

Multiculturalism, Group Rights, and the Adoption Conundrum

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Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. New York: Oxford University Press, 2001. 240 pages. \$65.00 cloth; \$18.95 paper.

Bikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. New York: Palgrave, 2000. xii + 344 pages. \$45.00 cloth; \$19.95 paper.

I.

In a volume focused on adoption, it may seem odd to be reviewing books that make no explicit mention of children, much less adoption. The books discussed here, Will Kymlicka's (2001) *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, and Bikhu Parekh's (2000) *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, are recent additions to the debate over multiculturalism. Growing out of both communitarian and post-colonial critiques of liberalism over the past 30 years, this debate has developed a number of distinct strands. For purposes here, however, it may be characterized as a discussion around the broad issue of whether and to what extent cultural groups may demand legal recognition, protection, and accommodation for what might be loosely termed "cultural rights." The debate has gained prominence in the past two decades as aboriginal groups and a number of disadvantaged cultural minorities have worked to secure recognition and respect for cultural identities and cultural practices in both domestic and international human rights arenas.

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Every contemporary nation-state is grappling with the problem of creating stability in plural societies. Each must come to terms with the need to create conditions under which diverse groups can participate and flourish while ensuring that the whole has sufficient unity and commonality to endure as a social and political unit. With this end in mind, both Kymlicka and Parekh seek to develop a political theory of multiculturalism that envisions a politics attentive to the fact of cultural difference. Both are centrally concerned with the capacity of modern nation-states to move from assimilationist to more genuinely plural and inclusive practices.

Kymlicka approaches the issue as a liberal; his book is chiefly concerned with convincing his (largely liberal) critics that recognizing group rights and group identities is not only consistent with, but furthers, such primary liberal values as individual autonomy, and that this liberal multicultural framework enhances democratic practices in general. Parekh, on the other hand, worries that an expressly liberal theory cannot be genuinely multicultural because it will always devalue nonliberal cultures. His effort, therefore, is to introduce a dialogic model of multiculturalism that will protect the integrity and existence of both liberal and nonliberal cultural groups within a given national community. Both books, in essence, argue for reconstructing nation-states along looser, less culturally homogeneous axes.

Focused as the books are on the meta-questions of nation-building, this debate may appear to have little bearing on issues arising out of regulating the family, particularly adoption. However, in the multiculturalism debate writ large, children, although rarely acknowledged, figure prominently. Many of the rights sought are critically tied to children, to whom distinct ways of seeing, speaking, and belonging must be passed if a cultural group is to maintain its integrity and cohesion. For many disadvantaged groups, the task is not only to protect a set of existing cultural understandings but also to revive cultural understandings that have been displaced or obliterated by dominant cultures. In addition, for groups whose members have been scattered and (more or less) assimilated into a dominant culture, there may be a strong imperative to gather the diaspora of a community.

The questions surrounding the recognition of cultural identity and securing that identity with legally cognizable rights are thus grounded in more fundamental questions about how the boundaries of individual and communal belonging are imagined in theory and effected in law and public policy. Adoption brings the debate over the law and politics of belonging into poignant focus by engaging the law in explicitly drawing the boundaries of belonging from a local to a global level. Transracial, transnational, and/or transcultural adoptions generate serious questions

about how cultural boundaries are determined and how cultural belonging and identity should be understood for both individuals and cultural groups.

Both domestically and at an international level, some members of historically disadvantaged groups have argued that the adoption of their children is a form of cultural exploitation. In the United States, for example, the National Association of Black Social Workers has termed transracial adoption a form of “race and cultural genocide” (Fogg-Davis 2002:52). American Indian groups in the long-simmering controversy over the adoption and foster care placement of Indian children have voiced similar concerns, especially as efforts to amend the Indian Child Welfare Act (1978) have gained momentum. At an international level, there is increasing concern with what is seen as the appropriation of children from disadvantaged nations, or from specific groups within those nations, by wealthy North American and European parents via adoption (Yngvesson 2001).

