

Love, Life, and Death

Opposite Futures and Protecting the Wrong Subjects

This isn't chattel here. We're talking about a child.

—JUDGE PATRICIA SEABROOK

It's not about them [the biological parents] or them [the adoptive parents]. It's about Lee, her best interests. It cannot be in any child's best interest to remove her from the only family that she knows—her parents, her sister, her country, which is now America. My heart goes out to you [the biological parents]. I simply cannot imagine your pain here or the horror that has been the last four years of your life. If this were about you, I'd hand the child over myself, but it's not. It's about Lee.

—DEFENSE COUNSEL FOR LEE'S ADOPTIVE PARENTS

Imagine if an American child were abducted, taken to different country; the parents go to that country to get their child back, only to hear that, sorry, the child belongs here now. That would turn our stomachs. The very reason why we have this Hague treaty is to prevent this kind of horror.

—ADAM BRANCH, LAWYER FOR LEE'S BIOLOGICAL PARENTS

In the 2011 episode “American Girl,” of NBC’s hit drama *Harry’s Law*, the plot showcases an emotional legal struggle over a girl, who is adopted from China, between her American and Chinese parents (Figure 5). Couched in the human rights discourse of “best interest of the child,” cultural representations like this episode illustrate the complexity of transnational adoption, family, and the law. As the plot unfolds, the audience learns that Mr. and Mrs. Chen had their daughter taken away from them when she was two years old by local Chinese family-planning government authorities based on the One-Child Policy. Their daughter was then “legally” adopted by Mr. and Mrs. Thomas, an African American couple in the



FIGURE 5. Lee with her biological and adoptive parents; scene from the episode “American Girl,” *Harry’s Law*, aired November 2011, NBC.

United States. According to Adam Branch, the prosecution lawyer for the Chens, the law was on their side because both the United States and China are signatories to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention). Although Judge Patricia Seabrook articulates a sense of empathy for the Chens, saying that if her daughter had been abducted that she too would “hunt her down until the ends of the earth,” she ultimately sides with the Thomases, stating: “Mr. and Mrs. Chen, I am deeply sorry, but I cannot justify upending this little girl’s world.” Thus any empathy and rights for the birth parents are trumped by the rhetoric of the “child’s best interest” and relatedly her future prospects in one family versus the other.

While this story presented in “American Girl” is television drama, it nearly matches and seems to draw from occurrences covered by the *New York Times* in August and September 2011, which reported that at least 16 babies were taken by family-planning officials between 1999 and 2006 in Longhui County of Hunan Province in southern China. In 2005, Chinese and foreign news media reported local government officials and orphanage employees in Hunan sold at least 100 children to other orphanages, who were then adopted by foreign adoptive parents.¹ Traffickers targeted migrants and the poorest villages, abducting and buying their children, whom they sold to orphanages.² Although this concerned many adoptive parents in the United States, most of them, along with U.S. adoption agencies, did not fully address the controversy and the possibility that their child might not have been abandoned or orphaned as they were told.³

These corruption cases in China not only touch upon the dangers, complexity, and contradictions of transnational adoption (TNA) as an “industrial complex” within a neoliberal global political-economy, they also point to the ways in which representation—such as *Harry’s Law*—works to construct the figures of the orphan, the birth and adoptive parents, and the nation.⁴ Standard summaries of the corruption in China pointed to local government officials exploiting poor, vulnerable birth parents, with adoptive parents hoping that they remained outside of the appalling mess. What this narrative ignored was that despite the designed protections from the Hague Adoption Convention, this corruption in the circulation of capital and illegal movement of bodies continues to feed the adoption industrial complex at the demand from adoptive parents and the expense of children and birth families. This episode is compelling because of the way it assuages the anxieties of illicit and corrupt adoptions through the promotion of a multicultural postracial narrative unique to the United States. Not only are the adoptive parents in the *Harry’s Law* episode African American, but the judge is also Black and adopted by White parents, highlighting the multiple embodiments of “American” postracial families. Judge Seabrook’s curated, intersecting, and “successful” identities of being a judge, a Black woman, and both a mother and transracial adoptee help explain how she can adjudicate this complex case. It is a discomforting verdict but one that the audience can ultimately agree with because the decision was never really in doubt.

The Hague Adoption Convention states that every adoption case must consider the “best interest of the child.” This chapter asks, How is the best interest of the child determined in transnational adoption policymaking? What sorts of already existing (violent) structures and representations are operating in order to activate and facilitate transnational adoptions? How has transnational adoption, as a loving act, produced other harmful outcomes? Legal adoption discourse and adoption laws like the Hague Adoption Convention predefine subjectivity, family, and the “best interests of the child,” which in turn represents the orphan as a victimized object in need of rescue from death or bare life, thereby constructing families

and nations as “opposite futures.” Through this imagined opposite spatial and temporal path (life versus death), adoption and love provide freedom from violence for orphans and transform them into adoptees—fully modern subjects—who attain permanency, economic stability, and above all else, parental love in ways that their birth and/or adoptive parents and home country could not provide.

To understand TNA’s underlying ethical dilemma requires going beyond scandals and instead investigating the discursive and legal construction of these seemingly prefixed concepts (best interest), subjects (orphan, adoptee, birth parent, adoptive parent), and spaces (orphanages, Asia, and the United States). These constructions ultimately work toward protecting the wrong subjects—adoptive parents rather than parents who are at risk of being separated from their children. Opposite futures are not guaranteed for adoptees. This analysis illuminates how these figures are powerful symbolic tools, compelling a reconsideration of the “best interests” axiom to understand the ways that adoption can be loving but also violent in representation and practice.

ADOPTIONS FROM ASIA AND THE HAGUE ADOPTION CONVENTION

Transnational adoption from Asia is not new (see chapter 1). Prior to the 1990s, South Korea and Vietnam were the two major sending countries. U.S. families adopted more than 80,000 Korean children between 1953 and 1992. But since then, Cambodia, China, India, Nepal, the Philippines, Taiwan, and Thailand have joined them, adding to the increased representation of Asian countries in TNA to the United States. Of the approximately 340,000 children adopted since 1992, roughly 162,000, or 47 percent (which does not include Russia or Kazakhstan), have been from Asian countries.⁵ Early adoptions from Asia were controversial because of their unregulated nature, the orphan status of children was often in question, and many critics were unsure whether the children would be better off living in the United States as opposed to being raised in their country of birth.

