THE POLITICS OF ADOPTION:

CHILD RIGHTS IN THE BRAZILIAN SETTING[*]

Claudia Fonseca

Universidade Federal do Rio Grande do Sul

In this paper, I propose to discuss child placement and, in particular, adoption as embedded within local, national and international discussions on child welfare. The point of departure for my research involved intensive ethnographic field work among lower-income families in urban Brazil. However, the more my analysis advanced, the more it became apparent that what I was observing at the "local" level was inseparable from regional and global processes taking place at the moment. Conscious of the tremendous impact international legislation such as the 1989 <u>United Nations</u> <u>Convention on the Rights of the Child</u>[1] has on Brazilian policy makers, I asked myself, in particular, how national legislation mediated universal humanitarian concerns, adapting them (or perhaps not) to concrete local situations.

Responding to persistent criticism that the UN Convention is premised on essentially Western middle-class norms (Ennew 1995; Stephens 1995; Panter-Brick & Smith 1999; Yngvesson 2000), legal scholars have countered by pointing out how the document is purposely open-ended in a way that allows signatory states to adjust it to the local context without sacrificing its major principles. Rejecting the myth of "automatically transferable jurisprudence", and recognizing the need to take into account the "enormous scope of possibilities for cultural difference" for the effective implementation of human rights norms (Alston 1994), these analysts suggest that the very indeterminacy of the UN document allows

for its major principles to pass through locally forged conventions ("conventions with a little 'c'"), based on traditional values and specific historical circumstances (Parker 1994)[2]. On a purely theoretical level, this response may appear quite promising. However, a look at how, in actual practice, these principles have filtered down to national law codes raises some doubts about Third World legislators' willingness or capacity to take domestic realities into account. In an effort to shift emphasis away from the usual top-down approaches, I will thus begin with a description of local practices of child placement in a Brazilian working class neighborhood, to then ask to what extent these "cultural differences" have been taken into account by national law-makers.

The empirical object of my analysis is adoption policy and practice – both on the national and international level. In many countries, adoption interested legislators but little until foreign adoptive parents began what was seen as predatory inroads on the country's juvenile population (see Yngvesson 2000; Goonesekere 1994).   The 1980s marked the explosion of international adoptions throughout the globe. By the end of the decade nearly 20,000 children a year were thus being moved across borders - an increase of over 70% in less than ten years (Kane 1993).   Falling birth rates, reasonably efficient welfare policies, and changing standards of sexual behavior had radically diminished the number of children available for adoption in Western Europe and North America.   At the same time, it was becoming abundantly clear to certain Third World governors that "excess" children could be conveniently gotten rid of by resorting to international adoption.   Of course, the "excess" was caused by different factors depending on the context. In Korea, the original wave of out-of-wedlock bi-racial adoptees (resulting from the Korean War), was followed by full-blood Koreans, relinquished by their families because of extreme poverty and patrilineal values which placed primal importance on consanguineal relations (Kim 2001). In China, often even married couples have given babies away in order to avoid the tremendous fines which the government

2

imposes for every child born after the minimum allowed (Johnson, Banghan & Liyao 1997). In Romania, the dictator Ceausescu had for years imposed policies of an entirely different nature, prohibiting any form of birth control and making life difficult for couples who had fewer than four or five children .   This fact, together with political and economic instability, as well as longstanding prejudice against the country's gypsy population brought about the huge exportation of children headed toward adoptive homes in Europe and America at the beginning of the 90s (Kligman 1992). Today, for reasons that are not hard to guess, Russia has joined China as a major furnisher of foreign-born adoptive children in the United States[3]. However, despite the ups and downs of war, political unrest, and capricious birth control policies which momentarily place one country or another in first place, areas such as India and Latin America appear to have been, until recent times, among the <u>most constant</u> providers of adoptive children – and for no other reason than sheer endemic poverty[4].

Considering the tremendous upsurge of inter-country adoptions in recent times, it is not surprising that legislators at various levels have tried to deal with the problem. From international accords[5] to the different national children's codes enacted in recent years, we see certain recurrent themes: youngsters should be placed, when at all possible, within their own countries; commercial "trafficking" of children is to be avoided at all costs, and the full rights of adopted offspring (including the right to a "cultural identity") are to be respected.   One wonders, however, how the implementation of these various concerns affects local realities. The question is : have the major issues all been covered? Or are there possibly other concerns, vital to the well-being of children and their families, that have been left aside or even obscured by the new child rights legislation?

Especially since the 1989 Convention, there has been a good deal of serious research on the different rights, duties and obligations linked to childhood (see, for example, Walsh 1991; Théry 1992; Franklin 1995; Ladd 1996).   Likewise many excellent studies on adoption

policies and practices have been produced, particularly after intercountry surged onto the scene in the early 1980s (Modell 1994; Kane 1993; Yngvesson 2000; Selman 2000). The many points of convergence between these two themes is evident, as reflected in both official documents and studies which measure the principle of a child's best interest against different forms of child placement throughout the globe.

