how to improve conditions so that children do not have to be removed from their countries of birth in order to be able to lead decent lives.

5. Feminist Methods

In an influential article, Professor Katharine Bartlett urged scholars to apply feminist methods to the analysis of social issues.211 In the article, Professor Bartlett described one of the central components of feminist analysis as “asking the woman question.”212 Asking the woman question, she noted, is a method “designed to expose how the substance of law may silently and without justification submerge the perspectives of women and other excluded groups.”213 Asking the woman question “demands . . . special attention to a set of interests and concerns that otherwise may be, and historically have been, overlooked.”214

Professor Mari Matsuda has argued that it is important to begin the analysis of an issue by thinking not only about how an issue affects all women, but also about how an issue specifically affects those women who are the most disadvantaged. Her work called for a radical rethinking of feminist theory “from the bottom up.”215

As I have already noted, in thinking about the construction of a feminist analysis of adoption, I have deliberately chosen to place poor women of color at the center. The next section of this Article will discuss two examples of ways in which a feminist analysis of transracial and international adoption might seek to be responsive to the lives and concerns of poor women of color.

a. Feminist Narratives and Storytelling

One important tool of feminist method has been the use of the personal narrative. As Professor Deborah Rhode has noted, “many feminist legal critics are . . . drawn to narrative styles that express the personal consequences of institutionalized injustice.”216 It has been observed that personal narratives have

212. Id. at 836.
213. Id.
214. Id. at 846. In her article, Bartlett identifies three tools of feminist method: asking the woman question, using feminist practical reasoning (a focus on the specific factual context of a complex situation), and consciousness-raising—testing the validity of accepted legal principles through the lens of personal experience. See id. at 831. She credits Simone de Beauvoir with the first use of the term the “woman question” to signify asking how women have been left out of the particular norm. Id. at 837 n.23.
216. Rhode, supra note 153, at 621. Feminist narratives grow out of, at least in part, the technique of consciousness-raising—the idea that the personal story contains the building blocks of political analysis. See,
the potential to perform functions that the dry reading of cases or empirical data cannot. \(^{217}\) Narratives can humanize a story, create empathy, and involve a reader emotionally in ways that other methods of describing a situation might never be able to do.\(^{218}\)

The use of narrative has been a revolutionary tool in legal scholarship. Not only did this technique break new ground in terms of methodology—challenging the idea of legal scholarship as impartial, disembodied analysis—but at a substantive level the technique of narrative also provided a forum through which outsider groups could tell their own stories, which often differed dramatically from those represented in the dominant discourse.\(^{219}\)

Narratives have also been an important part of the analysis of motherhood by legal scholars.\(^{220}\) As Professor Carol Sanger has noted, when legal scholars write about how the law conceptualizes mothers, the starting point for much of their work is often “the observed or self described experiences of mothers using the device of biography where they consider the ways that women lawyers, law professors, and law reformers have taken account of their own motherhood, personally and strategically.”\(^{221}\)

In the areas of transracial and international adoption, there are a number of narratives that reflect the experiences of adoptive mothers.\(^{222}\) However, there is very little literature, legal or non-legal, which discusses the feelings of women who have given children up for adoption,\(^{223}\) or who have had their children taken from them through the involuntary termination of parental rights. The gap is a glaring one; and there is a clear need to remedy the situation.\(^{224}\)

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e.g., Susan Estrich, Rape, 95 YALE L.J. 1087 (1986) (discussing rape reform by beginning with the author’s personal experience with rape).

217. See, e.g., David Luban, Difference Made Legal: The Court and Dr. King, 87 MICH. L. REV. 2152 (1989) (contrasting two retellings of a 1963 civil rights demonstration—one by the Supreme Court in a majority opinion, the other by Dr. Martin Luther King, Jr.); Mari J. Matsuda, Public Response to Racist Speech: Considering the Victim’s Story, 87 MICH. L. REV. 2320 (1989) (contrasting the First Amendment’s story of free speech with the victim’s story of the effect of racist hate messages).


