Selected References and Resources
Literature Survey – Law Review Articles

This survey covers selected articles published in major law reviews between January 1, 1969 and May 31, 2003 and addressing issues relevant to CAPS' mission.[1]

I. DOMESTIC ISSUES OF INTEREST

GENERAL DISCUSSION OF ADOPTION ISSUES IN THE UNITED STATES AND/OR UNDER U.S. LAW

Homer H. Clark, Jr. in "Children And The Constitution" (*1992 U. Ill. L. Rev. 1*) discusses the protection provided to children by the United States Constitution. He discusses court decisions in a number of areas including juvenile delinquency, capital punishment, child abuse, personal jurisdiction, out-of-wedlock births, adoption, education, and health. With regard to adoptions, the author analyzes Supreme Court decisions and state court decisions dealing with the rights of the fathers on their children born out of wedlock and addressing the constitutionality of religious preference statutes and race matching statutes.

Nancy E. Dowd in her review of the book "Family Bonds: Adoption And The Politics Of Parenting By Elizabeth Bartholet" explores a feminist analysis of adoption *(107 Harv. L. Rev. 913, February 1994*).

Marja E. Selmann in "For The Sake Of The Child: Moving Toward Uniformity In Adoption Law" *(69 Wash. L. Rev. 841, July 1994*) examines the potential of the proposed new Uniform Adoption Act (UAA) to remedy the numerous differences between state laws on adoptions and the resulting forum shopping. The author analyzes the reasons for the complexity of adoption law and discusses in particular the competing interests that must be balanced in adoption cases. The author then examines present state laws and the proposed UAA provisions on three specific issues: (1) the procedure for obtaining consent and the time period to revoke consent, (2) race-matching policies, and (3) open adoption. Finally, the author advocates for the adoption by the U.S. states of some or all of the UAA in order to reduce forum shopping and simplify the procedures for interstate adoptions.

---

[1] This survey was based on a search of the Lexis-Nexis database of law review articles using the following combinations of keywords (selected on the basis of CAPS' mission) and for all available dates: international adoption/child; intercountry adoption/child; international adoption/policy; international adoption/Hague convention; intercountry adoption/Hague convention; transracial adoption; adoption/legislative developments; adoption/biological father rights; international adoption/Romania; international adoption/European Union; and intercountry adoption/European Union.

Naomi R. Cahn in "Family Issue(s)" (*61 U. Chi. L. Rev. 325, Winter, 1994*) writes a review of Elizabeth Bartholet's book "Family Bonds: Adoption and the Politics of Parenting. Elizabeth Bartholet (Houghton Mifflin, 1993)).

Charla Murakami in "Symposium: The Evolution & Impact Of Jewish Law: Parent-Child Relations: A Comparison Of Jewish And California Law" (*1 U.C. Davis J. Int'l L. & Pol'y 107, Winter, 1995*) compares various aspects of Jewish and California law, including adoptions.

Gilbert Holmes in "The Extended Family System In The Black Community: A Child-Centered Model For Adoption Policy" (*68 Temple L. Rev. 1649 Winter, 1995*) argues that the simple nuclear family model in adoption laws, pursuant to which the adoptive family replaces the biological family, is ill-suited to the best interest of the child because it ignores the adopted child's ties to his or her birth family and it ignores the complexity of adopted children's families. He proposes that adoption laws look to models that follow a complex family structure and suggests that the Black extended family systems in the United States are complex family structures that can provide analytical guidance for adoption policy. The author proposes that, on the basis of a child-centered policy, adoption laws should facilitate adopted children's contacts with both their adoptive and birth families by (1) giving emancipated adopted children unrestricted access to their full adoption records; (2) enforcing post-adoption contact agreements between adoptive and birth parents; and (3) allowing un-emancipated adopted children to contact their birth family if it is in the adopted children's best interests.

Susan A. Munson in "Independent Adoption: In Whose Best Interest?" (*26 Seton Hall L. Rev. 803, 1996*) compares agency adoptions and independent adoptions, with particular emphasis on the situation in New Jersey.

Carol Sanger in "Separating From Children" (*96 Colum. L. Rev. 375, March, 1996*) examines various circumstances in which a mother is separated from her child, including adoption, surrogacy, mother employment. She discusses adoptions in the particular context of the birth mother's decision to place her child up for adoption. She analyzes the issue from a legal and social perspective, both historically and (looking back at the 1930s and the 1950s) and in modern days. Finally, she discusses a current trend of evolution in adoptions, the development of open adoptions (where links may be maintained with the birth family) as opposed to closed adoptions.

Eric C. Czerwinski in "Adoption Law: Congratulations! For Now - Current Law, the Revised Uniform Adoption Act, and Final Adoptions" (*49 Okla. L. Rev. 323 Summer, 1996*) reviews the Oklahoma Uniform Adoption Act, case law and the provisions of the revised Uniform Adoption Act on (i) the best interest of the child, (ii) consent to the termination of parental rights, (iii) notification obligations, in particular to the unwed biological father and (iv) racial preferences. The author also discusses the strengths and weaknesses of the revised Uniform Adoption Act and proposes changes.

Greg Waller in "When The Rules Don't Fit The Game: Application Of The Uniform Child Custody Jurisdiction Act And The Parental Kidnapping Prevention Act To Interstate Adoption Proceedings" (*Harv. J. on Legis. 271, Winter, 1996)* examines the consequences of the application by courts of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Federal Parental Kidnapping Prevention Act (PKPA), two statutes originally designed to address interstate abductions of children, to solve jurisdictional issues in interstate custody disputes between adoptive and biological parents. The author examines the practical differences and policy differences between adoption proceedings and the custody proceedings contemplated by the UCCJA and the PKPA and illustrates how these differences lead to undesirable results in adoption cases. The author also discusses the substantive effects of procedural choices in adoption cases where often the jurisdiction choice determines the choice of law. Finally, the author proposes amendments and recommendations designed to make jurisdictional rules specific to interstate adoption cases.

Jehnna Hanan in "The Best Interest Of The Child: Eliminating Discrimination In The Screening Of Adoptive Parents" (*27 Golden Gate U.L. Rev. 167, Spring 1997*) argues that many of the processes used by state and private agencies to screen prospective adoptive parents are discriminatory and are not in the child's best interest. After a historical review of adoption laws and their underlying policies, the author describes the current adoption process in the United States. The author then examines how the current adoption screening system violates constitutionally protected rights by considering race, age, marital status, and other similar factors. She analyzes recent legislation in California, Michigan and Maine that rejected these factors in adoption decisions. Finally, the author recommends possible solutions to improve the adoption screening process, including eliminating discriminatory factors and giving preference to prospective adoptive parents who already care for the child. Jared C. Leuck in "Foster Care and Adoption: The Best Interests of the Child in Adoption: An Article Review" (*11 J. Contemp. Legal Issues 607, 2000*) wrote a review of Jehnna Hanan's article.

Danielle Saba Donner in "The Emerging Adoption Market: Child Welfare Agencies, Private Middlemen, And "Consumer" Remedies" (*35 U. of Louisville J. of Fam. L. 473, Summer, 1996/1997*) explores conflicts of values underlying the adoption process. The author first engages in a historical review of adoption practices as child welfare acts versus "market"-based acts. She examines the market "value" of children as well as the impact of choosing an adoption agency using social workers versus relying on a private facilitator in the adoption process. The author also discusses the (then) draft of the Uniform Adoption Act. The author then analyzes how these underlying value conflicts affect "remedies" in adoptions. She examines in particular the recent emergence of the tort of "wrongful adoption" as a remedy for adoptive parents who discover an undisclosed physical or mental problem with the adopted child. The author analyzes the viability of the tort of "wrongful adoption" and the scope of liability imposed on adoption agencies and workers as the most recent manifestation of a market approach to adoption.

D. Marianne Brower Blair in "The New Oklahoma Adoption Code: A Quest to Accommodate Diverse Interests" *(33 Tulsa L.J. 177, Fall 1997*) examines the impact of

the new Adoption Code on adoptions in Oklahoma, with a particular focus on the interests of adoptees, birth and adoptive families. The author highlights the major procedural and substantive changes in the new Code, discusses the background and policy implications of these changes and addresses possible problems that may arise in the interpretation of some provisions.

Erika Lynn Kleiman in "Caring For Our Own: Why American Adoption Law and Policy Must Change" *(30 Colum. J.L. & Soc. Probs. 327, Winter 1997)* examines how American laws and policies may force many prospective adoptive parents to turn to international adoptions and suggests that these laws and policies be changed. While not arguing against international adoptions per se, the author advocates for laws and policies that will encourage Americans to adopt American children from the foster care system rather than foreign children. After explaining the different available types of adoptions, she examines reasons why prospective adoptive parents choose international adoption over domestic adoption and exposes the flawed policies that often lead to this decision.

Jill Sheldon in "50,000 Children are Waiting: Permanency, Planning and Termination of Parental Rights under the Adoption Assistance and Child Welfare Act of 1980" (*17 B.C. Third World L.J. 73, Winter, 1997*) examines the situation of the increasing number of children whose parents' rights have been terminated and who remain in foster care. The author first analyzes the Adoption Assistance and Child Welfare Act (AACWA) of 1980. The author then examines the state of foster care and cases of termination of parental rights since the enactment of the AACWA. Finally, the author discusses possible solutions to the problem of long foster care stays and state orphans and examines in particular existing programs in Massachusetts and other states.

Mary M. Beck in "Juvenile & Adoption Law: Adoption of Children in Missouri" *(63 Mo. L. Rev. 423, Spring, 1998*) analyzes Missouri law on adoption, with a view to determine whether it adequately protects all parties to an adoption and whether it is sufficiently clear to limit contested and litigated adoption cases. After a historical review of adoption and adoption law, the author discusses a contested adoption case on appeal in both Missouri and Pennsylvania and recent significant amendments to Missouri laws on adoption. Finally, the author advocates for further amendments to Missouri laws and for the fifty-state passage of the Uniform Adoption Act ratified by the National Commission of Commissioners for Uniform State Laws in 1995.

Cheryl A. DeMichele in "The Illinois Adoption Act: Should a Child's Length of Time in Foster Care Measure Parental Unfitness?" *(30 Loy. U. Chi. L.J. 727, Summer, 1999*) discusses the federal Adoption and Safe Families Act of 1997 ("ASFA") and its implementation in Illinois. After a review of the historical developments that led to the adoption of the ASFA, the author reviews in particular the evolution of the grounds for terminating the parental rights of "unfit" parents and compares the ASFA and its predecessor, the federal Adoption Assistance and Child Welfare Act of 1980. The author also discusses and criticizes the theories underlying the child welfare system. The author next analyzes Illinois' response to ASFA and the introduction by Illinois of a new ground for parental unfitness based on the child's stay in foster care for fifteen months out

of a twenty-two month-period. The author argues for the elimination of this new ground and proposes improvements in the use of existing unfitness grounds.

Angela Mae Kupenda, Angelia L. M. Wallace, Jamie Deon Travis, Brandon Issac Dorsey and Bryant Guy in "Aren't Two Parents Better Than None: Contractual And Statutory Basics For A "New" African American Coparenting Joint Adoption Model" (*9 Temp. Pol. & Civ. Rts. L. Rev. 59, Fall, 1999*) discuss a coparenting joint adoption model in which a child would be adopted by two single black people who are not married to each other and not romantically or sexually involved with each other. Professor Kupenda presented her coparenting joint adoption model in an earlier article (Angela Mae Kupenda, "Two Parents are Better Than None: Whether Two Single, African American Adults - Who Are Not in a Traditional Marriage or a Romantic or Sexual Relationship With Each Other - Should Be Allowed to Jointly Adopt and Co-Parent African American Children" (*35 U. Louisville J. Fam. Law 703 (1997*)) and in this second article, the authors address the contractual or statutory frameworks necessary for the realization of the proposed model.

Lisa Kelly in "West Virginia's Adoption Statute: The History of a Work in Progress" (*102 W. Va L. Rev. 1, Fall, 1999*) analyzes the current West Virginia adoption law and discusses short and long term needs for reform.

David Ray Papke in "Pondering Past Purposes: A Critical History of American Adoption Law" (*102 W. Va L. Rev. 459, Winter, 1999)* provides a comprehensive historical review of the development of adoption laws in the United States.

James G. Dwyer in "Children's Interests In A Family Context - A Cautionary Note" (*39 Santa Clara L. Rev. 1053, 1999*) examines various interpretations of a child's interest in family matters, including abuse and neglect cases and adoption cases.

H. Keith Morrison and Patricia A. Sievers in "Adoption Law In Arkansas" *(53 Ark. L. Rev. 1, 2000*) review statutory provisions under Arkansas Law regulating adoptions. The review includes a summary of the different types of adoptions, the applicable procedures, the consent requirements and rules on the termination of parental rights and the Interstate Compact on the Placement of Children. The authors also provide a brief survey of rules applicable to international adoptions when the state of Arkansas is involved.

Martin Guggenheim, in "Somebody's Children: Sustaining the Family's Place in Child Welfare Policy" (*113 Harv. L. Rev. 1716, 1717, 2000*) reviews Elizabeth Bartholet's book titled "Nobody's Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative (1999). Then, Elizabeth Bartholet in "Whose Children? A Response To Professor Guggenheim" (*113 Harv. L. Rev. 1999 June, 2000*) replies to Professor Guggenheim whom she says misrepresented her views on numerous issues.

Elise Bruhl in "Motherhood and Contract: Always Crashing in the Same Car" (*9 Buff. Women's L.J. 191, 2000 / 2001*) examines the concept of contract applied to motherhood. In particular she examines how a woman's experience of motherhood is affected by

several legal contracts and by quasi-contractual arrangements. Among the contracts that she discusses are the marriage contract, sexual contracts and maternal status (including reproductive contracts such as surrogacy and egg donations) and adoption contracts.

Susan L. Brooks in "The Case for Adoption Alternatives" (*39 Fam. Ct. Rev. 43, January, 2001*) examines and criticizes the Adoption and Safe Families Act (ASFA). After a background review of the ASFA, the author discusses therapeutic jurisprudence and preventive law. Using theories such as a family systems theory and cultural competency, the author criticizes ASFA's heavy emphasis on adoption while not promoting other permanency alternatives and she advocates the use and promulgation of subsidized guardianship and cooperative adoption as positive alternatives to traditional adoption because they allow children to maintain ties with certain family members.

Stephanie Jill Gendell in "In Search of Permanency: A Reflection on the First 3 Years of the Adoption and Safe Families Act Implementation" (*39 Fam. Ct. Rev. 25, January, 2001*) examines the successes and failures of the Adoption and Safe Families Act (1997). After a historical review of the child welfare system, the author analyzes the key provisions of the ASFA and the main criticisms of the Act. The author then discusses trends in child welfare that followed the adoption of the ASFA, states' actions to implement the ASFA and what can still be done to ameliorate some of the child welfare problems.

E. Wayne Carp in "Adoption, Blood Kinship, Stigma, and the Adoption Reform Movement: A Historical Perspective" writes a review of Katarina Wegar's book "Adoption, Identity, and Kinship" (*36 Law & Soc'y Rev. 433, 2002*) and states his position on the sealed versus open adoption records debate.

Stephanie Pham Quang reviews the book "Making Babies, Making Families: What Matters Most in an Age of Reproductive Technologies, Surrogacy, Adoption, and Same Sex and Unwed Parents' Rights" by Mary Lyndon Shanley (*17 Berkeley Women's L.J. 173, 2002*).

Naomi Cahn in "Birthing Relationships" (*17 Wis. Women's L.J. 163, Spring, 2002*) examines the role of adoption in a culture that celebrates motherhood, in particular with regard to the birth mother's rights and connection to her child and the adoptive family. After a historical review of the relationship between birth mothers, their children and the adoptive parents in the 19th and 20th centuries, the author discusses how the relational feminism perspective applied to birth mothers might change legislative and policy approaches to birth mother consent to adoption and to continuing contact and disclosure of information between birth mothers and adoptive families. Finally, the author analyzes how conceptions of the birth mothers and the laws governing their rights have been profoundly shaped by social and cultural forces defining the family.

Amanda C. Pustilnik in "Private Ordering, Legal Ordering, and the Getting of Children: A Counterhistory of Adoption Law" *(20 Yale L. & Pol'y Rev. 263, 2002)* examines whether adoptions should be left to a legal ordering model (i.e. one where state

regulations govern) or a private ordering model (i.e. one where parties determine the rules of their relationship (e.g., via contract)). A review of the history of adoption in the United States and Europe shows that, in the author's view, adoption was historically based on a private ordering model. In contrast, a review of the current law and case law of adoption reveals a predominantly legal ordering model and its numerous restrictive factors (e.g., restrictions based on race, religion or sexual preferences of the prospective parents and children). The author advocates for a private-ordering model.

Twila L. Perry in "Legal Struggles For Women's Rights: Past, Present, And Future: Feminism, Adoption, and Diversity" (*23 Women's Rights L. Rep. 247, Summer / Fall, 2002*) questions whether there is a feminist approach to adoption in the context of transracial, international as well as same race adoptions.

Mark Garavaglia in "The Value of the Post-Modern Child: Property, Personhood or Purgatory?" (*80 U. Det. Mercy L. Rev. 1, Fall, 2002)* examines baby-selling cases. After a review of a recent Michigan case that heightened public awareness of the issue of baby-selling in America, the author briefly discusses trends and case law on baby-selling and the treatment of human beings and human bodies as commodities. The author reviews arguments for and against limited baby-selling in the area of adoption and examines the inherent weaknesses in modern secular economic/legal theory to adequately prohibit the sale of children. Finally, the author examines options to protect the personhood of children.