Increasingly, international human rights documents call upon signatory states to provide indigenous and national minority groups with protection from the assimilative pressures of dominant cultural groups. The Draft United Nations Declaration on the Rights of Indigenous Peoples (1994), for example, declares in Article 6 that “Indigenous peoples have the collective right to . . . full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.” The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), while not as specific as the Draft Declaration on the Rights of Indigenous Peoples, contains broad language directing signatory states to protect the continued existence of minority groups. In addition, the United Nations Convention on the Rights of the Child (1989) contains open-ended language scattered through its provisions guaranteeing children the right to personal, familial, communal, and national identities (Stewart 1992).¹ These developments suggest that distinct cultural groups may increasingly seek ways of intervening in adoptive and foster care placement of their children, and that individuals may, in turn, seek better protection for their cultures or identities of origin. Taking such concerns seriously is likely to significantly affect domestic and international laws and policies on adoption.

¹ In 1987, the United Nations adopted a resolution entitled the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. This resolution attempts to provide special protection for adopted children as well. In addition, the 1993 Hague Convention on Intercountry Adoption attempts to bring more regularity to the adoption process and reduce exploitation of children.

Adoption also raises issues that are elided in the present theorizing on multiculturalism, however. Transnational, transracial, and transcultural adoptions illustrate the fluidity of cultural boundaries. Such adoptions complicate—and in the case of very young children, may render incoherent—the notion of cultural belonging, especially the idea of a “culture of origin” that differs from the immediate cultural context in which a child is raised. While theorists of multiculturalism often readily acknowledge that individuals *within* cultural groups stand in diverse positions with respect to that group’s practices, transracial, transnational, and/or transcultural adoption may place children between cultures in ways that cannot be accounted for with current theories. Thus is it important to think not only about how theorizing multiculturalism may affect the legal regime surrounding adoption but also how adoption, in turn, may require changes in theorizing multiculturalism.

In this essay, I look at how both Kymlicka and Parekh have come to understand the obligations of nation-states to promote multicultural laws and policies. I then inquire how laws and policies surrounding adoption might be affected by a more explicitly and comprehensively multicultural outlook. In addition, I suggest that the practices of transracial, transnational, and transcultural adoption illustrate the most serious limitations of the debate.

II.

In *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, Will Kymlicka revises and extends the theory of minority rights he first outlined in his 1995 book, *Multicultural Citizenship: A Liberal Theory of Minority Rights*. In that book he pointed up the links between individual autonomy and cultural belonging, arguing that since cultural understandings provide the context within which individual choices are made, liberal societies must be as attentive to protecting cultural integrity as they have traditionally been attentive to protecting the rights of abstract individuals. The new book collects a number of essays written since 1995 as a continuation of that dialogue with other political theorists about the value and possibilities of multiculturalism. The first three chapters, in fact, are useful as an introduction to the history of that exchange, as Kymlicka traces the evolution of the debate from its genesis in the liberal-communitarian disputes of the 1980s through its efforts to articulate theories of minority rights in the 1990s and into its present incarnation as a challenge to the explicit and implicit assimilative imperatives of modern nation-building. As noted earlier, Kymlicka’s is an expressly liberal theory of multiculturalism: Multicultural laws and policies are valuable insofar as they enhance individual autonomy and

dignity by allowing individuals to make sense of their choices and their lives.

Not surprisingly, critics of multiculturalism are legion (Barry 2002; Waldron 1995). Most argue, as Kymlicka (2001:33–34) acknowledges, that recognizing “special rights” for distinct cultural groups violates the equality guarantees of contemporary liberal democracies, threatens to “balkanize” society, and “erode[s] the sorts of civic virtues and citizenship practices which sustain a healthy democracy.” In this book he responds primarily to concerns about how claims for recognition of cultural membership potentially conflict with the demands of democratic citizenship itself. The essays are intended to allay fears of what recognizing group rights may do to liberal democracies.

Kymlicka argues that a complete theory of multiculturalism requires not only a theory of group rights themselves but also a fuller understanding of how the neutral practices of the liberal state can undermine and encroach upon the legitimate expectations of minority cultures for respect and recognition. While the “societal cultures” common to the modern nation-state may be pluralist, they are often rife with practices that erode the stability of minority cultural groups because of their implicit privileging of the dominant cultural group.

Kymlicka is at pains to establish that genuine multiculturalism cannot only be reconciled with democratic politics, but in fact may enhance such politics by allowing a deeper and more sustained engagement among disparate groups. Liberal multiculturalism, he argues, explicitly recognizes the importance of cultural identity and understands how such recognition can ease tensions between majority and minority populations. This is part of the central claim of the book referenced in the title: All deeply democratic politics are “politics in the vernacular,” enacted from local and particular cultural perspectives (Kymlicka 2001:213).