Adoptions from China began in significant numbers in 1992, and between then and 2021 it has become the largest sending country for U.S. families, who have adopted more than 95,000 children from China, constituting 27.8 percent of U.S. transnational adoptions.⁶ It is from this demographic and historical context that I use China as an example for thinking about race, specifically “Asian” vis-à-vis the “West,” as a global and historical formation that informs the ways law and transnational adoptions are imagined and practiced. Despite ongoing abuse and corruption in and substantial critiques of the TNA industry, international human rights law has in practice supported transnational adoption as being in the best interests of the child. The U.S. government has at some point placed 17 countries on temporary or permanent moratorium because of known or suspected abuses and corruption.⁷ China is somewhat unique because as a sending nation

it was almost always perceived as being efficient and having the best institutional safeguards. Unlike scandal-ridden countries such as Cambodia, Ethiopia, Guatemala, India, Nepal, or Vietnam, China was thought to have had a clean record for transparency and an uncorrupted supply of healthy infants.⁸ Yet this representation of China contradicts the West's imagination of it as a morally bankrupt and human rights-violating Communist nation. To be sure, even within this contradictory representation, China still mirrors larger symbolic representations of Asian countries such as South (and North) Korea, Vietnam, Cambodia, and India as spaces of immorality, ineptness, cultural backwardness, and/or Communism.⁹

The most significant law passed to date concerning transnational adoption is the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. It came on the heels of the UN Convention on the Rights of Children (UNCRC) of 1989, which began to address, among many others, the issue of transnational adoption and the right to a family.¹⁰ Building on these initial steps of the UNCRC, the Hague Adoption Convention is a multilateral treaty that established international standards and safeguards in response to questionable and unethical practices such as abduction, sale, and trafficking that mired the seemingly virtuous practice of transnational adoption. It aims to "ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights."¹¹ Significantly, it legitimized and privileged TNA for cases in which family preservation is not possible and domestic adoption has been exhausted. This differs from the earlier UNCRC (a convention that the United States has *not* ratified), which placed transnational adoption below in-country institutional care.¹²

While the United States was a signatory to the Hague Adoption Convention in 1994, it did not ratify the convention until 2007, where it entered into force a year later.¹³ With 105 contracting states, it is generally considered a constructive and beneficial development in transnational adoption.¹⁴ Yet many adoption supporters have criticized it, saying that while the effort to stamp out corrupt, unregulated, and exploitative adoptions is needed, sending countries, which are often "developing" nations (i.e., formerly colonized), do not have the resources to implement the standards and regulations.¹⁵ The other critique is the lack of an international supervisory body, which makes it difficult to stop exploitative and corrupt practices, and as supporters suggest, any indication of a scandal could mean dramatic decreases in who is available to be adopted.¹⁶ Even with scandals, agencies and the U.S. government continue adoptions until government intervention by a sending country. Legal scholar David Smolin states that there is strong financial incentive to look the other way: "United States agency personnel are financially or ideologically motivated to 'believe the best,' doubt negative reports, minimize abuses, and keep the system open and running at all costs even when abuses become apparent."¹⁷

Despite multiple cases of corruption and exploitation, transnational adoption continues to be supported by a large majority of U.S. practitioners, experts,

government officials, and those already touched by adoption. In fact, U.S. families had been able to adopt from non-Hague ratified countries such as Ethiopia, Nepal, Russia, and South Korea. In 2021 alone, U.S. families adopted from 32 non-Hague countries, which totaled more than 40 percent of the 1,785 adoptions.¹⁸ These adoptions that happen(ed) outside of the Hague Adoption Convention framework illustrate the “machine-like quality” of the “transnational adoption industrial complex.”¹⁹ Supporters of TNA argue that the adoption pipeline must remain open and functioning because the good of “saving” children outweighs possible faults. For them, shutdowns are detrimental and even reforms in these cases almost always slow the process to a grinding halt.²⁰ The various “facilitative” laws discussed in chapter 3—the Multiethnic Placement Act (MEPA), the Interethnic Adoption Provisions (IEP), the Adoption Tax Credit (ATC), and the Child Citizenship Act of 2000 (CCA), the latter gives automatic citizenship to adopted children—in conjunction with the Hague Adoption Convention are deeply entrenched as moments of inclusion and progress for adoption policy and practice. Representations of adoption in this context move from its “troubled” past of being exclusive, discriminatory, stigmatizing, unethical, and illegal to inclusive, respectful, ethical, cultural, democratic, liberal, humanistic, and rights bearing. Hence the historical and continued focus on “exclusions” as the basis for understanding racial subjection has confused some people about why others would want to stop an “inclusive” and “loving” act that “transcends” difference and is “in the best interest of the child.”

OPPOSITE FUTURES AND FULL LIFE FOR THE “ORPHAN”

The image of the orphan informs how the adoption industry conceives of and practices adoption. According to UNICEF, the organization most cited for statistics, in 2022 there were 147 million orphans globally.²¹ For most people the term “orphan” conjures the image of a helpless and parentless child (many dictionaries use this definition as well), but UNICEF and other aid organizations define “orphan” as any individual under age 18 who is without one or both parents.²² Despite the claim of millions of orphans, only 4 percent of children in institutions are “true” biological orphans.²³ Yet, as gender and sexuality scholar Laura Briggs has argued, the visual imagery of a mother and her child/waif throughout the past century has helped shape the politics of transnational and transracial adoption in terms of liberal interventionism and the notion of rescue. She critically engages this “visual iconography of rescue” that manifests in sentimental narratives and the rescue trope of transnational adoption along with their dependence on stereotypes of innocent, sick, helpless, and crying children relative to the culturally cold, indifferent, backward, and/or grateful birth parents.²⁴ This iconography and practice of rescue has become normalized and transformed into a regime of truth, hiding the ways the United States has often been implicated in the causes and the “need

for rescue” in the first place. I add to Briggs’s examination of orphan and rescue by highlighting the temporal and spatial aspects of this connected narrative. While “rescue” connotes removal from imminent danger, I contend that adoption as rescue marks originating countries as spaces of inevitable death. Adopting countries are spatially and temporally marked as an opposite and better future that enable freedom from violence and full (as opposed to bare) life.