Casey Martin in "Equal Opportunity Adoption And Declaratory Judgments: Acting In A Child's Best Interest" (*43 Santa Clara L. Rev. 569, 2003*) analyzes a new California law that allows registered domestic partners to adopt their partner's children. After a review of the history of second parent adoptions in California (both in law and under the case law, in particular the Sharon S. v. Superior Court of San Diego County case), the author discusses and analyzes AB-25, the first California law protecting same-sex adoptive families. The author analyzes the types of adoptions for non-conventional families that AB-25 still does not cover and proposes that declaratory judgments should be used as an additional means of providing for all types of adoptive families. After a review of the constitutionality of declaratory judgments, the author discusses the legal justifications for allowing the judiciary to employ declaratory judgment proceedings to address the concerns of non-conventional adoptive families.

RACIAL ISSUES IN ADOPTIONS

D. Michael Reilly in "District Of Columbia Survey: Constitutional Law: Race As A Factor In Interracial Adoptions." (*32 Cath. U.L. Rev. 1022, SUMMER, 1983)* examines the use of race as a factor in adoptions in the District of Columbia and discusses the landmark case of In re R.M.G. and E.M.G. In re R.M.G. and E.M.G. the District of Columbia Court of Appeals was asked to address the constitutional validity of the District of Columbia adoption statute's requirement that all adoption petitions include the racial background of the parties involved. The author examines the Court ruling and in

particular the development by the R.M.G. Court of a three-prong test to "precisely tailor" the race factor to the best interest of the child.

Margaret Howard in "Transracial Adoption: Analysis Of The Best Interest Standard" *(59 Notre Dame L. Rev. 503, 1984)* examines the issue of transracial adoptions in relation to the concept of the "best interest of the child". After a review of the factors contributing to the increase and then decrease in transracial placements of black and Indian children, she discusses the competing interests within the "best interest of the child" that are involved in transracial adoptions and suggests a normative hierarchy of these interests. The author then examines various factual problems arising in transracial placements and proposes resolutions in light of that hierarchy.

Eileen M. Blackwood in "Race As A Factor In Custody And Adoption Disputes. Palmore V. Sidoti" (*71 Cornell L. Rev. 209 November, 1985*) examines the impact of the Supreme Court decision in Palmore v. Sidoti on racial consideration in custody and adoption issues. In Palmore v. Sidoti, the United States Supreme Court reversed a Florida court's decision to transfer custody of a child from her mother to her father on the ground that the mother's interracial remarriage violated the child's best interests. After a review of the Equal Protection Clause as applied to race and the "best interest of the child" standard in child placement proceedings, the author examines race as a factor in the determination of the best interest of the child. The author then summarizes and analyzes the Palmore V. Sidoti case and the Supreme Court ruling. Finally, the author addresses the application of Palmore v. Sidoti to adoption cases and examines the potential effects of Palmore v. Sidoti on the best interest of the child standard.

Elizabeth Bartholet in "Where Do Black Children Belong? The Politics of Race Matching in Adoption" (*139 U. Pa. L. Rev. 1163, May 1991)* recalls her own personal encounter with racial considerations in the adoption of her two Peruvian children. After providing a historical perspective on the issue, the author examines the nature of current race-matching policies in adoptions, with their array of written and unwritten rules requiring that minority children wait in foster care for a same-race family rather than be placed immediately for adoption with waiting white families. Bartholet then examines the impact of race-matching policies on delaying or denying minority children's access to adoption and contrasts this with the alleged risks of transracial adoptions. She also examines whether current racial matching policies in the adoption context violate the anti-discrimination principle that is part of U.S. law. Finally, the author argues that race-matching policies are inconsistent with the proclaimed paramount principle of the "best interests of the child" and strongly advocates in favor of interracial adoptions.

Jo Beth Eubanks in "Transracial Adoption in Texas: Should the Best Interests Standard Be Color-Blind?" *(24 St. Mary's L. J. 1225, 1993*) examines the transracial adoption debate in Texas in the wake of the case of Christopher and the Jenkins foster family. After a historical review of adoptions, transracial adoptions and the debate on race matching and "the best interests of the child" test, the author analyzes court decisions and statutory provisions that have been enacted in other jurisdictions to deal with transracial adoptions. The author then analyzes whether race matching is constitutional and explores

proposed alternate solutions. Finally, the author discusses a proposed law in Texas and encourages the Texas Legislature to prohibit race matching in furtherance of the best interests of the child.

Zanita E. Fenton in "In A World Not Their Own: The Adoption Of Black Children" (*10 Harv. BlackLetter J. 39, 1993*) examines the transracial adoption debate from the point of view of Black children. The author first reviews the social history of adoption in America and Black children. The author then explores current trends in adoptions and foster care as they affect Black children. The author next argues that the current system of adoptions does not work for Black children and that the model of the extended Black family would be better suited for their needs.

Timothy P. Glynn in "The Role of Race in Adoption Proceedings: A Constitutional Critique of the Minnesota Preference Statute" (*77 Minn. L. Rev. 925, April, 1993*) examines the constitutionality of the Minnesota same-race preference statute. The author first summarizes the legal history of transracial adoptions, Minnesota's adoption law including the same-race preference provisions, and analyzes the constitutional principles applying to the use of race in adoption proceedings. The author then examines whether the Minnesota same-race statute is constitutional and proposes an analytical framework pursuant to which racial factors could be used in adoption proceedings in a constitutional manner.

Katharine Cannady in "The Use Of Race As A Variable In Adoptive Placement Proceedings" (*1 San Diego Justice J. 503, Summer, 1993*) examines three sides of the transracial adoption debate. After a historical review of the case law on race and adoptions, the author examines the views of National Association of Black Social Workers (NABSW) and others who have proposed legislation to prohibit transracial adoptions. The author also discusses the views of those who believe that child placement decisions should be totally devoid of race considerations and the middle-ground views of those who believe that while same-race adoptions are preferable, another solution may be necessary in the best interests of a child. The author proposes a "but for" test accompanied by a finding of "specific negative effect" to consider race in adoption cases. Under the "but for" test, the court first analyzes all relevant factors and circumstances and makes a preliminary placement decision. Assuming that the race of the potential caregiver is the same as that of the child, the Court must then ask whether its decision would remain the same "but for" race. In the affirmative, race has been considered appropriately. In the negative, the "specific negative effects" test is added, i.e. the Court must consider its decision contrary to the Equal Protection Clause unless a precise negative effect on this particular child because of this adoption could be identified.

Kim Forde-Mazrui in "Black Identity and Child Placement: The Best Interests of Black and Biracial Children" *(92 Mich. L. Rev. 925, February, 1994*) questions whether racial matching by courts and child-placement agencies serves the best interests of Black children. The author first examines case law regarding the use of race in child custody and adoption proceedings. The author then discusses how the use of race in placement decisions harms Black children. Next the author analyzes the assumptions underlying the

NABSW's position against transracial adoptions and contrary to the NABSW, the author argues that transracial adoption does not threaten Black culture and instead may benefit it. The author concludes that courts and agencies should limit child-placement decisions to nonracial criteria.

Julie C. Lythcott-Haims in "Where Do Mixed Babies Belong? Racial Classification In America And Its Implications For Transracial Adoption" (*29 Harv. C.R.-C.L. L. Rev. 531, Summer, 1994)* argues that race matching in adoptions cannot work because numerous children are born multi-racial and do not fit neatly in one or the other race. After a historical review of racial classification in the United States, the author illustrates that multiracial people currently have no official status in the US. The author then shows that race-matching policies in adoptions ignore the existence of a multiracial category of people and that recognizing multiracial people as a separate category would significantly impact transracial adoption policies. The author concludes that the current definition of race that bases identity on color and physical attributes, and the resulting state of limbo for multiracial people, is outdated.

Michelle M. Mini in "Breaking Down The Barriers To Transracial Adoptions: Can The Multiethnic Placement Act Meet This Challenge?" (*22 Hofstra L. Rev. 897, Summer, 1994*) explores transracial adoptions of children in foster care and the expected effect of the Multiethnic Placement Act on those adoptions. The author believes that the Act will have little effect on the racial preference practices of the adoption agencies. After a historical review of transracial adoptions, the author discusses the continuing race-matching practices of adoption agencies and their effects on black children in foster care. The author then examines the state statutes that have race preference provisions and the states statutes that prevent racial discrimination in adoption decisions. Next, the author argues that race is not an appropriate factor in adoption placement decisions when considering the best interest of the child. The author then analyzes the (then) proposed Multiethnic Placement Act and finds that the bill will not adequately prevent racial discrimination in adoptive placements. Finally, the author proposes some alternative solutions to eliminate racism in placement decisions.

Sharon Elizabeth Rush in "Symposium: Solomon's Dilemma: Exploring Parental Rights: "If Black is So Special, Then Why Isn't It in the Rainbow?"" (*26 Conn. L. Rev. 1195, Summer, 1994*) examines transracial adoptions in relation to theories about the family (e.g., bad families versus good families, narrow or broad definition of families).

Davidson Pattiz in "Racial Preference in Adoption: An Equal Protection Challenge" (*82 Geo. L.J. 2571, September, 1994*) argues that the de facto ban on transracial adoptions in the practices and laws of several U.S. states is unconstitutional and focuses on the race-based adoption statute of Minnesota, the Minnesota Heritage Act. After a study of the strict scrutiny test employed to determine whether a law complies with the United States Constitution's equal protection clause, the author argues that the Minnesota Heritage Act does not pass the strict scrutiny test and is unconstitutional. The author then suggests that even if the law were to pass strict the test, it is undesirable and he discusses several arguments in favor of transracial adoptions. Finally, the author proposes a

compromise statute permitting transracial adoptions but ensuring as much as possible that all aspects of a child's best interests are considered.

Allen C. Platt, III in "Adopting A Compromise In The Transracial Adoption Battle: A Proposed Model Statute" (*29 Val. U.L. Rev. 475, Fall, 1994*) proposes a model statute to compromise between the opposing positions in the debate on transracial adoptions. The author first provides a historical background on the development of the transracial adoption debate and summarizes the arguments of those who favor them and those who oppose them. The author then analyzes case law on transracial adoptions and reviews the few state statutes that contain specific provisions on the use by adoption agencies and courts of race as factor in adoption placement decisions. Finally, the author proposes a model state statute that could be accepted as the best possible compromise by both proponents and opponents of transracial adoptions.

David S. Rosettenstein in "Trans-Racial Adoption And The Statutory Preference Schemes: Before The "Best Interests" And After The "Melting Pot" (*68 St. John's L. Rev. 137, Winter, 1994*) analyzes the statutes in Arkansas, California and Minnesota that establish adoption placement priorities on the basis of race. After a review of the demographic and political background to the transracial adoption debate, the author analyzes the race preference provisions in the Arkansas, California, and Minnesota adoption statutes. The author then discusses the application of the best interest of the child in transracial adoptions. Finally the author addresses the constitutional questions raised by the use of race in adoption decisions.

Myriam Zreczny in "Race-Conscious Child Placement: Deviating From A Policy Against Racial Classifications" *(69 Chi.-Kent. L. Rev. 1121,1994*) examines race matching and race preferencing policies in the practice of agencies, courts and in statutes. The author argues that race consideration in a child placement (whether foster care or adoption) is not acceptable from both a legal and practical standpoint and often conflicts with the child's best interest.

Elizabeth Bartholet in "Beyond Biology: The Politics of Adoption & Reproduction" *(2 Duke J. Gender L. & Pol'y 5, 1995)* examines adoption in relation to reproduction and the evolving concept of "family". She notes that while reproductive technologies make it increasingly possible to expand the traditional concept of a family (e.g., to include gay/lesbian couples, single parents and older parents), state adoption laws in contrast remain focused on the traditional "one man married to one woman" family model. This narrow view is further reinforced by the values and criteria applied in the screening and selection of adoptive parents who are expected to fit a traditional parenting style. Bartholet thus identifies a conflict between the laws and the reality of adoption and she finds that current laws effectively prevent children from finding homes as prospective adoptive parents increasingly find ways around the restrictive provisions of the public adoption system and resort to private or international adoptions to the detriment of the numerous children in foster care. She notes the political implications of the adoption debate (with questions such as race in adoption, social justice and international adoptions, and feminist rights). Bartholet advocates for a change in the politics and policies of

adoption to make adoption a positive family alternative as opposed to a last resort choice, after all "biological" solutions have been exhausted.

Heidi W. Durrow in "Mothering Across the Color Line: White Women, "Black" Babies" (*7 Yale J.L. & Feminism 227, 1995*) reflects on the debate on transracial adoption and her own experience as a non-adopted biracial child.

Ruth-Arlene W. Howe in "Redefining The Transracial Adoption Controversy" (*2 Duke J. Gender L. & Pol'y 131,1995)* responds to Twila Perry's article (see above). After a summary of Perry's article, the author asserts that the transracial adoption debate is more about adults seeking to establish a right to parent than about meeting the needs of Black children. The article identifies various factors currently fueling efforts to eliminate race considerations from all adoptions, a trend with which the author disagrees. The author then identifies two shifts in the field of adoption and discusses the challenges for social work and legal professionals posed by these paradigm shifts. The author concludes with a consideration of the meaning of these changes for Black children, Black families and the Black community and urges professional practitioners and policy makers to develop culturally sensitive services and strategies to meet the needs of the growing number of Black children in foster care.

Senator Howard M. Metzenbaum in "S. 1224--In Support Of The Multiethnic Placement Act Of 1993" (*2 Duke J. Gender L. & Pol'y 165, 1995*) advocates in favor of transracial adoptions in support of his bill, The Multiethnic Placement Act.

Jacinda T. Townsend in "Reclaiming Self-Determination: A Call For Intraracial Adoption" (*2 Duke J. Gender L. & Pol'y 173, 1995*) examines the circumstances in which the black community is losing its children to transracial adoptions. After an overview of the development of transracial adoptions and relevant legislation, the author analyzes the Multiethnic Placement Act (MPA). The author then addresses the impact of transracial adoptions on black children's survival skills, their racial identities and sense of community. Finally, the author examines the Indian Child Welfare Act and its treatment of transracial adoptions of Native American children as a possible model for the adoption of Black children.

Barbara Bennett Woodhouse in "Are You My Mother? Conceptualizing Children's Identity Rights in Transracial Adoptions" *(2 Duke J. Gender L. & Pol'y 107, 1995)* cannot agree with policies advocating either total race-matching or total race-blindness. Rather, she argues that the adoption and foster care policies must be structured to preserve as much as possible children's long term access to their cultural and racial legacies, while recognizing and protecting their short term needs for security and nurture. Recognizing the tension between preserving children's individual and group identities, she proposes a fluid conception of identity rights with flexible tools to be used at various stages of the children's development. She proposes in particular various options that allow adopted children to maintain ties with their families and communities of origin (such as open adoption, kinship adoption, rights to visitation with biological siblings and extended family, "community visitation", etc.).

Dorothy E. Roberts in "The Genetic Tie" (*62 U. Chi. L. Rev. 209 Winter, 1995*) examines the legal and social meaning of the genetic tie between mothers and fathers and their children. The author examines the genetic tie's shifting meaning in defining personal identity, creating children, and determining legal parentage for white people and for black people. Among the issues that she discusses are the parental rights of unwed fathers and transracial adoptions.

Chip Chiles in "A Hand to Rock the Cradle: Transracial Adoption, the Multiethnic Placement Act, and a Proposal for the Arkansas General Assembly" (*49 Ark. L. Rev. 501, 1996*) considers the debate about the placement of black children in white adoptive families. After a brief historical presentation of transracial adoption, the author discusses the federal Multiethnic Placement Act of 1994 ("MEPA") that rendered illegal the (then) current adoption law of the state of Arkansas. The author then suggests that in reforming its adoption laws, Arkansas should go further than MEPA and prohibit entirely racial considerations in adoption cases.

Jennifer Mullins in "Transracial Adoption in California: Serving the Best Interests of the Child or Equal Protection Violation? (*17 J. Juv. L. 107, 1996*) discusses a bill entitled the Adoption Antidiscrimination Act of 1995 introduced by U.S. Senator McCain and analyzes the racial preference in adoption cases (then) included in the California Family Code. After a review of the types of adoptions affected by the race restriction in California and of the authorities that enforce the race matching requirement, the author notes that California justifies the race preference on the basis of the child's best interest and she discusses the factors that should be considered in a child's best interests. The author then examines whether the race requirement provides equal protection for potentially adoptive families (to the extent that the statute presumes that an adoptive parent of one race will be a better parent to a child of the same race) and whether the race requirement is necessary altogether. Arguing that in adoption cases the children could be protected by a race neutral statute, the author examines how Texas, Arizona and Colorado deal with transracial adoptions. The author concludes that the law in California unnecessarily restricts adoptions on the basis of race.

Barbara McLaughlin in "Transracial Adoption in New York State" *(60 Alb. L. Rev. 501, 1996)* examines the role played by race in adoptions, with focus on New York State. After a review of the history of transracial adoption, the author explains the practice in New York State. She then provides a detailed analysis of state (Minnesota, Maryland and Texas) and federal (the Multi-Ethnic Placement Act and the Indian Child Welfare Act) legislation as they relate to race in adoptions and proposes that a new law be passed in New York State to address specifically transracial adoptions. Based on legislative research, case law and sociological data, the author argues that this new law should forbid the use of race as a primary factor in adoption proceedings, thereby affording African-American children in foster care the opportunity to grow up in permanent homes.