Understanding the need of individuals to retain bonds with their cultural communities requires a critical reassessment of “theories of permissible nation-building” (2001:30). Modern nation-states, by becoming aware of how they “actively reproduce [their own] cultures”(50), can more adequately assess the extent to which assimilation and homogenization is essential to creating unity and stability. Kymlicka argues that liberal states are not as fragile as many critics of multiculturalism suggest: The degree of integration necessary to sustain a societal culture is probably less than has been previously imagined.

Kymlicka also argues that demands for minority rights are typically not difficult to reconcile with universal human rights discourses, as most of the individual rights support or enable group connections, such as the right to associate. The issue for Kymlicka in integrating global human rights discourses with demands for minority rights is that most universal guarantees justify

the day-to-day practices of nation-building without being sufficiently attentive to how minority cultural groups may be adversely affected. The solution, he insists, is to create *additional* rights that respond to the legitimate demands of minority cultural groups to supplement and correct the shortcomings of the broader universal discourses.

Ultimately, Kymlicka believes that nations need to change their fundamental institutional structures in favor of a model of “multination federalism,” which recognizes multiple political communities within the nation-state. Unlike devolution or power-sharing, where an overarching sovereign retains the ability to recapture power conferred upon subordinate political bodies, this model divides power among various groups without reserving authority to a single sovereign. Such a model can be stable, he asserts, but it will be a different kind of stability that requires a fundamentally different form of political negotiation. The glue that holds such a system together, he explains in Chapter 5, lies in the benefits that continued unity provides. This argument threads its way through the latter third of the book as well, which consists of several essays on nationalism. In it, Kymlicka argues that divisive nationalism is less likely to emerge if competing groups are granted more substantial roles in governing than most current models of governance provide.

Kymlicka’s earlier arguments for multiculturalism drew a strong distinction between different kinds of cultural groups—indigenous groups and stateless peoples or immigrant populations—and his earlier works have argued for differential treatment based on the *kind* of group asserting the claim. In Chapter 6, he appears to be revising some of that earlier thinking. Discussing the distinct ways in which indigenous and other cultural minority’s claims are treated in international law, he expresses some wariness about attaching too much difference to marginalized cultural groups: He notes that the difference between, say, stateless peoples and indigenous peoples is a difference in degree, not in kind, and that the types of rights being demanded are those that every distinct cultural group ought to be able to claim. Kymlicka (2001:126) argues that the issue should be “how to insure fair terms of interaction for peoples [as a whole] and to enable indigenous peoples to decide for themselves when and how to borrow from other cultures.”

As noted previously, this book is intended to assuage concerns about the effect of recognizing the rights of cultural minorities upon the ability of nation-states to maintain some reasonable degree of cohesion and stability. Kymlicka argues that, as a general rule, accommodation and recognition of various groups within democratic nation-states typically entails few real costs. Because accommodation and recognition of cultural differences within liberal states occurs within the context of a common set of

institutions, it has more potential for unifying than for dividing groups. The process of negotiating differences, he asserts, normally pluralizes or hybridizes those groups in the long run.

This concept of hybridization brings Kymlicka to a discussion of cosmopolitanism in Chapters 10 and 11. Here, he addresses the arguments asserted by various liberal theorists that cosmopolitanism is preferable to privileging the kinds of local and particular belonging envisioned by minority cultural rights. The cultural interchange envisioned in cosmopolitan thought, he argues, is a positive good, but such cultural interchange should not require an individual to deny a connection with his or her own culture. Indeed, protecting minority cultures can facilitate the kinds of cultural interchange that proponents of cosmopolitanism, such as Jeremy Waldron (1995), urge. As Kymlicka notes (2001:211), there is a difference between living in the “kaleidoscope of cultures” that Waldron describes and being culturally rootless: “[I]t is simply a case of enjoying opportunities provided by the pluralist societal culture that characterizes [life in modern liberal democracies].” According to Kymlicka, however, Waldron is concerned with what he sees as efforts by various groups to preserve or recapture a “pure” or “authentic” culture; Waldron insists that the fluidity of cultural interchange renders such efforts at least questionable, if not fruitless and self-defeating, in the long run. Kymlicka’s rejoinder is that most groups seeking recognition and accommodation in liberal societies

do not seek to preserve their “authentic” culture, if that means living the same way that their ancestors did centuries ago, unable to learn from other peoples and cultures. . . . In short, these minority cultures wish to be cosmopolitan, and embrace the cultural interchange Waldron emphasizes, without accepting Waldron’s own “cosmopolitan alternative,” which denies that people have any deep bond to their own language and culture. (212)