U.S. politicians rehearsed this spatial and temporal rescue narrative prior to implementing the Hague Adoption Convention in 2008. In the 1999 congressional hearing on the Implementation of the Hague Convention on Intercountry Adoption, the dominant sentiment was that TNA was a key solution to children in need of a loving, permanent home and that the United States in particular was a positive future for them. Democratic House representative Sam Gejdenson stated that transnational adoption was the solution to the orphan crisis: “Clearly, international adoption solves problems. Children living without loving families and in often terrible conditions have an opportunity for a very bright and optimistic future here in the United States or with adoptive parents in other countries.”²⁵ That transnational adoption was a “bright and optimistic future” and solution for children was “clear” because the United States had a long history of welcoming and caring for orphaned children. Mary Ryan, ambassador and assistant secretary of state for consular affairs, reminded everyone of this fact: “The United States, particularly since World War II, has opened its arms to orphaned and abandoned children around the world, and many parents look to international adoption to build American families and to provide a better life for these children.”²⁶

Indeed, the TNAs that followed World War II, the Korean War, and the war in Southeast Asia, along with representations of destitute orphanages and uncaring institutional workers, produced the image of the waiting Asian orphan and loving American adoptive families in the collective imagination. Republican House representative Thomas Bliley painted the picture in his opening statement:

Thousands of children worldwide are waiting helplessly for parents to read to them, to teach them how to tie shoelaces, to say bedtime prayers with them, and to eat ice cream with them on a summer night. It is in the best interests for a child to be part of a loving family. The Hague Intercountry Adoption Act gives the U.S. Congress an opportunity to stand up and reaffirm our support for intercountry adoption. I am proud to support this bill because I have been blessed by my own experiences with adoption, so now I am doing what I can to help thousands of innocent children find a home.²⁷

These statements from the 1999 congressional hearing exemplify the ideological presumptions in adoption discourse among government officials. They point to the ways that discourse about loving (Christian) American families and the democratic U.S. government have facilitated the incorporation of overseas “orphaned” children who needed homes. Bliley’s admission of being touched by adoption in

his own family illustrates that the personal and familial are intimately tied to political decisions. All-American activities such as reading books and eating ice cream convey the simplicity of the situation—there are children in need, families who can provide loving homes, and a government that can facilitate this process.

Just prior to the ratification and implementation of the Hague Adoption Convention in 2007 and 2008, Congress held another hearing in 2006 on Asian adoptions in the United States. Similar to 1999, Senator Larry Craig said: “We are fully entering a new era of international adoption by Americans, an era in which the Federal Government has a critical role in the adoption process.”²⁸ Social scientific outcomes studies “definitively” had reported that such adoptions were beneficial and in the “best interest of the child” (see chapter 2). Thomas Atwood, president of the National Council for Adoption, in his written statement for the hearing expressed: “The benefits of intercountry adoption to children are indisputable. The clinical record clearly confirms what common sense tells us—that outcomes for children who are adopted internationally are better than those for children raised in institutions or in foster care.” The truth seemed “self-evident,” Atwood added, that given the choice, most people would choose a loving, permanent family through intercountry adoption over living without a family in the country where “one happens to have been born.”²⁹ This “dire need” narrative coupled with scientific “certainty” of positive outcomes for transracial and transnational adoption further activated the government’s continued role in facilitating them.

However, the opposite future narrative does not just rescue orphans from “terrible conditions” to a “better life,” it also rescues them from imminent death. In the same year as the Asian adoption congressional hearing in 2006, Harvard emeritus law professor Elizabeth Bartholet, a prominent adoption scholar who is an outspoken proponent of TRA and TNA and an adoptive parent to Peruvian daughters, implored policymakers “to think empathically about the child at the heart of the international adoption debate.”³⁰ In a law review article Bartholet narrated a hypothetical “rational conversation” between herself, along with the audience, and a “typical” child to convey the child’s experiences, needs, and wants. I analyze this article in depth because one could easily argue that Bartholet has been the foremost advocate of transracial and transnational adoption in the United States. She has written two books and more than two dozen articles, testified before the U.S. Congress and international bodies, as well as published and appeared on countless news media such as the *New York Times* and *NPR* on the topics of transracial and transnational adoption.³¹

In Bartholet’s hypothetical, she presumed this child is a girl in China because there are more girls available than boys, and China is the top sending country to the United States in 2006. She questioned what the child would prefer in terms of preserving her “birth heritage,” “growing up in her country of birth,” being adopted domestically in her country of birth, staying in an orphanage, or being “placed abroad in a loving adoptive family.” Offering details to help

make this decision, Bartholet described the institutional living conditions of this “universal” child:

She knows from her daily experience that the orphanage is a horrible place. . . . When she screams for attention because she is hungry or cold or wet or just alone, nobody comes—attendants arrive only every four or six hours and then leave immediately after hurried diaper-changing and bottle-propping events. She would notice if she were capable of understanding that infants around her stop screaming after a while; they learn that screaming does not produce any result. . . . Her current orphanage is fairly typical. . . . Some are far worse, with infants dying at a high rate, and children whose biological age is in the teens lying in cribs looking as if they were toddlers, unable to talk or walk because they have been so deprived of the attention it takes for a human being to actually develop. Photographs of some of the still-living children in certain of these institutions look like photographs that could have been taken in the Nazi death camps, except here the subjects are all children, bone-thin, expressionless, staring back emptily at the camera eye.³²

Bartholet’s exercise of imagining what the child would want gets at the seemingly simple decision of choosing adoption over detrimental institutions. The invocation of Nazi death camps conjures Giorgio Agamben’s formulation of bare life, those “who may be killed” to “an unprecedented degree.”³³ Bartholet’s comparison suggests that institutionalized children who are *not* adopted are bare life because they exist in spaces of widespread death and extreme deprivation. In this situation the orphan is marked as a damaged racial (Chinese) subject in a deleterious racial space and time (anachronistic, ill-equipped, and inept Chinese orphanage) and as an ultimate victim. The identification of global racial difference explains not only the orphan’s lot in life and the need to be rescued but also that the West be the rescuer who prevents the orphan from dying in the way that China cannot.