George L. Opie in "The Multiethnic Placement Act: A Critical Analysis Of Why The Act Is Not In The Best Interests Of Children: "Improving America's Schools Act of 1994:

Howard M. Metzenbaum's Multiethnic Placement Act of 1994," Pub. L. No. 103-382, §§ 551-55, 108 Stat. 3518, 4056-58 (Oct. 20, 1994)" (*20 S. Ill. U. L. J. 605, Spring, 1996*) argues that the government should support transracial adoption and delete the language regarding racial classification currently in the MPA. After a review of the legal background for multi-ethnic adoptions, the author reviews the stated objectives of the MPA. The author then analyzes the provisions of the MPA on racial classification and their effect on the children concerned. Next, the author proposes amendments to the MPA to promote transracial adoptions and better realize the stated goals of the Act.

Daphne Nell Wiggins in "The Multiethnic Placement Act of 1994: Background, Purpose, Interpretations and Effects of Legislation Regarding Transracial Adoption" (*20 Law & Psychol. Rev. 275, Spring, 1996*) analyzes the Multiethnic Placement Act of 1994 (MPA). After a review of the debate on transracial adoptions and the factors that led to the adoption of the MPA, the author reviews the stated objectives and purpose of the MPA. The author then analyzes selected scholarly interpretations of the MPA and discusses its practical effects from the perspective of the social workers placing children from foster care.

Bo Eskay in "Symposium Children And The Law: Note & Comment: H.B. 2168 -- Codifying a Shift in Social Values Toward Transracial Adoption" (*28 Ariz. St. L.J. 711, Summer, 1996*) analyzes Arizona's House Bill 2168 that prohibits racial criteria from delaying or denying public adoptive placements of non-Indian children. After a review of the evolution of transracial adoptions in the United States and in Arizona, the author summarizes the legislative history and the contents of House Bill 2168 and critically analyzes its key provisions. He addresses the debate on transracial adoptions in light of the child's best interest standard and finds that Arizona's rejection of race-based delays and denials in adoptions evidences a shift in social values in favor of transracial adoptions. Specifically, while same-race adoption was presumed to be in the best interests of minority children, an emphasis on permanency and stability has now supplanted this view.

Anjana Bahl in "Color-Coordinated Families: Race Matching in Adoption in the United States and Britain" (*28 Loy. U. Chi. L.J. 41, Fall 1996)*, compares the use of race as a factor in adoptions in the United States and Britain. The author then examines whether a racially-neutral system, in which race is completely eliminated as a consideration in a child's placement process, is preferable to racial-matching policies to protect the "best interest of the child".

Carol R. Goforth in "What Is She?" How Race Matters And Why It Shouldn't" (*46 DePaul L. Rev. 1, Fall, 1996*) examines the use of racial classifications by governmental agencies, and advocates for the abolition of "official" racial classifications. After examining the notion of race and discussing whether race labels are meaningful, the author analyzes three specific programs where differential treatment is based on race: transracial adoption, congressional redistricting along racial lines and affirmative action in hiring and education.

Cynthia R. Mabry in "Love Alone is Not Enough" (*Wayne L. Rev. 1347, 1996*) argues in favor of transracial adoptions. After a historical review of state laws on the issue, the author argues that the Multiethnic Placement Act of 1994 should not have been repealed. In the author's view, race should only be considered in adoption decisions if the child expresses a racial preference.

Jane Maslow Cohen in "Race-Based Adoption In A Post-Loving Frame" (*6 B.U. Pub. Int. L.J. 653, Spring, 1997*) argues that the U.S. Supreme Court's proscription in Loving v. Virginia of state mandated race-matching in marriage must dictate a similar proscription of state mandated race-matching in adoptions. After a review of the principles and policies underlying the racial debate in adoptions, the author recasts the debate under a new light following the Loving v. Virginia case. The author concludes that the states should not be charged with the task of protecting black racial purity and enforcing the establishment of a child's identity on racial grounds.

Melisa C. George in "Tossed Salad: Diversity Considerations in Adoptions" (*21 Law & Psychol. Rev. 197, Spring, 1997*) examines arguments for and against adoption by diverse groups of potential parents. She examines the transracial adoption debate and ethnic (the situation of Indian children) differences between the parents and children. She also discusses cases based on the sexual preference of the parents.

Susan R. Harris in "Race, Search, and My Baby-Self: Reflections of a Transracial Adoptee" (*9 Yale J.L. & Feminism 5, 1997*) recounts her personal experience as a transracial adoptee.

Rita J. Simon and Howard Altstein review selected state statutes and case law that preceded the adoption of the 1996 transracial adoption provision in "Symposium on Race and the Law: Article: The relevance of race in adoption law and social practice" (*11 ND J.L. Ethics & Pub. Pol'y 171, 1997).* The article also summarizes the major findings of empirical studies that have been conducted in the United States on transracial adoptions going back to the 1970s. These studies involved Black and Korean children adopted by white families and examined the social adjustments and racial identities of these children when they were young adults. The authors conclude that in their view, transracial adoptions unequivocally serve the children's best interests.

Sharon F. Bass in "The Public Foster Care System and the Transracial Placement of African-American Children: Exploring the History and the Issue" (*4 U. Pa. J.L. & Soc. Change 73, 1997)* argues in favor of transracial adoption for African-American children. Given the high number of African-American children in foster care, the author argues that it is urgent to find more adoptive families, regardless of race considerations, and that a white family can, if necessary, adequately promote the child's individual heritage.

Katharine B. Silbaugh in "Symposium On Transracial Adoption: Foreword" (*6 B.U. Pub. Int. L.J. 381 Winter, 1997*) introduces the debate on transracial adoptions and summarizes the key arguments of proponents and opponents of the practice that will be elaborated on during the symposium.

Rebecca Varan in "Desegregating The Adoptive Family: In Support Of The Adoption Antidiscrimination Act Of 1995" (*30 J. Marshall L. Rev. 593, Winter, 1997*) analyzes the Adoption Antidiscrimination Act (AAA) and examines whether this Act could improve the foster care system in the United States. After a review of the legal, historical and statistical background of race-based adoptions, the author analyzes the successes and failures of the repealed Multiethnic Placement Act. The author then discusses the color blind approach of the AAA and advocates that the AAA would improve the situation of black children in foster care. The author thus encourages Congress to enact the AAA, subject to some amendments proposed by the author.

Hawley Fogg-Davis in "Symposium On Transracial Adoption: A Race-Conscious Argument For Transracial Adoption" *(6 B.U. Pub. Int. L.J. 385, Winter, 1997)* places the transracial adoption debate within a larger debate on multiculturalism. The author considers the effects of racism on adoptions and explores the legal debate over transracial adoption. The author argues that although race should not be a legal factor in adoption decisions, white adoptive families have a moral obligation to recognize the personal identity of their black adoptive children within a system of culturally enforced racial classification.

Ruth-Arlene W. Howe in "Symposium On Transracial Adoption: Transracial Adoption: Old Prejudices And Discrimination Float Under A New Halo" (*6 B.U. Pub. Int. L.J. 409 Winter, 1997*) examines transracial adoptions in a historical and social perspective. After a historical review of the evolution of adoption in the United States, the author discusses historical events and social conditions that explain the exclusion of African-American children from adoptions services. The author then specifically considers transracial adoption of African-American children in the United States as a "micro" direct-service child welfare practice. First, she reviews transracial placements from 1948 to 1978. Next, she discusses factors and conditions that shaped the child welfare system during the late 1960s to the early 1970s. From this historical review, the author concludes that no concerted efforts were made to analyze and assess the efficacy of transracial adoptions as an appropriate way to meet the needs of African-American children and that the African-American community was not involved in devising relevant policies.

Randall Kennedy in "How Are We Doing With Loving?: Race, Law, And Intermarriage" (*77 B.U.L. Rev. 815, October, 1997*) examines the legacy of the Supreme Court's 1967 decision on interracial marriages in Loving v. Virginia. With regard to adoptions, he advocates for the elimination of race matching statutes and practices.

Jennifer L. Rosato in "Proceedings Of The Third Annual Mid-Atlantic People Of Color Legal Scholarship Conference: February 13-15, 1997: Part 2: Article: "A Color Of Their Own": Multiracial Children And The Family" (*36 Brandeis J. Fam. L. 41, Winter, 1997/1998*) examines the difficulties faced by multi-racial children as a result of the current black and white perspective followed by family law. The author first examines how family law implements a black and white world in which multi-racial children do not necessarily fit and as a result of which race may become the predominant factor in the

determination of whether white parents can adopt black or biracial children. The author then suggests to reconceptualize the world using a multicultural, child-centered perspective. Applying this new concept, children would not need to be labeled black or white and a parent would not necessarily be considered an inappropriate placement for a child of a different color.

Amanda T. Perez in "Transracial Adoption and the Federal Adoption Subsidy" (*17 Yale L. & Pol'y Rev. 201, 1998*) explores whether the race-conscious federal adoption subsidy (established by the Adoption Assistance and Child Welfare Act of 1980), given to adults wanting to adopt minority and other hard-to-place children, is a permissible way of encouraging the adoption of minority children. After a statistical overview of the situation of black children in foster care, the author reviews the history and law on transracial adoption and the increased trend to eliminate barriers to transracial adoptions under the "best interest of the child" standard. The author then discusses the federal adoption subsidy and uses analogies to affirmative action cases to explore the constitutionality of the federal adoption subsidy statute. The author focuses on new trends in affirmative action law and analyzes whether the adoption subsidy would be found constitutional. The author concludes that the subsidy would be constitutional and is in the best interest of the children.

R. Richard Banks opposes race-matching in adoption state statutes and race classification of children by adoption agencies in "The Color of Desire: Fulfilling Adoptive Parents' Racial Preferences Through Discriminatory State Action" (*107 Yale L.J. 875, 1998)*. In his view, these practices are not only anticonstitutional, they also result in denying, on the basis of race, most black children the opportunity to be considered for adoption by white families who represent the majority of prospective adoptive parents. The author's proposed alternative approach seeks to rid adoption of the racial preferences that systematically produce racial inequality in contemporary American society. This Article examines the substantive policy issues implicated by the race-and-adoption debate and treats the controversy as a case study in the law and politics of race.

In her response to Richard Banks' article, Elizabeth Bartholet agrees with Banks that states should take no action to encourage the exercise of racial preferences in adoptions. In "Correspondence: Private Race Preferences in Family Formation" (*107 Yale L.J. 2351, May 1998)*, Bartholet, however, disagrees with Bank's proposed alternative solution, finding it too intrusive. Bartholet is concerned that Bank's "strict non-accomodation policy" will drive many prospective adoptive parents away from the public adoption system into the private agency/independent adoption system or to international adoptions, thereby further worsening the situation of black children in foster care in the United States. She recommends a stricter enforcement of the existing statutes on racial considerations in adoptions and an increased socialization of prospective parents to think positively about transracial adoptions.

Twila L. Perry in "Transracial And International Adoption: Mothers, Hierarchy, Race, And Feminist Legal Theory" (*10 Yale J.L. & Feminism 101, 1998*) examines how transracial and international adoption can be analyzed from a feminist perspective. The

author first briefly discusses the creation of a hierarchy between birth mothers and adoptive mothers in many transracial and international adoptions. The author then argues that society's perception of the link between competent mothering and race corresponds closely to hierarchies of women by race (i.e. white women are presumed to competently mother children of any race). The author then explores the links between domestic transracial adoptions and international adoptions of children of color and finds that they both raise similar issues with which feminists should be concerned. Finally, she explores issues important in the evolution of feminist theory and examines their potential for contributing to a feminist approach to transracial and international adoptions (e.g., the concepts of nurturing and parenting).

Angela Mae Kupenda, Adam L. Thrash, Jennifer A. Riley-Collins, LaShonda Y. Dukes, Stephany J. Lewis and Rodney R. Dixon in "Law, Life and Literature: Using Literature and Life to Expose Transracial Adoption Laws as Adoption on a One-Way Street" (*17 Buff. Pub. Interest L.J. 43, 1998 / 1999*) examine the laws on transracial adoptions under the light of stories from real life and literature. The authors first analyze the legal rules on transracial adoptions and note that the law, because it focuses on one-way transracial adoptions (i.e. to allow white families to adopt black children but not vice-versa), is suspicious from the beginning. The authors also note that one-way transracial adoptions are not the best or easiest way to place minority children, but that the law eliminates better ways. The authors then examine examples in literature and real life that illustrate the flawed premise underlying the whole system of transracial adoptions that white people are presumed fit to raise black children but not vice-versa. Finally, the authors examine the risks of transracial adoptions for the adopted children.

Dorothy E. Roberts in "Access To Justice: Poverty, Race, And New Directions In Child Welfare Policy" (*1 Wash. U. J.L. & Pol'y 63, 1999)* examines the Adoption and Safe Families Act (ASFA) and analyzes the child welfare policies reflected in the Act. She focuses in particular on the way ASFA addresses family preservation versus adoptions and seeks to reduce the foster care population by speeding up the termination of parental rights to allow more children to be adopted.

Larry May in "Access To Justice: Adoption, Race, And Group-Based Harm" (*1 Wash. U. J.L. & Pol'y 77, 1999*) responds to Dorothy Roberts' paper as a philosopher, an adoptive parent and a law student. As a philosopher, he agrees with Roberts that there is a philosophically respectable way to talk about child welfare policies that recognizes both the individual harm suffered by black children abused or neglected in their biological families and the collective harm suffered by black children removed from their biological parents and placed into foster care and into adoptive families (harm suffered as a member of a given Black community). As an adoptive parent, May finds that Roberts mistakenly disregards the benefits of adoption and ignores the fact that adoption is often the only way out of foster care for many poor Black children. Finally, as a lawyer, May finds that the legal responses to children's rights should endorse the double objective of (i) providing the most secure childhood possible for all children (and thus, not be too quick to send children back to their families for more abuse or neglect) and (ii) strengthening

Black families so that they can care for their children (and thus, not be too quick to remove Black children permanently from their families).

Cassondra Wiedenhoeft in "Foster Care and Adoption: Should Race be Considered in the Adoption of a Child?" (*11 J. Contemp. Legal Issues 600, 2000*) takes a position on the debate on transracial adoptions. After a background review on transracial adoptions, the author discusses the law in California. The author then summarizes the arguments of the proponents and opponents of transracial adoptions and argues that the racial debate should focus on the best interest of the child. She advocates that the goal of adoption laws should be to place all children in a loving and stable environment and consider race only as a secondary issue.

Suzanne Brannen Campbell in "Taking Race Out of the Equation: Transracial Adoption in 2000" (*53 SMU L. Rev. 1599, Fall, 2000*) examines whether the Multi-Ethnic Placement Act has been successful in controlling race-matching policies in public adoptions. After a historical survey of transracial adoptions, the author reviews the adoption process in the United States and the equal protection clause under the 14th amendment to the US Constitution. The author then discusses the Multi-Ethnic Placement Act of 1994 and its 1996 amendments. The author then summarizes various testimonies to the House Ways and Means Committee, Subcommittee on Human Resources of the House of Representatives on September 15, 1998. Finally, the author proposes some changes to the MEPA.

Margaret F. Brinig in "A Minnesota Comparative Family Law Symposium: Moving Toward A First-Best World: Minnesota's Position On Multiethnic Adoptions" *(28 Wm. Mitchell L. Rev. 553, 2001*) notes that Minnesota has favored racial matching as best meeting a child's needs in apparent conflict with federal legislation and analyzes possible reasons for Minnesota's position. The author provides an empirical look at some of the problems she discusses (e.g., actual numbers of Minnesota children in foster care, minority children in foster care, adoptive placements and transracial placements are presented and the number and rates of Minnesota foreign adoptions compared to intrastate adoptions are compared to rates from other states). The author also studies the difficulties faced by those transracially adopted (in particular she considers whether depression rate differs for African-Americans who are adopted transracially when compared with African-Americans in general as well as same-race adoptees and foster children).

Naomi Cahn in "Race, Poverty, History, Adoption, and Child Abuse: Connections" writes a review of Professor Dorothy Roberts' book "Shattered Bonds: The Color of Child Welfare (2001)" and Professor E. Wayne Carp's book "Adoption in America: Historical Perspectives (2002)" (*36 Law & Soc'y Rev. 461, 2002*). After a summary of the two books, Cahn addresses issues raised in both books: (1) the relationship between class, race, and child welfare; (2) the tensions between biological and functional families; and (3) the potential conflicts between parents' and children's interests.

Sandra Patton-Imani in "Redefining the Ethics of Adoption, Race, Gender, and Class" (*36 Law & Soc'y Rev. 813, 2002*) reviews and critiques Hawley Fogg-Davis' book "The Ethics of Transracial Adoption" (Ithaca and London: Cornell University Press, 2002) and Rickie Solinger's book "Beggars and Choosers: How the Politics of Choice Shapes Adoption, Abortion, and Welfare in the United States" (New York: Hill and Wang, 2001) as they focus on the concepts of adoption and choice and apply them to, inter alia, transracial adoptions.

