

Redefining and Reclaiming
Korean Adoptee Identity:
Grassroots Internet Communities and
*The Hague Convention on Protection of
Children and Co-operation in Respect of
Intercountry Adoption**

Christina Yang†

My parents told me that summer of my arrival I would sing and talk in Korean. Of course they never knew what I was saying. They also told me that in those first weeks I would run up to the front door, throw my body up against it and cry and cry and say in Korean, “Jip e ka le!” My sister, born to my parents and age 9 at the time, thought it might be some strange Korean game. So she would run up to the door, throw her body against it and say, “Jip e ka le!” I can imagine my sister doing this over and over—and turning my tears into laughter. Years later my parents learned what my Korean words meant: I want to go home.

- Hollee McGinnis, Korean adoptee¹

*Winner: 2008 Akiyu Hatano Student Writing Award

† J.D. Candidate, 2009, University of California, Berkeley, School of Law (Boalt Hall); B.A., University of Pennsylvania, 2003. Special thanks to Professor Angela Harris, who provided invaluable guidance and suggestions during the development of this piece for her Law, Markets, and Culture seminar course and advised my subsequent independent study. I gained inspiration from the beautiful, honest writing in the parenting and adoptee “blogosphere.” Thank you for sharing your stories. I am also grateful to AALJ Articles Editor Jennifer Lee and her team—Joanne Kwon, Anson Lau, Tracy Leong, Paul Park and Khoi Ta—for their thoughtful editing.

*Winner: 2008 Akiyu Hatano Student Writing Award

1. Posting of Hollee McGinnis to Relative Choices, <http://relativechoices.blogs.nytimes.com/2007/11/13/who-are-you-also-known-as/> (Nov. 13, 2007, 8:01 PM). McGinnis is policy director at the Evan B. Donaldson Adoption Institute and founder of Also-Known-As, Inc., an adult intercountry adoptee organization.

I. INTRODUCTION

For many Korean adoptees,² the idea of *kohyang*, or “hometown,”³ is fraught with conflict and loss, but is also bound up with hope. Adoptees hoping to define “home” and “identity” are often forced to work within the confines of law, markets, and dominant culture. This piece suggests how Korean adoptees may continue moving beyond the boundaries of defined identity, toward a new recognition of multicultural adoptee identity that adequately acknowledges loss and their unique contribution to the Asian American experience. This movement toward a distinctively multicultural intercountry adoptee identity shall occur largely outside the auspices of the law, although recent changes in international law which influence intercountry adoption⁴ are addressed as well. Specifically, I propose that Korean adoptees take advantage of the community-building power of the Internet to reclaim and redefine identity and a corresponding sense of “home.”

* * *

Every year, the United States is the world leader in adopting children from other nations.⁵ However, even in this country, federal oversight and regulation of intercountry adoption has been sorely lacking, resulting in countless cases of fee embezzlement from prospective parents, child trafficking, and broken promises related to pending adoptions.⁶

Intercountry adoption of Korean-born children is particularly relevant at this moment because of legal developments within the past two years. After many years, the United States finally implemented the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption⁷ on April 1, 2008.⁸ The treaty was initially

2. The term “Korean adoptee” is used in this piece to refer to an adopted individual of Korean descent who was born in South Korea and adopted by at least one individual of American descent, and who has lived with an adopted family in the United States for some period of time.

3. When a group of adult Korean adoptees visited a district on the edge of Seoul, Korea, the mayor offered them the city as their *kohyang*, saying, “If you get lost, you can tell people that you are from Kangdong-gu.” Eleana Kim, *Wedding Citizenship and Culture: Korean Adoptees and the Global Family of Korea*, in CULTURES OF TRANSNATIONAL ADOPTION 49, 67 (Toby A. Volkman ed., 2005).

4. The terms “intercountry adoption” and “international adoption” are used interchangeably throughout this piece.

5. Jane Gross, *U.S. Joins Overseas Adoption Overhaul Plan*, N.Y. TIMES, Dec. 11, 2007, at A29, available at <http://www.nytimes.com/2007/12/11/washington/11hague.html?ref=world>.

6. *Id.*

7. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134 (1993), available at http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69 [hereinafter Hague Convention].

8. Charley Keyes, *U.S. Joins International Treaty on Adoptions* (Dec. 12, 2007), <http://www.cnn.com/2007/US/12/12/international.adoptions/>.

approved in the Hague in 1993,⁹ and the United States first signed the Hague Convention in 1994, indicating its intent to move toward eventual ratification of the international treaty.¹⁰ In September 2000, both Houses of Congress passed the Intercountry Adoption Act of 2000 (IAA), which President Bill Clinton signed into law in October of the same year.¹¹ The IAA seeks to provide for implementation of the Hague Convention, to protect the rights of parties involved in intercountry adoption, and to boost the American federal government's ability to help U.S. citizens adopt abroad and inhabitants of other countries adopt American children.¹² On December 12, 2007, the United States took a long-awaited step toward increased federal monitoring of intercountry adoption by ratifying the Hague Convention,¹³ and implementation began last year.

The Hague Convention establishes minimum requirements for intercountry adoptions between participating countries, standards for accreditation of adoption agencies, and various safeguards to protect the interests of affected children, birth parents, and adoptive parents.¹⁴ Over seventy countries are currently signatories to this international treaty on adoptions. The United States, whose ratification of the Hague Convention has been described as delayed, stalled, and long-overdue,¹⁵ is rather late to the game—its ratification process took fourteen years. According to a U.S. State Department spokesperson, the process dragged on for so long because adoptions in the United States have historically been regulated according to individual state law.¹⁶ Now there is finally federal oversight of adoption policy under the Hague Convention.¹⁷

The total number of children placed as a result of intercountry adoption has decreased in recent years, but close to twenty thousand are still adopted internationally every year. In 2006, 20,679 children were adopted internationally,¹⁸ approximately nineteen-thousand children were

9. U.S. Department of State, Bureau of Consular Affairs, *The Hague Convention on Intercountry Adoption: A Guide for Prospective Parents* (Oct. 2006), at 3, available at http://adoption.state.gov/pdf/PAP_Guide-1.pdf [hereinafter United States Department of State, *Hague Convention*].

10. *Id.*

11. ANN E. WEISS, ADOPTIONS TODAY 111 (2001).

12. Intercountry Adoption Act of 2000, Pub. L. 106-279, 42 U.S.C. § 14901 (2000).

13. Keyes, *supra* note 8.

14. *Id.*

15. Kathleen L. Manley, *Birth Parents: The Forgotten Members of the International Adoption Triad*, 35 CAP. U. L. REV. 627, 638-39 (2006); Laura McKinney, *International Adoption and the Hague Convention: Does Implementation of the Convention Protect the Best Interests of Children?*, 6 WHITTIER J. CHILD & FAM. ADVOC. 361, 365 (2007).

16. Keyes, *supra* note 8.

17. Gross, *supra* note 5.

18. U.S. Department of State, *Total Adoptions to the United States*, http://adoption.state.gov/news/total_chart.html [hereinafter United States Department of State, *Total Adoptions*] (last visited Jan. 14, 2009).

adopted internationally in 2007,¹⁹ and intercountry adoption to the United States dropped even further in 2008 to 17,438.²⁰ Together with the American ratification and implementation of the Hague Convention, these numbers demonstrate that this is an opportune time for critical analysis of the treaty's strengths and shortcomings.

In this piece, I contend that the United States' recent ratification and implementation of the Hague Convention provide a useful framework for assessing the societal controversy around intercountry adoption of Korean-born children²¹ in America. The Hague Convention highlights the predominant concerns surrounding intercountry adoption, via the treaty's attempts to reform the process of adopting across national borders. I argue that although the United States has finally ratified and begun to implement the Hague Convention in order to improve the intercountry adoption process in terms of increasing equity and efficiency for Americans adopting children from foreign nations, the treaty's ratification is unlikely to truly ameliorate the major apprehensions of intercountry adoption critics or Korean adoptees themselves.

In Part I, I lay out the history of American adoption of Korean children, providing statistics regarding the adoption of Korean children by American citizens. A look at the Korean government's vows to drastically decrease the number of babies sent overseas to be adopted is accompanied by a glimpse into the emergence of Korean adoptees vocalizing their desires to abolish intercountry adoption entirely. This Part also considers the increasingly common voluntary repatriation of adult Korean adoptees to Korea for practical purposes such as finding their birth parents or for more complex reasons surrounding identity and "going home." Finally, this Part introduces the recent history of Chinese adoptees in the United States, as their experiences relate to those of Korean adoptees.

Part II's discussion of intercountry adoption exists within the context of the domestic and international laws that govern intercountry adoption. Engaging in a textual analysis, this Part reflects on the major criticisms and strengths of the Hague Convention, and provides a look at the treaty's roots in the United Nations Convention on the Rights of the Child.²² This Part also contemplates what role the Hague Convention may play in adoption of Korean children by United States citizens, given that while Korea has not

19. Keyes, *supra* note 8. These numbers stand in comparison to the 127,407 children adopted domestically in 2001, the last year that comprehensive domestic adoption data was collected. Child Welfare Information Gateway, *How Many Children Were Adopted in 2000 and 2001? (Appendix A)* (2004), http://www.childwelfare.gov/pubs/s_adopted/s_adoptedf.cfm (last visited Mar. 18, 2009).

20. U.S. Department of State, *Total Adoptions*, *supra* note 18.

21. References to "Korea" or "Korean" indicate the geographic area currently known as South Korea.

22. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1448 [hereinafter CRC]; D. Marianne Blair, *Safeguarding the Interests of Children in Intercountry Adoption: Assessing the Gatekeepers*, 34 CAP. U. L. REV. 349, 350-51 (2005).

ratified the treaty,²³ the treaty does not ban signatory countries from engaging in adoptions from non-member countries.

Part III examines one prime area of concern for international adoption critics: the economic and societal forces at work—including choice, or lack thereof—that create the “availability” of Korean children in the “market” of intercountry adoption. I then contemplate how a traditional law and economics approach can assist in evaluating the efficacy and equity of intercountry adoption. This Part also deliberates the adoptee interests at stake in such a “market.” This hierarchy of interests presents itself as physical, psychological, or some other amalgamation, in light of how the Hague Convention addresses the “best interests of the child.”

Part IV explores a second area of concern for critics of American adoption of Korean children: adoptees’ loss of birth culture and identity and the race-related issues adoptees must grapple with throughout their lives. This Part details the relationship between Korean adoptees and Asian American identity in a larger sense, imbued with a critical race theory perspective. For comparison, I also explore the relationship between Chinese adoptees and Asian American identity. By pointing out the failures of the amended Meitzenbaum Multiethnic Placement Act of 1994, which prohibits adoption and foster agencies from considering race or ethnicity in adoption decisions if they receive federal funding, I demonstrate that a “colorblind” approach is not a pragmatic or reasonable way to reform intercountry adoption. I also argue that the Hague Convention’s treatment of race and culture constitutes near-colorblindness.

In Part V, the Conclusion, I again turn to why the ratification and current implementation of the Hague Convention does not fully tackle intercountry adoption critics’ concerns. I propose one way the Hague Convention may serve as an avenue toward a fuller acknowledgment of the interests of both adult Korean adoptees and intercountry adoption critics: further implementation of the Hague Convention should expand upon the cursory treatment of race and culture currently in its text. I also present a second suggestion for empowering adoptees through extra-legal channels: Korean adoptees and their supporters should turn toward the intercountry adoptee online community, which showcases the power of grassroots coalition-building and the flow of knowledge and transparency that could be harnessed to adoptees’ advantage, especially if cues are taken from the workings of international/intergovernmental groups (IGOs) and non-governmental groups (NGOs). This suggestion also draws parallels between the intercountry adoptee community and other communities that have gained grassroots power via the proliferation of Internet forums.

23. Caeli E. Kimball, *Barriers to the Successful Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 33 DENV. J. INT’L L. & POL’Y 561, 581 (2005).