Indeed, transnational adoption presents a future that guarantees full life. “Full life,” here, represents not just being rescued or a better future (like domestic adoption in China might) nor the idea or even promise of the American Dream (like a typical immigrant future does).³⁴ Rather, it represents an unquestionable guarantee of an opposite future precisely because the orphan (as “nonimmigrant immigrant”) is being rescued by White American families to the United States.³⁵ Bartholet continued her imaginative exercise about the child, further illustrating point:

She might grow up wondering about her racial or national identity-wondering if she is truly “American” or more truly something else. However we should also tell her that many people in her country of birth would be thrilled if they had the opportunity to go live in the U.S., especially if they could get the kind of education and other advantages that most adoptive children will enjoy, so that they could participate in what is still seen by many throughout the world as “the American dream.” We should tell her that the research shows adopted children do very well on all measures that social scientists use to assess human happiness, and that it reveals no evidence that children are in any way harmed by being placed internationally. Finally, we

should tell her that the research shows that children raised for significant periods of time in institutions do terribly badly on all of those social science measures.³⁶

In this second part Bartholet shallowly concedes the identity struggles that the child might have to negotiate, ignoring surveys and studies (see chapter 2) that have shown many transnational adoptees have had to contend with these issues. For Bartholet the United States offers an opposite (spatial and temporal) future embodied in the American Dream. Despite her qualifying usage of “many” (Chinese adults and people “throughout the world”), Bartholet advances a position that for her is irrefutable (“no evidence” of harm). In distinction, being raised in an institution, like an orphanage, means that a child will “do terribly bad on all of those social science measures.” She concludes: “It seems obvious to me what this infant would choose if she could choose. She would choose not to spend another day or hour in the institution if at all possible. She would choose to go to the first good adoptive home available, regardless of whether that was in her country of birth or abroad, so that she could begin living the kind of life infants deserve and need both in terms of their day-to-day life satisfaction, and in terms of their prospects for normal development so that they can live and thrive as adults.”³⁷

While Bartholet indicates support for both domestic and transnational adoption for her imagined orphaned Chinese girl, she never represents what an adoptive Chinese future could look like outside of the institution, nor does she consider how state and local governments might assist birth parents so they could reunite with their children. The cultural distinction outlined by Bartholet becomes a proxy for racial difference. Thus not only is racial difference ascribed to the orphan figure but also to the space the orphan occupies and her future attached to that space if she were to remain.³⁸ Bartholet’s articulation of China presents it as an anachronistic nation. Despite orphanage care, domestic adoption, and foster care all improving in China by the mid-2000s, Bartholet and others continue to express that the solution to children in orphanages is to bring them to the United States.³⁹ For Bartholet the choice based on these truths is obvious. It is only through transnational adoption, and the “positively” racialized space and future of the United States, that the orphan figure can achieve full life.⁴⁰ She cannot live or become a thriving fully modern subject in the space of the Chinese institution that portends death. In creating these absolute truths and speaking for the racial Other, Bartholet contributes to the production of the orphan figure as not a subject but an abject victim and racial object of rescue.

PROTECTING THE WRONG SUBJECTS

To be sure, transnational adoption tries to be protective. Article 4 of the Hague Adoption Convention highlights the “requirements for intercountry adoption,” which includes that the mother has been given informed “consent” that was not “induced by payment” or “withdrawn” and that she understand the “effects of the adoption.”⁴¹ Yet so often this consent requirement does not actually exist for many

transnational adoptions and cannot be enforced when children are relinquished anonymously; through deception, coercion, or payment; or via trafficking. Legal scholar David Smolin and journalist Kathryn Joyce have shown in stark details how the adoption industry and the evangelical Christian movement to adopt from abroad have contributed to countless cases of corruption and children being taken from their families when they were never in fact orphans, and the Schuster Institute for Investigative Journalism at Brandeis University has an entire section on its website devoted to “International Adoption Fraud and Corruption.”⁴²

In fact, Bartholet acknowledges the uneasy issue of payment but claims being paid to relinquish one’s child does not represent diminished personhood: “Giving them [birth parents] money may be wrong because it will always be hard to know for sure that the money given was not the reason for surrender. But giving money to desperately poor birth parents almost all of whom would likely surrender their children in any event, is not the worst evil that such birth parents or their children are faced with.”⁴³ Economics professors Mark Montgomery and Irene Powell similarly contend that paying birth parents might be *more* moral than not: “Why must we ensure that payment doesn’t persuade parents to relinquish a child with whom they would otherwise not have parted? . . . On what moral grounds do we deny them the right to negotiate all aspects of the adoption exchange?”⁴⁴ Montgomery and Powell propose acknowledging the market forces of adoption—“that some children (or their parental rights) are, in effect, bought and sold”—rather than suppress them. For Bartholet, Montgomery, Powell, and others the entanglement of relinquishment, adoption, and money are inevitable. Thus scholars advocating for the increased facilitation of transnational adoption separate the interest of the child from the interest of the birth parents/mother. Despite the Hague Adoption Convention’s supposed stance against corruption and unethical practices that might separate families, once the adoption process *begins*, the law and public sentiment shift to favor the adoptive family.