Barbara Yngvesson in "Placing the "Gift Child" in Transnational Adoption" *(36 Law & Soc'y Rev. 227, 2002)* focuses on the concept of "giving" in adoption (as associated with "giving up" a child for adoption) and examines state practices for regulating the circulation of children in a market economy driven by "commodity thinking". She argues that experiences of giving a child, receiving a child, and of being a given child are in tension with market practices, producing the contradictions of adoptive kinship, the ambiguities of adoption law, and the creative potential in the construction of adoptive families. She examines the concept of the adopted child as gift and questions whether such gifts are truly "freely given." Finally, she examines how an adoptee's experiences of being given away may affect his or her life.

Kinna Patel in "Neglecting the Child: The Role of Race and Sexual Orientation in Adoption Proceedings" (*4 J.L. & Soc. Challenges 41, Spring, 2002*) explores the roles of race (both in African-American and Native American cases) and homosexuality in child adoption proceedings. The author reviews the debate on transracial adoptions, presenting the arguments for race matching and for transracial adoptions and describing the negative effects of race matching practices on the children. She also examines the situation of Native American children under the Indian Child Welfare Act. The author then reviews the debate surrounding adoptions by homosexuals, including the perceived effects on the child and the legal issues raised. The author discusses similarities between the use of race and sexuality as factors in placement decisions. Finally, the author proposes alternative solutions to correct the harm resulting to children and prospective adoptive parents as a result of the courts' use of race or sexual preference in placement decisions.

Cynthia G. Hawkins-Leon and Carla Bradley in "Mid-Atlantic People Of Color Legal Scholarship Conference: Race and Transracial Adoption: The Answer is Neither Simply Black or White Nor Right or Wrong" (*51 Cath. U.L. Rev. 1227, Summer, 2002*) explore solutions to the constant increase in the number of African American children in foster care and argue that transracial adoption and the color-blind approach endorsed by the Multi-Ethnic Placement Act (MEPA) and the Inter-Ethnic Adoption Act (IEAA) do not serve the best interests of these children. Rather, the authors suggest a two-pronged approach of increased recruitment of African American adoptive families and a focus on kinship care and adoption. After a quick overview of statistical data illustrating the magnitude of the foster care crisis, the authors review the history of the transracial adoption debate in the United States, recent federal legislation, states' responses to these laws and their potential legal implications. The author analyze the sole case brought pursuant to the MEPA and IEAA (Doe V. Hamilton County, Ohio). The authors then

outline the main arguments for and against transracial adoption (including the findings of social quantitative and qualitative research studies) and finally investigate kinship care as a possible solution to the foster care crisis.

Donna B. McElroy in "The Consideration Of Race In Child Placement: Does It Serve The Best Interests Of Black And Biracial Children?" *(2 Margins 231, Fall 2002)* after a historical survey of transracial adoptions in the United States, examines the "best interest" principle as the standard used in child placement and notes that there are four competing views on what is in a child's "best interest" (that of the adoption agency, the child, the adopting parents and the black community). She examines the U.S. Constitution, statutes, and case law as they relate to the issues raised in the debate over transracial adoptions. Finally, she analyzes the issue of transracial adoptions and argues that transracial adoptions are in the best interest of black and biracial children.

Stephanie R. Richardson in "Strict Scrutiny, Biracial Children, And Adoption" (*12 B.U. Pub. Int. L.J. 203, Fall, 2002*) advocates that, in the child's best interest, courts should apply intermediate scrutiny rather than strict scrutiny in cases involving biracial adoptions. After a review of the impact of being biracial, the author discusses the role of adoption agencies in defining criteria for the adoption process. The author also reviews relevant federal legislation and discusses the history of the right to adopt. Next, the author analyzes the differences between intermediate and strict scrutiny. The author then argues that intermediate scrutiny should be the standard for biracial adoption cases and summarizes sociological, psychological and legal evidence showing that strict scrutiny works against the best interests of the child.

Alice Hearst in her book review essay "Multiculturalism, Group Rights, and the Adoption Conundrum" *(36 Law & Soc'y Rev. 489, 2002*) reviews Will Kymlicka's (2001) Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship, and Bikhu Parekh's (2000) Rethinking Multiculturalism: Cultural Diversity and Political Theory. The author looks at how Kymlicka and Parekh understand the obligations of states to promote multicultural laws and policies and inquires how laws and policies surrounding adoption might be affected by a more comprehensive multicultural outlook.

Jennifer Swize in "Transracial Adoption And The Unblinkable Difference: Racial Dissimilarity Serving The Interests Of Adopted Children" (*88 Va. L. Rev. 1079, September, 2002*) argues that transracial adoptions are, at a minimum preferable to the shortage of black permanent homes for black children and challenges the preference for same-race adoptions. The author first discusses the theory of biological matching that is the traditional basis of adoption. The author then examines whether transracial adoption is inconsistent with biological matching and finds that it does not. The author next addresses arguments particular to race in the transracial adoption debate (e.g., racial identity and cultural benefits) and argues that the benefits of transracial adoption justify transracial placements, especially when the alternative for black children is to remain in foster homes. The author considers in particular that the racial dissimilarity between parent and child produces specific benefits to the child. The author concludes in favor of transracial adoptions.

Charlton C. Copeland in "Private Pathologies and Public Policies: Race, Class, and the Failure of Child Welfare" (*20 Yale L. & Pol'y Rev. 513, 2002*) writes a review of "Shattered Bonds: The Color of Child Welfare" by Dorothy Roberts (New York: Basic Civitas Books, 2002). The review includes an assessment of the Adoption and Safe Families Act of 1997 (ASFA) and its critique by Roberts as well as Robert's views on transracial adoptions and the author's own views on the issue.

THE INDIAN CHILD WELFARE ACT

Stan Watts in "Voluntary Adoptions Under The Indian Child Welfare Act Of 1978: Balancing The Interests Of Children, Families, And Tribes" (*63 S. Cal. L. Rev. 213, November, 1989*) analyzes the ICWA of 1978. After a review of the historical background of the ICWA, the author discusses the objectives pursued by the Act, the conditions for its application and the constitutionality of the Act. The author then examines the ICWA's jurisdictional provisions and the application of these provisions to the voluntary placement of newborn Indian children. Finally, the author proposes a solution to protect all relevant interests in placement decisions involving Indian children.

Michael E. Connelly in "Tribal Jurisdiction Under Section 1911(b) of the Indian Child Welfare Act of 1978: Are the States Respecting Indian Sovereignty?" (*23 N.M.L. Rev. 479 Spring, 1993*) analyzes how state courts increasingly deny tribal jurisdiction over Indian child custody matters in direct contradiction with the ICWA mandated preference for tribal jurisdiction over Indian child custody proceedings. The author first reviews the origins of the Indian Child Welfare Act and of its tribal jurisdiction provision. The author then analyzes Section 1911(b) of the ICWA, its implementation and the limited exceptional circumstances in which a state court is allowed to exercise its concurrent jurisdiction over Indian child custody proceedings.

Jeanne Louise Carriere in "Representing the Native American: Culture, Jurisdiction, and the Indian Child Welfare Act" (*79 Iowa L. Rev. 585, March, 1994*) explores how the Indian Child Welfare Act (ICWA) effectively perpetuates the subordination of Native American culture, families, and individuals. The author criticizes the concurrent jurisdiction provision of the ICWA and its destructive effects on the Indian culture.

Catherine M. Brooks in "The Indian Child Welfare Act In Nebraska: Fifteen Years, A Foundation For The Future" (*27 Creighton L. Rev. 661, April, 1994*) examines the Indian Child Welfare Act and the outcome of child custody actions heard under the Act, using Nebraska's experience in administering the Act as a primary example. After a review of the problems faced by the Indian nations that led to the adoption of the Act, the author summarizes the key elements of the Indian Child Welfare Act. The author then analyzes case law interpreting the Act in Nebraska and provides recommendations for a better adherence to the intent of the Indian Child Welfare Act.

Christine D. Bakeis in "The Indian Child Welfare Act Of 1978: Violating Personal Rights For The Sake Of The Tribe" (*10 ND J. L. Ethics & Pub Pol'y 543, 1996*) examines the

effect of the application of the ICWA on the constitutional rights of Indian parents. After a review of the historical background of the ICWA, the author discusses whether the ICWA serves the purpose it was given by Congress and specifically whether it is in the best interest of the children and whether it aids the tribes. After a discussion of parental rights, the author then analyzes whether the ICWA violates the equal protection rights of the parents of Indian children. The author finally demonstrates that the ICWA is applied inconsistently and she suggests that it be amended to realize its objectives without infringing personal rights.

Keri B. Lazarus in "Adoption of Native American and First Nations Children: Are the United States and Canada Recognizing the Best Interests of the Children" (*14 Ariz. J. Int'l & Comp. L. 255, 1997)* examines the removal of Native American and First Nations Canadian children from their communities in the United States and Canada. After a review of the problems involved in the placement and displacement of these children and possible causes for these problems, the author analyzes the applicable laws in the United States and Canada. Examining recent reforms in the United States, the author proposes some changes to be made in Canada, including a modification of the "best interest of the child" standard to include the cultural identity of the child.

Sloan Philips in "The Indian Child Welfare Act In The Face Of Extinction" (*21 Am. Indian L. Rev. 351, 1997*) examines the impact of the Indian Child Welfare Act on Indian children and their cultural heritage. After a review of the history that led to the adoption of the Indian Child Welfare Act and the problems it aimed to remedy, the author examines whether the purposes of the ICWA have been realized. The author then analyzes the expected effects of the (then discussed) Adoption Promotion and Stability Act on the adoption of Indian children. Finally, the author discusses the (then considered) Compromise Amendments to the ICWA that resulted from negotiations between the Indian leaders and Congress to avoid the passage of the Adoption Promotion and Stability Act. The Compromise amendments were later abandoned.

Jennifer Nutt Carleton in "The Indian Child Welfare Act: A Study In The Codification Of The Ethnic Best Interests Of The Child" (*81 Marq. L. Rev. 21, Fall, 1997*) examines the ICWA as one attempt to define the best interests of a child in terms of his/her racial and ethnic heritage. After a summary description of the ICWA and its background, the author examines the "best interests of the child" standard under the ICWA. The author then discusses whether the ICWA provides for an "Indian family exception" and how it addresses the potential conflict between rights of individuals and of the tribe. Finally, the author addresses Congressional attempts to limit the ICWA. The author concludes that understanding why the ICWA has sometimes failed to preserve the "Indian family" might aid in the discussion of the role of ethnic preference in the transracial adoption debate.

Cynthia G. Hawkins-Leon in "The Indian Child Welfare Act And The African American Tribe: Facing The Adoption Crisis" *(36 J. Fam. L. 201, Spring, 1997 / 1998*) examines adoptions in the light of cultural family structure. She notes that adoption laws are mostly based on a nuclear family model and discusses why this family model is not appropriate for all children, in particular for Indian and African-American children.

Rather, she advocates that the "extended family" model for adoption is a more widely applicable model. After a presentation of the relevant provisions of the Indian Child Welfare Act, the author examines parallels between the Indian and African-American "societies" and compares the ICWA to laws and policies relating to African American adoptions. Finally, the author proposes possible solutions to the adoption crisis in the African American community.

Lorie M. Graham in "The Past Never Vanishes": A Contextual Critique Of The Existing Indian Family Doctrine" (*23 Am. Indian L. Rev. 1, 1998 / 1999)* examines the situation in Indian children. The author notes that prior to the ICWA, one-third of all Native American children were being separated from their families and communities and placed in non-Indian adoptive homes, foster care, and educational institutions by federal, state and private child welfare authorities. The ICWA finally recognized the sovereign authority of tribes to address Indian child welfare issues. However, the author wants to demonstrate how exceptions to the ICWA, such as the Existing Indian Family doctrine, perpetuate past assimilative attitudes. After a brief historical overview of the treatment of American Indian children, the author examines how deeply ingrained assimilative attitudes had become in the U.S., leading to an Indian child welfare crisis. The author then criticizes the Existing Indian Family Doctrine and explores some current ideological debates that may be underlying challenges to the ICWA.

David S. Rosettenstein in "Legitimating Difference Without Sacrificing Social and Family Fabric" (*1 J. L. Fam. Stud. 13, 1999*) examines the impact of racial classification for family law and the family. After a description of the legal framework in which the debate over acknowledging race in American family law occurs and a review of some of the relevant doctrines of constitutional law (parental due process interests, privacy and equal protection), the author briefly looks at the demographics of the United States and their importance in the debate. Thereafter, the author examines how the legal recognition of race affects family law in the context of the Indian Child Welfare Act, adoptions, custody disputes and foster care placements.

Peter K. Wahl in "Children In The Law Issue: Contributors Little Power To Help Brenda? A Defense Of The Indian Child Welfare Act And Its Continued Implementation In Minnesota" (*26 Wm. Mitchell L. Rev. 811, 2000*) writes to support the ICWA, despite recent tragic failures in the application of the Act. After a review of the background and history of the Indian Child Welfare Act and Indian placement programs, the author analyzes the key provisions of the ICWA and the conditions that must be met for its applicability. The author then discusses the Indian Child Welfare Act in Minnesota. Finally, the author demonstrates that there is a continued need for the ICWA.

Christine M. Metteer in "A Law Unto Itself: The Indian Child Welfare Act As Inapplicable And Inappropriate To The Transracial/Race-Matching Adoption Controversy" (*38 Brandeis L.J. 47, Fall, 1999 / Fall, 2000*) examines whether the Indian Child Welfare Act provides an adequate example for the treatment of race in adoption decisions. First, the author shows that the ICWA is a law unto itself, based on the unique legal status of Indian tribes as "quasi-sovereign nations" and she discusses Supreme

Court decisions on racial classifications in domestic issues. The author then argues that the ICWA is not an appropriate model for other same-race adoption legislation because States have refused to find the ICWA applicable and do not consistently apply its provisions and there is a history of attempts to amend the Act.

Barbara Ann Atwood in "Flashpoints Under The Indian Child Welfare Act: Toward A New Understanding Of State Court Resistance" (*51 Emory L.J. 587 Spring, 2002*) examines the Indian Child Welfare Act ("ICWA") and its attempt to reverse the separation of Indian children from their families and to restoring tribal authority over the welfare of Indian children. After a review of postmodern philosophy principles that may have played a role in shaping the ICWA, the author summarizes the ICWA's core features and key provisions. She then discusses certain elements of controversy in state courts' interpretation of the ICWA and other problems in the implementation of the ICWA. Finally, she summarizes and discusses proposed revisions of the ICWA introduced in the 107th Congress.

THE RIGHTS OF BIOLOGICAL PARENTS IN ADOPTIONS

Gregory S. Hilderbran in "Parents, Children, And The Courts: Case Comment: In Re Baby Girl Eason: Balancing Three Competing Interests in Third Party Adoptions" (*22 Ga. L. Rev. 1217, Summer 1988*) examines contested adoption cases under Georgia law in the light of the three competing interests involved: the putative father's rights, the rights of the (prospective) adoptive parents and the rights of the child. The author first explores each of the three categories of rights. The author then reviews the Georgia Supreme Court's analysis in the contested adoption case involving Baby Girl Eason. The author suggests that the biological and adoptive relationships are of equal significance and advocates for the use of a true "best interest of the child standard" that includes into the analysis both the psychological and biological relationships.

Elizabeth A. Hadad in "Tradition And The Liberty Interest: Circumscribing The Rights Of The Natural Father: Michael H. v. Gerald D. (1989)" (*56 Brooklyn L. Rev. 291, Spring, 1990*) examines the Michael H. V. Gerald D. case (California courts decisions and the U.S. Supreme Court judgment). The author then uses the case to discuss the application of the liberty interest as protected by the US Constitution to the rights of the biological father to assert his paternity, even in conflict with a marital presumption of paternity.

Janet Hopkins Dickson in "The Emerging Rights Of Adoptive Parents: Substance Or Specter?" (*38 UCLA L. Rev. 917, April, 1991*) argues that existing law and agency practices inappropriately place risks on adopters and fail to consider their interests. The author first examines the historical and social background to the existing adoption system and its inadequacies in protecting adopters' rights. The author then identifies two problems faced by adopters: nondisclosure or fraud regarding a child's background or health history and post-adoption custody disputes. With regard to adoption fraud, the author analyzes two developments to the benefit of adopters: (i) the enactment of mandatory disclosure laws and (ii) the establishment of the new tort of "wrongful

adoption". With regard to post-adoption custody disputes, the author discusses California law and suggests a solution that would safeguard adopters' rights while maintaining the integrity of the independent adoption process.

Chester A. Caldwell in "Texas Expands Biological Fathers' Rights To Rebut The Marital Presumption And Establish Parental Rights To Children With Presumed Fathers: In the Interest of J.W.T., 36 Tex. Supp. Ct. J. 1126 (June 30, 1993) (*25 Tex. Tech L. Rev. 193, 1993*) analyzes the J.W.T. case. After a review of the facts of the case, the author summarizes the state of the law on the rights of putative fathers that existed in Texas (per decisions of the U.S. Supreme Court and Texas law and case law) prior to the J.W.T. case. The author then summarizes the Texas Supreme Court decision in In the Interest of J.W.T. and critically analyzes the decision. Finally the author addresses the implications of the J.W.T. decision for putative fathers in Texas.