II. INTERCOUNTRY ADOPTION

A. Korea—1950s to Present

Intercountry adoption began during the post-World War II era, when governments encouraged their citizens to personally help children orphaned by the war via adoption.²⁴ The history of transnational adoption from Korea dates back to the Korean War;²⁵ a wave of intercountry adoption occurred when children were orphaned by that conflict.²⁶ South Korea has the longest continually running foreign adoption program on the globe.²⁷

Between the 1950s and 1970s, Korea was the primary source of adoptive children to the West, especially the United States.²⁸ One estimate places the number of Korean children adopted into American families since the end of World War II at over 100,000, or about one out of twelve Korean Americans.²⁹ Other estimates suggest the number is as high as 150,000.³⁰

In recent years, the number of children adopted from South Korea has decreased. In 2006, 1376 South Korean children were adopted, whereas in 2005, 1630 children from South Korea were adopted by individuals in the United States.³¹ That year, South Korea stood as the nation sending the fourth largest number of children to the United States for international adoption.³² In both 2007 and 2008, although, South Korea dropped to the fifth most popular country of origin, with 939 adoptions taking place in 2007 and 1065 adoptions in 2008.³³ In comparison, the top countries of origin for international adoptions in the United States in 2008 were Guatemala and China, with 4123 adoptions and 3909 adoptions respectively.³⁴

Increased nationalism and a stronger economy are thought to be the major forces behind the reduced number of children adopted from Korea.³⁵ In the past few decades, the Korean economy has strengthened immensely; orphans are better provided for, abortion is more readily obtainable, and an

24. Jena Martin, *The Good, the Bad, and the Ugly?: A New Way of Looking at the Intercountry Adoption Debate*, 13 U.C. DAVIS J. INT'L L. & POL'Y 173, 176 (2007).

25. Martin, *supra* note 24, at 177.

26. *Id.*

27. Eleana Kim, *supra* note 3, at 56.

28. HEATHER AHN-REDDING & RITA J. SIMON, INTERCOUNTRY ADOPTEES TELL THEIR STORIES 5 (2007).

29. Elizabeth Larsen, *In Their Own Words*, MOTHER JONES, Oct. 24, 2007, available at <http://www.motherjones.com/news/feature/2007/11/in-their-own-words.html>.

30. Elizabeth Woyke, *Homeland Divide*, HYPHEN MAGAZINE, Summer 2005, available at http://mail.hyphenmagazine.com/features/issues/summer05/korean_adoptees.php.

31. U.S. Department of State, *Total Adoptions*, *supra* note 18.

32. Elizabeth Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 BUFF. HUM. RTS. L. REV. 151, 160 (2007) [hereinafter Bartholet, *International Adoption*].

33. U.S. Department of State, *Total Adoptions*, *supra* note 18.

34. *Id.*

35. AHN-REDDING & SIMON, *supra* note 28.

acute sense of national pride has led to a more prevalent perception of South Korea as part of the First World, rather than a developing nation.³⁶ Indeed, a Republic of Korea Health Ministry official once claimed, “We are going to stop foreign adoption by 1996, although this will not include the handicapped. We believe we will by then be able to take care of our own children.”³⁷

As the numbers indicate, this proclamation by the Korean government has not come to fruition; nonetheless, a movement to abolish intercountry adoption from Korea has become increasingly visible. This nationalistic movement posits that the South Korea of today—as opposed to the poverty-stricken one immediately after the Korean War—has enough economic wealth to tend to its own, and should not rely on intercountry adoption to care for Korean children.³⁸ The South Korean government has taken concrete legal steps toward at least lessening the flow of children being placed with families overseas.³⁹ In 1996, South Korean adoption laws were revised to establish an annual benchmark for decreasing international adoptions by three to five percent, with intercountry adoption to be eliminated completely by 2015.⁴⁰

The mainstream media story of an eight-year-old adoptee who was “return[ed] . . . like an unwanted Christmas necktie” by a Dutch diplomat and his wife reinvigorated the Korean public’s opposition to intercountry adoptions.⁴¹ Over eight years ago, the diplomat, who was posted in Hong Kong, adopted four-month-old Jade from South Korea.⁴² When he and his wife placed Jade with social services in Hong Kong in 2006, they explained that Jade was always emotionally remote and had not bonded with the rest of the family; a loud public outcry ensued.⁴³ On the heels of this tragedy, some South Korean lawmakers renewed lobbying for stricter limitations on international adoption, if not an absolute ban on the practice.⁴⁴

Indeed, accompanying this movement against intercountry adoption is a growing wave of voluntary repatriation to Korea by adoptees who have reached adulthood. As the number of adoptees returning to their birth country increases, substantive groups and activities beyond birth parent searching have sprung up. Volunteer work at orphanages and field trips sponsored by the Korean government are the norm.⁴⁵ The number of

36. *Id.*

37. *Id.* at 6.

38. Posting of Hollee McGinnis to Relative Choices, <http://relativechoices.blogs.nytimes.com/2007/11/27/south-korea-and-its-children/> (Nov. 27, 2007, 10:27 PM).

39. *Id.*

40. *Id.*

41. Peter Ritter, *Can an Adopted Child Be Returned?*, TIME, Dec. 18, 2007, available at <http://www.time.com/time/world/article/0,8599,1695735,00.html?cnn=yes>.

42. *Id.*

43. *Id.*

44. *Id.*

45. Woyke, *supra* note 30.

visitors to the Seoul office of Eastern Social Welfare Society, the major Korean adoption agency, jumped from forty-one in the early 1990s to a few hundred in 2003.⁴⁶ Government-sponsored “motherland tours” and Korean culture camps, with a duration of a few weeks at a time, have also become routine for younger Korean adoptees.⁴⁷ These tours began in the 1970s, but it has since become more commonplace for adoptees to make the visit to Korea independently, with some staying on indefinitely.⁴⁸

Author and blogger Jane Jeong Trenka, a Korean adoptee who returned to her *kohyang* as an adult, is one of the most vocal adult Korean adoptees participating in this movement.⁴⁹ Trenka has worked to assist a group of Korean birth mothers campaigning to end overseas adoption.⁵⁰ The group argues primarily that the Korean government has not adequately promoted domestic adoption, and that resources available for birth parent searches and for later reunification are insufficient.⁵¹

Trenka, who moved back to Korea in 2004,⁵² writes in one personal blog entry:

I firmly believe that international adoption from South Korea should be outright banned. . . . Although my story does not involve literal kidnapping or trafficking, as many others do, I can document the misrepresentation of my social history and natural family’s circumstances to my adoptive parents, which I believe is common and which ultimately victimizes the adoptee, the birth family, and the adoptive parents.⁵³

Trenka and some other Korean adoptees perceive a trend of purposeful misinformation, resulting in a lack of agency for everyone involved in intercountry adoption.

B. China—1990s to Present

Since 1995, China has supplanted Korea as the foremost provider of children adopted in America,⁵⁴ eventually emerging in 2007 as the leading

46. *Id.*

47. Eleana Kim, *supra* note 3, at 52.

48. Woyke, *supra* note 30.

49. Jane’s Blog, <http://jitreka.wordpress.com/about/> (last visited Mar. 26, 2009); Park Soo-mee, *Mothers Call for End to International Adoption*, JOONGANG DAILY, Aug. 8, 2007, available at <http://joongangdaily.joins.com/article/view.asp?aid=2879017>.

50. *Id.*

51. *Id.*

52. Jane’s Blog, <http://jitreka.wordpress.com/about/>, *supra* note 49.

53. Jane’s Blog, <http://jitreka.wordpress.com/fools-gold-international-adoption-from-south-korea/> (July 10, 2007) (emphasis in original).

54. AHN-REDDING & SIMON, *supra* note 28, at 5.

country sending children to the United States for adoption.⁵⁵ The flow of children from China to the United States has decreased slightly, but remained steady since China ratified the Hague Convention in September 2005.⁵⁶ The relatively recent history of Chinese adoptees in the United States provides for an informative comparison to that of Korean adoptees, which spans a time period beginning in the 1950s.⁵⁷ As the different generations of Asian adoptees interact with one another, the world of adoptees will continue growing and evolving:

It seems more than likely that [one ten-year-old Chinese adoptee], and many others in her young cohort of adoptees, will add their voices to future debates about adoption, debates that have already been enriched and complicated as earlier generations have come of age and have begun to define themselves as part of an international community, network, movement, and even “culture.”⁵⁸

This discussion continues in Part IV.D, *infra*.

III. INTERCOUNTRY ADOPTION—AN INTERSECTION OF DOMESTIC AND INTERNATIONAL LAW

All international adoption is regulated by a web of laws and regulations in both sending and receiving nations. Many different sources of law constitute the entity collectively known as international family law: private international law (e.g., the Hague Convention), public international law (e.g., the United Nations Charter and international human rights law), regional conventions (e.g., the European Convention on Human Rights), domestic/national laws that apply within a particular country (e.g., the United States Immigration and Nationality Act),⁵⁹ as well as international/intergovernmental organizations (IGOs) and non-governmental organizations (NGOs), which can often greatly influence the enforcement of family law norms in the international arena.⁶⁰

55. Gross, *supra* note 5 (accompanying graphic titled “International Adoptions,” dated Dec. 10, 2007).

56. U.S. Department of State, *Intercountry Adoption: China*, Feb. 2006, http://travel.state.gov/family/adoption/country/country_365.html.

57. Martin, *supra* note 24, at 176-77.

58. Toby A. Volkman, *Embodying Chinese Culture*, in CULTURES OF TRANSNATIONAL ADOPTION 81, 108 (Toby A. Volkman ed., 2005) [hereinafter Volkman, *Embodying Chinese Culture*].

59. The primary domestic law that applies to intercountry adoption by American citizens is the United States Immigration and Nationality Act (INA). Manley, *supra* note 15, at 635. The INA requires the following two conditions be satisfied for international adoptions: firstly, the prospective adoptive parents must be able to provide “a proper home environment,” as assessed via home study; secondly, the child must be classified as an orphan under the INA. *Id.*

60. BARBARA STARK, INTERNATIONAL FAMILY LAW: AN INTRODUCTION 4-10 (2005) [hereinafter STARK, INTERNATIONAL FAMILY LAW].

Part V, *infra*, suggests that as with IGOs and NGOs, which operate on both governmental and private levels to considerably influence international family law, adult Korean adoptees may harness grassroots-based power to create formal or informal groups in online adoptee communities for support or activist purposes.

This piece focuses primarily on the Hague Convention, along with a secondary look at the United Nations Convention on the Rights of the Child (CRC), for these are the two instruments that deal most directly with children's human rights on an international level. Although the United States is one of only a few countries, including Somalia, that have not yet ratified the CRC,⁶¹ an examination of the CRC is still warranted because of its influence on the great majority of nations engaged in intercountry adoption with the United States.

The Hague Convention is now another body of international law that controls international adoption in the United States, along with the Intercountry Adoption Act of 2000 (IAA), which came into effect due to the ratification of the treaty.⁶² The IAA concentrates on the administrative details of implementing the Hague Convention, including accreditation of adoption-related entities and collection of pertinent documents and records.⁶³

The Hague Convention itself focuses largely on instituting and maintaining safeguards for the intercountry adoption process. It is an instrument drafted with an eye toward the safety and consent of all parties involved, particularly the children being adopted. The treaty seeks to create a transparent process in which every party has adequate knowledge to make the adoption process a worthwhile one. In this sense, the Hague Convention represents a positive step forward: it tries to commit signing nations to explicit ethical and moral guidelines for adopting children safely.

Textual analysis reveals that the Hague Convention focuses largely on the procedures it deems will further its primary goal: ensuring that intercountry adoptions occur in the "best interest of the child and with respect for his or her fundamental rights."⁶⁴ In addition, the Hague Convention states at the outset that a child "should grow up in a family environment, in an atmosphere of happiness, love, and understanding."⁶⁵

61. Campaign for U.S. Ratification of the Convention on the Rights of the Child, Ratifying Countries, http://childrightscampaign.org/crcindex.php?sNav=getinformed_snav.php&sDat=ratifiers_dat.php (last visited Feb. 6, 2009).

62. *Id.* at 640; Intercountry Adoption Act of 2000, *supra* note 12.

63. *See generally* Intercountry Adoption Act of 2000, *supra* note 12.

64. Hague Convention, *supra* note 7, at Preamble.

65. *Id.*

Under the Hague Convention, priority is placed upon having the child remain within his or her family of origin, and if that is not possible, another family within the state of origin.⁶⁶

Chapter I of the treaty sets forth the scope of the treaty and its objects, which are to establish “safeguards” for adoptions taking place between Contracting States.⁶⁷ In subsequent chapters, the treaty describes specific requirements for intercountry adoptions,⁶⁸ defines central authorities and accredited bodies,⁶⁹ outlines procedural requirements in intercountry adoption,⁷⁰ and addresses recognition and effects of intercountry adoption within both sending and receiving nations.⁷¹ Chapter II reflects the Hague Convention’s preference for intercountry adoption over the child’s placement with “institutions” (orphanages or otherwise) within the country of origin.⁷²

Portions of the CRC are closely related to the Hague Convention. The CRC grew out of the Polish government’s proposal to the United Nations Commissioner on Human Rights in 1978, which showed that government’s desire to concretely contribute to protection of children, given the persecution of over two million Polish children at Nazi hands during World War II.⁷³ The CRC is well-regarded globally today, and is perceived as revolutionary for its presentation of children as “separate and distinct subjects of international human rights”; in other words, children have fundamental rights that exist outside the framework of parental or state control.⁷⁴

In the portions of its text that address adoption, the CRC discusses concerns similar to those addressed by the Hague Convention, such as a child’s ethnic and cultural background,⁷⁵ keeping the child within his or her country of origin if possible,⁷⁶ and requiring that states ensure as much as

66. *Id.*

67. Hague Convention, *supra* note 7, Chapter I.

68. *Id.* at Chapter II (emphasizing necessity of considering child’s best interests in placing him or her for adoption and of ascertaining parties’ consent to the adoption).