I would hold, however, that there are also many problematic aspects to the adoption/child-rights overlap -- spiny, albeit stimulating, issues -- that have seldom been the focus of discussion. Through the case study of law and local child-raising practices in a major city of southern Brazil, I propose to zero in on just such issues, to look into the global/local fit involved in the use of universal mandates, such as those to be found in the UN Convention, to guide practices in the globe's infinitely varied local settings. My final reflections will be on factors in the contemporary political context which possibly influence the law-makers' sensitivities.

CHILD CIRCULATION -- A SOCIAL DYNAMIC AIMED AT PROMOTING CHILD WELFARE

Before looking at Brazilian laws on adoption, it would be useful to consider the concrete circumstances in which policies of child welfare are to be carried out. My ethnographic field work centers on the squatter settlements and more settled working-class neighborhoods of Porto Alegre, the southernmost capital of a Brazilian state[6]. Although this city of nearly 2.000.000 is ensconced in a relatively prosperous and politically progressive area of Brazil[7], the laboring poor have by no means been immune to the vagaries of a political economy that has produced one of the world's most unequal distributions of wealth. At the millenium's end, surveys showed that one third of Brazilian families (more than fifty million people) live under the poverty line and 14% live in total indigence (Barros et al. 2000).

One must remember, however, that in Brazil, unlike the European or North American case, poor families, clustered in vast shantytowns and housing settlements, cannot be considered marginal. Thus, working-class people have, since colonial times, been relying on alternative social institutions -- family networks and the informal sectors of the economy -- to keep them going. In the realm of family organization, they have managed to see to the welfare of their children and guarantee the survival of new generations through, among other things, the strategy of <u>child circulation</u>. Through this practice, documented by historians and social scientists in diverse parts of Brazil, parents will divide the economic onus and socializing responsibility involved in raising a child between a series of informally chosen foster parents (Meznar 1994; Cardoso 1984; Scheper-Hughes 1992; Campos 1991; Fonseca 1995; Hecht 1997; Goldstein 1997).

The case of Solange, who speaks of several different mothers, may be used to illustrate certain aspects of this practice. Born while her (biological) mother was living under the roof of a great aunt, she grew up with her cousins, calling her elderly caretaker, just as her cousins did, "mother". When her parents separated, Solange went to live with her father and his new wife whom she addressed as "Mother Loraine". Pre-teen conflicts with her father led Solange to once again seek the company of her mother, with whom she lived for two years until the woman died of cancer. Before going into hospital, the ailing woman asked her backyard neighbor to look after Solange, and this neighbor -- whom Solange also refers to as "mother" -- eventually became her mother-in-law.

The collective care of children was, in this family, carried through from one generation to the next. Solange, at age twenty-eight, had three of her own children. The first was born while she was living with her mother-in-law. Her common law husband's sister had recently experienced the tragedy of stillbirth and, to console her, Solange agreed to give her the baby. Relatively stable circumstances (which included moving into her own house) led Solange to

raise her second son. However, the third child -- a little girl -- had been taken in by Solange's father and step-mother who lived close by, and the child -- when I last saw her -- was calling her fifteen-year maternal aunt (Solange's half sister) "mother".

This case clearly demonstrates how the circulation of children operates to cushion the effects of poverty which include a high level of adult mortality, conjugal instability and multiple-family households. However, it would be misleading to explain the practice as an *ad hoc* survival strategy. Youngsters will transit back and forth between the households of parents, grandmothers, godmothers, neighbors, or employers for any number of reasons. Depending on the circumstances, children may be placed at birth, or much later, well into their teens. They may be sent to surrogates picked out by their parents or go to a place of their own choosing. They may stay a few days or spend their entire childhood.   They may leave home because of a crisis -- when their parents split up or pass through a period of particular financial difficulty -- or for more banal reasons (the foster mother lives closer to a school, or is an older person wanting company, etc.).

Furthermore, by looking at the child-raising system rather than merely focusing on individual stories of "abandonment"[8], we cannot fail to note the amazing openness of working-class households, willing to take in un- or distantly-related children. Joaquim and his wife, for example, are an Afro-Brazilian couple who, aside from their three biological offspring, raised three (slightly younger) "foster" children[9]. Retired from the army, the father of this family had a small pension which placed him, financially, well above his close relations. Occupying an important position in his extended social network, his widely-recognized generosity confirmed a popular proverb: "Where there's food enough for one person, there's enough for two or three" (*Onde come um Português, come dois, três*".). One of Joaquin's wards was a sort of relation since her mother had been raised by Joaquim's mother: "When we took her in", he explains, "her status simply went from niece to

daughter". The other two children, however, a boy and a girl, involved unrelated neighbor children on whom the couple took pity. As his nine-year-old (foster) son listened on, Joaquim told the story of his arrival in the household:

> Fabrício was living next door with his mother in a rented room. He would show up here all dirty with unkempt hair. Everyone would go home to eat and he would stay put, just sitting there. One day, my daughter said, "Why don't we call that little boy over here, to see if he wants to eat something". He was so dirty, my daughter gave him a bath. We got him borrowed clothes with the neighbors and, with that, he became a regular client. The first night he came to sleep here, my wife sent to ask his mother's permission. She said yes, that she had no problem with that. So he stayed over the first night, and the second, and he's still here till this day, after six years...