The final essays in the book urge the reader’s attention to a fundamental problem with nationalism as it is practiced in most liberal states. At both conscious and unconscious levels, modern nation-states have blithely endorsed the cultural practices of dominant groups, with little attention to how those practices have undermined the cohesion and stability of competing cultural groups and have, in fact, fomented resistance that can erupt in nationalist violence. “The myth that the state can simply be based on democratic principles, without supporting a particular national identity or culture, has made it impossible to see why national minorities are so keen on forming or maintaining political units in which they are a majority” (253). In the long run, the solution, as Kymlicka argues throughout the remaining chapters, lies in rethinking nationalism itself, and being more open to notions of genuinely multiethnic states.

III.

Although Kymlicka espouses an explicitly liberal theory of minority cultural rights, in *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Bikhu Parekh (2000) struggles to develop a theory that will respond to the needs of nonliberal as well as liberal societies. Parekh argues that a theory of multiculturalism framed wholly within the boundaries of liberalism will be unable to fairly accommodate truly diverse cultural systems: the “moral monism” (2000:16) that encases liberalism will ultimately undermine real efforts to advance intercultural understanding and secure peaceful relations among different cultural groups. Liberalism, like any other substantive doctrine, entails a distinct cultural perspective,

and cannot provide a broad and impartial enough framework to conceptualise other cultures or their relations with it. . . . [It] excludes non-western societies, many of which are not liberal and some [that] do not even aspire to be . . . , and we cannot exclude them from our theoretical inquiry. . . . To do so is both unjust, because it denies the legitimate claims of nonliberal cultures to participate in decisions relating to the political structure of the wider society, and risky because the resulting structure cannot count on their allegiance. (14)

Parekh assumes as his task solving the whole problem of modern multiculturalism, ranging from how to think about collective rights through understanding how cultures differ and how states should relate to and evaluate cultural difference. Such an effort is no small task, and his ideas accordingly brush broadly—often too broadly—across the canvas. Throughout the book, Parekh makes a case for creating the political conditions for “intercultural dialogue”—among liberal cultural groups, among nonliberal cultural groups, and among nonliberal *and* liberal cultural groups. While clearly the model of intercultural dialogue he espouses shares much with liberal theorising in general, it is different in its emphases on the kinds of political structures it imagines and the ways in which it allows “culturally mediated interpretations and applications of laws,” among other things (Parekh 2001:140).

Like other theorists of multiculturalism, Parekh is attentive to how culture is imbricated in the individual’s life; human beings are embedded in cultures that shape human capacities in distinct ways (2000:47). “A way of life cannot therefore be judged good or bad without taking full account of the system of meaning, traditions, temperament and the moral and emotional resources of the people involved” (47). Chapter 4, “Conceptualizing Human Beings,” and Chapter 5, “Understanding Culture,” provide some of the most interesting insights in the book. Parekh asks the reader to conceptualize human beings as sharing a set of distinct

and common human capacities, but not a distinctive “human nature.” That human nature is shaped by its cultural context: while all humans may share “a capacity to reason, different cultures cherish and cultivate different forms of it” (2000:121). Moreover, the individual reflects upon both his or her capacities as a member of the human species and his or her understandings shaped within a particular cultural context. This latter point is important: Parekh wants to create a theory that not only appreciates different cultural understandings but also appreciates the different positions that individuals may occupy in relation to that culture.

In Chapter 5 Parekh expounds a definition of culture that is relatively familiar in the multiculturalism debate, as a set of historically developed beliefs that shape the ways in which its members understand and structure their lives. He adds to that general definition, however, in his recognition that individuals “belong” to their cultures in distinct ways, and that cultures themselves, while identifiable, are “constantly contested, subject to change and [form] no coherent whole” (2000:149). Because of the important role that a cultural community plays in every individual’s life, Parekh asserts controversially, all individuals have an obligation to “cherish” that cultural community. However, this is not a suggestion that the individual must never critique his or her own culture, nor seek to change it. “No culture is wholly useless or worthless. To love one’s culture is to wish it well, and that involves criticising and removing its blemishes” (161).