69. *Id.* at Chapter III (designating importance of establishing one central authority within each state to implement the Hague Convention; defining how adoption service providers may be accredited to meet Hague Convention standards for intercountry adoptions).

70. *Id.* at Chapter IV (outlining intercountry adoption procedures for central authority to follow).

71. *Id.* at Chapter V (requiring that contracting states recognize under law the adoptions made under the Hague Convention).

72. STARK, INTERNATIONAL FAMILY LAW, *supra* note 60, at 57 (citing Chapter II, Article 4(b), which mandates that an intercountry adoption should only take place “after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests”).

73. LAWRENCE J. LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD 16 (1995).

74. Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT’L L.J. 179, 204 (2003).

75. CRC, *supra* note 22, at Article 20(3).

76. *Id.* at Article 21(b).

possible that parties do not have “improper financial gain” after engaging in intercountry adoption.⁷⁷

However, the two instruments diverge in the way they approach intercountry adoption. The CRC does not focus on procedures to eliminate corruption within the intercountry adoption system, while the Hague Convention does.⁷⁸ Some scholars perceive the Hague Convention as more strongly “pro-adoption” than the CRC.⁷⁹ The CRC provision in question, Article 20, states that “alternative care” for a child who cannot remain with his or her family or origin may constitute “placement in suitable institutions for the care of children.”⁸⁰ The Hague Convention, on the other hand, states that an intercountry adoption may take place if the authorities have decided that it is in the child’s best interests after giving “due consideration” (a concept not precisely defined within the treaty) to possibilities for placing the child within the country of origin.⁸¹

While the Hague Convention has been lauded for the specific nature of procedural suggestions for intercountry adoption that it provides,⁸² it has also been criticized for not going far enough to truly reform the process on a global level.⁸³ Others believe that the Hague Convention’s vague language and lack of defined terms is a liability, because “signatories can interpret the ambiguous language as they see fit.”⁸⁴ The treaty also fails to designate a body responsible for oversight of implementation by contracting states; instead, it relies on each nation to appoint a “Central Authority” for this task.⁸⁵

South Korea has not yet signed or ratified the Hague Convention, and does not seem to plan to do so,⁸⁶ although it is a state party to the CRC.⁸⁷

77. *Id.* at Article 21(d).

78. Dillon, *supra* note 74, at 186.

79. *Id.* at 212-15 (citing Professor Alexandra Marvel: “[the CRC] places intercountry adoption after institutional care in the State of origin”; citing Professor Richard Carlson: “[the CRC] view that various forms of in-country care, including institutionalization, are preferable to intercountry adoption”).

80. CRC, *supra* note 22, at Article 20.

81. Hague Convention, *supra* note 7, at Article 4.

82. Dillon, *supra* note 74, at 186.

83. *Id.* at 201 (“Simply put, intercountry adoption cannot survive unless the spirit and letter of the Hague Convention are implemented globally. In my view, this implementation will require targeted investment in an adoption infrastructure and the creation of a global agency to oversee the process. It will not occur of its own accord, piecemeal, national jurisdiction by national jurisdiction.”)

84. *E.g.*, Donovan M. Steltzner, *Intercountry Adoption: Toward a Regime that Recognizes the “Best Interests” of Adoptive Parents*, 35 CASE. W. RES. J. INT’L L. 113, 141 (2003).

85. Hague Convention, *supra* note 7, at Chapter III; Steltzner, *supra* note 84, at 141; Blair, *supra* note 22, at 386 (noting that “[g]overnmental verification, of course, is not a complete panacea, if government officials are subject to bribes or corruption”).

86. Catherine M. Bitzan, *Our Most Precious Resource: How South Korea is Poised to Change the Landscape of International Adoption*, 17 MINN. J. INT’L L. 121, 145-46 (2008); Kimball, *supra* note 23, at 580-81.

87. United Nations Treaty Collection, *Ch. IV: Human Rights, 11. Convention on the Rights of the Child*, (Nov. 20, 1989), <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=133&chapter>

In fact, the country has gone so far as to claim that it seeks to end its international adoption program.⁸⁸ However, the United States may continue to receive children for adoption from Korea, as the treaty does not prohibit adoptions between non-contracting states.⁸⁹ The processes for adopting a child from a non-member country remain the same as before the United States ratified and implemented the Hague Convention,⁹⁰ although these processes would change for South Korea if it were ever to become a contracting state under the treaty.

In addition, the implementation of the Hague Convention by signatory nations has not been without bumps in the road. Guatemala, for instance, second only to China in terms of babies sent to the United States for adoption, only recently took official steps to implement the treaty.⁹¹ In early December 2007, the Guatemalan Congress passed a bill that would bring the country's law into compliance with the Hague Convention.⁹² Although Guatemala became a signatory nation years ago, it has lagged in officially complying with the treaty, and thus has been able to maintain a relatively short wait for prospective adoptive parents overseas. The comparatively speedy process for adoption has led to an amazing trend: one out of every hundred Guatemalan-born children grows up as an American citizen.⁹³ However, Guatemalan adoptions are also well-known for being "dirty," or susceptible to corruption via the Guatemalan lawyers who facilitate the adoptive process for hefty fees, and *jaladores*, hired hands who find pregnant women and then bribe them into giving up their babies.⁹⁴ The still-developing nation of Guatemala has difficulty fending off the "rapacious needs of American baby consumers."⁹⁵ Beginning in 2008, the Guatemalan government halted intercountry adoptions entirely in an attempt to address the corruption inherent in the existing system.⁹⁶

=4&lang=en.

88. Bitzan, *supra* note 86, at 123; Kimball, *supra* note 23, at 580.

89. Blair, *supra* note 22, at 383 (noting that "Convention countries have been urged by the Special Commission on the Practical Operation of the Convention to apply Convention standards, to the extent possible, with non-contracting nations as well").

90. U.S. Citizenship and Immigration Services, *Questions & Answers: Intercountry Adoption Instructions—Post-Hague Adoption Convention Implementation*, (Mar. 31, 2008), <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=beb46faedb8f8110VgnVCM1000004718190aRCRD&vgnnextchannel=f3beaca797e63110VgnVCM1000004718190aRCRD>.

91. Laura Smith-Spark, *Guatemala Adoptions: A Baby Trade?*, BBC, Dec. 17, 2007, available at <http://news.bbc.co.uk/2/hi/americas/7125697.stm>.

92. *Id.*

93. *Id.*

94. *Id.*

95. Nicole Bartner Graff, *Intercountry Adoption and the Convention on the Rights of the Child: Can the Free Market in Children be Controlled?*, 27 SYRACUSE J. INT'L. L. & COM. 405, 411 (2000).

96. Summer Harlow, *Adoptive Parents Visit Guatemala to Give Back*, CHRISTIAN SCIENCE MONITOR, Jan. 2, 2009, available at <http://www.csmonitor.com/2009/0102/p01s01-woam.html>.

Although the United States does not face the same hurdles—at least with regard to such overt corruption—in implementing the Hague Convention’s provisions within its borders, the success of implementing the treaty remains to be seen in the coming years, especially as the designated accrediting entities learn to perform their functions, and new standards for adoption service providers are put into practice.

These criticisms of the Hague Convention and the hurdles that must be surpassed during implementation of the treaty indicate that it would be appropriate to consider what alternatives and additional strategies are available to address both intercountry adoptees’ interests and intercountry adoption critics’ concerns. Parts III and IV, *infra*, contemplate two areas of concern for these parties. Part V, *infra*, considers alternative tactics that attend to these concerns.

IV. THE INTERCOUNTRY ADOPTION MARKET—FREE CHOICE?

A. Applying Law and Economics to Adoption

Adoption has long been conceived of as a free market because adoption services lack regulation and are often run privately, rather than through the government.⁹⁷ American society also places different values on babies available for adoption, depending on their race and socioeconomic background.⁹⁸ Additionally, foreign adoptions constitute an enormous portion of adoptions by American citizens today,⁹⁹ and may be “valuated” on an entirely separate scale from that applied to domestic adoptions. Many scholars use the language of supply and demand to describe adoption.¹⁰⁰ However, this is complicated by the many emotions and values attached to building a family in American society. Having children is widely accepted as a vital rite of passage in this country.¹⁰¹

Despite the clearly market-based forces at work around adoption, people are hesitant to override the altruism-based discourse around intercountry adoption.¹⁰² At the same time, some adoptive parents

97. Michele Goodwin, *The Free-Market Approach to Adoption: The Value of a Baby*, 26 B.C. THIRD WORLD L.J. 61, 65 n.21 (2006) (citing lack of government agency responsible for collecting adoption-related data as primary reason for inconsistent and unreliable adoption statistics).

98. *Id.* at 66-67.

99. *Id.* at 72.

100. *E.g.*, Graff, *supra* note 95; Goodwin, *supra* note 97.

101. Kim Park Nelson, *Shopping for Children*, in OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION 89, 90 (Jane Jeong Trenka et al. eds., 2006) (“For many Americans, childlessness is not an option, and being a parent has become an essential part of an adult’s identity.”).

102. *Id.* at 93 (“... parents see the practice [international transracial adoption] as ‘achiev[ing] instant sainthood’ because ‘in adopting foreign children, the parents feel that they are cooperating in their children’s efforts to burn their bridges. The children have no option but to adapt to the new world. There is no going back.’”); see also PATTON, *infra* note 167, at 56-57 (“The public discourse about transracial adoption was dominated by narratives of salvation . . . the 1960s impetus toward the placement of ‘hard-to-place’ children—most prominently children of color—drew on racialized stories of salvation and rescue.”).

emphatically state that they have not “saved” their children from their birth countries, and they, as adoptive parents, are in fact complicit in contributing to the societal forces that have led to the establishment of intercountry adoption.¹⁰³

In a controversial piece referred to widely as the “baby-selling article,” Judge (then Professor) Richard Posner and Elisabeth Landes frame adoption using traditional law and economics, suggesting that permitting a free market for adoption could potentially ease the “baby shortage” (defined as a lack of healthy, White babies up for adoption, as opposed to a glut of Black¹⁰⁴ babies) and resultant “black market” connected with adoption.¹⁰⁵ For instance, Posner and Landes theorize that by creating the proper financial incentives for expectant mothers to put their babies up for adoption, rather than abort them, the “baby shortage” may be alleviated in part.¹⁰⁶

Assuming that this type of “market” around intercountry adoption is undesirable, I turn to the question of why, and look at how the ratification of the Hague Convention does not adequately address these compelling issues. I believe the issues of knowledge and consent of the parties involved in intercountry adoption can inform this analysis.

B. Choice, Knowledge, and the Hague Convention

Choice and knowledge are closely tied together in the “market” of intercountry adoption. In the international adoption arena, birth parents have been referred to as the “forgotten members of the international adoption triad.”¹⁰⁷ They are disenfranchised. The choices available to birth parents, as opposed to adoptive parents, usually differ drastically. Viable choices for birth parents and their children are extremely limited. Birth mothers, for instance, are often impoverished and may thus have no choice but to “sell” their children, placing them on the foreign adoption market.¹⁰⁸ Birth parents are often in a disadvantaged position as far as the information they have access to about where their children will be placed, or even what rights they possess or surrender.¹⁰⁹

103. *E.g.*, Third Mom, <http://thirdmom.blogspot.com/2007/11/dear-tama-janowitz.html> (Nov. 16, 2007) (“No matter the circumstances of my children’s births and adoptions, I don’t believe I could do that by telling them I had saved them from terrible lives in Korea. They are here because individuals, governments, and societies did nothing to prevent those circumstances—including me.”).

104. I capitalize Black and White to recognize the status of these groups as cultural groups. *See infra* Crenshaw, note 188. However, some research works cited herein have *not* capitalized black or white, and I have left these references intact.

105. Elisabeth Landes and Richard Posner, *The Economics of the Baby Shortage*, 7 J. LEGAL STUD. 323, 324 (1978).

106. *Id.* at 336.

107. *See generally* Manley, *supra* note 15.

108. *Id.* at 633-34.

109. *Id.* at 628.