Adopted children are thought to be adoptable orphans because of presumed voluntary (and “loving”) consent by the mother, which has two related effects. It naturalizes the “clean break” while simultaneously erasing birth parents.⁴⁵ This was the circumstance that Harry Holt, founder of the Holt adoption program, articulated to a Korean birth mother who was distraught about her son being adopted: “I had to tell her it is a clean break and forever.”⁴⁶ Adoption policy expert Adam Pertman notes that adoptive families have historically wanted to maintain a strict notion of family, helped by the “clean break,” in order to be normal.⁴⁷ Adoption discourse helped assigned the label of “real parent” to adoptive parents in order to make adoptive families legible as legitimate families (see chapter 2). Adoptive parents have feared that bonds with their children might not be permanent, and one way to erase those insecurities was to “make their birth parent disappear,” or “at least to turn them into lesser beings who couldn’t possibly be the objects of anyone’s desire.”⁴⁸ State governments and adoption agencies have played an oversized role in both producing and catering to this complex fear and desire. By the

mid-twentieth century nearly every state had closed adoption records.⁴⁹ Scholars explain that the clean break in plenary adoption engenders a de-kinning process for birth/first mothers that justifies her “legal non-existence.”⁵⁰ Anthropologist Claudia Fonseca argues that this process facilitates Western concepts “that children must belong wholly or even essentially to one (and only one set of individuals/parents),” and agencies promote such fictions by “administratively erasing all pre-adoption history.”⁵¹ Many adoptive parents have been explicit that the erasure of birth parents and family—along with the child being a “blank slate”—has been a primary reason why transnational adoption is more attractive than domestic transracial adoption.⁵²

Together, the clean break process paired with racial discourse have enacted symbolic violence onto birth parents who are unable to signify “real” parent. This clean break has enabled the abject orphan to reemerge through adoption—by a loving White family to the United States—as a full subject, one whose ties to their past are severed, gaining a new life, identity, family, and nation. The clean severance is part of the neoliberal trade in transnational adoption of extreme loss for adoptees (identity, language, culture, history, and family) and birth parents in exchange for their “best interest” and opposite future. This is possible through configuring a totalizing and bleak outline of the orphan while completely ignoring the perspective of birth parents. The privileging of Western love provided by White American adoptive families discounts any love that orphanage workers, birth parents, or extended family may hold for the child.

One of Bartholet’s contentions is that orphans are too young and irrational to understand what they need.⁵³ Legal scholar Lisa Myers states that they are the most vulnerable: “Many of the world’s leaders, human rights organizations, and leading scholars have publicly recognized that international adoption often represents the only means of saving orphaned or abandoned children from lives of abuse, neglect, or exploitation” because they “represent the most vulnerable and innocent members of our global society.”⁵⁴ Legal expert Elizabeth M. Ward adds that transnational adoption protects the human rights of children and prevents the abuses caused from trafficking, child pornography, child prostitution, and hazardous working conditions.⁵⁵ Thus advocates such as Myers and Ward, but especially Bartholet, take the mantle of speaking for the voiceless “orphans,” which exemplifies what law professor Shani King calls “MonoHumanism.” While at first glance “one humanism” seems to be an inclusive project, but King uses this term because it encapsulates the exclusive strategy of ethno/Eurocentric humanism. “What MonoHumanism represents, more specifically,” King explains, “is the notion that the United States has substituted its own view of all non-American peoples or cultures for positive knowledge of them, facilitating the creation of the Western identity of self as the normative center. The narrative of identity that accompanies MonoHumanism subscribes both universality and superiority to Western knowledge and discourse, which effectively results in the exclusion and displacement of the knowledge and discourse of historically oppressed peoples.”⁵⁶

MonoHumanism mirrors transnational feminist of color Chandra Mohanty's description of Western feminism as Eurocentric. U.S. discourse centers the fact that Chinese girls were relinquished at incredibly disproportionate rates because of China's One-Child Policy and its favoritism of boys. Yet this ignores the role and existence of birth mothers (and parents) who in many circumstances wanted to keep and parent their children.⁵⁷ The self-referencing aspect of Western feminism ignores how the category of women is not universal because of the ways that the West narrowly defines women and women's issues.⁵⁸ The unequal power dynamics in transnational adoption illustrate how it is not just about race and class but an inherently feminist issue as well. Legal scholar Bernie Jones contends that transnational adoption "is predicated upon one woman's inability to mother her child and another's ability to take the child overseas and become a parent."⁵⁹ Human rights discourse has always been couched as a moral imperative to address global and social justice, inequality, oppression, and rights. Yet being "on the agenda" of human rights discourse has required victimization of the orphan and erasure of birth parents in order to gain political sympathy and action.

As the birth family is erased, the orphanage and the country of China are racialized as inferior and inept spaces. This racialization of space in relation to transnational adoption traces back to early "symbolic" adoptions from China in the 1940s and TNA from Korea (and later Vietnam) that portrayed these countries incapable of caring for their children. Such racial ideology was so prevalent that even alternative press perpetuated it. For example, in June 1973, an editorial by *The Chicago Defender* criticized the abscondence of responsibility for Black-Vietnamese children who were abandoned by their own mothers to "a society where their color accentuates a traditional native hostility to racial mixture, governed by an 'Oriental mentality' with a 'medieval concept of morality and ethnic purity.'"⁶⁰ Tied to racialized anti-Communist rhetoric, such stagnant and backward spaces could only try to respond to the needs of the child. They were incapable of anticipating and acting in the full best interest of the child, while transnational adoption, in contrast, demonstrated how the United States could transcend boundaries of race, nation, and culture. As English professor Christina Klein and historian Arissa Oh have each argued, this gesture of inclusion of Asian children into the U.S. national body politic, however, was necessarily premised on characterizations of the United States as morally, economically, and politically superior to China and Korea.⁶¹

In particular, discourse around the China adoption scandals placed the blame squarely on China, which had been transitioning to capitalism. Brian Stuy, a Salt Lake City adoptive parent to three girls from China stated: "It's a corrupt system. It's just so driven by money, and there's no check and balance to the greed."⁶² Media stories about the scandal focused on corrupt Chinese government officials and the traffickers, largely ignoring the ways in which U.S. adoption agencies and families were implicated in the high-value market-based demand that has created incentive to boost the "supply" of "available" children for *foreign* parents in the United States rather than domestic ones in China.⁶³ This was in large part because the

United States interprets itself as a rule-abiding country. Adoptive parents rarely question where or how their required cash “donation” gets used, even though they know most of it does not go toward helping children.⁶⁴ As Smolin has noted, gifts and cash donations, regardless of intent, commercialize and commodify the adoption process, “illicitly inducing consent.”⁶⁵