With this background understanding, Parekh moves to the issue of politics in a multicultural society, and here he parts company with many liberal theorists, whose belief in a set of universal values may impair their ability to understand that, in a truly multicultural society, disagreements over fundamental values must be expected. When cultural understandings are “deeply constitutive,” it is logical to assume that differences will not always be overcome, even in the most open of public discussions. Because differences matter in fundamental ways, Parekh argues that multicultural societies must develop ways of viewing equality contextually, and must allow their discussions about how to accommodate difference travel forward from that point, rather than attempting to rely on an equality-based analysis. That fact means that political life must entail a constant negotiation among competing cultural understandings.

Parekh continually emphasizes the dynamic nature of cultural processes; all cultures face pressures to change from both within and without, and their basic understandings are continually reinterpreted and adapted, even cultures that, to the outside observer, seem particularly resistant to change. Parekh wants to fashion political rules that will enhance cultural cohesion while

retaining enough flexibility to allow cultures to continue their evolutionary processes.

The role of the modern nation-state, then, is to create the conditions for meaningful intercultural dialogue. Such a dialogue can only occur where the parties genuinely respect each other's cultural background—meaning not that the parties must respect every belief that the other holds, but that they must understand that such beliefs legitimately derive from a set of cultural understandings. In this sense, Parekh differs from liberal theorists whose response to illiberal groups is to simply assert that their outlook is mistaken or misguided. In his earlier work, for example, Kymlicka (1995) argued that liberal societies must be tolerant of illiberal practices, but may certainly engage in sustained efforts to convince minority cultures of the errors of their ways. Parekh's argument, however, is that distinct cultural groups must engage with one another as equal partners, even if those groups have fundamental disagreements. While groups may profoundly disagree over specific cultural understandings or practices, such a disagreement cannot justify summary dismissal of or disregard for the competing cultures themselves. In this view, all cultures, according to Parekh, are entitled to respect in the sense that they provide a world view and a context for understanding the actions of others, even if outsiders may object to particular practices or beliefs.

Parekh appears to argue for the intrinsic value of cultural diversity as a human good. It is, in some senses, a Millian argument writ large (and Parekh would argue, free of the mono-focus of liberalism). Any particular culture, he notes, can realize only a limited range of human capacities and values. Thus, different cultures “correct and complement each other, expand each other's horizon of thought and alert each other to new forms of human fulfillment . . . independent of whether or not they are options for us” (2000:167). Openness to intercultural dialogues allows understanding to take root, and may even encourage “cultural humility” (167).

Like Kymlicka, Parekh sees modern nation-states as preoccupied with assimilation and homogeneity, with citizens urged to privilege their territorial and political identities over other identities that may be equally or more important. Thus, creating a multicultural society involves considerable restructuring of the nation-state itself. Balancing the need for unity and commonality yet encouraging different groups to function with some degree of autonomy is not a simple task, he argues in Chapter 7, but it can be done. Cultural groups are always involved in a “dialectical interplay” with their outside environments, and differences can be worked out if there is flexibility in the system and a willingness to live with unresolved issues.

Parekh's argument for recognizing collective rights is an invitation for groups to "talk it out," to decide what collectivities ought to have what rights and under what circumstances. That dialogue, he suggests, should be guided by several factors. Partners to the conversation must seek to understand how meaningful the group is in the life of its members: whether (1) its existence is "vital to the fundamental interests of its members such that those interests can only or best be promoted by the community enjoying a collective right"; (2) the rights demanded are necessary if the community is to integrate into the larger society; (3) the community has been systematically oppressed; (4) the group can contribute to wider society and if the rights demanded are essential to its ability to do so; and finally, whether (5) the group perceives that only rights can provide adequate protection for its own cultural integrity (Parekh 2000:217).

Parekh's is a nuanced account of how various cultural groups are likely to interact in the real world. This dialogue, in which all voices are heard and the cultural context from which different arguments are advanced are appreciated, is "necessarily messy and involves constant shifts of levels, styles and idioms. This sometimes makes [the dialogue] most exasperating and calls for considerable patience and sympathy" (2000:294). Nonetheless, it may prove a starting point for creating intercultural understanding, not least because it articulates a way of understanding and respecting cultural difference without having to suppress disagreement over different cultural outlooks.

