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WE BELONG TO “NOBODY’S CHILDREN” — WE ARE THE “THEY” WHO MUST CHANGE

A Response¹ to Professor Elizabeth Bartholet’s Sullivan Lecture *Nobody’s Children: Re-Visioning Child Welfare Policies on Abuse, Foster Care, and Adoption*

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Allow me to begin with thanks: first to Capital Law School for the honor of the invitation to address those who have gathered to discuss the law of adoption at this, the inaugural conference of the Dave Thomas Center for Adoption Law.

Let me also express thanks to Mr. Dave Thomas, who has demonstrated faith in our ability as lawyers and scholars to build better futures for our children, and therefore our society. Contrary to popular portrayals of lawyers, I do not see us as a profession which only tears apart or tears down, or divides parties, setting one against the other. Rather, in my child advocacy lawyering over the past two decades, I have come to believe that we lawyers, particularly those of us who work for and with children, demonstrate our best when we seek to create wholeness from sometimes small and scattered pieces, to resolve serious problems in the reconciliation of diverse and often countervailing perspectives, and to restructure desperate circumstances into those promising hope.

Finally, with that in mind, I thank Professor Bartholet for her thoughtful exposition of her perspective on barriers to, and solutions for, the adoption of more children. The fact that Professor Bartholet and I are not in complete agreement is good for problem-solving; it assures us that the foundation for whatever resolution may result from the discussion here today has been all the more soundly tested.

I. WHO BELONGS TO WHOM?

To begin, I am most struck, as Professor Bartholet intended, by the picture presented in the words “Nobody’s Children.” I, with so many others, find inspiration in the image of the child within the village, and, while my research has yet to reveal the name of the people, the tribe or community that initiated the well-known proverb, I salute them for the

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1 This essay reflects the author’s remarks at the inaugural symposium of the Dave Thomas Center for Adoption, “Adopting More Kids: Barriers and Solutions,” February 9, 1999. Additional commentary and source materials were added later upon review of Prof. Bartholet’s transcribed remarks.

pithy accuracy of their words. I'd like to take a moment to explore an aspect of that image: "It takes a village to raise a child." In those words I have heard the responsibility of the village for the child, because the village claims the child; the child belongs to the village. Hence, we speak of "our children," "our neighbors," "our community." In turn, the child gains his/her sense of identity from belonging to the village.

The possessive pronoun seems inescapable in American culture when we address relationships. Before I was a parent, I struggled against those possessive pronouns; I believed they kept us tied to earlier times when the law was used to make chattels of people, particularly children. The good village owned its children and demonstrated its integrity and sense of self-worth in its care of its children. Then, the very sounds of those pronouns changed for me in the first weeks of my son's life. I could now hear with new ears his future use of the words "my mom." I, his mother, belonged to him. I had come to understand that I belonged to, would meet the needs of, would give first priority to this child who claimed me by the gift of his attachment to me.

So now I understand the village's relationship with the child quite differently. It is the mutuality of that belonging that is the source of the child's sense of self. As the village shapes the child, so the child shapes the village. As the community supports, raises, and is responsible for its children, so too the child is responsible to the community and its next generation. The village cannot shake off the role it plays in creating the child's identity; the child's future is the village's identity. When the child is without a village, a community, a group of people holding him or her as an integral member, the child is bereft of more than his or her parents. The identity of the child and the village are subject to loss.

Anglo-American law has developed the practice of placing those children, who are outside of their original family (first village, if you will), in a family where he or she can be welcomed and nurtured. But what of that root community? The child's original community – by religion, ethnicity, ancestral background, race – remains a part of the child. It cannot be set aside. The newly arrived nurturers, the adoptive parents, do not replace; rather, they add themselves and their heritage to the mix that becomes the child's experience of life.

Therein, I believe, lies the heart of the difference between the perspectives that Professor Bartholet and I bring to this discussion. As much as I give my son nurture, acceptance, guidance, and love, I cannot substitute my origins for his own. I can only add it to the complexity that defines his own root village. In asking for, in agreeing to, in accepting the placement of this little boy, I undertook the most thorough change in my life. I became an adoptive mother.

Our American language has not yet evolved beyond calling my son "adopted," although he has not chosen to change nor has he changed in any elemental way. On the other hand, I have sought out the privilege of

adoption and have chosen to leave behind my sense of self as a woman without children. Yet rarely am I referred to as an adoptive mother; rather, it is common to say that I am the mother of an adopted child. I have come to see that linguistic accuracy and truthful information allows for an authentic sense of identity and, in turn, that an authentic identity is important enough to be counted among human rights. I hear and I read Professor Bartholet to be saying something quite different: That we must set aside children's villages and communities of origin, in order to provide them with nurture where it is available. I am convinced that such action is drastic, unhealthy for the child's development, and unwise for society's growth and change.

II. THE RIGHT TO ONE'S IDENTITY

The United Nations Convention on the Rights of the Child (UN CRC), ratified by all nations except the United States and Somalia (which has no ratifying governmental body at the present time) provides in Article 7 that a "child has a right to a name and to acquire a nationality and to know and be cared for by parents;"² and in Article 8 that a "child has a right to preserve or reestablish the child's identity (name, nationality, and family ties)."³

Identity, for those of us who know our stories and can trace ancestry though generations, who know our ethnic heritage and can find ancestors' birth and life places, is so commonplace that we mistake it, as we do even our breathing and our heartbeats, for some small and ordinary thing. In the United States, as elsewhere, though, there are children who do not have their stories for those stories have been taken from them by violence, e.g.: such as the child of the African slave and the child of the aboriginal people.