On the other hand, adoptive parents in the Western world have a wealth of information and resources available to them. Faced with waiting seven to ten years to successfully adopt a healthy White baby, individuals have the choice of opting for international adoption, which entails a significantly shorter wait and may also be less discriminating with regard to adoptive parents' characteristics, like sexual orientation.¹¹⁰

Michael Sandel, Professor of Political Philosophy at Harvard University, frames the moral limits of markets via coercion and corruption.¹¹¹ The coercion argument posits that market exchanges are not always voluntary, and that not all parties who are participating in a given exchange have consented fully or voluntarily.¹¹² For example, Sandel suggests a peasant might sell his kidney to provide for his family, but this decision is not truly voluntary.¹¹³ The corruption argument proposes that there are certain moral values that must be attached to goods; in other words, placing certain things on the market degrades them.¹¹⁴ Sandel uses surrogate motherhood as an illustrative example.¹¹⁵ Objections to surrogate motherhood are either rooted in worries regarding coercion or other "flaws" in consent, or fears regarding corruption of moral goods and the social norms attached to childbearing and parenthood.¹¹⁶ Both the coercion and corruption frameworks allow for a more complete understanding of intercountry adoption critics' concerns.

The field of law and economics functions atop a basic assumption: that most actors within the market are rational or reasonable.¹¹⁷ In economic theory, the rational economic person acts to maximize gain or profit, while in legal theory, the reasonable person is a barometer for judging people's behavior and policies that should arise from it.¹¹⁸ The problem remains that individuals—particularly people seeking desperately to become parents—are not always acting in a rational or reasonable manner.

The Hague Convention attempts to account for the potential shortcomings of a purely market framework by emphasizing the necessity of obtaining consent from the parties involved. The word "consent" appears fourteen times in the text of the treaty. Article 4 centers on acquiring "consent" from the birth parents, particularly the child's mother,

110. *Id.* at 630.

111. Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets*, The Tanner Lectures on Human Values, delivered at Brasenose College, Oxford (May 11 and 12, 1998), at 94.

112. *Id.*

113. *Id.* at 94.

114. *Id.*

115. *Id.* at 96.

116. *Id.* at 99.

117. Robin P. Malloy, LAW IN A MARKET CONTEXT: AN INTRODUCTION TO MARKET CONCEPTS IN LEGAL REASONING 144-45 (2004).

118. *Id.* at 145.

as well as the child. It focuses on the authorities in the child's state of origin obtaining consent, informing both sets of parents regarding the effects of consent, and ensuring that consent was given freely and without financial inducement.¹¹⁹ Notably, this Article also explicitly addresses the need for giving weight to "the child's wishes and opinions" and the child's consent.¹²⁰ Even so, it remains debatable whether this emphasis on consent is enough. Parties' assessments of true consent are likely to vary widely in practice.

For instance, Ji In, an adult Korean adoptee, writer, editor, and blogger, recognizes the choices made by others and the real possibility that a lack of true consent was involved in her adoption:

[My name] reminds me that I am who I am today because of the choices made for me by other people. It represents to me the wrongs done to my umma [Korean for "mother"] and many, many others like her that left her with no freedom and no chance to give me a name that linked me to her or to my sisters. The fact that my Korean name is dissonant among the matching names of my three Korean sisters, whose names fit together as harmonies in a chorus, is a scar on my flesh that I bear proudly and with a sense of profound loss.¹²¹

Intercountry adoption critics also fear the commodification of babies who are put up for adoption in other nations; they worry about the "export" of babies, or the "baby trade." Korean adoptee Jodi, age twenty-two, describes how her parents came to adopt her, a child from Asia: "They had two children, and they couldn't have any more. They talked to a cousin on my mom's side who had just come back from China. They said, 'Asian kids are cute,' and they said, 'Ok, we'll get one.'"¹²² The language that Jodi uses to describe her parents' motivations for adoption conjures up disturbing imagery of Asian children up for "purchase" on the market.

The Hague Convention's protections fall short of addressing the personal concerns and economic realities of some participants in intercountry adoption. The treaty's treatment of financial factors at play in intercountry adoption is limited to decreasing the possibility of parties' financial gain from the adoptive process, whether these are adoption agencies or birth parents.¹²³ The treaty gears itself toward stopping individuals and agencies who may try to swindle prospective adoptive

119. Hague Convention, *supra* note 7, art. 4.

120. *Id.* at art. 4(d).

121. Larsen, *supra* note 29.

122. AHN-REDDING & SIMON, *supra* note 28, at 33.

123. Hague Convention, *supra* note 7, art. 8 (preventing improper financial gain); art. 32 (prohibiting improper financial gain and unreasonably high remuneration for adoption agency employees).

parents out of money in connection with purported adoptions. The Hague Convention represents movement in the proper direction with regard to financial factors influencing intercountry adoption, but the market forces and personal motivations at stake are powerful indeed and difficult to overcome in the text of a treaty.

C. Hierarchy of Interests—What Prevails?

Prior to the discussion in Part IV, *infra*, of race, identity, and colorblindness, a discussion of the hierarchy of interests at stake during the adoption process is essential. The placement of a child for adoption necessitates an evaluation of the assorted interests—psychological, physical, identity-based, or some combination of the three—at stake for the child. Adoption policy and lawmaking must consider a balancing of all these interests. The Hague Convention prioritizes the “best interests of the child,”¹²⁴ but does not define these interests specifically.

In this piece, I define psychological interests as those rooted in child development theories regarding the basic healthy mental growth of a child. Physical interests are those interests based in a safe physical environment for a child—one without neglect or abuse. Identity-based interests are concerned with a child’s biological race and ethnicity. Upon completing a limited survey of literature that addresses the topic, I conclude that scholars typically focus on either psychological or physical well-being, while identity-based interests tend to be overlooked, or relegated to a lower priority.

Suffolk University Law School Associate Professor Sara Dillon writes, “[A] right to one’s own culture and to the possibility of enjoying that culture must first depend on sound psychological health.” Dillon argues against the idea that group rights to self-determination or to cultural autonomy create an adequate reason to allow children to languish in orphanages.¹²⁵ To this professor, the concept of “culture” is a luxury for these children, and is something that must take a backseat to placement in a physically safe environment. In her view, a child’s general psychological health is more likely to deteriorate in orphanages or other care institutions and must be prioritized over that of “adolescent identity issues that arise from adoption, especially into intercultural and interethnic families.”¹²⁶ By labeling these merely “*adolescent* identity issues,” Dillon dismisses them as much less important.

In her work, Professor Barbara Stark also promotes a child’s psychological health as important. She has cited child development psychologist Erik Erikson, who theorizes that a child builds an identity by

124. See generally Hague Convention, *supra* note 7.

125. Dillon, *supra* note 74, at 235.

126. *Id.*

coming to terms with his or her “sense of his place within the larger community.”¹²⁷

Harvard Law School Professor Elizabeth Bartholet has come out strongly in her work in favor of adoption as an alternative to institutionalizing children, because in her view, children’s physical and psychological health is more important than their identity-based interests. She perceives the most important rights of children as physical, in that it is most important to remove children from harm’s way (i.e., serious abuse or neglect); in her view, adoptive parents should be chosen based on whether they can provide a “loving and safe” home.¹²⁸ She also indicts both the political right- and left-leaning groups for their views on child welfare.¹²⁹ Bartholet describes both groups as desiring limits on government intrusion on individual families, but paints the right as overly emphasizing family autonomy, while the left remains too concerned with the discriminatory impact of child welfare policies on socioeconomically disadvantaged groups and racial minorities.¹³⁰

Bartholet would likely categorize Northwestern University School of Law Professor Dorothy Roberts in the left-leaning group of adoption system critics. Roberts has written of the adoption system’s inequitable treatment of Black families and stigmatizing of poor families of color, which causes children of color to be overrepresented in areas of both foster care and adoption.¹³¹ Roberts, a transracial adoptee herself, suggests that an equitable transracial adoption policy would recognize “systematic inequities” and continue to permit adoption of Black children by White parents, but would also emphasize recruitment of adoptive parents from a pool of biological relatives and other Black community members.¹³² Similarly, other scholars advocate for a race-conscious consideration of society’s regulation of adoption, and a recognition that race does matter in today’s society.¹³³

The basic argument of scholars like Dillon and Bartholet discounts the importance of culture in every individual’s life, including—one might say particularly—adoptees. A sense of one’s culture is central to people’s

127. Stark, *Baby Girls*, *infra* note 196, at 1267-68.

128. Elizabeth Bartholet, *Abuse and Neglect, Foster Drift, and the Adoption Alternative*, in *ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS* 223, 228 (Sally Haslanger & Charlotte Witt eds., 2005).

129. *Id.* at 224.

130. *Id.*

131. See generally Dorothy Roberts, *Feminism, Race, and Adoption Policy*, in *ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS* 234 (Sally Haslanger & Charlotte Witt, eds., 2005) [hereinafter Roberts, *Feminism*].

132. Dorothy Roberts, *Adoption Myths*, in *OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION* 49, 50, 55 (Jane Jeong Trenka et al. eds., 2006) [hereinafter Roberts, *Adoption Myths*].

133. See generally HAWLEY FOGG-DAVIS, *infra* note 218; see generally Twila L. Perry, *Black Children and Their Families in the 21st Century: Surviving the American Nightmare or Living the American Dream?*, 26 *B.C. THIRD WORLD L.J.* 25 (2006).

lives, regardless of whether they directly acknowledge it. Culture provides social cues, a framework for social experiences, and a sense of belonging, all of which are challenges for adoptees.

While it is difficult to argue against the importance of evaluating the psychological and physical well-being of a child when determining adoptive placement, this does not preclude a more thorough consideration of a child's race and ethnicity during the adoption process. A direct consideration of race and ethnicity would take into account the effects of race, ethnicity, and identity-based classifications on adoptees' lives, rather than sweeping such issues under the rug with colorblind policy and legislation.

V. KOREAN ADOPTEE'S BIRTH CULTURE, RACE, AND IDENTITY

Before proceeding further, I note that the literature and research regarding transracial adoption in the United States is largely focused on Black children placed with White adoptive or foster families.¹³⁴ Sociologists have chiefly studied the dynamics of interaction between Black children and White parents. Policymakers have directed their attention here as well. Thus, any discussion of race and culture in the adoption context necessarily includes seminal works regarding these groups. Research pertaining to this world of adoption through a Black/White dichotomy informs an understanding of the relationship between Korean adoptees and their White parents.

A. Counterpoint: *The Metzenbaum Multiethnic Placement Act of 1994*¹³⁵

In the early 1990s, the landscape of domestic adoption in the United States was considerably different than it is today. Adoption and foster agencies had, for the most part, reached a consensus that the first priority was to place a waiting child with a family or individual of the same race.¹³⁶ "There is no question in my mind that this is a vestige of the Jim Crow era as far as using race as a criterion for social policy," one public interest attorney said of race-matching adoption and foster placements at the time, which favored placing Black babies with Black families.¹³⁷

134. The history of minority/majority race relations in America has resulted in a dominant discourse through the prism of a Black/White paradigm; this paradigm is evolving, but still remains prominent.

135. Howard M. Metzenbaum Multiethnic Placement Act of 1994, 42 U.S.C. § 622(B)(9), 5115A, Pub. L. No. 103-382, §§ 551-554, 108 Stat. 4056 (1994), *repealed by* Removal of Barriers to Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996, 42 U.S.C. §§ 671, 674, 1996B, Pub. L. No. 104-188, § 1808, 110 Stat. 1903 (1996) [hereinafter MEPA and/or MEPA-IEP].

136. Michelle M. Mini, *Breaking Down the Barriers to Transracial Adoptions: Can the Multiethnic Placement Act Meet This Challenge?*, 22 HOFSTRA L. REV. 897, 908 (1994).

137. Steven A. Holmes, *Bitter Racial Debate Rages Over Adoption*, N.Y. TIMES, Apr. 13, 1995, available at <http://query.nytimes.com/gst/fullpage.html?res=990CE2D6153FF930A25757C0A963958260>.

However, the landscape of domestic adoption in the United States changed significantly in 1994, when the Metzenbaum Multiethnic Placement Act of 1994 (MEPA) was enacted to combat the common practice of race-matching in domestic U.S. adoptions. The development of MEPA was spurred to a certain degree by the murder of a Black foster child by his Black foster family, after the child was removed from a White family's care and placed with the Black family.¹³⁸ MEPA, as amended by the 1996 Interethnic Adoption Provisions (MEPA-IEP), prohibits federally-funded adoption and foster agencies from considering race or ethnicity in placing children with adoptive families.¹³⁹ In essence, MEPA insists upon colorblindness in placing children in foster homes and adoptive situations. MEPA also has roots in the controversy stemming from the National Association of Black Social Workers' (NABSW) position paper against Black babies being placed with White parents. The NABSW denounced these interracial adoptive family placements as fatally detrimental for the Black community.¹⁴⁰ And in a matter of extreme controversy, the position paper has been equated with the opinion that transracial adoption constitutes a form of cultural genocide.¹⁴¹ It remains unclear whether the NABSW actually said this, or if Black nationalists said it in reference to the position paper, but the idea of "cultural genocide" remains attached to the position paper.