In this particular case, I had also been able to make contact with the boy's mother, living by now in another neighborhood, with her new husband and three toddlers. Her account reveals the birth mother's perspective of such placements:

> One day they asked if I wanted to leave Fabricio to live there. They gave him loads of presents - toys, everything... Time went by and he just stayed on. [..] He understands my situation. Sometimes he comes and I talk with him. "Look, Fabrício, we don't live together because I can't provide you minimum conditions". He says, "No Mom, I accept that, I understand. I'm there with my godmother because you're poor. If things get better, I'll come live with you". But until then, he's likely to spend the rest of his life there.

Space does not permit to go into greater detail about the subtleties of this practice. Here, I will simply single out a few points of particular interest to my argument.

First, in the great majority of cases, a child does not lose his original family identity. People will refer to a number of different women as "mother" -- having spent some time

living with one and the other -- but they make no confusion between foster and biological ties. Even those individuals who spend years in a foster household, momentarily suspending all contact with their biological relatives, will expect and are expected to re-establish ties with their consanguines sooner or later. My field work revealed any number of situations in which, even though they had been raised in different households, grown siblings lived side by side in their respective houses, or at least visited each other often, enjoying all the privileges of the kinship tie.

Second, there has been no dearth of foster households that have accepted to take in children on the somewhat ambiguous terms of this informal child placement. Aside from grandmothers seeking company or sterile aunts and cousins thus procuring the joys of a family, every neighborhood has a number of generally well-respected matrons who make a living by boarding their neighbors' offspring. Often, parents cannot keep up payments, but then -- as in a limited number of cases I witnessed -- the child may simply slip from the status of boarder to foster child, until he or she is once more called back by blood relatives. As in the cases cited above, these placements very seldom pass through state authorities.

It is important to add that, well into the 1980s, the state orphanage was regarded, alongside foster families, as a routine element on the circuit of child circulation. Much to the administration's distress, women still used the institution as a poor man's boarding school, packing their children off and, once again, picking them up according to the variable pressures (financial, marital,…) of the life cycle[10]. To discourage such "abuse" of state assistance, the administrators would threaten women with the possibility of losing their children to adoptive parents. Thus many mothers would avoid the orphanage, looking rather to informal fosterage arrangements for the more adoptable of their offspring (the lighter-skinned babies). The temporary institutionalization of dark-skinned children, toddlers and older, caused them less worry. In such cases, women might even prefer the state institution

since they could count on recovering their children at a later date with no danger of interference or competing demands from the foster family.

Alongside this full-fledged fosterage culture, in which children were expected to accumulate parental figures as they circulated between households, there also existed a practice closely resembling plenary adoption, in which a child would be "given away" on a permanent basis.   This adoção à brasileira, the third element of child circulation pertinent to my argument, might occur when a woman in dire economic straits found her social network weakened or saturated by the placement of her previous children. Unable to find a foster home for her baby among relatives and friends, she would be in no position to impose conditions on her child's caretakers. Acquiescing to their demands, she would agree to "sign the child away" (dar de papel passado), permitting the adoptive parents to take out the child's original birth certificate as though they were the biological parents.   The understanding in this case is that the youngster will grow up knowing no other family but that of his or her adoptive parents.

By participating in this procedure, a woman and the adoptive parents of her child technically are committing a crime. Having agreed that the new parents take out a birth certificate on the baby as though it was their natural child, all three are guilty of "ideological falsity", punishable by one to five years in jail. However, the illegality of this act does not seem to intimidate most potential parents. According to some estimates, adocão à brasileira in 1990 was ten times more common than legal adoption[11] -- a statistic easily understood by those who recognize that the Brazilian working-class population has traditionally lived on the margin of state bureaucracy. Even today, at the turn of the century, nearly one third of births are not declared within the legal deadline, and many children acquire a birth certificate only when they enter first grade or do their military service. In these circumstances, it is not difficult for adoptive parents to pose as birth parents.

Our research put us in contact with a number of birth mothers who had thus given a child away. Although they were evidently saddened by the experience, they appeared to take a certain consolation and even pride in having carefully chosen the adoptive parents, giving convincing explanations about how the child was certainly better-off in the new home[12]. The adoptive family (which took on the status of biological family) was in general some sort of neighbor, of modest income, but enjoying a moment of relative stability. In most cases, the birth mother had episodic contact either with the adoptive family or with common acquaintances who could give concrete reports as to the child's progress. Seldom did a woman attempt to reclaim her child; however, the birth mothers I interviewed claimed they stood ready to re-assume their maternal role if the need arose. I often heard women say they had not "abandoned" their child; rather, they had seen to it that he or she would have a better existence.

