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**Children as Bearers of Culture: How Authorities Interpret Law Protecting Culture in  
International Adoption**

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## ABSTRACT

How is culture protected in transnational and transracial adoption? Through the examination of international, national and local laws and policies, I look at how culture is at once a global, national, racial, and individual attribute and at what aspects of these varying definitions of culture are deemed so important by adoption authorities that they are protected through policy. A content analysis of international conventions, the policies of China, Russia, Guatemala, and Native American tribes as sending countries, and the procedures of adoption agencies shows how global ideas of culture are reinterpreted to have specific meanings. I found that international laws use global ideas of culture to protect the cultural identity of individual children, national laws protect national cultural ideals, and the local adoption agencies protect nationalized, racialized, or individualized aspects of culture. This analysis also shows how using these varying aspects of culture when trying to protect children's culture can generalize ideas of culture and exclude protection of subcultures that a child may belong to within these national or racial categories. How adoption authorities include cultural provisions in policy show what aspects of culture are valued enough to protect and can in turn show how children are viewed. The different laws protect and give meaning to children as individuals, members of families, and representatives of nations and races.

Between 1999 and 2015 more than 261,000 children have been adopted internationally to the United States (U.S Department of State 2016). Thousands of international adoptions take place each year and increasingly the rights of children are being considered in these adoptions (Boyle 2009). With children's rights come questions about exactly what rights are due to individuals. Sending countries have regulations for their adoptions and increasingly these policies call for fostering some kind of connection between child and their origins. Between the conversation about increased children's rights and a call for increased ties to a child's origin comes the idea of culture as both a right and a way to connect a child to its heritage.

Culture has only recently become a part of the transnational and transracial adoption conversation and process and, as an element in these adoptions, it is not often explicitly stated. However, protection of culture can be seen in various, less explicit ways through the laws and policies concerning transnational and transracial adoption. International adoption has become what Tomlinson describes as a globalized process (Tomlinson 1999a) and laws and policies with provisions for culture can be found at every level of the adoption process, including the international, national, and local agency levels. At each of these levels, the policies and laws concerning culture address a general idea of global culture. Sending and receiving countries, as well as adoption agencies then reinterpret those universally perceived values in such ways that they can include provisions more specific to individual cultural ideas. At each level these reinterpretations of globalized cultural aspects are expressed differently to address and protect different aspects and meanings of culture.

Looking at what aspects of culture are put into, and protected by, law and procedure, rather than how cultural socialization is practiced by families, can provide a deep look into what both global society, as well as national societies, deem important about culture. Concrete laws

and processes actualize cultural transmission, and take it from being an idea that American adoptive parents think about, to actions they take or requirements they must meet. To understand how these policies reflect cultural ideas, it is necessary to closely examine individual laws and policies within the adoption process. These laws and procedures enter the adoption process at several levels including international treaties, laws of sending countries, laws of receiving countries, and adoption agency practices. Law can be seen as a source of identity for individuals and nations (Boyle and Meyer 1998) and the laws at each level of adoption authority show this expression of identity. International treaties express what ideas concerning adoption and culture are valued on a more global level. Laws of sending countries show what specific aspects of national culture that the country wants to maintain in the child's life away from their origins. Laws of receiving countries allow for nations to express their multi-culturalism. Lastly, practices of adoption agencies show what cultural ideas are encouraged for local families to maintain in their adopted child. However, within these policies the focus on a larger national or racial identity often does not leave room for protection of subcultural identities found within these broader identities.

In this study I examine the policies and procedures concerning adoption from China, Russia, Guatemala, and Native American tribes all going to the United States. I look at these nations' involvement in international treaties concerning adoption and how those treaties protect culture. I also examine each of the sending countries' policies and how those reflect the culture of the nation as well as broader, global ideas of culture. Lastly, I look at how the local, U.S. adoption agency protects a child's culture through advice to parents. The examination of these laws and policies seeks to answer how culture is at once a global, national, racial and individual attribute and what aspects of these varying definitions of culture are deemed so important by the

different levels of authority that they protect them through safeguards in policy. This understanding of how culture is protected in adoption should in turn further our understanding of what aspects of culture are important as well as how this informs the ways children are seen globally and nationally.

## THEORY

Due to recent changes in the focus of human rights, children are now at the center of human rights discourse. Boyle says, that with an increased look on human rights in the context of individuals, rather than families or nations, it is now possible to look at children as individuals rather than as parts of a family or state (Boyle and Kim 2009: 456). Before this change in children's human rights, adopted children were simply part of the adoptive family or adoptive country, without being considered as individuals within those larger groups. With the increased individualization of children, the value placed on protecting them has also increased. With a new focus in discourse on human rights that allows children to play a distinct role, so too can they play a role in the discussion surrounding culture. In fact, Boyle and Kim go on to say that the Convention on the Rights of the Child (CRC), one of the most significant child rights conventions, put on by the United Nations in 1989, is unique in human rights conventions because it includes "both civil/political rights *and* social/economic/cultural rights" (Boyle and Kim 2009: 457). When looking at laws and policies concerning culture, conventions for children prove particularly useful, as there is a stronger consensus to provide social, economic and cultural rights for children than there is a consensus to provide them for adults (Boyle and Kim 2009: 458). Children are now seen as a population whose rights are in greater need of protection than those of adults.