The influx of capital via transnational adoption has led to numerous corruption and trafficking cases that have compelled countries to halt transnational adoptions, either temporarily or indefinitely. Typically, these suspensions happen on the sending side, but in 2021 the Netherlands halted all transnational adoptions after a damning report was published. It revealed “systematic abuse” and that the country continued with adoptions despite being aware of problems.⁶⁶ The issue is that receiving countries, adoption agencies, and adoptive families do not actually become illicit or unlawful, nor are they perceived as contributing to illicit adoptions (the Netherlands being a recent exception).⁶⁷ In other words, TNA hinges on accepting trafficking and illicit practices as normative or an unfortunate but not detrimental side effect. Children are “laundered” through the adoption process after suspect conditions of relinquishment.⁶⁸ Thus, although the Hague Convention states that every adoption case must consider the “best interest of the child,” in U.S. legal discourse and practice of transnational adoption this decision has already been predetermined. China (and other Asian countries) are seen as spaces of immorality, ineptness, cultural backwardness, and/or Communism, while the United States, U.S. adoption agencies, and American adoptive parents are relinquished of culpability and instead viewed as actors and spaces of rescue and freedom from harm.

From the perspective of adoption supporters, the scandals that have plagued transnational adoption have only made the case for them stronger because their overall decline means fewer lives protected and saved. This has left us with a troubling gap between the theory of international adoption law embodied in the Hague Adoption Convention and its practice. Numerous scholars have written on how to “improve” the Hague Adoption Convention or prevent unethical adoption practices in order to follow the guidelines set out by it in the first place.⁶⁹ But as Smolin has maintained, the adoption industry is not self-regulating: “It seems clear that most of the parties involved in intercountry adoption possess strong motivations to favor even a systematically abusive adoption system over no system at all. Thus, international adoption is not a self-regulating or self-correcting system.”⁷⁰ For example, during the 2006 hearing, U.S. officials argued against implementing the Hague Adoption Convention and fighting corruption because of the fear that it would inhibit transnational adoption. Senator Mary Landrieu (D-La.), in her testimony for that hearing, expressed frustration when the government overreacts, instituting additional barriers that ultimately harm children and adoptive families:

Believe me, nobody wants to eliminate fraud more than our delegation, our whole caucus, but I want to say this for the record: When a bank is robbed in Chicago, we do not shut down the banking system. We go find the bank robber, and we put them in jail. Every time there is one stealing of a baby, or you know, one violation of a crime, everybody starts shutting down international adoption. And we don't realize, when they do that, they literally sentence children to death, literally. And they disrupt the lives of *thousands of good tax-paying church-going American citizens*. . . . And I'm going to fight against these closures that we keep going through, and we need to keep the system open, transparent, and it is a literal lifeline to children, and a happiness line for parents.⁷¹

Landrieu acknowledged the importance of preventing child trafficking and corruption but placed greater emphasis on the continuation of adoption, protection of adoptive parents, and the protection of the life, freedom, and happiness for the child. Similar to the language from the debates about the foster child, foster care, and domestic transracial adoption, these statements articulate Asian orphans as ultimate victims with a future in which they are "sentenced to death," while the white Christian American adoptive family simultaneously embodies the good ("tax-paying church-going") neoliberal subject, victim of regulation, and more important, the locus for the best future. Rather than taking seriously the fact that U.S. adoptions may facilitate child trafficking and corruption by its very global capitalistic nature, this material violence of familial separation induced by poverty, coercion, and misinformation is seen as a form of acceptable and even inevitable violence against birth families and children that is unfortunate but worth the costs.

Despite the rhetoric of "best interest of the child," transnational adoption discourse suggests that advocates are often fighting for the protection of adoptive parents rather than the most vulnerable ones. Significantly, lawmakers in the 1999 hearing failed to meaningfully discuss ways to keep Asian families together or facilitate domestic adoptions in the country of origin. Instead, they spoke about the need to protect adoptive parents. In his opening statement, House representative Bill Delahunt (D-Mass.) explained whom the Hague would benefit and protect: "U.S. ratification will signal our desire to encourage intercountry adoption and our commitment to creating a legal framework that will better protect *adoptive families* and their children."⁷² Congressman Earl Pomeroy stated that in signing the Hague Adoption Convention, "the United States and over 60 other nations recognize the importance of international adoption" and the effort to protect "*adoptive families* from fraud and abuse."⁷³

According to Congressman Richard Burr, the Hague Adoption Convention would enable greater efficiency for adoptive parents: "We are here today to discuss legislation that will make the process more transparent, more orderly, and less stressful *for those who want to provide* a child with nothing more than a loving home."⁷⁴ These statements underscore the role and importance of the adoptive

parents as rescuers who are in need of legal protections. Thomas Atwood, in his oral testimony for the 2006 hearing, explained the National Council for Adoption's "holistic" approach that recommended TNA as a "positive option for orphans, second in preference to timely domestic adoption, but to be preferred over domestic foster care, and group or institutional care."⁷⁵ Just as in the 1999 hearing, Atwood's scenario glaringly omits reunification with the birth family or keeping the birth family intact in the first place as priorities for the international communities. In both hearings, the orphan figure was an unquestioned given for which transnational adoption was seen as an inevitable solution and opposite future that would yield a better life and family.

OPPOSITE FUTURE NOT GUARANTEED

Thus far, this chapter has shown how the discursive and legal production of the orphan figure, birth and adoptive families, and sending and receiving nations has predetermined the answer for the "best interest of the child" test. Transnational adoption is supposed to be the legal and permanent transfer of child custody rights, where the adoptive family becomes the legitimate and better family and future. Yet transnational adoption, like all forms of adoption, is inherently attached to violence (see chapters 1 and 2). History has revealed how violence is not just a condition of possibility for transnational adoption but also an effect.