The colorblindness-focused MEPA and MEPA-IEP provide an interesting counterpoint to the Hague Convention, which more explicitly—although, I argue, still inadequately—addresses adoptive children's racial and ethnic identities. Although Congress had hoped that MEPA and MEPA-IEP would effectively end agency usage of race in adoption and foster placement,¹⁴² these laws in and of themselves have not worked because the government has not taken action to ensure true implementation.¹⁴³ MEPA, even after the amendment by MEPA-IEP, includes a loophole in permitting race to be considered in placing a child, depending on the individual best interests of the child.¹⁴⁴

138. Mini, *supra* note 136, at 956.

139. MEPA, *supra* note 135.

140. The NABSW's statement on transracial adoption provided in part: "Black children should be placed only with Black families whether in foster care or for adoption. Black children belong physically, psychologically, culturally in Black families in order that they receive the total sense of themselves and develop a sound projection of their future. . . . Black children in white homes are cut off from the healthy development of themselves as Black people." National Association of Black Social Workers, Position Paper (April 1972).

141. BARBARA K. ROTHMAN, *WEAVING A FAMILY: UNTANGLING RACE AND ADOPTION* 177 (2005).

142. Suzanne B. Campbell, *Taking Race Out of the Equation: Transracial Adoption in 2000*, 53 *SMU L. REV.* 1599, 1618-19 (2000).

143. *Id.*

144. MEPA, *supra* note 135.

Professor Bartholet and others embrace MEPA and its progeny as simply upholding the American commitment to civil rights, in that race should not be a factor in children's adoptions.¹⁴⁵ Bartholet, in particular, describes MEPA as a "powerful rejection" of anti-international adoption rhetoric—"the idea that children are best off if kept within their community of origin, and the related idea that racial and ethnic communities are best off when they keep 'their' children within the group."¹⁴⁶ She accuses social workers and mental health professionals who do not follow MEPA to the letter as individuals who "resist and evade" the law.¹⁴⁷

Professor Roberts, on the other hand, cites evidence that the efficacy of MEPA—if efficacy is to be measured by the number of White parents adopting Black children—remains limited. Most agencies indicated no increase in the number of domestic transracial adoptions since MEPA was enacted in 1994.¹⁴⁸

The Bartholet camp's characterization of the role that racial and ethnic identity plays in the life of a prospective adoptee is too superficial. Race cannot simply be shed. Its effects are inescapable in day-to-day life, particularly as a social construct.¹⁴⁹ The experience of Korean adoptees is no different.

B. Language of Loss

Jane Jeong Trenka's writing, as quoted in Part I, *supra*, brings to mind the language of loss prevalent in chronicles of the Korean adoptee experience. A discourse surrounding loss and trauma to the adoptee is a relatively recent development in the world of adoption, as open discussion of adoption itself is a recent development.

Twenty-four-year-old adoptee Lisa Lim describes the storm of emotions she felt upon finally succeeding in her search for her Korean birth parents, after years of looking:

I am kind of angry because I can't speak Korean, and I don't know Korean culture. All those things you can get back—I can study harder at learning Korean, but I am still like, "I'm never going to get that back." . . . I'm upset that I've lost so much by growing up here, in a sense.¹⁵⁰

145. Elizabeth Bartholet, *Commentary: Cultural Stereotypes Can and Do Die: It's Time to Move on with Transracial Adoption*, 34 J. AM. ACAD. PSYCHIATRY L. 315, 319 (2006) [hereinafter Bartholet, *Commentary*].

146. Bartholet, *International Adoption*, *supra* note 32, at 169.

147. Bartholet, *Commentary*, *supra* note 145, at 315, 319.

148. Roberts, *Adoption Myths*, *supra* note 132, at 53.

149. Haney López, *The Social Construction of Race*, *infra* note 186, at 3-4 (1994).

150. AHN-REDDING & SIMON, *supra* note 28, at 128-29.

Lim also noticed that while Reverend Al Sharpton spoke out on behalf of Black adoptees in bringing attention to their being “robbed of their roots,” no one did the same for Korean adoptees: “I was totally robbed of my culture. Why isn’t there anyone standing up?”¹⁵¹

Anger and disappointment are common themes expressed by Korean adoptees. Beth Kyong Lo, who was adopted from Seoul, South Korea in 1975, recounts her own reactions to others’ uncensored evaluations of her physical features, which have led her to believe she is of both White and Korean heritage:

Korean Americans, first to fourth generation, and other Korean adoptees tell me I cannot possibly be full Korean, that I do not look full Korean. I can accept it when Korean people tell me this, for I expect it, but to hear the same from another adoptee—that is when I feel truly alienated. To belong nowhere is to be invisible and to be invisible induces a deep rage. Asian Americans protest their invisibility in this country, so it is ironic that the many I have encountered have seemingly done their best to exclude me as well. A rage runs through my bones, aching to be released from the pit of my stomach. I have worn so many masks over the years that my skin feels gray and my features have faded. Like a ghost, I feel doomed to wander the earth forever, invisible and disconnected from the world of the living.¹⁵²

Lo describes how her feelings of loss were physically manifested during her childhood in the form of panic attacks, stomachaches, migraines, myriad fears, and “a tortured relationship with food.”¹⁵³

In addition to feelings of loss regarding their birth cultures, Korean adoptees often feel an acute sense of alienation from their adoptive and birth families. Intercountry and transracial adoption tends to isolate children from everyone around them. Adoptees’ experiences with racism keep a wall between adoptees and their White family members, who do not and cannot have the same experiences.

Tony, age thirty-one, who was adopted from an orphanage in Seoul when he was five, explains his loss of self-esteem after adoption, and remembers feeling distinctly aloof from everyone he knew when he was growing up (“protecting myself from everyone, and being completely noncommittal about things that touch me emotionally”).¹⁵⁴ He continues to

151. *Id.* at 123.

152. Beth Kyong Lo, *Korean Psych 101*, in *OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION* 167, 169 (Jane Jeong Trenka et al. eds., 2006).

153. *Id.* at 168.

154. AHN-REDDING & SIMON, *supra* note 28, at 138-40.

feel disconnected from his adoptive family.¹⁵⁵ When asked whether he feels accepted by the Asian community as opposed to the White community, he answers in the negative: “I feel about as accepted there as I feel by the white community. I consider myself the missing sock in the dryer. I don’t have a match anywhere.”¹⁵⁶ Tony also repeatedly emphasizes his lack of autonomy and choice in the adoption process.¹⁵⁷

Professor Bartholet has written extensively on the reasons that intercountry and transracial adoption should be encouraged, and even more readily facilitated by law and policymakers.¹⁵⁸ However, she neglects to address the personal, identity-based losses that adoptees often face upon arriving in the United States. Bartholet was disturbed and surprised by the importance placed upon race when she attempted to adopt a child as a single White woman.¹⁵⁹ According to Bartholet, the issues most germane to children put up for adoption are the basics: food, health care, and a roof over their heads.¹⁶⁰ She dismisses the racial and cultural concerns of intercountry adoption critics as “false romanticism.”¹⁶¹ Bartholet concludes:

The longer they spend in such orphanages, the less chance they will have at anything resembling normal development. By contrast, *those placed in international adoption live comparatively blessed lives*, and have an opportunity to overcome even very significant deficits caused by early deprivation, *with the age of placement overwhelmingly predictive of the chance for normal life.*¹⁶²

In reaching her conclusions, Bartholet focuses largely on children’s material gains once they are adopted. This discounts the cultural and race-based losses that many adoptees have voiced as central to their life experiences.¹⁶³ Her conception of “normal life” is biased in favor of Western values and Western society.

In a similar vein, a longitudinal twenty-year study on the impact of transracial adoption, completed by Professors Rita Simon and Howard

155. *Id.* at 131.

156. *Id.* at 141.

157. *Id.* at 142.

158. Bartholet, *International Adoption*, *supra* note 32; e.g., Bartholet, *Commentary*, *supra* note 145, at 315-20; Elizabeth Bartholet, *Beyond Biology: The Politics of Adoption and Reproduction*, 2 DUKE J. GENDER L. & POL’Y 5 (1995); Elizabeth Bartholet, *What’s Wrong with Adoption Law?*, 4 INT’L J. CHILD. RTS. 263 (1996).

159. MARY L. SHANLEY, MAKING BABIES, MAKING FAMILIES 27 (2001).

160. Bartholet, *International Adoption*, *supra* note 32, at 191 (citing Charles H. Zeanah et al., *Designing Research to Study the Effects of Institutionalization on Brain and Behavioral Development: The Bucharest Early Intervention Project*, 15 DEV. & PSYCHOPATHOLOGY 885, 886-88 (2003)).

161. *Id.*

162. *Id.* at 191-92 (emphasis added).

163. *See generally* Part IV.B.

Altstein concluded that most of the adoptees and adoptive families who were interviewed (first in 1972, then in 1979, 1984, and 1991) found the adoptive experience to be a “positive” one.¹⁶⁴ The authors discovered no appreciable differences between self-esteem and feelings of family inclusion when comparing birth children to adoptive children in these families.¹⁶⁵ They also found that during adolescence and adulthood, the adoptees were aware of and comfortable with their race:

The black adoptees stressed their comfort with their black identity and their awareness that they may speak, dress, and have different tastes in music than inner-city blacks—but that the black experience is a varied one in this society, and they are no less black than are children of the ghetto.¹⁶⁶

University of Minnesota Professor Sandra Lee Patton criticizes these transracial adoption studies as relying on quantitative methods that do not account for “institutional, cultural, sociological, economic, and political contexts within which such families are constructed and maintained.”¹⁶⁷ She observes that these quantitative methods wrongly rely on an oversimplified assignment of numerical values to race- and identity-based experiences, which are better measured subjectively. In short, these numerical categorizations are overly rigid. If the results of these sorts of studies continue to be published, the quantitative methods must be coupled with sufficiently open-ended interview questions and research methods to fully capture the intercountry adoptee experience, especially in the context of race and identity.

C. Korean Adoptees and Asian American Identity

Just a few decades ago, the limited race-related discourse surrounding intercountry adoption seemed more clear-cut: closed adoptions were the norm in the 1950s, in which the parties stayed anonymous and official records remained sealed; birth parents did not seek involvement in their child’s life after the adoption was finalized.¹⁶⁸ As one scholar writes, “The past was erased or contained in an abandoned ‘there’; the racialized trace of origins tended to be treated as manageable. Like adoption, race was not

164. See generally RITA J. SIMON & HOWARD ALTSTEIN, *ADOPTION, RACE & IDENTITY: FROM INFANCY TO YOUNG ADULTHOOD* (2d ed. 2002).

165. *Id.* at 222.

166. *Id.*

167. SANDRA L. PATTON, *BIRTHMARKS: TRANSRACIAL ADOPTION IN CONTEMPORARY AMERICA* 5 (2000).

168. Anita L. Allen, *Open Adoption is Not for Everyone*, in *ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS* 47, 47 (Sally Haslanger & Charlotte Witt, eds., 2005).

discussed and loss was rarely acknowledged.”¹⁶⁹ At the time, adoptee identity was althought of as rooted in the adoptive family, with little to no consideration dedicated to the adoptee’s birth culture and identity.¹⁷⁰ Adoption was often perceived as shameful, and agencies made an effort to find babies that couples could pass off as their biological children, under the guise of “normal” fertility.¹⁷¹

Contrastingly, in today’s American society, open adoptions are ever-increasingly common. Adoptive parents send announcements to friends and family, and birth parents are often regularly involved in their child’s life through visits, letters, and photographs.¹⁷² With the rise of open adoptions, conversations around race and ethnicity tend to occur more often as well. In addition, with the increase in the number of intercountry adoptions taking place, more children tend to know they are adopted simply because they have a different physical appearance than their adoptive parents.