This consensus to provide protection of human rights for children is a result of the globalization of both law and culture. Tomlinson writes that there is an idea that global connectivity implies that “the world is becoming, for the first time in history, a single social and cultural setting” (Tomlinson 1999a: 10). He describes Roland Robertson’s idea that globalization is the increased interaction between individuals, national societies, the “world system of societies”, and humankind (Tomlinson 1999a: 11). According to this, transnational adoption is a globalized process as it involves interaction of almost every level. Adoption is a globalized process in that it involves international treaties which represent the world system of societies, national laws, and individual families.

Tomlinson goes on to describe the idea that culture is being globalized and that a ‘world culture’ is the networking and integration of cultural practices and ideals from around the world (Tomlinson 1999a: 71). Since international adoption is a process that spans multiple nations and cultures, it is easy to imagine that any laws that speak to cultural maintenance for adopted children would reflect cultural ideals from this universally accepted global culture rather than specific ideals of individual cultures. This overarching global culture at once emphasizes the rights of individuals and celebrates individual diversity while simultaneously deemphasizing distinctions between national and societal cultural ideas. The generality of global culture leaves room for reinterpretation at every level of adoption authority, allowing the different authorities to choose which aspects of culture to protect.

In international adoption, the closest institution to a global authority is the United Nations which has been the base of several international treaties concerning adoption and the protection of children within this process. As a Western institution, it is clear that the global ideas of culture are based upon Western culture. Tomlinson writes that globalization is “simply the global

extension of *Western* culture” including such cultural values as human rights, though valuing children’s rights is still fairly new even in the western context (Tomlinson 1999b: 23). The idea of globalized culture is often opposed on this basis and that it is the West illegitimately “masquerading as the universal” (Tomlinson 1999a: 67). In this sense, any cultural maintenance provided for internationally is at once global culture and, in actuality, Western culture. Since ideas of children’s rights as well as cultural rights are fairly new in global culture it becomes clear that these ideas are specifically new to Western culture.

Law is connected to the idea of globalization, cultural or otherwise. Boyle and Meyer write that “[l]aw is important for its linkage to perceived universal principles and as a source of identity for individuals and, importantly, nationstates” (Boyle and Meyer 1998: 213). Law is connected to ideas of globalization in that it makes concrete what is and what is not a part of global ideals and values. In the case of international adoption, whatever is put into law concerning culture in adoption is at once a broad agreement with universal principles of culture and a way to protect pieces of individual cultures. The laws of nation states examined in this study do just this. They are based on universal principles while including provisions that reflect the nation’s unique cultural identity. What individual nations put into law helps them simultaneously conform to these universal principles and formalize their own cultural identity as nations. “The organization of legal systems and laws themselves are remarkably similar around the world despite much local cultural and material variation. This suggests that overarching principles are prompting conformity while local differences are creating relatively small variations” (Boyle and Meyer 1998: 218). This is reflected in international adoption laws which often look similar from different sending cultures with only minor variations that show their cultural distinctions. The cultural aspects that are maintained and protected in national laws



concerning international adoption reflect the perceived universal principles of culture. The generality of global principles allows for varying cultural distinctions and definitions of what cultural ideas are important to maintain. Law legitimizes these variances and provides a means as to how these varying ways of protecting and maintaining a child's culture of origin are put into practice at the international and national level.

Protecting a child's culture of origin is fundamentally part of protecting the rights of a child. The act of protecting children through law and policy is different from the vantage point of differing parties within the adoption process and thus the different parties protect children from different things. Internationally, the basic rights of children are the focus of protection. Sending countries are protecting children from families or individuals who cannot properly take care of them. Receiving countries protect children from being wrongfully removed from their families. Adoption agencies protect children from not being raised to be resilient and have a strong sense of self. Overall the cultural provisions within adoption policies show the distinct ways in which different parties aim to protect children who are being adopted outside of their culture.

So what is the culture that is being protected? Culture is a concept that has been defined in many ways, some of which are conflicting (Ray 2001, Spillman 2002). William Ray writes that the idea culture is paradoxical, at once connoting autonomy and difference and sameness and conformity. It is a way to conceptualize both the identity of the individual and that of the collective (Ray 2001). There are several ways in which culture can be understood. It can be understood as an attribute of the individual (Spillman 2002), an attribute of a collective (Spillman 2002), or an attribute of a national society (Schudson 1994). As an individual attribute, culture can become racialized and be based upon aspects inherent to the individual or be based upon how the individual draws upon available meanings in any given context (Spillman 2002).

As an attribute of a collective, culture can be used to connect members of a group or to distinguish individuals from groups. Lastly, as an attribute of a national society, culture can act as a national legacy that is preserved by the government of a nation-state. The different levels of adoption authorities are attempting to protect culture, but in doing so are using different definitions of what culture is. In fact, their policies reflect that even within these levels, the policies in place protect different ideas of what culture is and what parts need protection. For example, adoption agencies give suggestions related to culture as both an individual or racial trait, giving suggestions having to do with the child's ethnic heritage, and as an attribute of national society, making cultural suggestions based upon the child's national origin.

## RESEARCH DESIGN

To understand how cultural protection works in the global system of international adoption requires a multilevel analysis that includes international law, policies of sending and receiving countries, and practices of adoption agencies. I conducted this research by doing content analysis of laws from these different levels to form case studies of adoption from three countries, China, Russia, and Guatemala, and adoption of Native American children. I have chosen these three countries because they have all at some point in recent history been very common countries for Americans to adopt children from. The laws and policies concerning adoptions put in place by both these sending countries, and the U.S. as a receiving nation, are therefore fairly comprehensive. I have chosen to include adoption of Native Americans as a fourth case study because, despite happening in the United States, the policies surrounding these adoptions have very strict and specific provisions concerning the maintenance of the child's culture of origin which provide an interesting basis of comparison when looking at the policies

from other nations. Another reason for choosing these four sending cultures is that they represent distinct areas of the globe and have distinct cultures from one another.