BRAZILIAN LEGISLATION : THE LINEAR EVOLUTION TOWARD PLENARY ADOPTION

During the 1980s, the Brazilian political scenario went through important changes. Emerging from twenty years of military dictatorship, the country witnessed with tolerance an effervescence of social movements: workers' strikes, invasions of housing projects, marches for land reform, and church-led neighborhood associations. A rising number of university-educated professionals, including social and community health workers, as well as a technologically more efficient state bureaucracy, created a demand for greater intervention in people's domestic affairs. The writing of a new constitution (completed in 1988) mobilized thousands of activists aiming at social reforms who then turned their attentions specifically to the subject of children. Spurred on by the international discussions focussed on the theme as

well as the Brazilian government's desire to avoid unflattering publicity on its "street children", the National Congress passed, in 1990, the Estatuto da Criança e do Adolescente[13].

The new code was only partially the result of Brazil's particular political climate. It also reflected a world-wide trend which, during the 80s, brought many countries to re-edit their legislation on child welfare. Aside from the 1989 United Nations Convention on the Rights of the Child, many national and regional charters were also produced during this period: the 1987 Child Welfare Law in Spain, the 1987 African Charter on the Rights and Welfare of the Child, the 1989 English Children Act, the 1989 Persons and Family Code in Burkina Faso, to name only a few. Countries that did not edit new codes were still involved in discussions about how to comply with the spirit of the 1989 UN Convention. The fact that, within a short period, this convention was signed by 191 countries (the U.S. being the only significant hold-out) is ample proof of the international popularity of the child rights issue.

Not only was the theme of great international importance, the manner of dealing with problems of child welfare followed an equally global trend, electing the judiciary as a major instrument of social reform (Santos 2000). Many of Brazil's middle-class professionals appeared to believe that the solution to the country's endemic poverty and social injustice lay in the enactment of new and revolutionary laws such as the Children's Code (Vianna 1996). The Code decreed – among other things -- the right of all Brazilian children to "life, health, food, education, sports, leisure, preparation for a future profession, culture, dignity, respect, and liberty". Much was said about the advantages of the new legislation in relation to its previous 1979 edition. The stigmatizing term "minor" was exchanged for the more humanizing "child and adolescent", and a general philosophy of "total protection" was advocated as a replacement of the police-type tutelary complex. Touted as a document "worthy of the First World, " even more advanced, in some respects, than the U.N.'s child

rights convention, the Code was seen by many activists as a hallmark that would change the history of Brazilian children (see Ribeiro 1998). We might now ask how this enthusiasm, which produced a number of interesting "manifesto" rights was translated into directives on concrete issues such as those, for example, pertaining to adoption.

For wont of space, I pass over the intermediary legislative changes (described elsewhere, in Fonseca 1995, 1999), concentrating my efforts on the contrast between what, respectively, the 1917 Civil Code and the 1990 Children's Code say about legal adoption in Brazil. The first document, reflecting turn-of-the-century attitudes, gave no special concern to children, much less to adoption. These subjects simply appeared alongside thousands of other items dealing with the regulation of civil society. Nonetheless, the Civil Code remained the major reference for adoption procedures in Brazil until, in the latter half of the century, a series of laws introduced change. According to its terms, there was no necessity to involve public authorities in the transfer of children from one set of parents to another. A private act registered with the notary public was all that was required in a process obviously designed to provide the pleasures of parenthood to childless couples. People who already had legal offspring were not eligible to adopt children, and -- no doubt, to avoid the surprise of subsequent issue -- nor were those under 50 years of age. The adopted person (who, in fact, could be of any age, as long as he or she was 18 years younger than the adopter) had full right to his adopted parents' estate only if they had no biological offspring. In the event of younger brothers and sisters, born to the adoptive parents, he was entitled to but half the amount allotted to his siblings. Furthermore, the adoption could be revoked by either party -- parent or child. Since adoptive filiation was considered an added-on status, co-existing with instead of replacing ties to the biological family, the adopted person could resume his consanguineal identity with little ado.

By 1990, the adoption procedure had undergone radical changes. A two-pronged system, initiated in 1965, according to which "simple adoption" (much resembling the 1917 form) existed side by side with an evolving form of plenary adoption, came to a close with the victory of the latter. Today, all adoptions must go through government courts. In most states, special commissions have been set up, composed of judges, psychologists, and social workers, to oversee the process, deciding on the eligibility of children (required now to be under 18) and screening adoptive parents. The overriding philosophy is respect for "the child's best interests" -- bringing authorities to speak in terms of finding a family for the child (rather than a child for sterile couples). Since the 1988 constitution, all adoptive children have gained full inheritance rights, equivalent to those of children born in the family. Under the 1990 Children's Code, all adoptions are irrevocable, and -- more to the point -- all record of an adopted person's biological origin is struck from his birth certificate, permanently severing ties to his consanguineal relatives. In other words, adoptive status completely replaces the child's previous social identity, giving the adoptive parents exclusive rights to parenthood.

At first glance, the changes in legislation appear to be of uncontestable benefit. Certainly, discrimination against adopted offspring at the beginning of the century reflects the injustice of a rigid class structure. Permanently guaranteed rights equal to those of biological offspring may be heralded as a generally recognized humanitarian gain. However, the package deal presented in the 1990 form of adoption includes elements which are considerably more controversial.