219. See Delgado, supra note 178, at 2435-38.

220. See Sanger, supra note 9, at 28.

221. Id. at 28-29.


223. Most of the literature on birth mothers is from social work literature, which tends to portray young, unmarried, pregnant women as neurotic, immature individuals for whom the best solution is invariably to place their child for adoption. See H. David Kirk, Adoptive Kinship: A Modern Institution in Need of Reform 87 (1981) (describing Leotine Young’s psychological diagnosis of young, pregnant women). A few researchers have sought to explore more deeply the feelings of women who have surrendered their children for adoption. See, e.g., D. Brodinsky, A Stress and Coping Model of Adoption Adjustment, in The Psychology of Adoption 3-24 (D. Brodinsky & M. Schechter eds., 1990); Anne B. Brodzinsky, Surrendering an Infant for Adoption: The Birthmother Experience, in The Psychology of Adoption, supra, at 295 (discussing long-term emotional suffering of birth mothers who have surrendered children).

224. It has been observed by one birth mother who surrendered her child for adoption that birth mothers often do not speak out about adoption because of “the double-edged stigma attached to being a birth mother, which marks us as women who both conceived a child outside of marriage and ‘gave away’ that child.” Sweeney, supra note 145, at 340. She notes that “birth mothers internalize many of these images and judgments...
For obvious reasons, we are unlikely to find many women scholars who have given up children for adoption or whose parental rights have been involuntarily terminated. However, there are other sources from which we may be able to get a better sense of how women feel who have given up their own children for adoption. There are a few books and articles containing narratives of women who have given children up for adoption, and/or who have sought to reestablish contact with children they had given up for adoption long ago. The incorporation of the narratives of women who have placed children for adoption would be helpful to feminists in thinking about the degree to which the surrender of children for adoption should be considered to be truly voluntary.

Fiction is another possible source of narratives expressing the feelings of women who have become permanently separated from their children through adoption or under other circumstances. In Toni Morrison's *Beloved*, for example, Baby Suggs, a former slave, recalls memories of her children sold away from her during slavery:

Seven times she had done that: held a little foot; examined the fat fingertips with her own—fingers she never saw become the male or female hands a mother would recognize anywhere. She didn’t know to this day what their permanent teeth looked like; or how they held their heads when they walked. Did Patty lose her lisp? What color did Famous’ skin finally take? Was that a cleft in Johnny’s chin or just a dimple that would disappear soon’s his jawbone changed? Four girls, and the last time she saw them there was no hair under their arms . . .

It could be argued that the sale of children under slavery has a modern day counterpart in the involuntary termination of the parental rights of many Black parents, and as I have argued earlier, even “voluntary” surrenders of children for adoption can have coercive undertones. Still, the point here is not to argue that the surrender of a child by its mother for adoption is the same as a mother having her child sold during slavery. Rather, it is simply to acknowledge that the parting of a mother from her child, when she knows that it is permanent, is an extremely painful thing for many women. It may be that we have undervalued this pain when the parting takes place in the context of adoption.

Why would a young, unmarried Black or white woman surrender her child for adoption? Why would the young white mother of a bi-racial child surrender the baby for adoption? Why would the mother of an infant in Latin America give up her child to be adopted by Americans? How does a young woman of color feel when her parental rights have been involuntarily terminated with respect to

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children that she raised for at least the first several years of their lives, and whom she had not yet given up hope of getting back? Thinking about transracial or international adoption “from the bottom up” would help mainstream feminists to think about the feelings of mothers who have found themselves in desperate circumstances.

Thinking about adoption “from the bottom up” may not actually be so difficult. Indeed, it might involve the simple process of placing oneself in the shoes of the least advantaged woman with respect to the issue of transracial or international adoption. Thus, a woman might ask: “Under what circumstances would I be willing to give up one of my own children for adoption?” One should then accord to poorer, more disadvantaged women the same feelings of connection to children that we assume we have to any children to whom we have given birth.

Incorporating and taking into account the narratives of women who have been separated from their children is also consistent with the circumstances that, at least in part, gave rise to narratives as a tool in feminist legal theory. Narratives represent a means through which the experiences of outsiders can be heard. Unless the stories of women who have surrendered children or have had their children taken from them are also heard, a troubling situation may come about in which the traditional outsiders will become the insiders and be in the position of excluding the stories of others.

b. Feminist Method and the Argument that “Children are Not Property”

The language that we use in the discussion of a social issue is not without significance. Language not only has the effect of conveying ideas, but the manner in which an issue is discussed can have an impact both on the relationship between the parties involved in the discussion and the incentive these parties have to reconceptualize the issue or approach it in new ways.