Additionally, each of these countries have populations of various races from each other, as well as various races within each country due to ethnic diversity. With these racial differences, one can expect children from these countries to have varying physical characteristics. One would expect a child adopted from China to have Asian physical characteristics, a child from Guatemala, to look Hispanic, a Native-American child to have some Native American physical attributes and a child from Russia to appear white though this is not always the case.

The final reason for choosing these nations as case studies is that they all show different affiliations with the Hague Adoption Convention. China is recognized by the United States as a convention country, Russia is not a convention country, and Guatemala is a convention country that is not recognized by the U.S. (HCCH Status Table 2016, travel.state.gov 2013). The analysis of the Hague convention does not apply to the case study of Native American adoptions, as they are considered domestic adoptions.

These case studies are based primarily on documentation of policies and procedures put in place for American parents adopting from these different countries and cultures as well as international treaties concerning adoption and children's rights. These policies are the those currently in place or those last in place before adoptions of children from a certain country, such as Russia, ceased. This study also includes information that American adoption agencies give to adopting parents concerning culture when adopting these children. This information was collected from adoption agency websites. I chose to include any information agencies put on their websites concerning culture or information giving advice to parents adopting transracially, transnationally, or transculturally. As there is very little to actually force parents teach their child

about their culture of origin, these laws will show what points are so important that they are enforced with legal backing, or at least strongly encouraged by agencies which are, to parents, the most accessible authority in the adoption process.

Looking at culture keeping from this broader standpoint rather than just looking at what individual families do also provides a broader view of what is important in culture. This unit of analysis allows us to see how global and national culture are transmitted through international treaties, nations, and local agencies. What is deemed important enough to be put in law or policy at the international or national level shows what cultural aspects are expected to push beyond national borders to survive in individuals who leave the boundaries of their home culture. The culture that is expected to last even when an individual is surrounded by a different culture cannot be shown through individual families and must be looked at from a perspective that reflects the attitudes of entire cultures and societies, which can be found solidified in laws and policies.

## INTERNATIONAL LAWS AND TREATIES

There are two international treaties that are central to the current transnational adoption process. These are the Convention on the Rights of the Child (CRC) and the Hague Adoption Convention. The primary difference between these two conventions is that the CRC is a human rights convention while the Hague Adoption Convention is what Sara Dillon calls a “best interests convention” (Dillon 2003: 208). These conventions are primarily to protect the rights of children, in general or in the adoption process, and only touch on ideas of culture in a broad way so as to be inclusive of the many societies involved in these treaties. In this way the two treaties protect culture as an attribute of an individual, with the purpose of protecting culture for the

child's sake. The CRC and the Hague convention bring global culture, and the idea of protecting culture, into the adoption process.

### *The Convention on the Rights of the Child*

The Convention on the Rights of the Child (CRC) is an international agreement which came into effect in 1990. This agreement legally enforces the economic, political, cultural, and civil rights of every child regardless of race, religion, or social status. Whether or not a country has signed and ratified this treaty shows, to some extent, that country's level of acceptance of global culture and globalized ideas of children's rights. Of the three sending nations being examined in this paper, Russia, China, and Guatemala, all signed and ratified this treaty within two years of it being enacted. In fact, the U.S is the only country in this study that has signed but not ratified the convention, showing its agreement with this view of what is globally considered important for the rights of children but not showing its compliance with these ideals.

This convention has a section on children's rights specifically for when children cannot be in their family environment. This section includes adoption as one potential solution and includes a fairly minimal provision for culture. Article 20 states that for children who cannot be in their family environment and who must be given protection from the state, "[w]hen considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (CRC 1989). By not giving any specifics about what aspects of culture the child has a right to, the convention does not exclude any particular culture or society but it also does not protect anything specific. It lists culture alongside language, ethnicity, and religion, showing that, according to this convention, those aspects are not included in culture, begging the question of what is. However,

by leaving culture with no definition, the CRC leaves any application of this article up to individual nations. Additionally, the phrase “desirability of continuity” concerning a child's upbringing is nonspecific, again allowing any country to interpret this as they will whether that be as continuity from the child's life previously or a desired continuity in the child's future. Lastly, by saying that “due regard shall be paid” the treaty declines to truly enforce any action relating to cultural maintenance in adoption and again leaves the degree to which a country complies with this article entirely up to each individual country to determine.

Article 21 of the CRC includes more strict regulations of adoption in order to protect the child's interests first and foremost in the process of any international adoptions, but does not include any cultural provisions. However, there is one other article within the CRC that protects the child's identity. Article 8 states that “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations” (CRC 1989). Though Article 8 does not specifically mention culture, “nationality, name, and family relations” can be considered cultural aspects. In this way the CRC preserves culture in its effort to preserve identity, but it does so in a fairly open ended way. This convention, as an international treaty, mentions culture in a vague way that allows it to fit with the broad, nonspecific ideas of global culture that can be accepted by a wide range of varying cultures and nations. This convention, as a convention formalized by the United Nations, expresses Western ideas of what culture and identity are and what rights are important. Additionally, Smolin notes that the United States, having received nearly half of all internationally adopted children, “has a predominant influence on the entire system” and has “played a significant role in the development of international law governing intercountry adoption, including both the Convention on the Rights of the Child (CRC) and the Hague Adoption Convention” (Smolin 2013: 82). The

influence from the U.S and the UN have shaped these international treaties, which have formed our idea of what global culture is and what is worthy of being included in globalized law.