I would argue that, in discussions concerning adoption legislation, there has been a consistent slippage between two entirely different points -- producing a "natural link" where none necessarily exists between the exclusivity of parental rights, on the one hand, and the equality of adopted and biological offspring, on the other. The first principle, embodied in the notion of "substitute filiation" (by which a child's biological origins are effaced, being

irrevocably replaced by the adoption filiation), appeared on a limited basis with the law 4.655 (1965). The second principle, measured for our purposes, by the adopted child's full inheritance rights, only became possible -- and, again, for only a certain category of adoptee -- in 1979 with the *Código do Menor.* What is today called "plenary adoption" (first instituted in the 1979 Code) involves both principles. The country's 1988 Constitution expands the equality principle, stating that all offspring -- whether had within the marriage relationship or not, whether adopted or biological -- shall enjoy "equal rights and qualifications" and shall not suffer any form of discrimination in function of their particular form of filiation. The 1990 Children's Code, on the other hand, reaffirms the exclusivity principle canceling ties between all adopted children and their (consanguineal) relatives (art. 41), and further decreeing that the courts will hold exclusive authority as to whom and under what conditions the original birth records can be consulted (art.47).

This latter aspect of contemporary adoption legislation is particularly curious when we consider the fact that informal adoptive arrangements have long been part of working-class family organization. In traditional placement patterns, birth parents participate in the choice of foster or adoptive parents, and hope to maintain episodic contacts even when they are not able to raise their offspring. In other words, contrary to the "myth of abandonment" which often accompanies adoption narratives (Ouellette 1996; Yngvesson 2000), in the Brazilian region where I worked (as, I suspect, in many other Third World countries), the overwhelming majority of people whose children are given in adoption would welcome information about their child's placement, and – given the opportunity – would relish an eventual contact.

We see, then, that formal law has evolved quite distinctly away from the first rule of locally relevant child circulation as recorded in our ethnographic description: the accumulation of parental figures, and the maintenance, alongside the new adoptive status, of

a child's consanguineal identity. Before further pursuing our analysis of present-day adoption legislation, it would be interesting to place these legislative changes within the framework of state institutional policies as they respond to the demands and needs of the local population.

FROM THE POOR MAN'S BOARDING SCHOOL TO PRE-ADOPTION INTERNMENT

As I stated above, during my mid-1980s field research, the state orphanage acted as a sort of poor man's boarding school -- a place where families hoped to temporarily enlist state aid in order to guarantee the welfare of their children. In fact, it was practically the only form of state aid since, contrary to European and North American settings, there were very few government subsidies to bolster low-income households. Milk distribution programs for young children and other episodic aid to poor families, generally coordinated by a public charity run by the president's wife (Legião Brasileira de Assistência), had relatively little effect in easing poverty. For the 60% of the adult population engaged in the informal economy, there were no food stamps or family allowances. Public schools, never more than four hours a day, did not automatically furnish meals. (What snacks were prepared for the children were generally furnished from the family's pocket money, as were all school materials.) Even for those parents with a salaried job (seldom earning over $100 a month), the official family allowance of approximately $6 per child made very little dent on basic necessities.   Today, in the year 2000, conditions are not much different.   A publicly subsidized medical system instituted in the mid-1980s is constantly being undermined for lack of funds.   Despite a slightly expanded school system, still nearly half the Brazilian children flunk first grade, and the average 17 year-old will never have more than a seventh-grade education. Altogether, studies show that recent economic policies have had little effect in improving the lot of Latin America's lower echelons[14]. On the contrary, midst rampant

unemployment, the gap between rich and poor has continued to widen (see, for example, Gafar 1998; Barros et al. 2000).

We may therefore presume that, over the past decade, things have not changed appreciably for many of Brazil's poverty-stricken families. Public policy concerning the internment of children from these families has, however, changed. Institutionalization, seen as a last resort, has been reduced to a minimum, while -- at least in the state of Rio Grande do Sul -- the cost of maintaining up-to-standard institutions (small family-type units providing middle-class comforts ranging from computers to horseback-riding) has soared to well over $1000 per child per month. At the same time, state-financed foster families which never received more than $50 per child have been all but phased out.[15] Evidently, foster families, closely associated to the children's original milieu, have been judged a priore sub-standard.

Historians tell of an epoch when countries in Europe and North America confronted a situation not unlike that of pre-1990 Brazil, in which poor families would abandon their offspring to state institutions as a strategy for survival. Faced with the cost and inefficiency of massive institutionalization, the state began to invest in measures which would fortify and help finance poor families (see, for example, Donzelot 1977; Panter-Brick & Smith 1999). Higher salaries for manual laborers, subsidized medical aid, and full-day schooling including meals were (alongside subsidies paid directly to parents according to the number of children) among the measures that most these countries promoted in order to back their family-based social policies. On the other hand, since the late twentieth century, in Brazil and other peripheral countries, the state has been presented with a different sort of solution to the massive institutionalization of poor children. Rather than seriously investing in preventive measures to avoid overpopulation at the state orphanages, they may resort to large-scale adoption as a means of emptying the institutions.