For Korean adoptees, one constant and unresolved question is what sphere of Asian American identity they occupy. Asian American Studies Professor Ronald Takaki at the University of California, Berkeley characterizes ethnic identity as “neither essentialist nor static: it is both ‘being’ and ‘becoming.’”¹⁷³ As Asian American identity exists in a state of constant evolution, it tries to encompass the Korean adoptee identity as well. Most Korean adoptees cannot escape stereotypes attached to Asian Americans, such as the perpetual foreigner, exotic geisha, or expert martial artist. Some theorize that the “success” of intercountry adoption from Asia (i.e., the popularity of programs linking Korean-born children with American adoptive parents) has contributed to the model minority myth, which positions Korean adoptees differently from Black or Latino adoptees, for instance.¹⁷⁴ The model minority myth confines understanding of Asian Americans to that of a one-dimensional “superachiever”; there is no room for any other Asian American to exist.¹⁷⁵ Korean adoptees may seem like mere “pawns” in the continuing vitality of the model minority stereotype.¹⁷⁶

Simultaneously, although, Korean adoptees can exercise a certain agency over their identities, if one construes identity as performed (i.e., an

169. Toby A. Volkman, *Introduction: New Geographies of Kinship*, CULTURES OF TRANSNATIONAL ADOPTION 1, 4-5 (Toby A. Volkman ed., 2005) [hereinafter Volkman, *Introduction*].

170. *Id.*

171. Allen, *supra* note 168, at 63.

172. *Id.*

173. RONALD T. TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 502 (1989).

174. Kathleen Ja Sook Bergquist, *International Asian Adoption: In the Best Interests of the Child?*, 10 TEX. WESLEYAN L. REV. 343, 347 (2004).

175. FRANK WU, YELLOW 76 (2002).

176. Bergquist, *supra* note 174, at 348.

individual presents or hides certain aspects of identity). However, as Professor Angela Harris of the University of California, Berkeley, School of Law observes, daily identity performance occurs under constraints.¹⁷⁷ Stereotypes and perceptions influence how an individual may perform his or her identity.¹⁷⁸

It is no secret that Korean adoptees often feel caught between their birth and adoptive cultures and identities. In the most classic sense of the word, they are immigrants, having been born in one country and transported to live in another. In spite of this, they do not undergo the typical Asian American immigrant experience, wherein whole families immigrate together to the new land.

The push and pull of assimilation into American society is a central part of the Korean adoptee experience. Intercountry adoption from Korea began in the middle of the twentieth century, so the first wave of Korean adoptees are now well into adulthood, raising families of their own.¹⁷⁹ Most Korean adoptees of the first post-Korean War generation have faced pressures to assimilate into their American adoptive families via name changes and the replacement of Korean with English spoken in the home, among other things.¹⁸⁰ To writer Eric Liu, assimilation into dominant White culture possesses an intensity that he cannot fight:

I never asked to be white. I am not literally white. That is, I do not have white skin or white ancestors. I have yellow skin and yellow ancestors, hundreds of generations of them. But like so many other Asian Americans of the second generation, I find myself now the bearer of a strange new status: white, by acclamation. That is, I have been described as an “honorary white,” by other whites, and as a “banana,” by other Asians. Both the honorific and the epithet take as a given this idea: to the extent that I have moved away from the periphery and toward the center of American life, I have become white inside. *Some are born white, others achieve whiteness, and others have whiteness thrust upon them.* This, supposedly, is what it means to assimilate.¹⁸¹

The Whiteness that Korean adoptees struggle with best aligns with Liu’s image of “whiteness thrust upon them.”

177. Angela Harris, *Love and Architecture: Race, Nation, and Gender Performances Inside and Outside the State*, 52 CLEV. ST. L. REV. 121, 122 (2005) (citing Devon Carbado and Milu Gulati’s conception of “identity performance”).

178. *Id.*

179. Sunny Jo, *Making of KAD Nation*, in *OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION* 285, 288 (Jane Jeong Trenka et al. eds., 2006).

180. *Id.*

181. ERIC LIU, *THE ACCIDENTAL ASIAN* 34-35 (1998) (emphasis in original).

Perhaps Korean adoptees in the United States face a certain status as “honorary Whites,” just as Asian Americans in general have.¹⁸² A type of racial hierarchy has emerged in American adoption, in that most White Americans are likely to desire adopting White children over Asian or Latino children, who are in turn preferred to Black children.¹⁸³ One mother to a transracial adoptee has heard Asian intercountry adoptees described as “a discreet shade of off-white;” in other words, they are not White, but not Black either.¹⁸⁴ The word “discreet” highlights the very existence of Asian adoptees within the model minority stereotype—quiet, unassuming, and by extrapolation, easy-to-parent. The intercountry adoption system provides White American parents with the ability to adopt Korean and other Asian children with relative ease, perpetuating the spread of this honorary Whiteness.

However, in recent years, the theory of *social* construction of identity has gained increasing acceptance.¹⁸⁵ University of California, Berkeley, School of Law Professor Ian Haney Lopez rejects the notion of race as a “fixed essence” with roots in human biology, and instead prefers a view of race as socially constructed via colonialism, nationalism, and other cultural struggles.¹⁸⁶ Professor Patton writes of her interviews with transracial adoptees: “The force most evident in the construction of the identities of adoptees was *social structure*—adoption agencies and the public policies which governed their practice.”¹⁸⁷ The central premise of critical race theory, which had its genesis in the early 1980s,¹⁸⁸ is that race is actually a legal and social construction, and thus affects the allocation of power and privilege in the law and other societal arenas.¹⁸⁹ Race has progressively become a central component of evaluating belief systems and American society.¹⁹⁰ It has become more common for Korean adoptees to explore, question, and even reject their layered identities,¹⁹¹ and adoptees perceive

182. ROTHMAN, *supra* note 141, at 49.

183. Solangel Maldonado, *Discouraging Racial Preferences in Adoptions*, 39 U.C. DAVIS L. REV. 1415, 1423 (2006).

184. ROTHMAN, *supra* note 141, at 49.

185. Volkman, *Introduction*, *supra* note 169.

186. Ian Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 6-7 (1994).

187. PATTON, *supra* note 167, at 79.

188. See generally Kimberlé Crenshaw, *The First Decade: Critical Reflections, or “A Foot in the Closing Door”*, 49 UCLA L. REV. 1343 (2002) (describing the inception and subsequent proliferation of critical race theory into the legal world and academic scholarship).

189. Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COLUM. HUM. RTS. L. REV. 47, 49 (1997).

190. Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331, 1336 (1988).

191. Volkman, *Introduction*, *supra* note 169, at 5; McGinnis, *Who Are You Also Known As?*, *supra* note 1 (McGinnis also identifies herself by her Korean birth name, Lee Hwa Yong).

their racial and minority identities as much more complex¹⁹² than previously accounted for in conversations about adoption.

Korean adoptees are forging their own categories to contain their unique racial and cultural experiences. These new categories are sometimes subversive and therefore empowering to adoptees. Writer, activist, and Korean adoptee Sunny Jo suggests that the labels of “Korean,” “American,” or “Korean American” fail to encompass the Korean adoptee identity. She proposes the creation of a “KAD ethnicity and culture . . . KADs reclaiming our own culture and heritage to get beyond the shame and inferiority that have been forced upon us by adoptive families and cultures from the start.”¹⁹³

In response to a question regarding whether she feels additional pressure is placed on transracial adoptees to define their identities, eighteen-year-old interview subject/Korean adoptee Carrie says:

The best thing I’ve found on all the Korean [Internet] sites was people saying, “We don’t have to justify ourselves to other people.” I feel that culturally, I don’t have to tell them what I am. “Why do I have to justify myself to you?” What I hate is that for some of these questions, I don’t know the answer.¹⁹⁴

D. Chinese Adoptees and Asian American Identity

Growing up in the United States as Asian children adopted (most commonly) by White parents,¹⁹⁵ Chinese and Korean adoptees face similar race and identity issues. Indeed, the American public has generally perceived adoption of children from Asia as “very successful.”¹⁹⁶ Equating this “success” with “assimilation,” early studies found that Korean adoptees seemed “happy” and “‘impressively’ well-adjusted.”¹⁹⁷ However, these early studies did not take into account Korean adoptee issues surrounding race or ethnicity.¹⁹⁸ The model minority stereotype,¹⁹⁹ along

192. See, e.g., Crenshaw, *supra* note 190, at 1387 n.2 (quoting Catharine A. MacKinnon in *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN IN CULTURE & SOC’Y 515, 516 (1982), who explained that “‘Black’ should not be regarded ‘as merely a color of skin pigmentation, but as a heritage, an experience, a cultural and personal identity, the meaning of which becomes specifically stigmatic and/or glorious and/or ordinary under specific social conditions’”) (emphasis added).

193. Jo, *supra* note 179. Jo uses the term “KAD,” a term coined by Korean adoptees in referring to themselves. See, e.g., Volkman, *Introduction*, *supra* note 169, at 12.

194. AHN-REDDING & SIMON, *supra* note 28, at 71.

195. Maldonado, *supra* note 183, at 1418.

196. Barbara Stark, *Baby Girls from China in New York: A Thrice-Told Tale*, 2003 UTAH L. REV. 1231, 1262 (2003) [hereinafter Stark, *Baby Girls*].

197. *Id.*

198. *Id.*

199. See generally Part IV.C, *supra*.

with other stereotypes of Asians and Asian Americans, constitute some of the barriers Asian adoptees must face today.²⁰⁰

University of Tennessee College of Law Professor Barbara Stark claims that one of the major differences between growing up as a Chinese adoptee today and growing up as a Korean adoptee immediately after the Korean War is that adoptive parents today are more aware of the need to address ethnic and racial differences between them and their children.²⁰¹ Individuals adopting children from China today are more likely to weave Chinese culture into their lives.²⁰² Jane Brown, a social worker who holds workshops for adoptive families, and an adoptive parent herself, recommends that families “directly confront issues of loss and rejection,” along with race, that adoptive children must face at some point in their lives.²⁰³ Researchers like those at the Evan B. Donaldson Adoption Institute in New York are starting to study these issues in hopes of helping young adoptees work through these identity-related issues, by surveying adopted children from Asia who are now grown.²⁰⁴

Professor Stark nevertheless acknowledges that contradictions still exist—“Americans feel free to selectively appropriate those aspects of culture that they find congenial or colorful”—and that American appropriation fails to address, for instance, the “misogyny of traditional Chinese culture.”²⁰⁵ Young Chinese adoptees are typically exposed to “celebratory representations of cultural difference . . . often detached from immigrant histories in the United States.”²⁰⁶ Social worker Brown notes, “It is one thing to dress children up in cute Chinese dresses, but the children need real contact with Asian-Americans, not just waiters in restaurants on Chinese New Year. And they need real validation about the racial issues they experience.”²⁰⁷ These families may believe they are building a strong foundation for their children to deal with race, ethnicity, and identity, when in fact they have neglected to truly do so.

As of 2006, the total number of Chinese adoptees in the United States exceeded 55,000.²⁰⁸ This population is just now coming of age and

200. Stark, *Baby Girls*, *supra* note 196, at 1262-63.

201. *Id.* at 1270 (“Unlike the white parents who adopted Korean orphans in the 1950s and 1960s, many parents of the adopted baby girls from China recognize the difference between their ethnic backgrounds and that of their daughters as an issue to be addressed, rather than transcended.”).

202. *Id.*; see also Andy Newman, *Journey from a Chinese Orphanage to a Jewish Rite of Passage*, N.Y. TIMES, Mar. 8, 2007, at A1, available at <http://www.nytimes.com/2007/03/08/nyregion/08batmitzvah.html> (describing thirteen-year-old Chinese adoptee’s bat mitzvah ceremony that incorporated both Chinese and Jewish elements for this traditional Jewish adolescent rite of passage).

203. Lynette Clemetson, *Adopted in China, Seeking Identity in America*, N.Y. TIMES, Mar. 23, 2006, at A1, available at <http://www.nytimes.com/2006/03/23/national/23adopt.html>.

204. *Id.*

205. Stark, *Baby Girls*, *supra* note 196, at 1270-73.

206. Volkman, *Embodying Chinese Culture*, *supra* note 58, at 92 (citation omitted).

207. Clemetson, *supra* note 203.

208. *Id.*

beginning to substantively wrestle with issues surrounding race and identity.²⁰⁹ Lessons can be drawn from the experiences of adult Korean adoptees, who are discussing and exploring their experiences in significant ways.²¹⁰

Due to the relatively recent emergence of Chinese adoptees as a significant portion of the adoptee community in the United States, more expansive and in-depth literature and studies exploring their growth in the United States will no doubt emerge as the adoptees grow older and begin grappling with race and identity in a more concerted fashion.

E. Colorblindness

The first generation of Korean adoptees—and some might argue, the current generation of adoptees as well—largely grew up in families promoting assimilation and colorblindness.²¹¹ As a parallel, the U.S. Supreme Court first began to take on a colorblind conception of the Fourteenth Amendment's Equal Protection Clause in the 1970s; this philosophy has progressed to this day.²¹²

In the context of adoption, colorblindness is most often invoked by adoptive parents and many proponents of intercountry adoption as a justification for their transracial adoptions, with claims that “race doesn't matter” attached to an “integrationist view of the future.”²¹³ Colorblind theorists and many who practice “a-racial parenting” actively avoid “teaching race” to their offspring, contending that it merely advances bigotry and race-based stereotyping, and is counter to what they perceive as the ideal “a-racial society.”²¹⁴

Professor Patton notes, “While ‘colorblindness’ has frequently been embraced as antiracist, it has also been shown to be an *evasion* of race that situates Whiteness as the ‘norm’ and denies the salience of racial difference.”²¹⁵ Patton, herself an adoptee, also observes that in a series of interviews she completed with transracial adoptees, many cited problems reconciling their actual racial experiences in the world with their adoptive

209. *Id.*

210. *Id.*

211. *E.g.*, AHN-REDDING & SIMON, *supra* note 28, at 14-22.