### *The Hague Convention on Adoption*

The Hague Adoption Convention focuses on protecting the interests of children, birth parents, and adoptive parents in international adoptions. It provides a formal recognition of international adoptions and ensures that those international adoptions between convention countries, are legally recognized in other countries that are part of the treaty. The United States has ratified the Hague convention and for U.S. parents to adopt internationally, the child they are adopting must be determined to fit either the definition of a convention adoptee or the U.S. definition of orphan (Adopt 2015). This convention, like the CRC, only includes very general provisions for cultural maintenance in adoption so that it can be universally accepted. Article 16 of the convention requires that if a child is deemed eligible for adoption by the country of origin, the sending country itself will “give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background” (HCCH 1993). Like the CRC, this convention addresses culture only in the broadest sense and, by using the phrase “give due consideration”, does not strongly enforce that any specific action be taken. This article, unlike the one from the CRC drops language from the list of things to be given consideration when placing a child. This shows that in the Hague Convention, language is not considered significant to culture or something that a child has a right to. This article also differs from Article 20 of the CRC in that the CRC addresses that due regard be paid to these cultural aspects during the adoption process, while the Convention on Adoption states that the country of origin is responsible for this consideration of cultural aspects of the child's identity. This difference can be explained by the

fact that the CRC is presenting what rights are due to a child during the adoption process *in general* while the Adoption Convention more specifically states *who* must ensure those rights in the process. In this case, the sending country is responsible for ensuring those rights as they are determining whether international adoption is a justifiable option. Whether a country is part of one of these agreements shows that particular culture's openness to accepting and instituting the Western ideas that compose global culture and global and international law as it is shown through the lens of children's rights.

The Indian Child Welfare Act (ICWA), which is a domestic law in the United States, shares some of the principles presented in these international treaties. For example, when determining a placement for the child, preference is given to extended family members, other members of the child's tribe, or other Indian families (NILL 2016). This, at once reflects the tribal culture of seeking to maintain some control over their tribe and their rights as nations within the United States, as well as the principles for continuing desirable aspects of a child's life and giving consideration to their previous upbringing. In this way the laws concerning the adoption specifically of Native American children reflects international treaties concerning transnational adoption. However, unlike the two United Nations Treaties, the ICWA, by giving preference to members within the child's culture, is protecting culture as an attribute of, and for the sake of, the collective group.

The varying statuses of each of the countries in this study, in regards to the two United Nations treaties, reflect the countries' varying degrees of acceptance of the globalized culture surrounding children's rights and international adoption. Russia as a non-Hague Convention country is showing its national cultural desire to maintain control and authority over its own adoption process rather than adhering to an international standard. Because they have ratified the



CRC it is clear that, despite this, they agree with the globally accepted ideas of standards for children's rights.

The U.S. which has not ratified the CRC and thus has not formally conformed to globalized law on children's rights has had a strong reaction Russia not signing the Hague convention. After the U.S. signed the Hague convention in 2008 (HCCH 2016), adoptions from Russia to the U.S. decreased by several hundred each year until 2013 when Russian President Putin's ban on adoptions to the U.S. went into effect (U.S. Department of State 2016). This trend reflects both cultural tensions between the two nations as well as the importance the U.S. places on conformity of other countries to what it has accepted concerning international relations. Russia, having not ratified the Hague convention, became a sending country deemed unsuitable for the U.S. to adopt from.

China, having ratified both the CRC and the Hague Convention (HCCH 2016, UN Treaty Collection 2016) is showing its openness to positive international relations, as well as an agreement with global cultural views of children's rights. With these two treaties, China is showing its willingness to cooperate with United Nations countries and to foster positive relations with primarily Western nations by conforming to Western influenced global values. U.S. adoptions from China have remained steady since the adoption of the Hague convention (U.S. Department of State 2016) which again shows the U.S.'s cultural attitude towards international conformity with its own standards.

Guatemala is perhaps the most interesting case. It has ratified the CRC and the Hague Convention and is technically a Hague Convention country; however, five countries have objected to Guatemala being part of the Hague Convention. The U.S., though it has not formally objected, does not recognize Guatemala's status as a Convention country (UN Treaty Collection

2016, HCCH 2016). The U.S., as well as the other objecting countries, has determined that Guatemala has not fully implemented legislation that make it fit the convention requirements. Thus, the U.S. is not a Convention partner with Guatemala. Guatemala's ratification of these two treaties reflects the same cultural aspects as China in regards to cooperation with globalized, Western views and ideals. However, by ratifying the Hague convention and not taking actions to implement the proper legislation it is showing the cultural desire for positive international relations and cooperation like China, but a lack of concern for the actual rights of the child. The country wishes to be recognized as a treaty country without actually changing its own adoption policies. As with Russia, since the U.S. has adopted the Hague Convention and deemed Guatemala ineligible to be a partner, adoptions to the U.S. have decreased each year and are now at zero (US State Department 2016) this time showing the United States' actual concern for children's and parent's rights and not just their desire for conformity.