A recent study in the Porto Alegre institutional network indicates that, today, many social workers consider institutionalization a pre-adoption measure – especially in the case of younger children (Cardarello 2000). The Children's Code, after all, stipulates a child's right to a family (always in the singular) – preferably his own. However, lacking that possibility, a "substitute family" is seen as vastly preferable to growing up in an institution. Since the government no longer sees fit to invest in subsidized substitute families, it is only logical that adoption be placed high on the list of desirable options.

The attitude of Brazilian professionals appears to be in tune with that of their overseas counterparts. The idea that adoption is invariably more in a child's interests than fosterage is not written in the laws - neither in the 1989 U.N. Convention, nor in the various national Children's Codes. Yet, events such as President Clinton's 1997 emotional call to find adoptive homes for the 500,000 U.S. children in foster care[16], as well as the examination of literature in child welfare journals, leave little doubt as to the common sense appeal of this conviction. It is based on the idea that children are better off living in one permanent home with one set of parents. Scholars and social agents working in Africa, Asia, and Latin America have countered with the possibility of other "healthy" environments in which children grow up between various households or with multiple parental references (Cadoret 1995; Hoelgaard 1998; Fonseca 1995; Goonesekere 1994; Panter-Brick & Smith 1999). Certainly, this alternative vision could stimulate ideas on the adjustment of modern legislation and state policies to the "fosterage culture" I described for lower-income Brazilian families. However, this second element of the traditional system seems, for Brazilian decision-makers, more difficult to grasp than the notion of the "adoption culture", much touted in international conferences.

THE EFFICACY OF SAFEGUARDS IN CONTEMPORARY LEGISLATION

A series of restrictions have been written into present-day legislation in order to ensure what is seen as the most just form of adoption – restriction o which children can be declared available, where they should be placed, and who has the power to place them. A consideration of how things work in actual practice suggests that these safeguards are not by any means fail-proof.

1. Consent and abandon by birth parents

A highly-publicized scandal which occurred in Jundiai, a medium-sized town in the state of São Paulo, during the final months of 1998, appeared to point to the need for tighter regulation of the adoption process[17]. A number of lower-income mothers – compared by journalists to the Argentine madres de la plaza de maio – had banded together to protest the "abduction" of their children by the local judge, a man by the name of Beethoven. Investigation showed that over the past six years, more than 200 children had been given in international adoption, most of them without the mothers' consent. After a summary search for a child's parents, limited in several cases to a short notice published in the official government paper, the judge would declare the child abandoned, allowing adoptions in record time. The judge countered the mothers' accusations with what he considered a perfectly good justification. Working in collaboration with a reputable Italian adoption agency, he was providing a decent home to mistreated and neglected children who were living in deplorable hygienic and moral situation. In one case, for example, the child's mother earned her living as a stripper; in another, the child lived in a house "with broken windows and roaming dogs".

Press coverage of this affair insinuated that Judge Beethoven acted out of venal interests, possibly receiving large "donations" from the Italian agency through which the

confiscated children were channeled. Reading between the lines, however, we see emerge another possible version of reality – one in which the judge, a fervently religious man, acting according to moral convictions, sent the children abroad not for his own personal gain, but rather "for the children's own best interests". Such an interpretation has little currency among the media's consumers, perhaps because it is disquieting to think that "honest" or well-meaning magistrates would be capable of such obvious misdeeds, and that the "traffic" in children may occur even when dollars and cents are not an issue. We, nonetheless, find it not only plausible but provocative since it raises the question of how juridical terms such as "abandonment" and "negligence" are translated into concrete practice.

Art. 45 of Brazil's 1990 Children's Code clearly stipulates the need for the parents' or guardian's legal consent in order for a child to be adopted. Paragraph 1 states that this consent may be waived in the case of a child or adolescent whose parents are unknown or who have been stripped of their paternal authority for having abandoned their child or neglected its basic needs.   However, both the concepts of "abandonment" and "consent" must be placed within the context of the Brazilian poor from which most "adoptable" children are drawn.

Already considered vague in the European context (Manaï 1990), the legal definition of abandonment is even more problematic in poverty-ridden areas of Latin America where children "abandoned" to state institutional care are, in general, not the out-of-wedlock offspring of adolescent mothers, but rather third or fourth-born children of women who simply cannot afford the extra burden[18]. Although legislation in Brazil expressly states that poverty is not a sufficient motive for stripping parents of their rights[19], the observation of empirical cases shows that social workers, even when they classify parents as "caring", may well equate extreme poverty with "abandonment" or "neglect" and recommend a child's removal from its home (Cardarello 2000)[20]. Today, the very acceptance of children at the

state orphanage carries serious implications as terms such as "parental neglect" are broadened to include what fifteen years ago was classified under "poverty" or "socio-economic problems". A child's institutionalization, may, at first, be "temporary", a classification that supposedly grants the family time to "get organized" so as to provide a proper environment to their offspring. However, social workers recognize that, in areas of chronic poverty, there is little hope that families will be able to make significant changes in their material circumstances (*Ibid*). Thus, the oft-heard pronouncement, "Either the family gets their show together or the child is given in adoption", does not present such equal options as it would first appear.