It has clearly been to the benefit of children that legal theory has evolved from the idea of children as the property of their parents,226 to the idea that children are persons with certain rights and interests independent of the adults who give birth to and/or care for them.227 The modern idea that “children are not property” has supported rationales for protecting children from adults in a variety

226. The idea of children as property has a long history. For a discussion of this history, see Barbara Bennett Woodhouse, "Who Owns the Child?" Meyer and Pierce and the Child as Property, 33 WM. & MARY L. REV. 995, 1043-50 (1992). This conception of children as property is, in part, a legacy of patriarchy. See id. at 1051-59.

227. There is an inherent tension between children’s autonomy rights and the rights of parents to raise their children in accordance with their own values, as well as the interests of the state in protecting children and in protecting the larger society. See ROBERT H. MNOOKIN & D. KELLY WEISBERG, CHILD, FAMILY AND STATE 1-3 (1995); Woodhouse, supra note 227, at 999-1000.
of contexts, and it underlies adoption of the “best interests of the child” test as the
guiding principle to resolve child placement disputes.228

This does not mean, however, that the argument that children are not property
is an appropriate one in all contexts. In the controversy over transracial adoption,
the principle that “children are not property” can be invoked in ways that may be
problematic when it is used in the attempt to defeat claims by members of some
minority groups that children should be placed for adoption with members of that
group rather than families of a different race.229

Black people in America may be especially sensitive to arguments drawing
an analogy between people and property, regardless of the purpose for which the
analogy might be invoked. Black women are well aware that they, as well as
Black children, have actually held the legal status of property in this country, and
have been bought, sold and traded.230 It therefore becomes the height of irony for
Black women to be told that “children are not property,” as a part of the argument
that minorities have no particular “claim” on minority children, or no interest in
policies that will affect minority children. The argument is offensive because it
dismisses, as mere ownership rhetoric, legitimate concerns many Black people
have about both individual minority children and minority communities.

Also, the argument that “children are not property” represents a failure of
imagination. It discourages the kind of creative thought necessary to address the
question of the relationship between transracially adopted children and the
minority groups from which they come. The property analogy confines analysis
to existing concepts that simply do not fit the complex and interrelated issues that
arise in the analysis of transracial and international adoption.

At the present time there is no specific legal theory that has been recognized
or developed to protect the interests of minority children or to protect children’s
own cultural identity interests. Some scholars have begun such an exploration.231
However, the fact that no such theory presently exists does not mean that one

228. See generally JOSEPH GOLDSTEIN ET AL., BEYOND THE BEST INTEREST OF THE CHILD (1979); Perry,
Race and Child Placement, supra note 1, at 54.

229. See, e.g., Susan Estrich, Indian Rights Win, Two Children Lose, USA TODAY, July 13, 1995, at 9A.
This article describes a case in which a young, unmarried, poor Indian couple placed their newborn twins for
adoption in the home of a white couple without revealing the babies’ Indian heritage as required by the Indian
Child Welfare Act. The birth parents changed their minds after four months and, invoking the Act, sought a
return of the children. In taking the position that the children should remain with the adoptive parents, Professor
Estrich argues that “[c]hildren don’t belong to anyone. They are not property. They should not be treated as
chattel.” Id. Other articles, while not necessarily using the specific term “property,” suggest that the claims of
some Blacks that Blacks as a group have an interest in the issue of transracial adoption means that Blacks are
attempting to assert a kind of ownership interest in Black children. See, e.g., Bartholet, supra note 1, at 1233
(“Black leaders have argued for racial matching policies on the grounds that black people have the right to
control the destiny of ‘their’ children . . . .”).

230. See Davis, supra note 58.

231. See, e.g., Barbara Bennett Woodhouse, “Are You My Mother?: Conceptualizing Children’s
identity rights). See generally GROUP RIGHTS (Judith Baker ed., 1994) (exploring the concept of group rights
including the rights to self determination and the relationship between the rights of a group and the rights of
individuals).
cannot or will not be developed. This is another task to be confronted in the development of a feminist analysis of adoption.

Property is a complex concept. It can be extended to the analysis of issues in new and unexpected ways, such as in Professor Cheryl Harris’ analysis of white skin in America as conferring benefits not unlike the ownership of property. On the other hand, some applications of the idea of property where it might, at first glance, seem natural, may be quite inappropriate. The argument that children are not property has clearly served children’s interests well in a number of contexts, but it is of little value in analyzing some of the most important issues arising in the analysis of transracial and international adoption.