Overall, international laws include provisions for the continuity of a child's identity and culture generally, with little explicit information on what culture and identity include. The treaties point more to ideas of nationality as sources of identity and culture but the protections in place are based on the fact that culture is something an individual has and deserves. In this way the international treaties protect culture for children generally, but put the responsibility of specific cultural protection in the hands of nations. Individual nations are obligated to protect their children and actualize their response to this obligation with their specific national laws concerning adoption to other countries.

## INDIVIDUAL COUNTRY ADOPTION POLICIES

Each sending country has its own policies for transnational and transracial adoption. These policies primarily have to do with the process of adopting a child and the requirements that adoptive parents must meet to adopt a child from that country. These policies do not spell out specific ways to maintain the child's culture of origin but they do reflect several different aspects deemed important in globalized culture that in turn, reflect more specific aspects of that nation's culture. These policies, by showing concern for globally important cultural ideals, serve to legitimize the sending country as a part of the international adoption process. In this way countries treat culture as an attribute of the nation-state rather than as an attribute of the individual. The protections put in place by specific countries do not protect culture for the sake of preserving the child's identity but rather end up reaffirming aspects of the identity of the nation-state itself. By including globally accepted ideas for what is important in a child's life and family, nations use their own policies to show that they are acceptable and legitimate pieces of the process. Two aspects, globally considered important, that national policies touch on and reflect their own specific cultural ideals with, are health and family ideals.

### *Health Policies*

Both China and Russia have specific requirements for adoptive parents concerning health that at once reflect the globalized cultural ideals of health, and more specific national ideals. Included in China's extensive health requirements for parents is a rule that adoptive parents cannot have a body mass index over 40 (Skousen 2015). A 40 on the BMI scale is classified as obese. While obesity can cause severe health problems that could interfere with raising a child, this requirement is unique to Chinese adoptive policy. This policy at once reflects globalized ideals and concern for fitness of the family, and China's particular health and weight

standards and ideals. By having protections for cultural health standards, China is not protecting the child's individual culture or identity but rather strengthening its own national cultural position on health ideals.

Russia too, has fairly extensive health requirements for adoptive parents. Russia specifically has a policy stating that individuals with drug or alcohol addictions may not adopt a child from Russia (Adopt 2015). As with China's BMI policy, this seems like a standard health policy, reflecting globalized ideals for healthy, safe families. While it seems obvious that a parent with a drug or alcohol problem should not be able to adopt a child, the fact that Russia has made a law specifically disqualifying such individuals reflects an aspect of health concern specific to Russian culture and society. Russia is known for having a large proportion of citizens with alcohol and narcotics addictions (McKee 1999), and by putting this requirement into their adoption policy they are allowing the adoption policy to reflect the culture of the country. This reflection is done by acknowledging a trend and instead of passing on this culture to children being sent out of the country, the policy is ensuring that this particular aspect of Russian culture is not being transmitted to adopted children. Again, this does not truly protect the individual identity of Russian children but instead proves that the nation is aware of its own cultural issues.

Both of these policies from China and Russia treat elements of health as socially determined by the characteristics of the adoptive, non-genetically related family. Like China, Russia has a policy that reflects both an aspect of its own specific national health culture and the accepted globalized culture of health. China's policy is to pass on standards of health and weight present in the country to the adopted child's family, while Russia's policy is to ensure that a common and concerning health trait is not passed on. These policies both show national concern

about health and how the governments of these countries want to protect their children but how they also want to project their own image.

### *Family Ideals and Composition*

Ideals about the composition of the family are an aspect of global culture that varies greatly across cultures. These sending nations all have policies concerning family composition that differ with the varying ideals of the specific cultures though many are overlapping or similar. China, Russia, and Guatemala all have age and marriage requirements for adoptive parents that are fairly standard and seen in the international adoption policies of several countries. However, these three countries all include some policies that are more specific. Native American laws as presented in the ICWA also have provisions that take family composition into account.

As mentioned before, the ICWA gives preference to a child's extended family members, other members of the tribe, and other Indian families when placing the child (NILL 2016). This policy is the only one from these four cases that presents the idea that adoptive parents should be culturally related to the child thus treating culture as something that comes out of a collective. In contrast, other sending countries seek to maintain their family values through requirements for adoptive parents from other cultures that make those adoptive families fit in with the sending country's values. By creating laws that make adoptive families fit into the norms and values of the sending culture, these national policies continue to treat culture as something born out of the nation-state.

China's policy includes a requirement that any prospective parents may not have been divorced more than two times (Skousen 2016). This provision reflects both a desire for a stable

home for the child, as well as a way to ensure that the American family fits with socially acceptable Chinese cultural norms concerning divorce. This limitation on the number of divorces allowed, reflects more traditional Chinese marriage standards (Palmer 2007). At the same time, the fact that the limitation is fairly lenient, in that the policy still allows for two divorces, reflects the more recent rise in divorce rates across China (Palmer 2007).

Russia too has policies for maintaining Russian family and cultural values in internationally adopting families. Though adoptions from Russia to the U.S. had already ceased, in 2013 Putin enacted a ban on adoption of Russian children to all same sex couple or to singles from countries that allow same sex marriage, as part of the Anti-propaganda Law (CNN 2014, State.gov 2013, Engle 2013). This law expresses Russia's negative attitudes towards homosexuality by banning all gay pride parades and other such public expressions. By not allowing same sex couples to adopt and even preventing Russian children from growing up in a country that allows gay marriage, Russia is ensuring that their adopted children will grow up in families composed the same way as the traditional Russian family.