Janet L. Dolgin in "Just A Gene: Judicial Assumptions About Parenthood" (*40 UCLA L. Rev. 637, February, 1993*) examines the evolving meaning of the concepts of family and parenthood and the attempts of the courts to keep up with social evolution. The author first considers the theoretical framework within which courts approach cases involving conflicting claims to parenthood (biological links versus social links, issues arising from reproductive technologies). The author then analyzes several decisions of the US Supreme Court in which unwed biological fathers sought recognition of their paternal rights either to contest an adoption or to contest the marital presumption of paternity. The author also discusses court decisions about surrogate motherhood. Finally, the author examines the implications of the presumptions developed by courts to assess parenthood.

Jeffrey A. Parness in "Designating Male Parents At Birth" (*26 U. Mich. J.L. Ref. 573 Spring, 1993*) comments on the increasing difficulty in determining the legal parentage of infants and focuses on the legal designation of the male parent. The author first describes contemporary methods of designating male parentage and proposes methods to improve this designation, both with regard to the initial birth record and to the amendment of the birth record.

Alexandra R. Dapolito in "The Failure To Notify Putative Fathers Of Adoption Proceedings: Balancing The Adoption Equation" (*42 Cath. U.L. Rev. 979, Summer, 1993*) discusses the importance of unwed father's rights given the increasing numbers of non-traditional families and of single fathers wanting to be a parent. The author focuses on the treatment of putative fathers' rights by courts. After a review of United States Supreme Court's decisions setting forth the rights of putative fathers in adoption proceedings, the author examines the case law of several state courts on putative fathers' rights. The author then surveys the possible causes of action available to an unwed father to protect his rights and reviews the public policy considerations that might conflict with his claims. The author further analyzes state laws that protect the rights of putative fathers and advocates for statutory protections for putative fathers as those will best be able to protect the concerned fathers' rights and protect the adoptive families and children from unnecessary uncertainty in adoptions.

Khristine Ann Heisinger in "Child Support Properly a Factor in Determining Best Interests of Child in Voluntary Termination of Parental Rights" (*58 Mo. L. Rev. 969, Fall, 1993*) examines factors considered in the termination of parental rights. She focuses on the Western District of the Missouri Court of Appeals' decision In re R.A.S. In that decision, the court of appeals affirmed the trial court's dismissal of a petition for voluntary termination of the parental rights of an absent father. The court held that when a parent voluntary wants to terminate his parental right to avoid his child support obligations and termination would produce no benefit to the child, the "best interests" requirement is not met and termination should be denied. After a summary of the facts and holdings In Re R.A.S., the author reviews Missouri laws on the termination of parental rights and the policy reasons that support a strong child support enforcement. She focuses in particular on whether child support is a proper factor in determining the best interests of a child in placement decisions.

Deborah A. Ellingboe in "Sex, Lies, and Genetic Tests: Challenging the Marital Presumption of Paternity Under the Minnesota Parentage Act" (*78 Minn. L. Rev. 1013, April, 1994*) examines the Minnesota Parentage Act (MPA) and the standing of a biological father to sue for paternity against a marital presumption. After a review of various states' paternity statutes, court interpretations of these statutes and the underlying policies, the author analyzes the MPA. The author argues that because the MPA creates rights for the biological fathers, they should have standing to sue for paternity, whether under the MPA or as a constitutional right, even if a marital presumption of paternity already exists. The author concludes that courts should use the child's-best-interests test to determine whether the marital presumption of paternity or the biological father's rights should prevail.

Deborah L. Forman in "Unwed Fathers and Adoption: A Theoretical Analysis in Context." (*72 Tex. L. Rev. 967, April, 1994*) examines the theoretical framework underlying the law's treatment of unwed fathers' rights in adoption. The author first analyzes the U.S. Supreme Court's jurisprudence of fatherhood. The author then explores alternative theories on the rights of the unwed father. Some theories deny the unwed father rights on his children (fatherhood is based solely on the marital presumption of paternity). Some theories give fathers and mothers equal rights to approve and veto adoptions. A third, middle-ground, position imposes threshold requirements to obtain paternal rights. Typically, the requirement is that the father must have shown a willingness, a "substantial commitment", to assume his parental responsibilities. The author notes that courts have difficulty in applying the "substantial commitment" standard in a meaningful way (e.g., because of the moral bias involved in some cases, or the difficulty in selecting criteria to measure parental commitment). The author supports the "substantial commitment" standard and argues that courts must consider all aspects of the interpersonal circumstances before them to serve children's interests. Finally, the author proposes some practical solutions to avoid repeating the drama of the Baby Jessica case.

Kirsten Korn in "The Struggle for the Child: Preserving the Family in Adoption Disputes Between Biological Parents and Third Parties" (*72 N.C.L. Rev. 1279, June, 1994*) considers the possible solutions to prevent the tragedies that occur in contested adoption cases. The author first discusses three highly publicized cases of contested adoption decisions (Baby Jessica, Baby Richard and Baby Pete). The author then provides a historical review of the constitutional protection of child and parent rights. Next the author examines the definition of family and the constitutional protection of the family integrity and explores the rights of adoptive parents, biological parents, unwed fathers and children. The author finally reviews the standards used to settle disputes between biological parents and third parties and proposes changes to these standards.

Karen C. Wehner in "Daddy Wants Rights Too: A Perspective On Adoption Statutes" (*31 Hous. L. Rev. 691, Summer, 1994*) compares several states' statutes on unwed fathers' rights regarding adoption proceedings. After a historical review of the development of putative fathers' rights (in common law and pursuant to decisions of the US Supreme Court), the author compares state statutory treatment of the unwed biological father and discusses the Uniform Adoption Act and the Uniform Parentage Act. The author then proposes solutions for improving the adoption process when putative fathers are involved. Finally, the author concludes that legislators must be prepared to make reasonable, good faith efforts to balance the interests of the father in establishing his parental rights and the state's interest in terminating those rights if the father fails to meet his parental obligations.

Douglas E. Cressler in "Requiring Proof Beyond A Reasonable Doubt In Parental Rights Termination Cases" *(32 U. of Louisville J. of Fam. L. 785, Fall, 1994*) advocates that states should adopt the "beyond a reasonable doubt" standard in parental rights termination cases. After a review of the events typically leading to an action for the termination of parental rights, the author summarizes the grounds which must generally be proven before parental rights may be extinguished by a court. The author then discusses the various evidentiary standards employed in various types of proceedings and concludes that the highest level of certainty must be sought in parental termination cases and thus that proof must be obtained "beyond a reasonable doubt" for all relevant facts.

Meghan S. Skelton in "Providing Justice For Children In Disputed Adoptions: A Feminist Perspective" (*1 Wm. & Mary J. of Women & L. 217, Fall, 1994*) approaches the issues arising in contested adoption cases from the perspective of women. The author first examines the nature and value of the attachment between infants and their adult caregivers. The author then considers the due process rights of the biological parents and adoptive parents under family and adoption laws and jurisprudence and surveys statutory consent provisions. She examines how a feminist perspective would apply the law. The author then analyzes contested adoption cases and the tests used by courts to decide these cases, and, arguing that not all decisions have served the best interests of the child, she examines how a feminist approach might address the same disputes. Finally, the author proposes other options to the courts that would integrate the feminist perspective and better serve the interests of the child. The author concludes that the courts to better serve

the child must focus on the attachment relationship between the child and the parent figure.

Lynn Kirsch in "Unwed Fathers And Their Newborn Children Placed For Adoption: Protecting The Rights Of Both In Custody Disputes" (*36 Ariz. L. Rev. 1011, Winter, 1994*) addresses, in the wake of the Baby Jessica case, custody disputes between unwed fathers and prospective adoptive parents. After a summary of relevant United States Supreme Court cases, the author uses two cases to illustrate the differences in the methods used and results achieved in resolving custody disputes between unwed fathers and prospective adoptive parents. One case illustrates how the expectation of different results in different state courts leads to forum shopping and delays in the decision on a child's future. The other case illustrates how within the same state, similar delays can occur when two different courts use two different methods. The author then discusses her proposed two-tiered approach to resolving these custody disputes. Finally, the author concludes that any custody dispute resolution method must incorporate procedures to ensure fast and final decisions.

Michael A. Weinberg in "Deboer v. Schmidt: Disregarding The Child's Best Interests In Adoption Proceedings" *(23 Cap. U.L. Rev. 1099, Winter, 1994*) analyzes the decision of the Michigan Supreme Court in the Baby Jessica case and its implications for contested adoption cases. The author first examines the requirements of both Uniform Child Custody Jurisdiction Act ("UCCJA") and the Parental Kidnapping Prevention Act ("PKPA"), and analyzes the United States Supreme Court cases that set forth the unwed father's constitutional rights with respect to his child. The author then discusses the Michigan Baby Jessica case and examines whether the UCCJA and the PKPA should apply to adoption proceedings. The author argues that in addition to the biological parents, the child and the prospective adoptive parents should be given standing to litigate the custody of the child. Finally, the author examines case law illustrating the importance of considering the best interests of a child in adoption proceedings.

Mary L. Shanley in "Unwed Fathers' Rights, Adoption, And Sex Equality: Gender-Neutrality And The Perpetuation Of Patriarchy" (*95 Colum. L. Rev. 60, January, 1995*) focuses primarily on the basis and nature of an unwed biological father's right to veto an adoption decision of an unwed mother. The author first reviews the historical development of the rights of unwed fathers in common law and constitutional law (based on Supreme Court decisions) and discusses state laws and case law dealing with unwed fathers and adoption. The author then analyzes the arguments put forward by those who argue that the unwed biological father should have the right to assume custody of his children when the biological mother relinquishes her rights and those who argue that the unwed mother's decision to place the child for adoption cannot be contested. The author advocates that the proper bases for parental rights should be responsibility, relationship (including, but not exclusively, biological ties) and care and she examines how three adoption bills submitted to the New York legislature follow (or not) that principle.

Paige Kerchner Kaplan in "Putting The Child First In Custody Battles Between Biological Fathers And Adoptive Parents" (*35 Santa Clara L. Rev. 907, 1995*) explores

California law and case law on independent adoptions and the rights of biological fathers as they relate to the best interests of the child. The author first examines the court decisions in the Baby Richard and Baby Jessica cases and addresses attachment theories on the impact of removing young children from the only home they have known. The author reviews the Uniform Adoption Act, adoption law in California and the rights of biological fathers in California. The author also summarizes the California Supreme Court decision that expanded these rights to putative fathers seeking custody in California. The author then analyzes the problems presented by the inconsistent judicial decisions in contested adoption cases and the lack of adequate legislation and proposes solutions to these problems.

Andrew S. Rosenman in "Babies Jessica, Richard, And Emily: The Need For Legislative Reform Of Adoption Laws" (*70 Chi.-Kent. L. Rev. 1851, 1995*) discusses the problems and issues raised by three high-profile contested adoption cases (Baby Jessica, Baby Richard and Baby Emily) and proposes legislative reforms to remedy these problems. The author first analyzes in details the three cases. The author then examines the conflict between the rights of the putative father and the "best interests of the child." Finally, the author proposes four legislative reforms to avoid the recurrence of the problems identified in the three discussed cases: (1) expedited decisions and appeals; (2) putative father registries; (3) mandatory pre-placement counseling; and (4) penalties for fraud.

Susan Swingle in "Rights Of Unwed Fathers And The Best Interests Of The Child: Can These Competing Interests Be Harmonized? Illinois' Putative Father Registry Provides An Answer" (*26 Loy. U. Chi. L.J. 703, Summer, 1995*) examines Illinois' efforts to strike a balance between the interests of all the parties concerned in contested adoption cases. The author first reviews the United States Supreme Court decisions that framed the rights of unwed fathers and established a liberty interest between an unwed father and his child in adoption proceedings. The author next discusses the Baby Richard case and the Illinois Adoption Act as it existed at the time the Illinois Supreme Court reversed Baby Richard's adoption. The author then analyzes the Amended Illinois Adoption Act and finds that, subject to some proposed changes, Illinois' Putative Father Registry adequately balances the competing interests involved in contested adoption proceedings.

Jeffrey Thomas Skinner in "Survey Of Developments In North Carolina And The Fourth Circuit, 1994: VI. Family Law: Why the Best Interests Standard Should Survive Petersen v. Rogers" (*73 N.C.L. Rev. 2451, September, 1995*) examines the standards applied in North Carolina to contested custody cases. After a brief historical survey of adoption proceedings and parental rights in the United States, the author analyzes custody laws in North Carolina. The author then reviews the Petersen v. Rogers case and critiques the North Carolina Supreme Court's decision in Petersen. Finally, the author argues that the Petersen test in reality does not eliminate the application of the best interests standard in North Carolina.

Brooke Ashlee Gershon in "Throwing Out The Baby With The Bath Water: Adoption Of Kelsey S. Raises The Rights Of Unwed Fathers Above The Best Interests Of The Child" (*28 Loy. L.A. L. Rev. 742, Winter, 1995*) examines the impact of the California Supreme

Court decision in the case on the adoption of Kelsey S. and argues that courts should not give precedence to a father's constitutional rights over a child's best interests. After a brief historical review of the laws regulating adoption custody proceedings (at the federal and California levels), the author analyzes the Kelsey S. case, discussing both the trial court decision and the California Supreme Court decision. The author argues that the California Supreme Court wrongly put the biological father's rights ahead of the child's rights, denying the importance of the child's psychological bond to his adoptive parents in the assessment of the best interests of the child.

Cindy Paul in "Recent Development: H. Utah's 1995 Adoption Act Revision" (*22 J. Contemp. L. 239, 1996*) discusses amendments to Utah's adoption legislation with particular focus on the rights of the unwed biological father to contest an adoption and relevant notice and procedure requirements.

Leslie Joan Harris in "Reconsidering the Criteria for Legal Fatherhood" (*1996 Utah L. Rev. 461*) explores the use of biology in defining legal fatherhood and why this reliance on biology often harms the children. The author first examines how biology became the major criterion used in the definition of legal fatherhood and discusses the downsides of relying on biology. The author then discusses alternative criteria for the definition of parenthood and rejects them. Finally, the author advocates for reliance on functional paternity as a basis for legal fatherhood.

Scott A. Resnik in "Seeking The Wisdom Of Solomon: Defining The Rights Of Unwed Fathers In Newborn Adoptions" (*20 Seton Hall Legis. J. 363, 1996*) analyzes the development of unwed fathers' rights in American adoption law. The author first presents the controversy on the rights of unwed biological fathers as it was captured in three very public disputed adoption cases (Baby Jessica, Baby Richard and Baby Emily). The author then analyzes the decisions of the US Supreme Court that framed the rights of the biological unwed father and discusses questions that were left open by the Court. The author focuses in particular on the cases of newborn adoptions. Next, the author reviews state approaches to the rights of unwed fathers. Finally, the author proposes a solution that balances the interests of biological fathers, adoptive parents, the state, and the child.

Judith T. Younger in "Responsible Parents and Good Children" (*14 Law & Ineq. J. 489, June, 1996*) examines the relationship between laws and parents' responsibilities for their children. The author first provides an overview of family laws from colonial times to present times. The author then examines the law on five issues (family form and function, the economic value of children, parents' responsibility for the antisocial acts of their children, and the primacy of children's interests in deciding issues that affect their welfare) and criticizes the laws' ambivalence on these issues. Finally, the author concludes that children are at risk because of their parents' failure to form strong, stable families and that family law fails to tell parents that society wants strong, stable families, responsible parents and good children. The author thus proposes legislative reforms to clearly communicate society's expectations.

Laura Goldsmith-Ryan in "Adoption of Michael H.: One Baby Step Forward for Adopted Children, One Potential Giant Step Backward for Women" *(30 U.S.F.L. Rev. 1281, Summer, 1996*) examines the potential conflict in contested adoption cases between the rights of the biological parents and the rights of the child. The author first sets out the rights of the unwed biological father under California law and case law and then discusses the California Supreme Court decision in the Adoption of Michael H. case. The author analyzes the importance of this decision for adopted children, arguing that a biological connection should not automatically supersede the psychological connection between a child and his adoptive parents. Rather, the author argues that priority should be given to the child's best interest. Finally, the author discusses whether courts could misuse the California Supreme Court holding of Adoption of Michael H. to give the father a right to oppose the mother's decision to terminate her pregnancy.

Tracy Cashman in "When is a Biological Father Really a Dad?" (*24 Pepp. L. Rev. 959, April, 1997*) examines legislative, judicial, and public support for the clarification of the rights of unwed biological fathers in the wake of much publicized cases where fathers attempted to block an adoption and the effects of these cases on children. After a historical review of the development of the confusion on fathers' rights, the author examines the constitutional claims underlying the fathers' rights as interpreted by the US Supreme Court and the lack of uniformity in state procedures determining fathers' rights. The author then proposes guidelines to improve the predictability in contested custody cases, including state ratification of relevant sections of the Uniform Adoption Act.

Naomi R. Cahn in "Reframing Child Custody Decision-making" (*58 Ohio St. L.J. 1, 1997*) explores how disputes are resolved when a third party seeks custody of a child whose biological parents are still alive. The author first discusses how the law defines parental rights, the rights of third parties and the best interest of the child standard. The author examines situations in which a need for a new definition of "parent" has arisen, including contested adoption cases, surrogacy cases, cases arising from new reproductive technologies and unwed fathers. The author reviews several criteria that have been suggested to define "parentage" and determine the appropriate custodian of the child. The author finally argues that in child custody decision cases, courts must recognize all concerned parties' rights, responsibilities and attachments, and aim at a speedy resolution of all such disputes.