As many transracial and transnational adoptees contend with racism internally, within their family, or at their school or workplace, other adoptees face dire situations that produce adoption discontinuities such as abuse, rehoming, or deportation. Reuters published a five-part exposé in 2013 on unregulated custody transfer, also known as rehoming.⁷⁶ "Rehoming" is a term most often used for finding a new home for pets because the pet owner(s) are unable or no longer willing to care for them. But the Reuters story focused on families who had adopted children and were searching for new homes for them—in adoption world, this is known as dissolution. Reuters examined 5,029 posts from a five-year period in one Yahoo online group forum. "On average," the piece revealed, "a child was advertised for re-homing there once a week. Most children ranged from 6 to 14 and had been adopted from abroad—from countries such as Russia and China, Ethiopia and Ukraine." One parent advertised: "We adopted an 8-year-old girl from China. . . . Unfortunately, we are now struggling having been home for 5 days." An adoption agency posted: "We have a family that is no longer willing to parent their adoptive child from Asia and we are seeking a second family for him. His need for a new home is solely because of his adoptive parents' inability to attach to him (it is their first adoption), not because of any behaviors on his part." In another example, an adoptive mother wrote: "My husband and I are very carefully and prayerfully seeking a loving and nurturing family for our 14-year-old Vietnamese daughter who has been with us for almost a year. She

honestly is almost a model child. Excellent student and no major issues at home or school. The problem is not her; it is our family dynamic. My husband and I are older parents and we have totally different parenting styles that conflict and cause serious contention and a split in our home.”

These hundreds of examples show that adoption, which is narrated as a new forever home, is not a predetermined opposite future for transnational adoptees (who made up the majority of rehoming postings despite there being fewer transnational adoptions versus domestic ones). In addition to the flippant nature in which these adoptions were being treated, the other concerning aspect was that rehoming oftentimes involved complete strangers without court or child welfare oversight. This meant no background checks, home study, preadoptive training, or postadoption checkups. The ease in which people (many of whom were denied adoptions through the formal process) can attain children via rehoming has led many children to be subjected to serious physical, sexual, and/or emotional abuse by the new parents or other children in the new home. The *Reuters* exposé shows the multiplication of violence perpetrated by both the original and the new adoptive families who participated in illicit adoptions and family-making and unmaking.

Another form of violence includes the deportation of noncitizen transnational adoptees. Prior to 2001, families who adopted from another country were advised to naturalize their child so they would gain citizenship, but thousands of families failed to do this. While the exact number is not known, the Adoptee Rights Campaign estimates tens of thousands of adoptees were not naturalized and are therefore without citizenship.⁷⁷ The legal conundrum was caused by the passage of two federal laws on criminalization and anti-terrorism passed under President Bill Clinton in 1996, where he (again) worked with Republicans in an attempt to prove that he was tough on crime.⁷⁸ Together, the laws expanded the definition of aggravated felony and crimes of moral turpitude to include many non-violent offenses. Noncitizens convicted of crimes that carry a one-year sentence or \$1,000 fine could now be deported with no room for judicial discretion. The laws applied retroactively, so individuals could be deported even after serving a sentence.

Caught between these overzealous laws and the failure to be naturalized, dozens of transnational adoptees have been deported to their country of birth, sometimes for minor offenses such as writing bad checks and burglary. They have been torn apart from their family for a second time. In this instance they are separated from their adoptive families and sent to a place where they have little to no memory and do not know the language. In some of these cases, adult adoptees have had adoptive parents who have passed away, abused them, or abandoned them through a disrupted adoption. In one case John Gaul III, adopted from Thailand when he was four years old, realized he was not a U.S. citizen. Upon this revelation, his adoptive parents immediately submitted a naturalization application, but

Gaul was convicted of automobile theft and check fraud. He spent twenty months in prison and was deported back to Thailand in 1999.⁷⁹

As a solution to such deportations, Congress passed the Child Citizenship Act of 2000 (CCA), which conferred automatic citizenship to adopted children.⁸⁰ Congress, adoptive parents, and the media all celebrated this significant legal dispensation of political rights for adoptees. It was a liberal gesture of inclusion, equality, and love for an estimated 150,000 adoptees who became “overnight citizens.”⁸¹ Yet, as critical adoption studies scholars Eleana Kim and Kim Park Nelson have noted, the legal and cultural citizenship that adoptees gained was “related to their adoptive parents’ racialized privilege as a predominantly white group of U.S. citizens.”⁸² Moreover, the new law only applied to children who were under 18 years old and to new adoptions. While the original version of the bill would have been retroactive, the final bill was not. Thus citizenship was not given to adoptees over the age of 18. With the CCA age limit in place, dozens more adoptees were deported after 2001. Kairi Abha Shepherd, who suffered from multiple sclerosis and was raised by a single adoptive mother who died from cancer when she was eight, was deported in 2012 to India for writing bad checks.⁸³

Another stark example involved Adam Crapser. He and his biological sister were adopted from Korea to Michigan but were physically abused by his adoptive family, who later dissolved their adoptions. After staying in multiple foster homes, he was adopted again, this time by the Crapsers, an Oregon couple who had multiple adopted and foster children at the time. Similar to his first adoptive home, Adam was again abused. The Crapsers were later charged with 34 counts of child abuse, rape, sexual abuse, and criminal mistreatment. After being kicked out of the house, Adam broke into the Crapsers’ home to retrieve the few things from his Korean past—his shoes and Korean bible. He was arrested and pled guilty to burglary, leading to 25 months in prison, which was more than 8 times the length that Thomas Crapser, his abusive adoptive father, served. Adam’s legal troubles continued after convictions for unlawful firearm possession and assault.⁸⁴ After living in the United States for 40 years, being married, and having 3 children, he was deported in 2016.