Guatemala has similarly negative feelings towards homosexuality and it too, is shown in their requirements for parents adopting internationally. According to the U.S. State Department's report on human rights practices for Guatemala, "The country's antidiscrimination laws do not apply to LGBT individuals" (U.S. Department of State 2016) showing the country's intolerance towards homosexuality. Guatemala does not allow homosexual couples or individuals to adopt. All single prospective parents must sign a statement that they are not homosexual and are not involved in lesbian or gay relationships (International Adoption Help 2016). This parental requirement is similar to Russia's though on a more individual basis instead of banning adoptions to certain more tolerant countries. By limiting adoption based on sexual orientation,

Guatemala, like Russia, is ensuring their children will be brought up in homes deemed acceptable by their national social standards.

It is important to note that these health and family composition policies were not outwardly enacted as means to maintain culture. These policies do not state that they are for the protection of adopted children's culture, rather they are a means by which we can infer that culture is included in adoption law even when not overtly stated. Though these policies were not enacted as a means to maintain culture, they do effectively extend pieces of culture from the nation to the child. This lack of intentionality again shows that these laws are not in place with the purpose of protecting an individual's right to culture and identity but are instead more for the identity of the sending nation and its image on the international stage.

#### AUTHORITY IN THE ADOPTION PROCESS

The amount of authority that a country or culture claims over the adoption process is something that in part reflects the claim a country has over the child and in part a claim of power in an international arena. Authority over the adoption process can be shown through the travel requirements each country has for adopting parents. The level of involvement of the country in the legal process also reflects the strength of ties that the country wants to maintain with the child. This again protects culture more for the sake of the nation than for the sake of the adopted children as individuals.

#### *Travel Requirements*

Each of these countries has differing travel requirements that reflect the authority that the sending culture has over the adoption process. The travel requirements themselves vary across

the sending nations, as do the reasons for the travel. The different countries emphasize different reasons for their travel requirements ranging from practicality during the procedure to introducing the parents to the child's culture. These travel requirements all reflect the amount of authority that the sending country claims over the adoption process.

Native American adoptions, though not requiring travel since they are domestic, are completely under the authority of the tribe. Under the Indian Child Welfare Act (ICWA), tribal courts are given authority over any child custody cases involving a child who is a tribal member or who is eligible for such membership. The authority that tribes have over adoption serves to both legitimize the tribe as a governing entity and, as with Russia, to legitimize the tribe's ties to the child. While tribes maintain complete authority over the adoption process through the ICWA which is under U.S law, sending countries formally retain even more authority as sovereign states with no higher authority.

Russia requires that adopting parents take two trips to Russia, for several days each, to complete the adoption process. At least one parent must be present for the legal proceedings (Adopt 2015). These trips, and the fact that the procedures must take place on Russian ground, signify that the process is in the hands of the Russian government and strengthens its ties and commitment to the child.

China, like Russia, requires that parents travel to the country during the adoption process. The required trip is for parents to meet their children and finalize the adoption (Skousen 2015). However, unlike for Russia, this trip is not only for pragmatic reasons of holding the proceedings in their own courts. The required travel includes some touring of cities and introducing parents to Chinese language and culture. China's travel requirement is only partially to claim authority over



the adoption process and is in fact more for the purpose of strengthening ties between family and child than ties between child and country.

Guatemala does not have any travel requirements for parents (International Adoption Help) showing that Guatemala does not feel the need to claim authority over the adoption process and similarly does not desire to enforce any ties that the child has to the nation.

The travel requirements of these sending nations vary with the amount of authority that the country claims over the adoption process. The travel requirements range from no required travel to multiple required trips so that an adoptive parent is present at all adoption proceedings. This authority is related to whether or not the country will consider the child a member of the society they came from after the adoption is complete.

#### *Inclusion or Exclusion*

The authority over the adoption process as well as any ties between country and child that these countries attempt to create during the adoption process are further visible in their inclusion or exclusion of the child as a member of their society once the child has left the physical boundaries of their culture.

In Native American adoption the child remains a member of the tribe and can claim their membership officially at the age of 18. The ICWA provides that upon request of a Native American adopted child who has reached the age of 18, the court that finalized that adoption must release all information concerning the child's tribal eligibility (NILL 2016). This policy provides a way for the adopted child to become a legitimate member of the culture they were born into, allowing the child to return to their culture of origin should they choose. The tribe seeks to maintain authority over the adoption and ties with the child because the child is never

fully excluded from the tribe and will hopefully become an active member upon reaching adulthood.

Russia, similarly, allows adopted children to maintain their Russian citizenship concurrently with their adopted citizenship (Walsh 2016). This again explains Russia's desire for authority over the adoption process. They claim authority because the case involves an individual, the child, whom they consider a member of their society. However, despite Russia seeking to maintain ties, during these trips there is less cultural learning involved than in the trips that China requires. This shows that while Russia does want to maintain ties with the child, their authority over the adoption process is more important than instilling a sense of Russian culture in adoptive parents.

Conversely, China and Guatemala do not allow adopted children to hold multiple citizenships. Once the child receives U.S citizenship they must renounce their Chinese or Guatemalan citizenship (Walsh 2016). The countries claim less authority over the adoption process because the children, once adopted will no longer be considered members. Rather, the children from these countries are excluded and cut off from their country of origin.

The amount of authority claimed by the sending country is directly related to whether or not the child will remain a member of the sending society. Nations that will allow the child to maintain their original citizenship or claim their position in the society will claim more authority over the adoption process than nations that will sever ties with the child once the adoption is complete.