Kimberly T. Lee in "Hollow Promise: Biological Father's Constitutional Right to Withhold Consent for a Third-Party At-Birth Adoption of His Child" (*18 J. Juv. L. 151, 1997*) examines the constitutionally protected right of an unwed biological father to oppose the adoption of his child. The author first analyzes United States Supreme Court cases that defined these rights. The author then examines California Supreme Court decisions on the biological father's constitutional rights when dealing with infant adoption and analyzes the flaws in the California law and case law. Finally, the author proposes solutions to adequately protect a father's rights while preserving the best interests of his child.

Alexandra Maravel in "Intercountry Adoption and the Flight from Unwed Fathers' Rights: Whose Right Is It Anyway?" *(48 S.C. L. Rev. 497, 1997*) examines the rights of the biological fathers in cases where the biological mother puts the child up for adoption against the will of the biological father in a foreign country where the consent of the father is not required. In the (then current) state of the law, the father would be forced to litigate his rights in the foreign country. The author advocates for the U.S. ratification of the Hague Convention on Intercountry Adoptions that would solve these problems.

Susan Kubert Sapp in "Easing the Delivery of Adoption Reform in Nebraska: L.B.712" (*76 Neb. L. Rev. 856, 1997*) examines unwed fathers' rights in adoption. After a historical review of the father's rights as set forth in the case law of the United States Supreme Court and the Nebraska Supreme Court, the author discusses the changes made to Nebraska's adoption laws by L.B. 712, enacted September 7, 1995. She discusses the changes brought about by L.B. 712. The author then analyzes notable post-L.B. 712 adoption decisions of the United States Supreme Court and the Nebraska Supreme Court.

Cheryl Ryon Eisen in "Using a "Brief Case Plan" Method to Reconcile Kinship Rights and the Best Interests of the Child When an Unwed Father Contests a Mother's Decision to Place an Infant For Adoption" (*23 Nova L. Rev. 339, Fall, 1998*) examines Florida current and proposed laws on unwed fathers' rights in contested adoptions. The author first reviews current Florida laws relating to adoptions and discusses the needs for changes. The author then reviews a proposed new legislation regulating unwed fathers' rights in adoptions (Senate Bill 550, also known as Senate Bill 0002 for 1999). After a critique of Senate Bill 550, the author proposes an alternative framework for new legislation on unwed fathers' rights.

Thomas L. Fowler and Ilene B. Nelson in "Navigating Custody Waters Without A Polar Star: Third-Party Custody Proceedings After Petersen V. Rogers And Price V. Howard" (*76 N.C.L. Rev. 2145, September, 1998*) examine the standards and laws applied in North Carolina in custody matters, including contested adoption cases, as affected by the Petersen v. Rogers and Price v. Howard cases. The authors first summarize the application of the "best interest of the child" test by North Carolina courts in custody and adoption matters. The authors then analyze the facts of the Petersen case and the issues considered by the North Carolina Court of Appeals and the North Carolina Supreme Court and discuss the implications of the Petersen decision. The authors next discuss how the Petersen standard was modified by the Price case and what standards are applied after the Price decision.

Karen R. Thompson in "The Putative Father's Right To Notice Of Adoption Proceedings: Has Georgia Finally Solved The Adoption Equation?" (*47 Emory L.J. 1475, Fall, 1998*) examines Georgia laws on the rights of putative fathers. After a review of US Supreme Court decisions that defined the putative fathers' rights, the author identifies issues not addressed by the Supreme Court and thus left to State's courts and State laws. The author then examines how these issues were dealt with under Georgia law and by the Georgia courts prior to the 1997 amendments to Georgia adoption laws. Next the author discusses the 1997 amendments to Georgia's adoption laws with regard to the putative father's right

to notice of adoption proceedings. The author focuses on shortcomings of the amended statute and proposes some changes to better protect the rights of the putative fathers.

Marcus T. Boccaccini and Eleanor Willemsen in "Contested Adoption And The Liberty Interest Of The Child" *(10 St. Thomas L. Rev. 211, Winter, 1998*) discuss recent court decisions in contested adoption cases and the balance between the rights of the biological father contesting the adoption and the interests of the child. The authors first define the liberty interests of the child under the Constitution and discuss the case law of the Supreme Court of the United States on the rights of the biological fathers to contest an adoption. The authors examine psychological research on the importance of attachment in infancy and the rights of a child to a permanent home. The authors then discuss recent cases of contested adoptions where the guidance from existing Supreme Court decisions was insufficient and argue that the liberty interests of the child in contested adoption cases are of greater legal concern than those of the biological father, noting that the Supreme Court has ruled on the rights of the fathers, but has yet to directly address the child's rights in contested adoption cases.

Toni L. Craig in "Establishing The Biological Rights Doctrine To Protect Unwed Fathers In Contested Adoptions" (*25 Fla. St. U.L. Rev. 391, Winter, 1998*) advocates for the protection of biological fathers' rights. The author reviews the historical and modern treatment of the unwed biological fathers and the development of the biological fathers' rights doctrine and its underlying policies. The author then discusses competing interests that have diminished the biological rights doctrine. The author focuses in particular on adoptions in Florida and analyzes and criticizes Chapter 63 of the Florida Statutes, arguing that it is unconstitutional and suggesting amendments.

Tim Peeples in "Recent Decision: Family Law--Parental Rights of an Unwed Father--An Unwed Father Secures Parental Rights by Establishing a Relationship with His Child" (*68 Miss. L.J. 1095, Spring, 1999*) analyzes the ruling of the Mississippi Supreme Court in Smith v. Malouf. The Smith Court held that when a putative father made significant efforts to develop a custodial, financial, and personal relationship with the child, he gained constitutional rights to receive notice of and to object to the adoption of his child. The author finds that the Smith decision (i) strengthens the position of an unwed father who has acted to establish a relationship with his child, even if his parental right to object to the adoption of his child was revoked by the State, but it does not hold that an unwed father automatically gains parental privileges, and (ii) resolves the conflict between Mississippi's statutory law and United States Supreme Court case law (Stanley v. Illinois), thus fortifying the parental rights of an unwed father.

Michael L. Jackson in "Fatherhood and the Law: Reproductive Rights and Responsibilities of Men" (*9 Tex. J. Women & L. 53 Fall, 1999*) explores the reproductive rights and responsibilities of men and women in traditional and less conventional reproductive arrangements, both before and after the child is born. The author first examines the current state of the law and finds that, while men and women have equal responsibilities under the law, men are not given the same rights as women. Then, the author discusses whether the dissimilar treatment of men with regard to their rights is

justified. Finally, the author proposes alternative approaches that would treat men and women more equally.

Jordana P. Simov in "The Effects of Intercountry Adoptions on Biological Parents' Rights" *(22 Loy. L.A. Int'l & Comp. L. Rev. 251 December, 1999)* discusses inter-country adoptions between Hungary and the United States (in particular California). After a review of the adoption process and applicable laws, the author examines the rights of the foreign biological parent(s) under federal law, California law and case law and Hungarian law. She then focuses on the efforts of international organizations, such as the United Nations, to create uniform standards for international adoptions and examines whether these efforts include the protection of the biological parents' rights. Finally, she recommends possible solutions to protect the foreign biological parents' parental rights.

Kristine Alton in "Part Nine: Foster Care and Adoption: Case note: In re Adoption of Kelsey S." (*11 J. Contemp. Legal Issues 547, 2000*) analyzes the California Supreme Court's decision in Re Adoption of Kelsey S. Under the Uniform Parentage Act, a biological father may veto the adoption of his child only if he is a "presumed father" and a biological father becomes a "presumed father" either by marrying the child's mother, or by receiving the child into his home and holding him/her out as his own. The Court held that the Uniform Parentage Act infringes a biological father's federal due process and equal protection rights if it precludes the father from contesting the adoption of his child after he has demonstrated a full commitment to parental responsibility in a timely and sufficient manner, despite the mother's action to prevent him taking the child into his home. The author then discusses cases that followed the Kelsey S. decision and the importance of that judgment for family lawyers.

Theresa Glennon in "Somebody's Child: Evaluating The Erosion Of The Marital Presumption Of Paternity" (*102 W. Va L. Rev. 547, Spring, 2000*) examines the legal and moral issues involved in the application of the marital presumption of paternity. The author first provides background information on the status of children born out of wedlock, the development of DNA paternity tests, the increasing numbers of divorces in the United States in the last thirty years and their effects on children. The author then reviews the history of the marital presumption of paternity and analyzes how courts have resolved disputes between several claims to paternity. The author also reviews the provisions in the Uniform Parentage Acts of 1973 and 2000 that deal with the paternity of children born during their mother's marriage. Finally, the author examines the inconsistent application of these doctrines by courts and advocates for a re-examination of the assumptions underlying the legal parentage of children born during a marriage.

John A. Bluth in "Can an Unmarried Biological Father Recover His Child and Damages?" (*2002 Utah L. Rev. 577*) examines the rights of the unwed biological father in a Utah adoption procedure. The author first reviews the case law of the United States Supreme Court that defined the rights of the unwed biological father in contested adoption cases, and then discusses the relevant Utah law and case law. The author finally reviews the legal options available to the unwed biological father in Utah to bring an

action against the mother and other parties to regain custody of the child and for damages.

Matthew R. Hall in "Redefining Fatherhood" (*4 J. L. Fam. Stud. 209, 2002*) writes a review of Professor Nancy E. Dowd's book "Redefining Fatherhood" (New York University Press 2000).

Mary Beck in "Toward a National Putative Father Registry Database" (*25 Harv. J.L. & Pub. Pol'y 1031, Summer 2002)* analyzes putative father registries and provides a survey of the current laws on such registries and applicable procedure in the 50 U.S. states. After a review of relevant case law, she finds that states' putative father registries may protect the rights of unwed fathers and adoptees within their state but lose much of their effects when father and/or mother travel outside of the state. She thus proposes federal legislation to create a national database that will enhance and connect the state and local putative father registries and adequately protect the birth fathers' rights to a relationship with their children, the adoptees' rights to the permanency of adoption and the privacy rights of mothers.

Edward R. Armstrong in "Family Law--Putative Fathers and the Presumption of Legitimacy--Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights of Putative Fathers in Arkansas" (*25 U. Ark. Little Rock L. Rev. 369, 2003*) examines the rights of putative and adoptive parents under Arkansas law. After a historical overview of the presumption of legitimacy, the author reviews United States Supreme Court decisions that defined the rights of putative fathers. The author then discusses several Arkansas Supreme Court cases. Focusing on the R.N. v. J.M. case, the author examines the Arkansas Supreme Court views on the conflict between the rights of putative fathers and the presumption of legitimacy and identifies resulting concerns. The author then addresses the implications of the R.N. v. J.M. case for children and families and proposes certain legislative changes to better protect the best interest of children and the integrity of families.

Jeffrey A. Parness in "Old-Fashioned Pregnancy, Newly-Fashioned Paternity" (*53 Syracuse L. Rev. 57, 2003*) explores US laws on paternity and examines the roles of biological ties in all determinations of legal parenthood. The author examines differences in assigning parental rights and parental responsibilities and differences between legal maternity and legal paternity determinations. The author then illustrates unfair legal paternity procedures and proposes alternative solutions to create fairer paternity procedures.

GAY/LESBIAN ADOPTIONS AND SINGLE PARENT ADOPTIONS

Juliet A. Cox in "Judicial Enforcement of Moral Imperatives: Is the Best Interest of the Child Being Sacrificed to Maintain Societal Homogeneity?" (*59 Mo. L. Rev. 775, Summer, 1994*) examines the courts' assessment of the morality of parents in the application of the best interest of the child standard in custody and adoption placement decisions. The author first examines interracial relationships and parentage, including the

changes in moral societal judgment of these relationships, the courts' reaction to this shift in moral judgment and the resulting impact on adoption and custody decisions. The author then carries out the same analysis with regard to gay and lesbian relationships and parentage.

Devjani Mishra in "The Road to Concord: Resolving the Conflict of Law over Adoption by Gays and Lesbians" (*30 Colum. J.L. & Soc. Probs. 91, 1996)* evaluates the conflict between state laws and policies on the adoption of children by gays and lesbians. She argues that the application of the child's "best interest" standard favors recognition of these adoptions and that the focus on the parents' sexual preferences is misplaced.

Theresa Glennon in "Symposium: Constructing Family, Constructing Change: Shifting Legal Perspectives On Same-Sex Relationships: Panel One: Family Law: Article: Binding The Family Ties: A Child Advocacy Perspective On Second-Parent Adoptions" (*7 Temp. Pol. & Civ. Rts. L. Rev. 255, Spring, 1998*) focuses on second parent adoptions in which the second parent is gay or lesbian and explores these issues from a child's advocacy perspective. The author first describes a Pennsylvania case (In Re Adoption of B.L.P.) where the court refused to grant a second-parent adoption and the consequences of this decision for the child involved. Next the author criticizes this decision and argues that it fails to ensure the welfare of the child as mandated by the Pennsylvania Adoption Act. The author then examines whether second-parent adoptions should be limited to married couples and disagrees with this limitation. To conclude the author argues that family law should prioritize child caretaking relationships.

Joyce F. Sims in "Homosexuals Battling The Barriers Of Mainstream Adoption-And Winning" (*23 T. Marshall L. Rev. 551, Spring, 1998*) reviews social and legal developments affecting the adoption of children by gay and lesbian parents.

Emily Doskow in " The Second Parent Trap: Parenting For Same-Sex Couples in a Brave New World" (*20 J. Juv. L. 1, 1999*) examines the rights of gay and lesbian parents under California law, with particular emphasis on the status of "second" parents - the same-sex partners of biological or legal parents. After a brief review of the means by which lesbian and gay parents can and cannot create families with children, the author discusses second-parent adoption under California law. She also examines the consequences for same-sex second parents where no adoption is completed. Finally, the author discusses the recent evolution of standards under the Uniform Parentage Act and the effects of that evolution on same-sex families.

Nancy G. Maxwell, Astrid A.M. Mattijssen, and Charlene Smith in "Legal Protection for All the Children: Dutch-United States Comparison of Lesbian and Gay Parent Adoptions" (*17 Ariz. J. Int'l & Comp. Law 309 Spring, 2000*) examine recent changes in the United States and the Netherlands with regard to gay/lesbian adoptions and compare the different approaches followed in each country. The authors first analyze relevant U.S. and Dutch case law and describe the current status of Dutch law as it affects gay and lesbian co-parents. Then the authors examine proposed legislation in the U.S. and the Netherlands concerning the right of same-gender couples, and homosexual individuals in

general, to adopt and compare the Dutch and American legal histories concerning same-gender co-parent adoptions. Finally, the authors conclude that recognition of same-gender co-parent adoption is in the best interest of the children raised by same-gender couples.

Nancy D. Polikoff in "Recognizing Partners but Not Parents / Recognizing Parents but Not Partners: Gay and Lesbian Family Law in Europe and the United States" *(17 N.Y.L. Sch. J. Hum. Rts. 711, 2000*) compares U.S. law and the law of selected European countries on the recognition of gay/lesbian partnerships and their right to adopt children. After summarizing the relevant laws of the selected European countries, the author demonstrates their ability to validate lesbian and gay relationships while disapproving of lesbian and gay parenting. Conversely, in the United States, she finds court approval of lesbian and gay parenting without a resulting approval of lesbian and gay relationships. In her view, this distinction facilitated substantial recognition of the parenting abilities of lesbians and gay men. Finally, she reports that recent developments in the United States signal an end to the separation of the issues of couple recognition and parenting ability to the detriment of gay/lesbian families. Specifically, states opposing gay marriage argue that gay couples should not raise children, and legislators oppose the joint adoption of children on the ground that joint adoption is a step towards legalizing gay marriage.

Kenneth Strauss in "Foster Care and Adoption: Recent Developments in Single Parent Adoptions" (*11 J. Contemp. Legal Issues 597, 2000*) provides a brief overview of the evolution of single parent adoptions in the United States.

Heather J. Langemak in "The "Best Interest Of The Child": Is A Categorical Ban On Homosexual Adoption An Appropriate Means To This End?" (*83 Marq. L. Rev. 825, Summer, 2000*) examines the increase in the number of adoptions by homosexuals and the legal issues raised by these adoptions. After a historical review of adoptions in the United States, the author analyzes state laws that expressly prohibit adoptions by homosexuals and whether these laws are constitutional. The author then discusses court decisions that have supported adoption by homosexuals and reviews some of the theories underlying these decisions. Finally, the author argues that the "best interest of the child" should be the decisive factor in adoptions and that the sexual orientation of the adoptive parent should be considered only when there is another equally suitable prospective adoptive parent.

Scott C. Seufert in "Going Dutch?: A Comparison of the Vermont Civil Union Law to the Same-Sex Marriage Law of the Netherlands" (*19 Dick. J. Int'l L. 449 Spring, 2001*) examines the laws of Vermont and the Netherlands on same-sex marriages. After a review of the old case law and statutes of Vermont, the author examines the civil union law that authorizes same gender marriages. The author also examines the registered partnership and adoption-related law of the Netherlands and the legislative history of the new Dutch same-sex marriage law and adoption statutes. Finally, comparing both sets of laws, the author analyzes some of the ramifications of these laws for same-sex couples and their impact on adoptions.