IV.

Both Parekh's and Kymlicka's books re-acquaint the reader with the broad outlines of the contemporary debate over multiculturalism. It remains to be seen, however, how these discussions and debates can contribute to an understanding of contemporary arguments concerning adoption. As noted earlier, adoption brings questions of identity and belonging into sharp relief, especially as it is increasingly carried out across racial, cultural, and national boundaries. In fact, transnational adoption is fast becoming a flashpoint in the debate over cultural integrity and cohesion.

When a child is adopted, state power is invoked to change the child's identity at a personal and familial level; it may also alter the child's cultural and national identity. Recognizing rights to cultural identity and integrity called for in various international human rights documents and responding to the demands of historically marginalized groups promises further changes in the legal and political environment within which adoption might be carried out.

Many of these concerns have already made themselves felt among groups immersed in the adoption process. In the international context, as Barbara Yngvesson (2000) has noted, sending countries and international agencies are increasingly concerned with developing ways to preserve children's identities of origin and to help them connect to cultures whose absence they feel as a real and continuing loss. Receiving countries, likewise, are increasingly making efforts to provide adoptees with information and options for reconnecting with their "birth" cultures, from "roots" tours to providing educational programs for adoptive parents. In 1994, the National Association of Black Social Workers softened its earlier stance opposing transracial adoption but urged that, where such adoptions occurred, adopting families should be connected to black community groups.

However, should theories of multiculturalism be attentive to the issues raised by transnational, transracial, or transcultural adoption? Many of the questions arising in the context of adoption are, of course, particular and not likely to be answered by the meta-theorizing of Kymlicka or Parekh. Nonetheless, some of their concerns bear on how adoption is currently managed.

Both authors suggest a far more active and decisive role for distinct cultural groups in day-to-day political and public life. It is certainly conceivable that such groups would want greater control over the adoptive or foster placement of children who are born into or are otherwise part of that cultural group; children from disadvantaged populations are far more likely to be subject to adoption than the children from dominant cultural groups at both international and domestic levels. For many marginalized groups, the loss of children is a lived experience: It is not an abstract argument about the vitality of cultural communities and the vibrancy of cultural identity. In fact, the problem has cut both ways. Not only have marginalized groups seen their children placed outside of their communities, but also potential adoptive parents within those communities have been systematically disqualified from the adoption process. The original position paper of the National Association of Black Social Workers, which opposed transracial adoption, was in part premised upon the experience of African-American social workers in seeing prospective black adoptive parents passed over in favor of white adoptive parents.

Recognizing a multiplicity of cultural groups with distinct legal and political powers certainly complicates the process of adoption, but it is an option that needs to be fully explored. In the United States, for example, jurisdiction over the adoptive and foster care placement of Native American children is accorded, at least in theory, to tribes.² In fact, the Indian Child

² Tribes have exclusive jurisdiction over children who are tribal members, or are eligible for membership, and are domiciled within reservation boundaries, and permis-

Welfare Act (1978) (ICWA) has been interpreted by the U.S. Supreme Court as placing the interests of the tribe on a par with, or even superseding, the interests of the biological parents, once the parents have decided to place the child for adoption (*Mississippi Band of Choctaw Indians v. Holyfield* [1989]). Nothing in the ICWA precludes potential adoptive parents from initiating an adoption petition in a tribal court—and tribal courts are not bound, as state courts are, to give preference in placing Indian children with Indian foster and adoptive parents. (As an aside, it is worth noting that in the adoption context, indigenous groups have been viewed differently from other minority groups, at both a domestic and an international level, based on distinct political histories.)

These sorts of arrangements are akin to what both Kymlicka and Parekh have suggested: Modern nation-states, to be truly multicultural, may need to divide power among a far greater number of cultural groups. To follow out Parekh's point, recognizing the rights of cultural groups to control the foster and adoptive placement of their children would guarantee a considerably robust "intercultural dialogue." The ways in which the rights of cultural groups could be realized with respect to "their" children is enormously varied, from requiring adoptive parents to teach children about their cultures of origin to more formal requirements for visitation, connection, and education. How such requirements might be squared with the familial rights of both adoptive parents and children, however, admits of endless complication. Should—or could—adoptive parents be obligated to create connections with cultural groups if they adopt a child, and if so, which ones?