THE LOCAL ADOPTION AGENCY

The United States, as a primary recipient of adoptees, in some ways benefits globally from transnational and transracial adoption. Dorow writes that citizenship in particular, for transnationally adopted children, holds symbolic power due to the fact that it strengthens the idea of the United States as a benevolent, welcoming, multicultural nation (Dorow 2006: 208). This idea encourages the receiving end to have provisions for culture, so as to maintain this image for the country. Adoption agencies are taking up this cause where laws and policies are lacking and providing parents with what they deem as tools for making multicultural families. By doing this the agencies affirm this positive “melting pot” image that the United States has held onto.

While agencies in the U.S. are seemingly promoting multiculturalism, they too are encouraging more universalistic ideas of culture rather than teaching families to learn about the specific cultures of their adopted children. Boyle and Meyer discuss how the integration of universal principles begins at the international and national levels but eventually these universal ideals will spread to other spheres and other actors. (Boyle and Meyer 1998). In this instance the local adoption agency level is one of the new spheres that universal cultural principles have penetrated, replacing more individual cultural principles with broader ideas of culture that are often more linked to race than nationality. Additionally, organizations with closer ties to the state are more likely to comply with normative pressure from the legal system (Edelman 1992). The adoption agency, as an organization strongly tied with national laws, is especially likely to comply with the normative features of these laws, making it even more likely to have become a sphere to which universal ideals spread.

These agencies shape the practices of how the U.S. enacts its own cultural principles and globally accepted cultural principles, not by force of law but by recommendation. Adoption agencies go beyond what is preserved or reflected in policies set internationally or by individual

countries. The agencies make direct suggestions to adopting families about how to raise their children and how best to acknowledge and preserve their child's culture. At this level, nothing that the agencies suggest is required but they encourage parents to implement their suggestions on the basis that it will foster the child's positive self-identity. One agency website states that, "the goal of the adopting family should be to maintain a connection to their child's heritage" (Kuligowski 2015). They go on to explain that the reason behind this goal is because, "it's important to know where we have been and the unique properties that make us individuals within our family as well as our community" (Kuligowski 2015). This shows identity as an attribute of an individual, highlighting Boyle and Meyer's idea that law and policy are an important source of identity for individuals (Boyle and Meyer 1998). This focus on identity as an attribute of the individual in adoption agency literature differs from the ways the ICWA discusses identity as more of a collective attribute of the tribe and its members.

Agencies such as this one often make general suggestions for parents adopting transnationally or transracially. For example, this site suggests that parents adopting internationally, "find out who's who in [their] child's birth country. Follow actors and athletes and encourage [their] child to cheer for them during special events such as the Olympics" and "[b]ring in as many toys and books as [they] can find that [their] child will relate to" (Kuligowski 2015). These suggestions are vague enough that they can apply to any culture, which allows the agencies to simulate authority on culture on a global scale. The elements of culture that are mentioned here, including sport and actors, are elements that are being considered by the agency as universally important to culture. Additionally, these aspects of culture that the agency focuses on are connecting culture and country, not leaving room for subcultures within nations. Here culture is being defined as a property of nation-states rather than

individuals. This way of looking at culture through only a global and national lens is very similar to how culture is represented in the national laws of sending countries. This knowledge of global culture is necessary in the adoption field because clients are looking for answers about such a wide variety of cultures. This globalizing allows agencies to instruct families on how to culturally socialize their child from any culture while simultaneously ignoring any unique aspects of the child's specific culture of origin.

In addition to making general suggestions, for parents adopting from different cultures, agencies and their websites often make attempts to specify more. Some websites have pages for adopting from specific countries but often these websites specify how to maintain culture by highlighting different suggestions for children based on their differing racial, ethnic backgrounds rather than national or cultural backgrounds. However, there can be many different cultures within one racial category. By listing these suggestions in racial rather than cultural groupings they are simplifying culture and generalizing it to where it can be adopted by American families in the ways that they *perceive* culture as members of the U.S.'s racialized society. The ways that agencies highlight different pieces of culture to pass on to adopted children disseminates American stereotypes of races. Food, stories, language, and holidays are all aspects of nearly every culture. There is no reason why one would be highlighted over another for any particular race other than the American perception of these races and what they mean culturally. Adoption agencies, by stressing one aspect of culture over another for different racial groupings, are giving parents license to teach their child a culture based on racial stereotypes.

One website lists methods to maintain culture for parents adopting from different ethnicities (American Adoptions 2016). For Asian children, it suggests that parents "learn more about Asian culture, including traditions, holidays and stories" (American Adoptions 2016).

Sohoni explains that even though previously in the United States “Asians were legally recognized and categorized as belonging to distinct racial and ethnic groups” they “became “racialized” as Asians not because they were recognized as racially similar, but instead because they were members of the same category of aliens ineligible for citizenship” (Sohoni 2007: 614). Here the adoption agency is using the racialized category of Asian instead of appealing to distinctive ethnic groups. For Hispanic children, the agency suggests that parents, “learn more about Hispanic traditions, including traditional food, stories and celebrations. Families adopting a Hispanic child may wish to learn to speak Spanish and raise their child in a bilingual home” (American Adoptions 2016). As with Asians, this category of ‘Hispanic’ is not inherent, rather it was a category created in the U.S. to group those from Latin America and distinguish them from white Americans (Foley 2002). The agency uses these forged categories to make their advice more wide reaching. For Native American children, the site encourages parents to “research the child's tribe of origin in order to share with the child the traditions, celebrations, dress and other tribe customs” (American Adoptions 2016). This adoption site shows a distinction in the ways they talk about Native American and other groups. They recommend that parents learn about the child’s tribe which is much more specific than learning about a race as a whole. This could be in part because the ICWA raises tribes to being cultural wholes, and discusses culture of children in this more collective way, rather than deeming it as something an individual child has (NILL 2016). Making suggestions based on racial categories implies that parents are supposed to teach culture so that their child can learn to be of a particular race. By narrowing down the global culture into racial categories these agencies are equating culture and race, but by broadening from national identity to racial category the agency is enabling itself to remain expert on culture even when it is lacking information specific to countries or subcultures within them.