Just as the rehoming cases showed, the deportation cases underscore the violence of love. What is meant to be a forever home can wind up being a “return to sender” because harsh and restrictive U.S. citizenship, immigration, criminalization, and anti-terrorism laws. These laws produced the “illicit adult adoptee,” a racialized undocumented immigrant without rights whose crimes deemed them deportable. Yet similar to trafficking and corruption cases, rehoming and deportation cases elucidate how adoptive families have elided representations of being illicit precisely because transnational adoptions are so predominantly imagined as an opposite future. They mirror the countless other cases in which transracial/transnational adoptees have experienced adoption discontinuities—where adoptees experience different forms of “permanency ruptures” such as no longer living

in the adoptive home or connected to the adoptive family—because of alienation, racism, neglect, abuse, dissolution, and/or murder.⁸⁵

CONCLUSION

In tracing the representational configuration of the orphan, family, and nation, I have tried to show both the conditions and violence required to make a transnational and postracial family. As the *Harry's Law* episode "American Girl" shows, transnational adoption is complex. It can be loving and violent at the same time. Nevertheless, the show also reconfirmed what we already knew: the United States and the American family constitute the privileged space and actor in transnational adoption. Even though international law (the Hague Adoption Convention) was supposedly on the side of the birth parents, Mr. and Mrs. Chen, the national law (in this case the judge) reinterprets the "best interest" for Lee, the young child at the center of the case. Just as the episode title suggests, Judge Seabrook confirms that Lee's status should remain "American" because U.S. representation deems China and even her birth parents as unable to provide her a full life and meet her best interest. Indeed, the "loving" possibility of returning to her birth parents—that is, a nonadoptive future—is imagined as traumatic, providing another example of how the birth parents and country of origin are constructed as uncertain and violent spaces. This example—and we can look back to Operation Babylift (see chapter 1)—helps us understand how law and representation, especially cultural and racial ones, work to make legible and illegible subjects, families, and nations.

This chapter is not a claim that a thing such as orphan does not exist or that change and action are not needed. While there is some truth to the idea that children who are adopted domestically or abroad may have better chances of not experiencing certain types of harm, the unquestionable certainty of a full life is not actually guaranteed because of various types of violence that follow adoptees or emerge after the act of adoption (e.g., abuse, neglect, racism, alienation, rehoming, murder, deportation, etc.). The point here is that it is important to examine how orphans are made legible and desirable. The unidirectional flow of children as orphans, who are conceived as objects of rescue, from Asia (as well as Africa, Latin America, the Pacific Islands, and the Caribbean) to the United States, Canada, Australia, and northern and western Europe has matched the selectively porous neoliberal borders that have enabled capital and trade to cross but remained closed for "ineligible" (im)migrants. Transnational adoptees raised by White families can theoretically assimilate and/or become American, but for other immigrants the border is an "abjection machine" that transforms people into abject subjects such as "alien" and "illegal."⁸⁶ The conferral of automatic citizenship for immigrant transnational adoptees through the CCA highlights the unequal access to movement and rights. These "orphans"—whether legally or unlawfully produced—become the objects of high demand and emerge as an instrument of the state to promote

specific families (over and against illegitimate foreign parents) and represent the “liberal” nation.

Furthermore, birth parents are erased so that the child can be a detached and freestanding orphan. And while orphanage and institutional care can be dire places, Bartholet’s imagery and narrative leaves no space for children and caretakers to inhabit what ethnic studies scholar Y  n L   Espiritu has termed “the politics of living.” For L   Espiritu, who is thinking in the context of refugees, the politics of living centers “everyday forms of human experience and adaptation” and considers “how do refugees imagine and build a home—a refuge in the midst of confinement?”⁸⁷ I would add to this, How do orphans (if they’re orphans at all) imagine and build a home in the midst of an institution like an orphanage? This is not to romanticize orphanages because they are problematic, can be corrupt, and often contribute to the problem.⁸⁸ Rather, it is to highlight how transnational adoption and human rights discourse do not allow “orphans” to be subjects who might eventually assert their agency through acts of care, love, labor, resistance, memory, and survival.⁸⁹ Instead, they can only be understood as abject racial objects of rescue whose only chance at full life is through transnational adoption. In other words, why is it that “universal subject” can only be universal in the geography of the United States and through adoption by a White family? Why not imagine, support, and enact policies that would enable children and families to thrive where their families and communities already exist?

The dramatic decline in transnational adoption does not necessarily represent a turn in social beliefs about adoption—that is, that transnational adoptions might be unethical. Historically, the adoption industry has merely waited for a new market (country) to open, thereby providing more opportunities to engage in unethical practices inherent in the global exchange of capital and human beings. This time, it may need to wait longer than usual. The decline has shown the ways that money played a role in the transnational adoption industry. Agencies have chosen to shut down programs because it is too costly to be accredited.⁹⁰ This shift is being represented as inevitable harm. Bartholet, again as a representative voice who is always cited in news stories about adoption, stated: “That drop-off represents the tens of thousands of kids every year who used to get loving, nurturing homes and now aren’t getting them. I think it’s rank hypocrisy to talk as if these [restrictions on adoptions] are justified in terms of the child’s best interest.”⁹¹ For Bartholet the idea of decreased transnational adoption can only mean one thing—harm—rather than recognition that many sending countries have created new social support and infrastructure to facilitate domestic adoptions. Throughout the 2010s mainstream media reported on this decline. One such article ended with a quote from Jay, an adoptive parent, that rehearsed the opposite future narrative: “Those of us who have seen the conditions in orphanages abroad know what’s at stake here. The difference between a family and an institution for many children is literally the difference between life and death.”⁹²

I conclude this chapter with a caution about domestic adoption. Although for many—on all sides of the debate—domestic adoption is a better option than transnational adoption, the former does not come without its own problems. The U.S. Supreme Court’s overturning of *Roe v. Wade* in 2022 and subsequent claims by Justice Samuel Alito and other adoption supporters that adoption is a preferred alternative to abortion highlights how adoption has been deployed by many Christians.⁹³ Despite the “compassionate conservative” Christian adoption movement that has centered orphan care, the push by Christian antiabortion activists (sometimes who are one-in-the-same with the former) for forced birth, relinquishment, and ultimately adoption in the United States cannot be detached from larger efforts to control gender, sexuality, and morality through the punishment of “immoral” and “sinful” sexual activity.⁹⁴ Similar to repeated Christian civilization projects, adoption has become an avenue to Christianize children who would otherwise be terminated during pregnancy or be raised by presumptively non-Christian parents of disrepute—or as journalist Kathryn Joyce has stated, Christian adoption is “effectively saving [orphans] twice.”⁹⁵

The issues that families in other countries are facing are similar to the issues that parents, and especially poor, single mothers (of color), face in the United States: lack of financial and social support to care for their own children. Thus, while the shift to domestic adoption in historically sending countries is viewed as promising by many, others argue that we must reimagine care all together. Chapter 5 explores how race and the law intersect with the adoption of Native American children.