V. CONCLUSION: PRACTICAL IMPLICATIONS

This article does not argue that transracial or international adoptions should no longer take place. I have previously argued that the debate over transracial adoption has had the unfortunate effect of deflecting attention from the welfare of the vast majority of Black children in this country who, despite the controversy over transracial adoption, will continue to be raised by Black families in Black communities. Although I contend that international adoptions of children of color also raise some troubling issues that feminism should address, I do not argue that they should be discontinued either. Even though it can be argued that international adoptions take, from the sending country, potentially productive adults who could assist in that country’s development, the reality is that many of the children who are adopted would otherwise likely grow up in large institutions, or under even worse conditions that would severely reduce their chances of growing up to be outstanding or even productive citizens. Even the argument that money spent on intercountry adoptions might be better spent on improving services and the economic circumstances of children in the sending countries is a tenuous one because in the absence of an adoption the money would probably end up being spent in the prospective adoptive couple’s own...

232. See Cheryl I. Harris, Whiteness as Property, 106 HARV. L. REV. 1707 (1993) (arguing that the status of being white in America provides benefits analogous to the possession of property).

233. Feminists might wish to explore the analogy between the survival skills argument in transracial adoption and the argument by some feminists that same-sex schools are beneficial for many women. It seems especially odd for feminists to argue that there is nothing special that a Black family would offer to a Black child in light of arguments that have been made about the advantages that same-sex institutions can offer to women, at least in particular stages of their development. A number of feminists have argued that that all women’s colleges provide unique strengths in preparing women to function well in the hostile environment that they will later face in the outside world. See, e.g., Susan Estrich, For Girls’ Schools and Women’s Colleges; Separate is Better, N.Y. TIMES, May 22, 1994, § 6 (Magazine), at 39. See generally Janelle Miller, The Future of Private Women’s Colleges, 7 HARV. WOMEN’S L.J. 153 (1984). Certainly, the position of feminists on same-sex education is not unanimous—the National Organization for Women has recently vigorously opposed the establishment of the Young Women’s Leadership School in East Harlem, a new, experimental public school opened in New York City. See David Gonzalez, Girls’ School: Neighbors For, NOW Against, N.Y. TIMES, Mar. 5, 1997, at B1.

234. See Perry, Transracial Adoption, supra note 1, at 107.

235. See BAGLEY, supra note 11, at 172-73.
country, rather than being transferred abroad. Finally, although it is appropriate to argue that Western women should become involved in the efforts to prevent the economic exploitation of third-world women’s and children’s labor in factories in their countries that service Western economic interests, the goal need not be to close these factories. Rather, it should be to change their practices so as to promote economic justice for the poor women who are employed in them. Still, because it is an institution which involves the systematic transfer of children from the least advantaged women to the most advantaged, international adoption raises issues that should be of concern to women who claim a feminist perspective. The relationship between women in the richest and the poorest countries should not be based on the transfer of the children of the women of poor nations to the women of wealthy nations.

Although this article does not call for an end to international adoptions, experts in the field believe that these adoptions, as a long-term, worldwide phenomenon in which children of color from poorer and/or third-world countries are transferred to rich, white nations are on the decline. The reasons for the projected future decline are a combination of feelings of nationalism, as well as improved economic conditions, in the sending countries.

It might be appropriate for feminists to ask what would happen if the supply of adoptable babies, both internationally and domestically, were to decrease dramatically. What would happen if poor, minority women in America no longer lived under the kind of conditions that result in their being unable to raise their children? What would happen if the stigma against bearing children outside of marriage ended and women no longer felt pressure to give up their children because they are unmarried? What if it were typical that women could achieve a level of economic self-sufficiency that would make parenting without a husband a more viable option? What if poverty and gender subordination were so eradicated in Latin America that poor mothers in Ecuador did not feel a need to give up their children in order to provide them with a “better” future?

There are a number of possible results. First of all, there would still likely be some children available for adoption. Some women who conceive children would probably still choose to place them for adoption for a myriad of personal reasons, including a personal opposition to abortion. However, it is also likely

236. See id. at 173. Indeed, Bagley states that there is evidence that once a couple has acquired an internationally adopted child they are more likely to support welfare services in the country from which their child came. See id.