This generalizing on the part of the adoption agency allows parents to adopt what they perceive to be parts of their child's culture but which are truly stereotyped aspects of the conglomeration of many cultures into one generalized "Hispanic" or "Asian" culture. This again specifies enough that the agency can participate in the adoption process on a global scale but simultaneously flattens and removes any uniqueness of the culture as it is taught to the child. It also leaves open the opportunity for parents to teach their child parts of a culture to which the child never belonged. For example, parents adopting a child from Guatemala may consider their child Hispanic and teach it to speak Spanish. Guatemala is a country comprised of many different cultures and languages. There are 26 different languages spoken in Guatemala, 24 of which are indigenous (Lewis et al. 2016). Many adoptees from Guatemala are in fact from these indigenous cultures and teaching them to speak Spanish would not actually be maintaining the child's culture of origin. This system of grouping by race when teaching about culture erases the very fundamentals of what makes a culture its own and erases the need for parents to accurately represent the child's specific culture. In this way, agencies rely on what Osagie Obasogie describes as an "unquestioned belief that race is primarily a matter of visually obvious physical features" (Obasogie 2010: 586). Additionally, this grouping erases any need to teach culture to children of the same ethnicity as the parents. These suggestions are only made for children who appear differently from the society and family they are being adopted into. Agencies are ignoring the fact that white children adopted internationally also come from different cultures than the one in which they are raised.

Adoption agencies make their advice based on racial identity or general national identity, showing that, though they encourage cultural socialization for the sake of the individual child's identity, they interpret culture as nation-state based or racially based, as determined by continent

of origin. This is again in accord with Boyle and Meyer's idea that policies are an important source of identity for both the racialized individual as well as the nation-state (Boyle and Meyer 1998). These generalized groupings speak to parents adopting from anywhere. The adoption agencies suggestions, like national policies, bolster the image of the nation's cultural identity. The agency, by giving such broad advice, gives parents the opportunity to interpret ideas of culture and choose how to implement them within their individual families. In this way agencies allow parents to reinterpret culture as an attribute of the individual, the collective, or the nation-state in much the same way that adoption authorities do at every level of the adoption process.

### *Conclusions*

In contrast to studies that examine how individual families culturally socialize children, the analysis in this paper focused on the laws and policies that initiate this socialization process. International treaties have decreed culture as something that children have a right to generally, though no specific cultural rights have been determined so as to include different views of culture held across nations. Internationally, culture is shown as an attribute of the individual, as something that is important because it is part of identity and individuality, both of which are highly valued. With this view, children deserve and have a right to culture. However, the culture that is protected on a national level, through national laws and even through adoption agencies who represent the receiving nation, is no longer part of the individual, rather it is protected as an attribute of the nation itself. The protections put in place for culture on the national level are not to protect a child's individuality and identity. Instead they serve to express, through law, the culture of the nation as a whole. These cultural protections allow the nation to project its chosen culture; the culture it wants to be known globally. It also allows nations to undermine and bury



any claims that subcultures within the countries may have to culture and to cultural connections with the children being adopted. Nations are able to claim adopted children from subgroups as representative of the nation at large.

Adoption agencies also prescribe nation-state based and racially based notions of culture and in doing so, move away from the goal of benefitting the child and work more for the benefit of the state. Though they encourage parents to take action on the basis that cultural knowledge and culture as part of an individual's identity is important, the ways in which they generalize and categorize culture racially or by country undermine this message. The reinterpretations of global culture as shown in all of the laws discussed, allow these laws to protect varying cultural aspects which can end up reproducing racialized or nationalized ideas of cultural identity while ignoring subcultural identities. While culture has been deemed something that is valued and that children have a right too, the ways that different authorities interpret cultural protection allow them to protect culture in ways that often benefit the nation over the individual.

These results, though specific to adoptions with the U.S. as the receiving country, are still valuable for understanding how culture is understood within the context of adoption. The United States is both instrumental in shaping international adoption law and is among the nations receiving the most children through international adoption each year. Therefore, while the results of this case may not be globally generalizable, the amount of adoptions to the U.S. make it a worthwhile case to understand. Due to of the prevalence of international adoptions to the U.S. it is reasonable to expect that the United States would have more cultural protections in place however, this is not the case. The U.S., like the sending nations examined, protects culture in ways that bolster its own cultural image. In this instance it is the image of the U.S. as a multicultural melting pot. Through agencies, the U.S. protects its own cultural image more than

it protects the child's individual culture. The specifics of a child's culture are less important than the fact that the agencies, as representatives of the country, show that they encourage cultural learning. The investigation of culture and policy can lead to a better understanding of cultural identity construction and how that process is influenced by global ideals and not just by an individual's upbringing. It can also help us to understand how culture is viewed and treated internationally, by other nations, and within the United States.

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