At the same time, contemplating such arrangements reveals a weakness in both Parekh's and Kymlicka's work: Both appear to assume that distinct cultural groups can be easily identified. In fact, cultural boundaries can be notoriously open, as becomes immediately clear when these abstract notions are placed into concrete contexts. Determining who is in or out of a cultural group is a difficult question at all times, but it becomes exponentially complicated when applied to adopted children. To which cultural group do adopted children belong, especially if they are themselves from a racially, ethnically, or culturally mixed group? How do we come to recognize, in law and public life, who is and who is not a legitimate "cultural" group and who belongs to a particular group when the idea of culture itself is irreducibly ambiguous?

sive jurisdiction over such children domiciled outside of the reservation's boundaries. Numerous disputes over the interpretation of the permissive provisions have occurred, and the model is not without its problems, but it provides one model worthy of discussion in understanding how powers over adoptive placement might be distributed among distinct cultural groups.

These and other difficult questions are addressed by Parekh or Kymlicka only at a very abstract level. Yet they are central to the issue of multiculturalism in the context of adoption. If political power is to be distributed among a variety of cultural groups, it is essential to be able to define who belongs to that group with some degree of certainty. Both authors seem to slide quickly by that issue, assuming that cultural groups will self-identify. At different points, both assert that such groups can be identified by their common history, shared understandings, and, often, language, but those criteria do not necessarily work well on the ground, particularly for cultural groups who are trying to reassemble themselves in the face of a history of suppression or dispersion.

Parekh, understanding the fuzziness of cultural boundaries and the variety of positions that individuals might assume internally in relation to the group, might respond that determining who is a member of a cultural group, or should be subject to its jurisdiction, is a matter of negotiation and dialogue. That position does not respond adequately to the issues raised by adoption, however. This threshold determination of belonging is likely to be one of the most difficult issues in the adoption context. To what “cultural group” does a child belong: the culture of origin, or the culture “acquired” with the adoptive placement? At one point, in a passing comment, Parekh suggests that cultural belonging should not look backward to a culture of origin:

The term “our” culture refers not to one in which we are born, for we might emigrate or be given up for adoption and raised in another culture, but one in terms of which we understand and organize our individual and collective lives. “Our” culture is one we live, which has shaped us, and with which we identify. And we recognise those as members of our cultural community who share its beliefs and participate in its practices. Like all communities cultural communities are not, and cannot be, just imagined communities. (2000:155)

When applied to a child adopted at a very young age, the very concept of a “culture of origin” seems to dissolve. Yet, the experience of many children, particularly children who are racially different from their adoptive families—and race, here, is often elided with culture, which raises its own issues—suggests that the need for connection with a culture of origin may have considerable pull (Patton 2000). Whether that perceived need to belong on the part of a child should translate into a set of rights conferred either on the child or on the cultural group into which the child was born introduces some very basic issues into the broad contours of the multiculturalism debate.

Children adopted transnationally, transracially, and/or transculturally bring dramatically to the fore issues of crossing cultural boundaries and generate vexing political problems that much of

the mainstream literature on multiculturalism has simply missed. When Parekh, for example, talks about the multiple ways in which individuals can position themselves in respect to a particular culture, he might profitably consider what Fogg-Davis (2002) refers to as the racial (and cultural) navigation that many adoptive children engage in on a daily basis. Also, when Kymlicka suggests that belonging to a particular cultural group can be relatively easily reconciled with the openness demanded by cosmopolitanism, he could think more deeply about how cross-cultural belonging is a fact in the lives of many adopted children and their families and how such cross-cultural belonging is an example or a refutation of the kind of cosmopolitanism he envisions.

Kymlicka emphasizes, throughout his book, that in this third wave of thinking about minority rights, it is time to re-assess the ways in which modern nation-states privilege dominant cultures at the expense of minority cultures. Legal and policy regimes regulating the family in contemporary nation-states usually provide a good illustration of his point: The model of family life typically endorsed or promoted in such laws and policies reflect those of the dominant cultural group; but transracial, transnational, and transcultural adoption may provide an entry point within those legal and policy regimes for rethinking encrusted conceptions of family life in more open and inclusive ways.