238. See id. It is not only third world countries that are increasingly restricting international adoptions. Countries such as Russia and Romania have also begun to make it more difficult for their children to be adopted by foreigners. See, e.g., Joseph Albright & Marcia Kunstel, Citing “Trade” in Children, Russia Tightens Rules on Foreign Adoptions, ATLANTA CONST., Nov. 18, 1994, at A9; Michael S. Serrill, Going Abroad to Find a Baby, TIME, Oct. 21, 1991, at 86 (noting that Romania stopped foreign adoptions until it could enact adoption procedures).
that, as a practical matter, the number of children available for adoption, transracial, international, or any other kind would decline. What might be some of the consequences?

First of all, it might mean that some women would simply not be able to become mothers by adoption. This would be unfortunate because many people, if not most people probably experience a very strong desire to parent. Secondly, a decline in the number of children available for adoption might result in more middle-class women choosing to bear biological children outside of marriage. Some feminists might consider this to be a positive development. An increased number of non-impoverished, women-headed households could constitute a significant step toward undermining the institution of patriarchy. For example, it might assist in finally determining how “necessary” the role of men is in families, independent of the usual role of economic provider. Fewer babies available for adoption might also result in more women having a stake in fighting to make new reproductive technologies more available to a wider range of women. A shortage of babies available for transracial and international adoption might result in more adoptions of disabled children. It is probably true that many people would not adopt a disabled child under any circumstances. However, it is also true that the demand for transracial and international adoptions increased as a result of the shortage in adoptable, white babies. The day may come when more people are willing to adopt disabled children if fewer “healthy adoptable” children are available.

There are other possible ramifications of a decline in the number of children available for adoption. If fewer women in the society were mothers, more women would have a stake in redefining womanhood without the expectation of motherhood. The expectation that women become mothers is a powerful ideology that affects the lives of all women, whether or not they choose to become, or are able to become, mothers. If fewer women have children, the ideology of motherhood might exert less power. Finally, the idea might be furthered that responsibility for children is the responsibility of everyone, and not simply of the parents who give birth to them or who have undertaken to raise them.

Adoption is an important institution. It provides an opportunity for people to experience the joys and challenges of parenthood. More importantly, it provides the opportunity for children to have homes who otherwise might not have them. A feminist analysis should support adoption as an institution, but at the same time should be willing to question the justice of a world which often results in the transfer of children of the least advantaged women to the most advantaged. There must be some commitment to eradicating the racism, economic exploitation and

239. See Martha L. Fineman, Images of Mothers in Poverty Discourses, 1991 DUKE L.J. 274, 276 (“[A]s an institution with significant and powerful symbolic content in our culture, motherhood has an impact on all women—independent of the individual choice about whether to become a mother”).
patriarchy that is often a factor that affects a woman’s ability or choice to raise her own children.

Is this Article, then, a call to action for feminists who have adopted transracially or internationally, or indeed for all feminists? Should women who have adopted children from different ethnic groups feel an obligation, not only to raise an individual child with a healthy racial identity, but also to become involved in the broader issues that affect the ethnic group from which the child comes? Should the mothers of transracially or internationally adopted children become activists in struggles over racial integration, immigration, affirmative action and bilingual education?

Raising children is an emotionally draining and time consuming activity. Many women hold down full time jobs in addition to their childrearing obligations. Lives lived under such pressure may not appear to leave much time for anything else, including political action. Still, there are women who have successfully combined childrearing, a job and political activity. Black women in the civil rights movement and women in some third world liberation struggles are examples of this, and certainly there are many others. But, as I have also argued, not all activities that further racial justice have to take place on a political stage—there are ways in which the personal choices that women make everyday can contribute to either perpetuating or changing societal patterns. Feminists, whether or not they have adopted children, can be attuned to the ways in which the personal choices they make about where they live, where they worship and what kind of schools their children attend support or challenge the racism in American society. Similarly, they can choose to educate themselves about issues such as whether the clothing and other items they buy is manufactured in third world countries that are paying women in those countries less than a living wage that would enable them to support their children. In short, as we think about the need to find adoptive homes for children we must also think about trying to create a world in which the choice of a woman to place her child for adoption is a free choice, rather than one dictated by circumstances of racial, economic or gender oppression.

240. See, e.g., Kumari Jayawardena, Feminism and Nationalism in the Third World (1986) (discussing participation of many third world women in struggles for national liberation).