Social workers we interviewed call attention to the fact that parents do not generally contest the judicial process which strips them of authority. Our own experience is that most parents who have been divested of their parental authority do not grasp the finality of this legal measure. The same could be said of the release a woman signs to allow for her child's adoption. Even North American birth mothers may complain they did not fully understand the terms of the adoption process (Modell 1994; Carp 1998). Brazilian mothers -- descendants of families in which, since at least the last century and probably before, child placement has been an integral part of basic socialization routines -- have far more reason to misconstrue the law. In a process completely outside state control, children would be placed by their mother or parents in a substitute household, sometimes for long periods of time. The substitute parents might try to stipulate restrictive conditions -- they might, for example, claim that birth parents should have no further contacts or rights over the relinquished child. But time would frequently prove such preventive measures ineffectual, and people would predict (often, with reasonable accuracy) that sooner or later the child would renew contact with his consanguineal network. Interviews with birth parents and siblings show that children who have been "given away" (whether through adoption of

informal placements) often maintain a symbolic presence in the family. They will be included in routine lists of family members, their pictures will be used to decorate walls, and their birthdays will be remembered.   In these circumstances, it is probably safe to presume that neither "abandonment" nor "consent" necessarily correspond to the contractual conditions imagined by state legislators.

2. <u>National adoptions first?</u>

Looking once again at the scandal involving Judge Beethoven, we see another issue of capital interest to our discussion: objections surrounding inter-country adoption.   The Brazilian <u>Children's Code</u> states that youngsters should be placed in foreign adoptive families only in exceptional cases (Art. 30), thus giving echo, in a slightly milder edition, to the UN Convention's article 21-b : "inter-country adoption may be considered as an alternative means of child care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin".

To understand this issue, one must first recognize – what is evidently not obvious at first glance -- that in Brazil there are many, many couples (as well as single men and women) who seek, in vain, to legally adopt a child.   During a recent seminar organized in Porto Alegre by the state adoption services, I was amazed by the number of disgruntled people who had shown up in the audience simply to voice their grievances. When dismissing a person's candidature, the adoption services would usually give some explanation linked to the evaluation of emotional stability[21], but many people felt they had been turned down because they were too old or because they were single. Even when their candidacy is accepted, people often wait years to get the sort of child they want.

Professionals who work in the state adoption service will repeatedly point out how overseas adoption helps resolve "difficult cases", that is to say, the placement of older and darker children, the sibling groups, and even handicapped youngsters. Yet a survey of Rio Grande do Sul`s service showed that at least until the mid-80s, over half the children destined to international adoption were white, under three years old and with no physical or mental impairments (see Nabinger 1994)[22]. It is true that in this particular service (considered one of the most progressive in Brazil), international adoptions comprise less than five per cent of the total number of adoptions performed each year, but, in many other states, inter-country adoptions outnumbered official local adoptions well into the mid-1990s.

The option of placing a poor child with foreign parents no doubt plays on the imagination of many decision-makers[23]. Although I know of no such study in Brazil, an in-depth examination on state-sponsored child placement in nearby Colombia, South America's largest exporter of adopted children, yields insight into the influence of potential international adoptions on government policies. Registering Colombian efforts to guarantee child rights, the anthropologist S. Hoelgaard (1998) describes a well-regulated state-sponsored fosterage program in which many children appear to make good adjustments in local subsidized families. Despite this fact, the Child Counselors appointed by recent Colombian legislation to look after the children's interests will routinely pull a child out of its foster household to give it to overseas adoptive parents. The idea that children are better off in European or North American adoptive homes prevails even when the foster family is willing to adopt the child. Children, including those old enough to clearly state their preference, are often taken against their wishes from the foster family, and all subsequent contact between the foster parents and their former ward is strictly forbidden. Needless to say, it is highly significant that, in the case of contemporary Colombia, well-intentioned professionals rather than venal intermediaries "trafficking" in children are responsible for most such questionable practices.

Inter-country adoption is, of course, a highly polarized issue, with voices divided between, on the one hand, xenophobic fears that the country's dignity is thus bruised or its human resources depleted, and, on the other hand, child-saving hopes that adoption may ultimately remedy the plight of the Third World's miserable masses[24]. Not surprisingly, these hardly appealing options are generally avoided by social scientists. A more interesting approach would see the "problem" of inter-country adoption as symptomatic of the political inequalities – between producers and consumers -- inherent in any form of child distribution[25]. In other words, to forward the cause of child welfare and social justice on any appreciable scale, the intensive concern expressed about intercountry adoption must be carried over to national scenarios, provoking a serious reexamination of all adoption policies – both international and domestic.