Angela Dunne Tiritilli and Susan Ann Koenig in "Advocacy For Nebraska Children With Gay And Lesbian Parents: A Call For The Best Interests Of The Child To Be Paramount In The Case Of Non-Biological, Non-Adoptive Parents" (*36 Creighton L. Rev. 3, 2002 / 2003*) advocate for the abolition by the Nebraska courts of the parental preference doctrine, which gives a preferred custody right to the biological or adoptive parent and its replacement by the best interests of the children test. The authors first review the Nebraska laws that address a parent-child relationship involving a non-biological, non-adoptive parent (including the statutes on marriage, divorce, paternity, guardianship, juvenile actions, adoption, and actions under the Nebraska Child Custody Jurisdiction Act (NCCJA)). The authors argue that the NCCJA can protect children of same sex parents in that it allows a custody decision to be made in the best interests of a child. Second, the authors discuss the equitable doctrines recognized in Nebraska to protect parent/child relationships involving a non-biological and non-adoptive parent. After a case law review, the authors argue that the in loco parentis doctrine should be favored in custody and visitation matters involving non-biological and non-adoptive parents and the parental preference doctrine abolished. Finally, the authors discuss the best interest standard and argue that in the best interests of the child, the sexual orientation of a non-biological, non-adoptive parent should have no impact on the rights of that parent.

IDENTITY RECORDS/OPEN ADOPTIONS

Annette Ruth Appell in "Blending Families Through Adoption: Implications For Collaborative Adoption Law And Practice" (75 B.U.L. Rev. 997, September, 1995) examines the need for mechanisms to maintain ties between the adoptive and birth families and explores in particular "open" and "cooperative" adoptions of foster children. After a review of the evolution of adoption law and practice in the United States, the author examines collaborative adoption for dependent children. She then discusses the implications of the various legal mechanisms that have been established to achieve openness in adoption (e.g., collaborative adoption agreements, recent legislation on such agreements in selected U.S. states and court-mandated open adoptions) and compares these legislative and judicial mechanisms with regard to post-adoption familial contacts. The author then suggests criteria to assess when such contacts are in the child's best interest and prescribes extralegal mechanisms to promote collaborative adoptions.

Shirley K. Senoff in "Open Adoptions in Ontario and the Need for Legislative Reform" (*15 Can. J. Fam. L. 183, 1998*) examines the legal status of open adoptions in Ontario. The author examines the Child and Family Services Act (CFSA) which favors a "closed" approach to adoption, under which identifying information about the various parties is kept secret. The author argues that the closed approach to adoption is grounded in several adoption myths (e.g., with regard to the relationship between birth mothers and adopted children) that influence the legal system and discriminate against adoptees, birth mothers and adoptive parents. The author reviews a new law in British Columbia that accepts open adoptions and advocates for specific legislative changes to Ontario's CFSA which would better serve the needs of all parties to an adoption.

Naomi Cahn & Jana Singer in "Adoption, Identity, And The Constitution: The Case For Opening Closed Records" *(2 U. Pa. J. Const. L. 15, December, 1999*) examine the controversy over the confidentiality of adoption records. After a historical review of closed adoption records in the United States, the authors discuss the constitutional law challenges brought by adult adoptees against the sealing of their records and by birth parents against the opening of the records. The authors then examine arguments in favor of, and against, open records and conclude that these arguments point strongly in the direction of openness. The authors propose that a presumption of open records, at the choice of an adult adoptee, replace the current secrecy requirement.

II. INTERNATIONAL ISSUES OF INTEREST

GENERAL DISCUSSION OF INTERNATIONAL ADOPTIONS

Margaret Liu in "International Adoptions: An Overview" *(8 Temp. Int'l & Comp. L.J. 187, Spring, 1994)* discusses the various attributes of international adoption and its increasing popularity. After a review of the evolution of international adoptions, the author analyzes the arguments for and against international adoption and addresses measures available to protect children involved in international adoptions. She examines the actual process of international adoption, and calls for laws to protect children from abuse. Finally, the author offers some prospective analysis on the benefits of international adoption.

Richard R. Carlson in "The Emerging Law Of Intercountry Adoptions: An Analysis Of The Hague Conference On Intercountry Adoption" (*30 Tulsa L.J. 243, Winter, 1994*) examines the Hague Convention on Intercountry Adoptions, its benefits and obligations, and the possible means for its implementation in the United States. After a summary of the key terms of the Convention, the author analyzes certain controversial provisions from a U.S. perspective. Finally, the author discusses the effect of the Convention when the U.S. is a sending nation in an intercountry adoption.

Holly C. Kennard in "Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of Intercountry Adoptions" *(14 U. Pa. J. Int'l Econ. L. 623, Winter, 1994)* examines international efforts to prevent the sale of children. After discussing the development of intercountry adoptions as an international business, she focuses on international responses to the problems associated with intercountry adoptions by analyzing relevant United Nations documents and the Hague Convention on International Co-Operation and Protection of Children In Respect of Intercountry Adoption. The author identifies shortcomings in the Hague Convention's ambitions in preventing the sale of children and offers several suggestions to better achieve the Convention's objectives. Finally, she examines the problems of defining non-profit objectives and determining what constitutes acceptable payment for those involved in the adoption "business".

Lisa M. Katz in "A Modest Proposal: The Convention On Protection Of Children And Cooperation In Respect Of Intercountry Adoption" *(9 Emory Int'l L. Rev. 283, Spring,*

1995) examines the Hague Convention on Intercountry Adoptions. After a review of the history of intercountry adoptions and the moral, political and economic elements that influence the creation of law on adoptions, she discusses the intercountry adoption procedure (prior to the Hague Convention) and its defects through a case study involving a prospective U.S. adoptive parent. The author then analyzes the Hague Convention on Intercountry Adoption and the new procedures it establishes for intercountry adoptions. Finally, the author discusses whether the Hague Convention achieves its objective of simplifying procedures and protecting the best interest of the child.

Stacie I. Strong in "Children's Rights in Intercountry Adoption: Towards a New Goal" (*13 B.U. Int'l L.J. 163, Spring, 1995)* focuses on the rights of children to a permanent family. She examines statistics and psycho-social theories showing that institutional and foster care are insufficient. She analyzes the legal bases for and history of domestic and international adoptions and she finds that the international community, if it truly intends to protect the best interest of the children, should promote the adoption of children even if this means prioritizing international adoption over domestic foster care. After a summary of the current status of children's rights in the adoption process (children's rights movements), she advocates for fewer restrictions to domestic and intercountry adoptions and for the empowerment of the children themselves to make their voices heard in the adoption process.

Jennifer M. Lippold in "Transnational Adoption From An American Perspective: The Need For Universal Uniformity" *(27 Case W. Res. J. Int'l L. 465, Spring/Summer, 1995)* focuses on the many problems faced by U.S. couples in adopting children, both domestically and internationally, as a result of the inconsistencies among diverse laws. After an overview of international adoptions in the United States, she explores the various U.S. state, federal, and foreign laws and procedures which apply to domestic and international adoptions and looks at the problems created by the resulting conflicts of law. She suggests that a uniform international adoption law should be implemented to solve these problems and examines whether the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption is a suitable model.

Susan O'Rourke von Struensee in "Violence, Exploitation And Children: Highlights Of The United Nations Children's Convention And International Response To Children's Human Rights" (*18 Suffolk Transnat'l L. Rev. 589, Summer, 1995*) summarizes and analyzes the key provisions of the United Nations Convention on the Rights of the Child, including its provisions on adoption.

Sara Goldsmith in "A Critique Of The Immigration And Naturalization Service's New Rule Governing Transnational Adoptions" *(73 Wash. U. L. Q. 1773, 1995*) examines the impact of the amended federal immigration regulations ("1994 Regulations") on international adoptions. After an overview of the international adoption process, the author summarizes the 1994 Regulations and analyzes the problems it creates. Having identified the flaws and inconsistencies of the current approach to international adoptions, the author proposes an amendment to the United States' immigration laws that would

balance the adoptive child's best interests with the competing rights of both the illegitimate foreign father and the adoptive parents.

Kristina Wilken in "Controlling Improper Financial Gain In International Adoptions" *(2 Duke J. Gender L. & Pol'y 85, 1995)* focuses on the lack of U.S. laws regulating improper financial gains derived from international adoptions. After a review of the Hague Convention on Intercountry adoptions and its provisions on improper profiteering from intercountry adoptions, the author outlines current adoption goals, policies, and procedures within the United States. The author argues that the United States must amend its laws to conform with the provisions of the Hague Convention against improper financial gains from adoptions and suggests possible modifications.

Jennifer Lin Newman wrote an interesting review of the book "Hague Conference on Private International Law, Proceedings of the Seventeenth Session, Tome II: Adoption – Coperation" (edited by the Permanent Bureau of the Conference. Netherlands: SDU Publishers, 1994) (book review published in *18 Hous. J. Int'l L. 229, Fall, 1995)*. The book is found to provide a very valuable compilation of the preliminary and working documents that preceded the adoption of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

William L. Pierce in "International Commentaries: Accreditation Of Those Who Arrange Adoptions Under The Hague Convention On Intercountry Adoption As A Means Of Protecting, Through Private International Law, The Rights Of Children" (*12 J. Contemp. Health L. & Pol'y 535, Spring, 1996*) examines the provision of the Hague Convention on the accreditation of intermediaries in international adoptions and several possible options for the implementation of these provisions of the Convention in the United State.

Alexandra Maravel in "The U.N. Convention on the Rights of the Child and the Hague Conference on Private International Law: The Dynamics of Children's Rights Through Legal Strata" *(6 Transnat'l L. & Contemp. Probs. 309, Fall 1996)* examines the relationships between international law and national laws in the field of children rights, and in particular with regard to adoptions. She analyzes how the norms and rights set forth in the U.N. Convention on the Rights of the Child are juxtaposed to the rules of the Hague Convention on Intercountry Adoption. She finds that the implementation of international norms at national levels through the conduit of the Hague Convention breaks the old assumptions that international law is "soft" and national law is "hard" and the two never meet. In her view, the interaction of norms and processes between international and national levels in the field of children's rights is one of the more exciting metamorphoses of the late twentieth century.

Darya P. Jeffreys in "Intercountry Adoption: A Need For Mandatory Medical Screening" *(11 J.L. & Health 243, 1996/1997)* focuses on the health problems associated with intercountry adoptions and suggests a mandatory health examination as part of the conditions for entry of the adopted children in the United States.

Peter H. Pfund in "The Hague Intercountry Adoption Convention and Federal International Child Support Enforcement" (*30 U.C. Davis L. Rev. 647, Spring, 1997*) discusses the Hague Intercountry Adoption Convention and its (then future) implementation in the United States. The author also briefly describes new federal legislation for the reciprocal enforcement (between the U.S. and other countries) of family support obligations, including child support.

Iris Leibowitz-Dori in "Womb for Rent: The Future of International Trade in Surrogacy" *(6 Minn. J. Global Trade 329, Winter, 1997*) examines the increase in the number of international surrogacy cases and the resulting high risk of abuse of women and their babies. After a background review of international trade in surrogacy, she discusses the possibility of regulating surrogacy internationally and compares surrogacy with the adoption market and its trends. The author finally suggests a regulatory scheme that integrates surrogacy within existing international treaties and proposes specific measures to regulate surrogacy.

Peter H. Pfund in "The Developing Jurisprudence Of The Rights Of The Child: Contributions Of The Hague Conference On Private International Law" (*3 ILSA J Int'l & Comp L 665, Winter, 1997*) discusses three international conventions drafted by the Hague Conference and protecting children's rights in furtherance of the United Nations Convention on the Rights of the Child: (i) the convention on international child abduction; (ii) the convention on intercountry adoption and (iii) the convention on the protection of children. He welcomes the work initiated by the Hague Conference on a new convention for international child support enforcement.

Anthony D'Amato in "Cross-Country Adoption: A Call To Action" *(73 Notre Dame L. Rev. 1239 May, 1998)* notes the disparity between the number of unwanted children worldwide and the number of childless families who want children. After identifying various possible causes to this situation, he suggests a unique solution to remedy the problem. He proposes to establish an Intercountry Adoption Agency in Vatican City, funded by private donations. Abandoned children would be taken to a temporary hospital run by the Intercountry Adoption Agency in Vatican City, where they would be medically examined and then be turned over to the new adoptive parents with all available information on the child (if any). Under this proposal, both the sending and the receiving states' governments would be kept out of the process and the cost of adoption would be near to zero.

Lisa K. Gold in "Who's Afraid of Big Government? The Federalization of Intercountry Adoption: It's not as Scary as it Sounds" *(34 Tulsa L.J. 109, Fall, 1998)* identifies the many problems associated with intercountry adoption and suggests that the federal government should take control in the regulation of intercountry adoptions to simplify and harmonize the process.

Stephanie Zeppa in "Let Me In, Immigration Man": An Overview of Intercountry Adoption and the Role of the Immigration and Nationality Act" (*22 Hastings Int'l & Comp. L. Rev. 161, Fall, 1998)* discusses the increase in the number of intercountry

adoptions in the United States and the complexity of the process. After a summary of the origins and history of international adoption, she examines the numerous laws (national and international sources of law) involved in the actual process of international adoption focusing in particular on China and Russia. The author suggests certain amendments to the US immigration laws that would facilitate the process of intercountry adoption.

Marian Nash (Leich) in "Contemporary Practice Of The United States Relating To International Law" (*92 A.J.I.L. 734, October, 1998*) reports on the Hague Convention on Intercountry Adoptions as submitted by President Clinton to the Senate for U.S. ratification. The article also examines other international law instruments.

Goran Hakansson in "Rights Of Children In The New Millennium: International Adoption And Refugee Children" *(21 Whittier L. Rev. 245, 1999)* reviews the rules of international law applicable to refugee children and in particular the rules applying to the adoption of refugee children.

Gabriela Marquez in "Transnational Adoption: The Creation And Ill Effects Of An International Black Market Baby Trade" (*21 J. Juv. L. 25, 2000*) examines the factors that have lead to the development of an international black market for babies. The author first reviews several reasons why demand for transnational adoptions grew in the U.S and examines the impact of this higher demand on the countries of origin of the children and the resulting development of a black market for babies. The author then addresses the problems caused by this international black market for the birth and adoptive parents, the children, and the adoption agencies. The author then discusses the Hague Convention on Protection of Children and Co-Operation in Respect of Inter-Country Adoption and finally proposes possible solutions to regulate the international black market for babies.

Nicole Bartner Graff in "Intercountry Adoption And The Convention On The Rights Of The Child: Can The Free Market In Children Be Controlled?" (*27 Syracuse J. Int'l L. & Com. 405, Summer, 2000*) questions the premise that intercountry adoptions are all positive for the children and birth mothers involved. After a review of statistical information on the demand for intercountry adoptions, the author discusses a case study of adoptions in Guatemala and the corruption problems resulting from the economic dimension of intercountry adoptions. The author then examines the impact and failures of the U.N. Convention on the Rights of the Child on intercountry adoptions and analyzes the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption created as a means of imposing controls on intercountry adoption. The author compares the two international conventions. The author concludes that "the international community has failed in two instruments to control the rapaciousness of U.S. baby consumers."

Bridget M. Hubing in "International Child Adoptions: Who Should Decide What Is In The Best Interests Of The Family?" *(15 ND J. L. Ethics & Pub Pol'y 655, 2001)* examines the plight of children without families and families without children and submits that international adoptions can be a solution. She discusses arguments for and against international adoptions and other issues such as single person adoptions,

adoptions by gay and lesbian couples and interracial adoptions. She analyzes the international measures for the protection of children and evaluates the effects of the United States' ratification of these instruments on international adoptions. She outlines the process currently utilized in the United States for international adoptions (involving three sources of law, that of the child's country of origin, U.S. federal law and U.S. state law). Finally, she focuses on who should decide what is in the best interests of the child and families involved and concludes by expressing the necessity for international bodies to regulate international adoptions. She proposes that (i) a convention be adopted to codify and simplify the adoption process and to develop a uniform set of standards to protect the best interests of the child, the birth parents and the adopting parents, and (ii) a supervisory body be set up through the international community to regulate international adoptions.

Laura A. Nicholson in "Adoption Medicine and the Internationally Adopted Child" (*28 Am. J. L. and Med. 473, 2002*) examines medical issues raised by international adoptions and the medical specialty of Adoption Medicine. After a review of the international adoption process in the United States, the author discusses issues related to the medical health of international adoptees and the development of the specialty of Adoption Medicine specialty. The author then discusses cases of adoption dissolution and wrongful adoption that were triggered by the health of the adoptee, and proposes that families should be mandated to see an Adoption Medicine specialist before seeking the dissolution or other remedies for wrongful adoption based on an undisclosed medical condition of the child. Finally, the author reviews new federal legislation on international adoptions (the Childhood Citizenship Act of 2000, The Hope for Children Act and the Intercountry Adoption Act of 2000) and discusses states' responsibilities toward international adoptees.

Susan M. Sterett in her "Introductory Essay" to the Special Issue on Nonbiological Parenting of the Law and Society Review of the University of Massachussetts (*36 Law & Soc'y Rev. 209 (2002))* provides a detailed and lucid catalogue of the many issues raised in international adoptions and provides a survey of relevant literature.

INTERNATIONAL ADOPTIONS AND U.S. STATE LAWS

Mary C. Hester in "Intercountry Adoption from a Louisiana Perspective" *(53 La. L. Rev. 1271, March 1993*) studies intercountry adoptions by parents residing in Louisiana. After providing a background review of intercountry adoptions, she examines foreign, international, federal, and state laws relevant to the process. An appendix to the article summarizes the steps of an intercountry adoption procedure under federal immigration and Louisiana adoption laws. Finally, the author proposes some changes to federal and state laws to facilitate intercountry adoptions.