One of the insights to be gained from *Rethinking Multiculturalism* lies in Parekh's effort to understand issues of cultural diversity *outside of* identity politics, where Kymlicka appears to continue to make his arguments from within that frame. As Iris Young (2001) has commented, Parekh's work explains why a logic of identity ultimately fails to create an adequate model for understanding how to construct a multicultural society. Parekh's primary argument centers on the value of cultural diversity for society as a whole, not simply for the members of that cultural community. Claims of identity, as both Young and Jeremy Waldron (2000) have pointed out, limit the ways in which cultural difference can be understood. Young notes that the logic of identity "is not well able to conceptualise cultural difference as involving similarity, overlap, hybridity and exchange" (2001:119).

From this standpoint, Parekh's views may provide more guidance for thinking about adoption than Kymlicka's. The questions noted above about the difficulty of determining cultural belonging for adopted children are often stated in terms of identity, but children adopted across national, racial, and cultural boundaries have complicated identities that cannot easily be categorized. Consequently, it is particularly difficult to frame adoption law and policy in ways that respond adequately to the needs of children, their families, and the cultural groups who are interested in their welfare and belonging. In some ways, trans-

racially, transnationally, and transculturally adopted children are the exemplars of hybridized or perhaps even cosmopolitan citizens; in other ways, they are not. Their needs for belonging at a variety of levels, to more than one family or more than one culture, deserve careful consideration. Current theorizing about these issues on the level of identity politics per se does not provide adequate answers and does not open many doors for reconceptualizing belonging and cultural diversity. If we step outside of that narrowly confined identity framework and understand the complex identities of adoptive children, we may obtain a more fruitful understanding about multiculturalism and diversity itself.

Efforts to allocate authority over children among competing cultural groups—at a national, international, or sub-national level—can too easily get mired in producing cultural winners and losers while leaving unexplored the critical questions of belonging in a world of fluid identities and permeable cultural boundaries. Opening a sustained public dialogue about cultural belonging in the adoptive context—among *all* of the players—might yield new insights about how culture and belonging should be conceived in today's world.

References

- Barry, Brian (2001) *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press.
- Brownlie, Ian, & Guy S. Goodwin-Gill, eds. (2002) *Basic Documents in Human Rights*, 4th ed. Oxford: Oxford Univ. Press.
- Fogg-Davis, Hawley (2002) *The Ethics of Transracial Adoption*. Ithaca: Cornell Univ. Press.
- Kymlicka, Will (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford Univ. Press.
- Parekh, Bikhu (2001) "A Response," 1 *Ethnicities* 137–40.
- Patton, Sandra (2000) *Birth Marks: Transracial Adoption in Contemporary America*. New York: New York Univ. Press.
- Stewart, George A. (1992) "Interpreting the Child's Right to Identity in the U.N. Convention on the Rights of the Child," 26 *Family Law Q.* 221–23.
- Waldron, Jeremy (1995) "Minority Cultures and the Cosmopolitan Alternative," in W. Kymlicka, ed., *The Rights of Minority Cultures*. Oxford: Oxford Univ. Press.
- (2000) "Cultural Identity and Civic Responsibility," in W. Kymlicka & W. Norman, eds., *Citizenship in Diverse Societies*. Oxford: Oxford Univ. Press.
- Yngvesson, Barbara (2000) "'Un Niño de Cualquier Color': Race and Nation in Inter-Country Adoption," in J. Jenson & B. de Sousa Santos, eds., *Globalizing Institutions Case Studies in Regulation and Innovation*. Aldershot: Ashgate.
- Young, Iris Marion (2001) "Thoughts on Multicultural Dialogue," 1 *Ethnicities* 116–22.

Case Cited

Mississippi Band of Choctaw Indians v. Holyfield, U.S. 30 (1989).

Statutes Cited

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993).

Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally, U.N. GAOR, 41st Sess., U.N. Doc. A/Res/41/85 (1986).

Draft Declaration on the Rights of Indigenous Peoples, E/CN.4/Sub.2/1994/2/Add.1 (1994).

Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, done May 29, 1993, Miscellaneous No. 40 (1994) [Hague Convention].

Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, done May 29, 1993, 32 I.L.M. 1134.

Indian Child Welfare Act of 1978, 25 U.S.C.A. §1901 et seq. (2001).