212. Ian Haney López, *A Nation of Minorities: Race, Ethnicity, and Reactionary Colorblindness*, 59 STAN. L. REV. 985, 987 (2007) (citing as exemplar cases *Johnson v. California*, 543 U.S. 499 (2005); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Rice v. Cayetano*, 528 U.S. 495 (2000); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)).

213. PATTON, *supra* note 167, at 48.

214. Tanya Washington, *Loving Grutter: Recognizing Race in Transracial Adoptions*, 16 GEO. MASON U. CIV. RTS. L.J. 1, 18-19 (2005) (citing Derek Kirton, RACE ETHNICITY AND ADOPTION (2000)).

215. PATTON, *supra* note 167, at 49 (citing Ruth Frankenberg in WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS).

parents' colorblind approach to raising them.²¹⁶ One interview subject said, "I think you need to be a little bit aware. . . . it's ignorant. . . . I mean, we do not live in a society that's 'color blind.' We just don't."²¹⁷

While colorblindness might be a "noncontroversial social ideal," colorblind justifications for transracial adoption do not adequately confront prospective adoptive parents' private adoption decisions, where race may play a role, and colorblind legalism fails to confront this potential "race-based aversion."²¹⁸

F. Near-Colorblindness: The Hague Convention's Treatment of Adoptees' Race, Ethnicity, and Culture

While the Hague Convention does not take a colorblind approach to prospective adoptees' race, ethnicity, and culture, it offers only a superficial treatment of these vital parts of an adoptee's identity. Although the treaty does not go so far as to prohibit consideration of race and ethnicity in placement with adoptive families, its omission of definite parameters within which to recognize an adoptee's culture are troubling and problematic.

The treaty contains merely a cursory mention of the adoptee's birth culture and ethnicity. Article 16(1)(b), which mandates that the "Central Authority of the State of origin . . . shall—give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background" is the only section of the Hague Convention that focuses on the prospective adoptee's ethnic or cultural background.²¹⁹ The problem with this clause lies primarily in its vague and broad wording. Governmental agencies facilitating the adoption process may construe "due consideration" broadly or ineffectually.

Additionally, other provisions of the Hague Convention may be construed in an overly broad manner. Several Articles within the treaty

216. *Id.*

217. *Id.*

218. HAWLEY FOGG-DAVIS, THE ETHICS OF TRANSRACIAL ADOPTION 11 (2002).

219. Hague Convention, *supra* note 7, art. 16:

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

c) ensure that consents have been obtained in accordance with Article 4; and

d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

provide a certain measure of flexibility to signing nations. In some cases they allow deference to the law already enacted within the nations. For instance, Article 38 provides: “A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.” And Article 37 states: “In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.” The practical power of the Hague Convention within signing nations is an area of contention, given the flexibility accorded to nations in applying their own domestic adoption laws.

Indeed, one scholar contends that the Hague Convention places little importance on the concept of culture.²²⁰ Cultural identity as the Hague Convention conceives of it, she argues, is a “source of data,” and not a “source of identity in and of itself.”²²¹ This diminishes the power of an adoptee’s cultural identity, and the relative weight assigned to it is minimal. Finally, the treaty does not provide for an adoptee’s right to preserve a connection to his or her birth culture.²²²

VI. CONCLUSION AND OPENING DIALOGUE—A FRESH APPROACH TO KOREAN ADOPTEES’ RACE, BIRTH CULTURE, AND IDENTITY

The December 2007 ratification and April 2008 implementation of the Hague Convention are, without a doubt, important steps in reforming the intercountry adoption process in the United States. Nevertheless, they are only the first steps. Ratification and implementation of the treaty do not, by themselves, satisfactorily attend to intercountry adoption critics’ concerns. I suggest one way to address these concerns through the Hague Convention itself, and recommend an accompanying tactic, which takes a more grassroots approach toward ameliorating the effects of intercountry adoption. These two approaches applied in tandem will likely address a greater portion of intercountry adoption critics’ interests, along with the identity- and culture-based issues most important to adult Korean adoptees.

On another note, I acknowledge that it is not necessarily possible or desirable to abolish intercountry adoption entirely, as some critics would prefer. The powers of the market that have developed around the demand for healthy children to adopt, coupled with the emotional and social value attached to building a family in American society, are such that it would be impossible to suspend international adoption completely.

220. Martin, *supra* note 24, at 204-05.

221. *Id.* at 204.

222. *Id.* at 206.

A. Implementing the Hague Convention—Embracing Race and Culture

As the first prong of my strategy, I propose that the United States' continued implementation of the Hague Convention expand upon the decidedly underwhelming mentions of race and culture in the treaty's text. Treaty implementation should involve a more explicit embracing of the racial and cultural issues that are at the core of adoptee identity. This can be achieved by taking advantage of the Hague Convention's flexible provisions, and framing added consideration of race and ethnicity within the treaty's valuing of the child's "best interests." As mentioned in Part IV.F, *supra*, "due consideration" of race and ethnicity may be broadly construed without violating the treaty.

Adoptive parents should be encouraged to confront their children's birth cultures and identities directly, but not in an overbearing way that their children might reject. To facilitate this process, one scholar suggests—in the context of MEPA and MEPA-IEP—that mandatory racial awareness and racial competency training be instituted for prospective adoptive parents.²²³ These educational programs could be implemented within the adoption system to give adoptive parents the proper tools to support their child within a transracial family.²²⁴

At the same time, such emphasis on culture should not take place in a way that would trivialize the birth culture or approach it in a paternalistic way. In acknowledging the race-based identity of adopted Chinese girls, Nancy Ota muses, "If their daughters are American, shouldn't their cultural heritage also be a part of America's cultural fabric and not a reified set of customs from a distant, foreign place?"²²⁵ Realizing that they themselves are generally coming from a position of White privilege, adoptive parents should carefully take into consideration how race and identity will figure into their relationship with their children, and their children's experiences in life.

In a related vein, the Hague Convention does not rule out policies that may increase adoptions by individuals of color and better support adoptive parents of color. Adoptive parents of color, particularly those who identify as Korean American, should be better equipped on a very personal, experiential level to attend to Korean adoptees' struggles with identity, culture, and race. The Hague Convention allows for improved recruitment and retention of adoptive parents of color; advocates of cultivating improved intercountry adoption experiences should capitalize on this.

223. Washington, *supra* note 214, at 42-43.

224. Vicky Ku, *Intercountry Adoptions: Instituting Educational Programs in the Adoption Process to Facilitate Awareness of Cultural Identity Issues*, 43 FAM. CT. REV. 511, 512 (2005).

225. Nancy K. Ota, *Moving Beyond the Black/White Paradigm: Coalition Building in the Twenty-First Century*, 12 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 41, 77 (2005).

*B. Internet Grassroots Empowerment of Korean Adoptees and
Their Supporters*

The grassroots empowerment of Korean adoptees that I envision here challenges established boundaries around identity and exists outside the formal channels of the law. Rather than resigning themselves to subsisting within predefined parameters, Korean adoptees may seize the unique chance presented by the United States' recent ratification of the Hague Convention in December 2007 and the treaty's entering into force in April 2008.²²⁶ The media and societal attention paid to the Hague Convention and its effects can increase the possibilities for productive dialogue surrounding issues important to the many Korean adoptees who must bridge two or more countries, cultures, races, and identities.

In the following concluding sections, I suggest a number of ways that Korean adoptees might empower themselves using grassroots organizing and mobilizing strategies, particularly in this current age of the Internet.

1. IGOs and NGOs—Models to Consider

In this second prong of my recommended approach, grassroots empowerment and self-awareness are crucial. This form of grassroots empowerment operates outside the official auspices of the Hague Convention, and is centered in the flow of knowledge and inherent transparency present in the online world. The growing presence of blogs authored by Korean adoptees and adoptive parents, along with adoption support networks online, reveals the power of organic relationships and exchange of information between adoptees themselves, as well as between adoptees and other people in their lives, that has yet to be channeled to its full advantage.

The intercountry adoptee community may be encouraged by the success of political minority communities which have gained notable grassroots power via online forums. If these online voices are correctly employed, they may work alongside or with international/intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) to influence adoption law and policymaking.

States themselves remain at the center of international lawmaking, but "state-based" IGOs and "non-state" NGOs are increasingly important in the world of international family law.²²⁷ States create IGOs;²²⁸ examples of well-known IGOs include the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), and the

226. Keyes, *supra* note 8.

227. Naomi Cahn, *Representing Children and International Norms*, 6 NEV. L.J. 1232, 1236 (2006); ALAN BOYLE & CHRISTINE CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 41 (2007).

228. BOYLE & CHINKIN, *supra* note 227, at 90.

World Health Organization (WHO).²²⁹ IGOs and NGOs—which must not be established by government and must operate mainly using voluntary contributions—tend to have a symbiotic working relationship.²³⁰

A number of American NGOs work with indigenous NGOs located in developing countries to represent the interests and needs of children.²³¹ NGOs are best known for their contributions to international human rights norms—most often by lobbying governments, contributing to changes in legislation, publicizing human rights violations, holding and attending conferences, and offering expertise.²³² NGOs often have a significant impact, serving to catalyze international state action and bring issues to the table.²³³ Despite the informal nature of their influence on negotiations and treaty-making, they may still exert an important effect on international lawmaking.²³⁴

In the adoptee world, NGOs are emerging in prevalence. For example, Global Overseas Adoptees' Link (GOA'L) is an NGO operating in Korea that seeks to connect Korean adoptees with their birth culture and even birth families, if adoptees so desire.²³⁵ GOA'L was established in 1998 by twelve Korean adoptees.²³⁶ The group describes part of its mission as raising awareness and decreasing the stigma surrounding adoption in Korea.²³⁷ GOA'L is one example of grassroots adoptee organizing that has led to the creation of an NGO.

Families with Children from China (FWCC) is a large NGO that exercises influence over Chinese adoptions in the United States.²³⁸ FWCC acts as a source of reliable, credible information for prospective parents seeking to adopt from China.²³⁹ Additionally, it creates a sense of community among adoptees and their families in various regions around the United States; through FWCC, families meet for Chinese cultural events, conferences, and other social gatherings.²⁴⁰ FWCC also acts as a political body, lobbying the American government for legislation that will positively affect the adoptive process from China.²⁴¹ The NGO aims to

229. LEBLANC, *supra* note 73, at 37.

230. BOYLE & CHINKIN, *supra* note 227, at 90.

231. Cahn, *supra* note 227, at 1236.

232. LEBLANC, *supra* note 73, at 41.

233. BOYLE & CHINKIN, *supra* note 227, at 93-94.

234. *Id.*

235. Global Overseas Adoptees' Link (GOA'L), *Introduction: History*, <http://www.goal.or.kr/eng/?slms=info&lsms=1&sl=1&ls=3> (last visited Mar. 27, 2008).

236. *Id.*

237. Global Overseas Adoptees' Link (GOA'L), *Introduction: Introduction*, <http://www.goal.or.kr/eng/?slms=info&lsms=1&sl=1&ls=1> (last visited Mar. 27, 2008).

238. STARK, *INTERNATIONAL FAMILY LAW*, *supra* note 60, at 70.

239. *Id.*

240. *Id.*

241. *Id.* at 71.

give adopted children a “strong and positive sense of the culture of their State of origin.”²⁴²

Although Korean adoptees and their supporters could potentially have the most impact on law- and policymaking by forming IGOs and NGOs, forming an NGO requires navigating a fair amount of bureaucracy and administrative details which may be difficult to coordinate expediently or efficiently in an online space.

Nonetheless, as Part V.B.2, *infra*, discusses more expansively, it is not necessary for adoptees to form officially recognized NGOs to reap the benefits of online communities. Adoptees interacting in online groups can find power by coalescing and can organize for purposes of lobbying and bringing attention to adoptee concerns. These unofficial networks of individual adoptees and their supporters can operate in a manner similar to that of NGOs; with the expansion of the Internet removing the barriers to access that are present in the physical world, NGOs’ ability to influence international law and policy has increased.²⁴³ The “information revolution” has resulted in ease of debate, and exchange of information and ideas, all while controlling costs.²⁴⁴ Members of Korean adoptee online groups may also use these forums to encourage one another in their daily struggles with race, identity, and connecting to (or disconnecting from) their motherland.