As a white, Irish-American woman, I could easily stand as I do before you and say that a child's story of identity is not important, that it can be replaced with the nurture he or she needs and will receive in an adoptive placement — even a placement that is foreign to, and unfamiliar with, his or her roots of identity. If all that were at stake was a child's need for nurture in a permanent placement now/today/this minute, then the answer to the barriers to permanence is obvious: Knock them down, push them aside, ignore the circumstances that put the barriers there in the first place. But we would be discarding the truth of a child's long term need for and right to his or her identity.

2 N.E. WALKER, C.M. BROOKS, & I.S. WRIGHTSMAN, *CHILDREN'S RIGHTS IN THE UNITED STATES: IN SEARCH OF A NATIONAL POLICY* 31 (Sage Publications 1998).

3 *Id.*

III. FOR EXAMPLE, RACE: ADOPTION IN THEORY

The National Association of Black Social Workers (NABSW) did talk of trans-racial adoptive placement as a risk to Black culture and identity, even a form of genocide. Let us not dismiss the charge lightly. At the time of that call to action in 1972, the NABSW had good cause to fear for the future of Black children in white homes. At that time, the federal government could not bring itself to ratify the 1948 United Nations Convention on the Prevention and Punishment of Genocide, knowing its own history with the children of Native Americans – and the specific governmental goal of the previous century of doing whatever necessary to erase the “Indianness” out of the Indian children.⁴ Indeed, not until 1978, in the enactment of the federal Indian Welfare Act, did government reverse itself on the placement of aboriginal children.

The preservation of identity, though, does not require that we exclude the adoption options that have been proposed by Professor Bartholet. If we do believe that true nurturing of a child is realized in the attachment and belonging the child expresses in phrases such as “my mom,” “my dad,” and “my home,” then we are on notice that adoption is as much about who and what the child is entitled to acknowledge as his or her true sources, as the adoptive parent is entitled to acknowledge as his or her own heritage.

Our duty, recognized long ago by John Locke in his *Second Treatise on Government*, as the parents of a child — by birth, adoption, Kafala of Islamic law, or otherwise — is to help bring that child to adult competence as the person he or she actually is. If the child is African-American, Native American, Mexican-American or any other variation of that ethnographic descriptive, then that child has a right — under the UN CRC and probably by law of international custom in the United States⁵ — to know that identity. That knowledge, to be meaningful, must be offered with respect, courtesy, and truth.

So how do Professor Bartholet and I, women who want to change the world for the better, who want to change children’s lives forever for the better, accomplish the task of imparting our adopted children’s identity to them in a way that is meaningful, that assists them in achieving a happy adulthood, that honors the cultures of their origins, and that supports the existence and survival of their root village?

4 See Catherine M. Brooks, *The Indian Child Welfare Act in Nebraska: Fifteen Years, A Foundation for the future*, 27 CREIGHTON L. REV. 661, 661-62 (1994).

5 While the United States has failed to date to ratify the UN CRC, principles of international law likely compel compliance as the CRC has the indicia of customary international law. See WALKER, *supra* note 2, at 41-42, quoting G.B. Melton, PhD (private communication).

IV. ADOPTION IN PRACTICE

I adopt a child from another family line and it is I who am changed. It is I who am inextricably woven into the fabric of that other family. In adopting another's child, I allow the child to claim me, all the while claiming his or her identity and heritage. My little boy is not an Irish-American. He may claim, as so many do, that heritage when it suits him on Saint Patrick's Day each year, but he comes from Polish and Czech and German pioneers who settled near the Platte River Valley in Nebraska. My originating family is recently of New York, less recently of Counties Clare and Galway. My husband's family is recently of New Mexico, less recently of the area once known as Soviet Georgia. We are now Omahans. We are a family as are all the genetically-tied families produced by my siblings and their spouses.

My son's birth mother asked that he be baptized in the Roman Catholic Church, in her presence and mine, in the presence of her mother and mine; he was baptized in my grandmother's christening gown. Had his birth mother had a similar heirloom we surely would have used it as well. Were my child Black, he would worship in the traditional Black Catholic churches of North Omaha; he would be educated in one of the schools of those churches. More importantly, my husband and I would seek parishioner status there. We would seek cultural and racial education in the local community workshops and colleges. We would have even more children's books focused on African-American experience than we have today. We would certainly continue to enjoy our subscriptions to *Ebony* and *Jet*, and my husband and I would make the effort to tune in the BET (Black Entertainment Television) cable channel. We would ask our African-American friends and relatives the questions we want answered and ask them to teach us what we do not know enough to ask. We would work to honor our child's identity.

Were my child Native American, we would honor a cultural plan created in collaboration with the Indian Child Welfare Act specialist and elders of his tribe. Eventually, we would seek formal adoption for ourselves into the child's tribe.

V. A RESOLUTION: EVERYBODY'S CHILDREN

In the foregoing, I have offered my response to Professor Bartholet's proposal for taking down the barriers to adoption across racial lines. We adoptive parents must honor the originating village/community as the identity source of the child. We must seek to know that community and to be known to that community. Then would we ourselves change for our children and for all villages the child is entitled to claim: European-Americans, African-Americans, Native Americans, and all other Americans who are brave enough to know each other, one family at a time,

one village at a time. Thus the child of the 21st century would be the child of a worthy new world.