IDENTITY RECORDS/OPEN ADOPTIONS

D. Marianne Brower Blair in "The Impact Of Family Paradigms, Domestic Constitutions, And International Conventions On Disclosure Of An Adopted Person's Identities And

Heritage: A Comparative Examination" *(22 Mich. J. Int'l L. 587, Summer 2001)* provides an overview of the historical and current legal regulating the disclosure of information to adoptees, birth parents and adoptive parents in the United States, Canada, the United Kingdom, and the Republic of Ireland. She then examines the extent to which international law has and will potentially further influence the reform and implementation of adoption disclosure norms. Having reviewed recent legislative proposals in the United States and other countries, as well as the history and interpretation of relevant international conventions, the author proposes a model for future regulations under which birth and adoption records would be opened for adult adoptees, a contact preference system would be implemented and a judicial or administrative override would be created to enable birth parents to delete identifying information in compelling circumstances and a parallel system would be established for the disclosure of information to the birth parents. The author argues that the proposed reforms will serve the needs of those adoptees and birth families who desire to maintain a contact, while attempting to balance the privacy interests of those who do not, and will facilitate appropriate placements and medical care for all adoptees and their birth families.

GAY/LESBIAN RIGHTS IN INTERCOUNTRY ADOPTIONS

Lisa Hillis in "Intercountry Adoption Under the Hague Convention: Still an Attractive Option for Homosexuals Seeking to Adopt?" *(6 Ind. J. Global Leg. Stud. 237, Fall, 1998)* examines the impact of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption on intercountry adoptions by gay and lesbian adoptive parents. After a review of intercountry adoptions and the goals and mechanics of the Convention, the author examines the arguments for and against intercountry adoptions by homosexuals and discusses the feasibility of such adoptions under the Hague Convention. Finally, the author makes suggestions for the implementation and interpretation of the Convention to allow more children to find permanent, loving homes, including with gay and lesbian adoptive parents.

INTERCOUNTRY ADOPTIONS AND CHINA

Robert S. Gordon in "The New Chinese Export: Orphaned Children, An Overview of Adopting Children From China" (*10 Transnat'l Law. 121, Spring, 1997)* aims at assisting adoption attorneys involved in international adoptions with China. After a review of the history of international adoptions, the author analyzes the Hague Conference's Convention in Respect of Intercountry Adoption and discusses the role of the United States with regard to international adoptions. The author analyzes China's adoption laws and describes the process and procedures (in China and in the United States) to adopt a child from China. Finally, the author summarizes the benefits of adopting a child from China.

Jessica L. Singer in "Intercountry Adoption Laws: How can China's One-Child Policy Coincide with the 1993 Hague Convention on Adoption?" *(22 Suffolk Transnat'l L. Rev. 283, Winter, 1998)* examines how China's one-child policy conflicts with the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry

Adoption. After an overview of international adoptions and China's adoption policy, she analyzes the Hague Convention and China's laws and regulations on adoption. She concludes that the increasing number of Chinese children available for adoption results from China's domestic laws that limit the size of families, and these laws conflict with the Hague Convention, which first emphasizes the maintenance of the family structure.

Michelle Van Leeuwen in "The Politics Of Adoptions Across Borders: Whose Interests Are Served? (A Look At The Emerging Market Of Infants From China)" *(8 Pac. Rim L. & Pol'y 189, January, 1999)* explores the causes of the increasing numbers of Chinese babies adopted in the United States. The author then discusses the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and analyzes whether it serves the interests of the children and the adoptive parents in the specific cases of Chinese-American adoptions. The author concludes that the Hague Convention does not serve the interests of children because its implementation procedures are too complex and inefficient and because of unclear definition of key terms.

Crystal J. Gates in "China's Newly Enacted Intercountry Adoption Law: Friend or Foe?" (*7 Ind. J. Global Leg. Stud. 369 (Fall, 1999))* reports on the 1998 changes to China's laws on international adoptions with the hope that the amended law will reduce the number of children living in Chinese orphanages. She first examines the numerous factors (e.g., social and economic considerations) that contribute to the development of intercountry adoptions from the point of view of the sending and the receiving countries. After a brief analysis of the international conventions applicable to adoptions, the author examines China's law and policy regarding intercountry adoption between 1988 and 1999. Finally she examines the impact that stringent laws in the sending country have on intercountry adoptions. She advocates for a lowering of the legal restrictions that in effect lead to an increase in the number of children in orphanages and their replacement by legislation that is better suited to eliminate possible abuses of the adoption system.

In the context of the - then impending - 1998 amendments to China's adoption laws, Curtis Kleem in "Airplane Trips and Organ Banks: Random Events and the Hague Convention on Intercountry Adoptions" (*28 Ga. J. Int'l & Comp. L. 319 (2000))* examines the cause of the fluctuation in the number of international adoptions in any given country. After a brief summary of the history and procedures for international adoptions in China, the author examines the factors that may affect the number of internationally adopted children (e.g., wars, economic reasons, political pressure, famine, drought, negative media attention, etc.) and in particular, focuses on the reasons why China's 1998 amendments may want to curtail international adoptions. The author then examines the role played by the Hague Convention on Intercountry Adoptions and makes several suggestions to ensure that Chinese orphans can continue to be given the opportunity of an international family.

Rachel A. Bouman in "China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention?" (*13 Transnat'l Law. 91, Spring, 2000*) examines China's

One Child Policy (OCP) in relation to China's adoption laws and China's obligations under the Hague Convention on Intercountry Adoption. After a review of the development of the OCP in China, the author examines the progression of international adoption in the United States and the reasons for the selection of Chinese children. The author provides an overview of the Hague Convention, a description of China's adoption law and recent amendments. In addition, the author evaluates China's new adoption laws and in particular, the author assesses whether the proposed amendments will achieve the government's proposed goals and whether the Hague Convention's "best interests of the child" requirement can be met when children are forced out of their country of origin. Finally, the author summarizes the need for China to relax its OCP in order to promote domestic adoption.

Ryiah Lilith in "Buying a Wife but Saving a Child: A Deconstruction of Popular Rhetoric and Legal Analysis of Mail-Order Brides and Intercountry Adoptions" (*9 Buff. Women's L.J. 225 (2000/2001))* explores the parallels between intercountry adoptions and mail-order brides (focusing on adopted Chinese girls and Filipina brides). Noting that most writers generally praise adoptions and criticize mail-order brides, the author disagrees and argues that the two practices are indistinguishable in the US-Asian relationships and are both by-products of Western/US colonial and imperial activities in Asia. To support her thesis that the two practices are equivalent, she (i) identifies the common criticisms put forward against the mail-order bride industry (e.g., abuse, commodification and fraud) and shows how these equally apply to international adoptions and (ii) sets out to demonstrate that not all mail-order brides are prostitutes and that not all adoptions are humanitarian acts.

Jonathan G. Stein in "A Call To End Baby Selling: Why The Hague Convention On Intercountry Adoption Should Be Modified To Include The Consent Provisions Of The Uniform Adoption Act" *(24 T. Jefferson L. Rev. 39, Fall, 2001),* after a history of adoption, examines the rise of baby selling in the United States in the absence of adequate legislation. The author discusses the importance of the Uniform Adoption Act (UAA) in fighting baby selling in the United States and examines the strong consent laws used in South Carolina, New Jersey and Vermont in contrast with recent baby selling cases in states without strong consent laws. The author then addresses the increase in international baby selling cases and examines international efforts to end such practice, including by the United Nations and the Hague Convention. Finally, the author advocates for the adoption of the Uniform Adoption Act's consent requirements to supplement or replace the Hague Convention's inadequate requirements.

Mary H. Hansel in "China's One-Child Policy's Effects On Women And The Paradox Of Persecution And Trafficking" *(11 S. Cal. Rev. L. & Women's Stud. 369, Spring, 2002*) explores the impact of China's one-child policy on the situation of Chinese women and suggests some options for improvement. After an overview of the policy, its enforcement, justifications and consequences, the author presents the misogynist effects of the policy, describing the patriarchal culture, the practice of sex-selective abortions, female infanticide, the abandonment of girls, the resultant shortage of women and

trafficking. The author then looks at the potential positive consequences of the policy for women and finally proposes solutions to remedy the misogynist effects of the policy.

Kay Johnson in "Politics of International and Domestic Adoption in China" (*36 Law & Soc'y Rev. 379 (2002))* examines the apparent decision of the Chinese Government in the 1990s to promote international adoptions of abandoned Chinese children rather than to encourage domestic adoption of these children. The author reports that research indicates that many Chinese families were willing to adopt abandoned children, including girls, but that the Chinese regulations severely limited the reality of these adoptions. International adoptions were apparently preferred for economic reasons (they provided an influx of foreign currencies) and political reasons (they can enlarge the pool of prospective adopters without disturbing birth planning priorities (i.e. the preference of most Chinese families that the one child allowed be male)). Legal changes in 1999 eased restrictions on domestic adoptions for children in orphanages, but not for those living outside of orphanages. Despite the historical preference for international adoptions, the author notes that China is now slowly moving towards an adoption policy more in line with the principle of the Hague Convention on Intercountry Adoptions that international adoptions be considered only if a suitable domestic family cannot be found.

INTERCOUNTRY ADOPTIONS AND EUROPE

Increasing numbers of children are adopted in the United States from the former Central and Eastern European countries and the Russian Republics. Yet, as many of these countries are currently negotiating accession to the European Union, there is a non-negligible risk that the right of their abandoned children to a family will be sacrificed to political pressure as the applicant countries are pushed to modify their national adoption laws and to curtail international adoptions on the basis of unsubstantiated allegations of abuse and other human rights violations.

Laura J. Schwartz in " Models for Parenthood in Adoption Law: The French Conception" *(28 Vand. J. Transnat'l L. 1069, November, 1995)* examines the relationship between contemporary French adoption law and France's history, tradition, and values and whether a similar relationship exists with regard to adoption laws in the United States. After analyzing ways in which legal orders based on ideal biological or psychological relationship models might structure adoption, the author finds that a social consensus exists in France on the importance of preserving biological ties and that the consensus is enunciated clearly in both French law and government policy and reflected in adoption laws. She concludes that no successful reform of United States adoption laws should occur without an evaluation of the consensus (if any) on the value of biological ties.

Frederique Dreifuss-Netter in "Adoption and Medically Assisted Procreation Under French Law" (*St. Louis-Warsaw Trans'l 93, 1996*) compares adoption and medically assisted procreation as two alternatives to the same problem – a childless couple's desire to have a child. The author first summarizes the applicable regulations under French law and then examines the legal status of children under the two institutions both before and

after the legislative reforms of 1993. Finally, the author examines and critically appraises the reforms of 1993.

Kimberly A. Chadwick in "The Politics and Economics of Intercountry Adoption in Eastern Europe" (*5 J. Int'l Legal Stud. 113 (Winter, 1999))* examines the treatment of international adoptions in Eastern European countries, and in particular Russia, Romania, the Ukraine and Georgia. She summarizes the adoption laws in these countries where there was sometimes a strong historical and political opposition to international adoptions. The author then examines the economic considerations that influence these countries' policy towards international adoption and discusses the effectiveness of the 1993 the Hague Convention on Intercountry Adoptions. The author advocates in support of international adoptions where a suitable domestic family cannot be found (even with adequate financial assistance) and states that the focus in these decisions must be exclusively on the best interest of the child. She advocates for an international convention that would include a uniformized definition of the "best interest of the child" that would be independent from economic and political considerations.

Shannon Thompson in "The 1998 Russian Federation Family Code Provisions on Intercountry Adoption Break the Hague Convention Ratification Gridlock: What Next? An Analysis of Post-Ratification Ramifications on Securing a Uniform Process of International Adoption" (*9 Transnat'l L. & Contemp. Probs. 703, Fall, 1999*) argues that the Hague Convention on Intercountry Adoptions (which at the time of writing neither the United States nor Russia has ratified) provides sufficient safeguards to protect the interests of all parties involved in Russia-U.S. intercountry adoptions. After a historical review of international and Russian-U.S. adoptions, the author discusses the newly adopted modifications to the Russian Federation Family Code. The author describes the process of international adoption and considers how this process will be affected by the new Family Code. Finally, the author analyzes several problems inherent in the international adoption process and advocates for the ratification of the Hague Convention, with a few suggested changes, to solve these problems.

Caroline Forder in "European Models of Domestic Partnership Laws: The Field of Choice" (17 Can. J. Fam. L. 371, 2000) examines the laws in selected European countries on the recognition and registration of partnerships and couples, including same sex couples and the resulting effect on family issues, including adoption of children.

Emilia Weiss in "Changes in the Modern Era Lead to the Evolution of Hungarian Family Law and Children's Rights" *(31 Cal. W. Int'l L.J. 75, Fall 2000)* provides a historical perspective on the laws regulating children rights, adoptions and families in Hungary. She discusses the impact of international law in shaping Hungary's family law and in particular the recent changes to the laws on domestic and intercountry adoptions and the protection of children at risk in Hungary.

Andras Koros in "Children's Rights in the Hungarian Judicial Practice" *(31 Cal. W. Int'l L.J. 67 Fall, 2000)* summarizes the practice of the Hungarian courts with regard to family law issues and children rights, including on adoption decisions.

Mary Hora in "A Standard Of Service That All Families Deserve: The Transformation Of Intercountry Adoption Between The United States And The Russian Federation" *(40 Brandeis L.J. 1017, Summer, 2002*) studies wrongful adoption lawsuits involving international adoptions (in particular for undisclosed medical conditions of the adopted children). The author details two recent steps taken by the Russian and American governments to regulate the international adoption process that may limit such issues in the future: (i) the requirement under a newly enacted decree that foreign adoption agencies be accredited by the Russian government and establish offices in Russia and (ii) the requirement under the newly enacted U.S. Intercountry Adoption Act that American adoption agencies involved in intercountry adoptions supply prospective parents with the medical records of the children they are seeking to adopt. After a review of the history of the adoption of Russian children by Americans, the author focuses on the main barriers to successful international wrongful adoption claims and argues that these barriers demonstrate the inconsistencies in the legal treatment of international wrongful adoption suits. The author concludes that the Intercountry Adoption Act and the new Russian decree provide an opportunity to offer greater protection to adoptive parents in these situations.

Katherine O'Donovan in “"Real" Mothers for Abandoned Children” (*36 Law & Soc'y Rev. 347, 2002*) examines the treatment of abandoned children under the laws and practices of England, France and Germany. Although the three countries have ratified the United Nations Convention on the Rights of the Child, their laws and practices with regard to the child's identity rights differ. After a review of the United Nations Convention on the Rights of the Child and its provisions on the protection of the child's identity rights, the author examines the legal responses to maternity and abandonment in England, France, and Germany. Finally, the author explores how women who abandon their infants or who give birth anonymously are viewed to understand the differing interpretations of international obligations in the three selected jurisdictions.

INTERCOUNTRY ADOPTIONS AND OTHER REGIONS

Claudia Lima Marques in "Assisted Reproductive Technology (ART) in South America and the Effect on Adoption" *(35 Tex. Int'l L.J. 65, Winter 2000)* examines how Assisted Reproductive Technology (ART) is regulated in some countries of South America (in particular in Argentina, Brazil, Paraguay, and Uruguay) and the effects of ART on the laws regulating national and intercountry adoptions in South America.

Claudia Fonseca in "Inequality Near and Far: Adoption as Seen from the Brazilian Favelas" *(36 Law & Soc'y Rev. 397, 2002)* compares local practices, national law and global policy involved in adoptions in Brazil. Following a brief ethnographic account of child circulation among working-class families in Porto Alegre, Brazil, the analysis focuses on clandestine adoption as one of the ways in which the Brazilian poor bypass legal bureaucratic procedures that would prevent them from legally adopting a child. Finally, the author compares adoption law and policies in Brazil and North America.

Kelly M. Wittner in "Curbing Child-Trafficking In Intercountry Adoptions: Will International Treaties And Adoption Moratoriums Accomplish The Job In Cambodia?" (*12 Pac. Rim L. & Pol'y 595, March, 2003*) examines the recent efforts to combat the trafficking of Cambodian babies for international adoption. The author first briefly reviews the motivations for intercountry adoptions and the rise of the black-market trade in infants worldwide. The author then discusses the causes of infant-trafficking in Cambodia and evaluates Cambodian adoption laws on intercountry adoptions. Next, the author discusses and criticizes the Hague Convention on Intercountry Adoption as inadequate to prevent adoption fraud and infant trafficking. The author looks at the U.S. domestic responses and initiatives to stop baby-trafficking and finds that the Intercountry Adoption Act ("IAA") may actually encourage adoption fraud. Finally, the author proposes solutions to reduce frauds in the Cambodian intercountry adoption process.

Mohamed Y. Mattar in "Trafficking In Persons, Especially Women And Children, In Countries Of The Middle East: The Scope Of The Problem And The Appropriate Legislative Responses" (*26 Fordham Int'l L.J. 721, March, 2003*) examines the scope of the trafficking in women and children in the Middle East, and examines the legislative responses to this problem, including international conventions. Among various problems, the author addresses the sale of children for adoptions and legislative attempts to control this problem.