2. Grassroots Internet Advocacy—Online Forums, Blogs, Coalition-Building

Online grassroots activism has developed significantly during the first decade of the twenty-first century, and Korean adoptees can utilize these innovative opportunities for grassroots advocacy.

The proliferation of online forums means that new places exist where members of the public may easily engage in dialogue. Internet use has grown steadily over the past ten years.²⁴⁵ According to a 2005 report, 63% of American adults went online.²⁴⁶

According to a seventh annual study conducted by the University of Southern California Annenberg School Center for the Digital Future, membership in online communities has more than doubled over the past three years.²⁴⁷ Fifty-four percent of online community members log into

242. *Id.*

243. BOYLE & CHINKIN, *supra* note 227, at 44.

244. *Id.*

245. PEW INTERNET & AMERICAN LIFE PROJECT, INTERNET: THE MAINSTREAMING OF ONLINE LIFE 57-58 (2005), http://www.pewinternet.org/pdfs/Internet_Status_2005.pdf.

246. *Id.* at 58.

247. Press Release, University of Southern California Annenberg School for Communication Center for the Digital Future, Annual Internet Survey by the Center for the Digital Future Finds Shifting Trends Among Adults About the Benefits and Consequences of Children Going Online (2008) (on file with author), available at <http://www.digitalcenter.org/pdf/2008-Digital-Future-Report-Final-Release.pdf>.

these communities at least once a day, and seventh-five percent of online community members are involved in communities pertaining to social causes.²⁴⁸ Eighty percent of Internet users over age seventeen believe the Internet is a vital source of information, and rank it higher than television, radio, or newspapers.²⁴⁹ Today, individuals engage in conversations and exchange information in cyberspace, rather than the town square or local neighborhood park.²⁵⁰ The Internet has created, and continues to create, new prospects for civic participation.

The adoptee online community has grown significantly during the last decade. Beginning in the 1990s, adult adoptee groups began forming in the United States as well as other countries, via the World Wide Web.²⁵¹ Today, a search on Google using the keywords “Korean adoptee” yields 10,400,000 results.²⁵² The top results direct the searcher to formal and informal networks of adult Korean adoptees, as well as support groups for adoptees and loved ones.²⁵³

The private adoption industry itself also has a presence online. Private adoption agencies tend to use the Internet to advertise for adoptive parents, and individuals seeking to adopt are increasingly turning to the Internet.²⁵⁴ Prospective parents also engage in discussion of adoption in online forums, such as Adoption.com.²⁵⁵ Because of the anonymity these types of forums can provide, participants engage in more frank discussion of race, ethnicity, and identity; alternatively, these forums may exist as a completely “deracialized” space.²⁵⁶ Study of the Adoption.com forums revealed that despite “efforts to cross the racial divide,” discussion pertaining to transracial adoptions remains inextricably tangled with race.²⁵⁷

Online forums and blogs operate with some overlap, as both online media consist of formed communities. Both exist because participants form a community. As of 2005, blog readers made up over a quarter of all Internet users, and blogs have increasingly played a role in political campaigns.²⁵⁸

Even academics are taking note of the power of blogs. University of California, Los Angeles School of Law Professor Eugene Volokh, founder of the blog “The Volokh Conspiracy,” which receives 20,000 unique visitors each weekday, has pondered whether traditional law review articles

248. *Id.*

249. *Id.*

250. Stacy D. Schesser, *A New Domain for Public Speech: Opening Public Spaces Online*, 94 CAL. L. REV. 1791, 1799 (2006).

251. Eleana Kim, *supra* note 3, at 59.

252. Search on <http://www.google.com> performed February 18, 2009.

253. *Id.*

254. PAMELA ANNE QUIROZ, *ADOPTION IN A COLOR-BLIND SOCIETY* 11 (2007).

255. *Id.* at 86.

256. *Id.* at 110.

257. *Id.*

258. PEW INTERNET & AMERICAN LIFE PROJECT, *supra* note 245, at 65.

are the best way to influence legal scholarship, or if his blog is the better venue, given its unique community and wide readership.²⁵⁹

As a case study within the increased mainstream presence of these adoptee online communities, I examined the month-long blog launched by the *New York Times* in November 2007. The blog, called “Relative Choices,” had a general focus on adoption in American families and a primary focus on transracial and transnational adoptions.²⁶⁰ The contributors’ list ranged from adoptive parents of children from other countries, birth mothers, and Asian adoptees themselves.²⁶¹ “Relative Choices” seems an ironic name for this blog, given the lack of choice available to some birth parents and adoptees.²⁶² Indeed, members of the Korean adoptee Internet community have disparaged “Relative Choices” for lacking a more balanced view of the current dialogue around the intercountry adoption process, particularly those voices drawing attention to the losses inherent in adoption and calling for reform of the process.²⁶³ These critics also highlight the imbalance of power that is part of the adoption process.²⁶⁴

The blog “Racialicious,” which focuses on the intersection of race and pop culture, criticizes the *New York Times* blog’s publication of an essay by a man who adopted his daughter from China and in particular its inclusion of “a healthy dose of orientalism and white savior stuff.”²⁶⁵ One prominent blogger—a Korean adoptee, adoptive mother, and adoption social worker in the Midwest—wrote of another essay posted on “Relative Choices” that allegedly resulted in censorship of adult adoptees’ disparaging comments: “I’m not going to ‘get past’ her [the essay author’s] dismissal of important issues for TRA’s [transracial adoptees]. I don’t have that privilege because this is my life and the life of the hundreds of thousands of others in this country who were adopted transracially.”²⁶⁶

259. See generally Eugene Volokh, *Scholarship, Blogging, and Tradeoffs: On Discovering, Disseminating, and Doing*, 84 WASH. U. L. REV. 1089 (2006).

260. Relative Choices, <http://relativechoices.blogs.nytimes.com> (last visited Feb. 6, 2009).

261. *Id.*

262. See generally Part III.B, *supra*.

263. Elizabeth Larsen, *International Adoption, It’s a One-Way Dialogue*, MOTHER JONES, Dec. 12, 2007, available at <http://www.motherjones.com/news/update/2007/12/international-adoption-one-way-dialogue.html> (Larsen writes in part: “I think when it comes to adoption, American adoptive parents (myself included) steer the discourse. We direct adoption agencies and think tanks. We write the home studies of prospective adoptive parents. We are policy experts and doctors and academics and journalists. We are passionate about adoption—an institution that has given us so much—and therein lies the problem: In our passion, we sometimes shield ourselves from larger discussions about the toll that adoption can take, a discussion that is in fact gaining traction across the globe. And in doing so, we are preventing adoption from evolving.”).

264. *Id.*

265. Posting of Carmen Van Kerckhove to Racialicious, <http://www.racialicious.com/2007/11/13/the-new-york-times-censors-adult-adoptees-on-adoption-blog/> (Nov. 13, 2007).

266. Harlow’s Monkey, http://harlowmonkey.typepad.com/harlows_monkey/2007/11/relative-choice.html (Nov. 12, 2007).

The Internet has also indelibly shaped the development of the Chinese adoptee community. Online forums and intercountry adoption in China both began growing in the 1990s; unsurprisingly, Chinese adoption issues made their way onto the Internet.²⁶⁷ Thousands of prospective adoptive parents connected in those early years via expansive e-mail lists, building a sense of community although they had never met in person.²⁶⁸

These organic networks and groups are rooted in the adoptee community itself, and thus provide the best sort of forum to acknowledge the losses inherent in the process and experience of international adoption. By taking part in the more nuanced dialogue facilitated in this forum, and in telling their stories, adoptees may best be able to lead to true reform of the intercountry adoption process in a way they envision as necessary.

The ease of Internet access and its growing popularity mean that the Internet is increasingly being utilized for organizing social movements and even protests.²⁶⁹ Public storytelling and vocalizing concerns and issues are two ways for Korean adoptees to take ownership of their anxieties and create change. Beth Kyong Lo has found that writing is a productive way for her to deal with her identity as a Korean adoptee: “[T]hrough writing, acknowledging my past and accepting fate (or that I’m here for many reasons), attempting not to alienate myself from other Korean adoptees. . . , and flinging myself into an abyss of motherhood and family, I have found a somewhat progressive peace of mind.”²⁷⁰

Duke University Professor Lisa Lowe points to the importance of self-directed action in creating Asian and Asian American identity: “‘Immigrant acts’ names the *agency* of Asian immigrants and Asian Americans: the *acts* of labor, resistance, memory, and survival, as well as the politicized cultural work that emerges from dislocation and disidentification.”²⁷¹

The Asian American community possesses a history of grassroots activism and formation of interest groups. Even prior to the Asian American Movement in the 1960s, Asian Americans formed groups like the Japanese American Citizens League to organize around elections and the internment after Pearl Harbor.²⁷²

Grassroots activism within minority communities has also historically involved coalition-building. In the late 1960s, when the student-organized Asian American Political Alliance banded together with other minority student groups (the Afro-American Studies Union and Mexican-American

267. Volkman, *Embodying Chinese Culture*, *supra* note 58, at 87.

268. *Id.* at 87-88.

269. See generally Seth F. Kreimer, *Technologies of Protest: Insurgent Social Movements and the First Amendment in the Era of the Internet*, 150 U. PA. L. REV. 119 (2001).

270. Lo, *supra* note 152, at 176.

271. LISA LOWE, *IMMIGRANT ACTS* 9 (1996).

272. Jeeho Lee, *One Step Closer: Understanding the Past and Potential work and Influence of Asian American Interest Groups in Claiming a Space for Asian Americans in America’s Democracy*, 14 ASIAN AM. L.J. 123, 134 (2007).

2009] REDEFINING AND RECLAIMING KOREAN ADOPTEE IDENTITY 171

Student Confederation) to pressure University of California, Berkeley, administrators into creating one of the first ethnic studies departments in the country.²⁷³ The group deemed itself the Third World Liberation Front.²⁷⁴

Outside of college campuses, civil rights movements within the Asian American and African American communities in the late 1960s also often entailed coalition-building. Pivotal Japanese American activist Yuri Kochiyama worked closely with Malcolm X, and Asian Americans like Richard Aoki joined the Black Panthers.²⁷⁵ At that time, minority community leaders began to realize “the strategic importance of unity, and they knew that unity could not be forged without space for the efflorescence of oppressed cultures.”²⁷⁶

Online communities of Korean adoptees may also engage in useful coalition-building, thanks to the relatively permeable nature of groups formed online. These types of groups are constantly gaining and losing members, as people shift from one group or community to another. Members of online groups have stated in surveys that the Internet improves the odds that they will have contact with individuals outside of race, class, or age classifications applicable to them.²⁷⁷ Given the lengthier history of Black children adopted by White families in the United States, for example, and the wealth of studies surrounding the impact of transracial adoption, Korean adoptees and their supporters might form coalitions with Black adoptees²⁷⁸ around their similar concerns regarding race, ethnicity, and identity.

* * *

Korean adoptees occupy a space within Asian America that defies traditional race- and ethnicity-based classifications. Their stories contribute to what it means to be Asian in America. Professor Takaki emphasizes:

273. *Chronology of Ethnic Studies at U.C. Berkeley*, NEWSLETTER OF THE DEPARTMENT OF ETHNIC STUDIES AT U.C. BERKELEY, Vol. 2, No. 2, Spring 1997, available at <http://ethnicstudies.berkeley.edu/documents/Chronology%20of%20Ethnic%20Studies.pdf>.

274. *Id.*

275. VIJAY PRASHAD, AFRO-ASIAN CONNECTIONS AND THE MYTH OF CULTURAL PURITY 137-38 (2001).

276. *Id.* at 137.

277. PEW INTERNET & AMERICAN LIFE PROJECT, *supra* note 245, at 64.

278. Black adoptees have also formed online communities. *E.g.*, Adopted and Fostered Adults of the African Diaspora, <http://afaad.wordpress.com/> (last visited Jan. 18, 2009) (global nonprofit organization supporting adoptees of African descent).

Today we need to fill the shouting holes, to listen to . . . the past and learn their secrets. Their stories can enable us to understand Asians as actors in the making of history and can give us a view from below—the subjective world of the immigrant experience.²⁷⁹

By combating anti-subordination and challenging traditionally rigid categorizations via grassroots Internet communities, Korean adoptees may establish their niche. And by resisting silence and stepping forward to fuel the fire of openly discussing the racial, cultural, and identity-based losses that occur when a child is adopted across international borders, Korean adoptees may move beyond the confines of established identity to embrace their uniquely multicultural, transnational identities.

279. TAKAKI, *supra* note 173, at 8.