3. <u>The legitimate authority to decide</u>

People in the Brazilian working-class, we should remember, do not necessarily submit passively to the authority of the central government. Rather, in many instances, they adapt this authority to customary sensitivities through tactics such as the <u>adoção à brasileira.</u> The fact that birth mothers may prefer this method of placing their children is understandable. In the first place, the strategy enables a woman to play a decisive role in defining her child's future (in keeping with the third element we underlined in traditional patterns of child circulation) in a way that official policies do not. From the birth parents' perspective, legal adoption is shrouded in utmost secrecy. Thus, many of the poverty-stricken parents I dealt with deem (perhaps, with reason) that they should not seek state assistance unless they are willing to dump their children into a black hole, that is -- unless they are willing to see their

children labeled "abandoned" and carted off to an unknown destination. Adoção à brasileira, on the contrary makes birth parents – and often other relatives in the extended kin group -- active participants in the choice of a child's new home.

Why adoptive parents from the working classes might prefer this modality is not much harder to understand. For many years, performing this legal sleight of hand was the only way people with other (biological) children could guarantee full inheritance rights to their adoptive offspring. Furthermore, legal adoption was long hemmed in by a series of restrictions which, in many cases, simply did not fit their circumstances[26]. In 1988, the new constitution facilitated adoption and prohibited any discrimination between biological and adoptive children. The number of legal adoptions, however, has yet to increase. It is possible that many potential adopters still do not feel at ease with the interviews and bureaucracy involved in the state adoption process. They may imagine that they are too poor, too old, single or otherwise unacceptable by the adoption service's usual criteria for good parents.

Furthermore, in public services, the anonymous procedure through which an adoptive family is matched to a child's needs magnifies the anxiety of potential parents. Asked to describe the anonymous child they would ideally like to adopt, they will generally ask for a white baby girl in good health – exactly the sort of child which is in short exchange at the orphanage. They worry lest they have difficulty accepting the child the adoption services choose for them. In cases of traditional child circulation, on the other hand, people often end up with a child not by choice, but rather by a play of circumstances, when a death in the family or a divorce in the neighborhood suddenly makes a youngster available. The question does not arise whether the child is the color, size, or sex the would-be parents prefer. It is, then, no surprise that one of the rare studies on adoção à brasileira shows that children adopted in this fashion are generally older and darker than those adopted in a legal manner[27].

According to Abreu (2000), even Brazilian judges tacitly endorsed adoção à brasileira until the 1980s popularity of international adoption put pressures on the judiciary to invest in legal adoption. (Receiving countries, as this researcher points out, require official adoption papers in order for the child to immigrate.) Still at the end of the 80s, public television broadcast a debate in which judges and lawyers spoke in favor of the "obvious nobility of spirit" which moved families to thus take in foundlings. And, at least in the Brazilian Northeast where Abreu concentrates his research efforts, we find well into the 90s judges (as well adoptive and biological parents) who openly avow preference for adoção à brasileira as a way of getting around impersonal state bureaucracy.

It is no coincidence that the most vehement opposition to this informal practice comes from the more progressive sectors of the public youth services -- those most in touch with international sensitivities. In Porto Alegre, for example, every step of the adoption procedure scrupulously respects the tenets of children's rights set down by the U.N. convention, the Hague Convention on Adoption (ratified by Brazil in 1995) and the Children's Code. Nonetheless, adoção à brasileira evidently continues to rival professional expertise and so remains, predictably, anathema among state juvenile officials. At a 1999 meeting of Brazilian adoption workers in Porto Alegre, a state-employed psychologist, giving the final word to three days of discussion, urged that the combat against adoçao a brasileira should, from that day on, become a professional's major concern. One wonders if, rather than consider these different viewpoints in terms of "modern" versus "archaic" attitudes, or "legal" versus "corrupt" procedures, analysts might be better advised to ask if modern legislation, by ignoring local forms of social dynamics, does not produce the very behavior it outlaws.

HISTORICAL CONTEXT AND INTEREST GROUPS

The irony is that, although they did their best to reproduce the spirit of international human rights principles, Brazilian legislators have NOT followed exactly in the steps of their First World brethren. A comparison of the scenarios surrounding adoption policies in Brazil and the United States illustrates this point. In North America, the vast majority of adoptions today involve some sort of participation by birth parents. At the end of the 80s, birth and adoptive parents had met together at least once in an estimated 69% of U.S. adoptions[28]. In Brazil, on the other hand, this sort of "open adoption" -- although long familiar in the form of adocão à brasileira, is not discussed, much less put into practice even in the most progressive adoption services. In the field of adoption, policy makers have been "more royalist than the king", producing laws which, in the name of a "child's best interests", have been used to disempower birth families and bypass local fosterage arrangements on an unprecedented scale.

How is it, one wonders, that such policies are produced? I would not like to contribute to facile explanations which cast in doubt the good faith, political engagement, or competence of the countless child rights activists who dedicate their efforts to devising these policies. However, one must take heed of historical analyses which have repeatedly demonstrated that laws are not created in a political vacuum, nor are law-makers in any way outside the power plays inherent in their field (Bourdieu 1986). Recent studies on the economic philosophies and political negotiations involved in international child welfare legislation demonstrate that this field is no exception.

D. Guy (1998), in her overview of the Pan American Child Congresses held in various Latin American capitals between 1916 and 1948, points out a number of tensions which cut across the debates: those, for example, between feminist activists and male statesmen, or between social workers and eugenics-oriented doctors. Of particular interest here is the

tension between proponents of a welfare state (who held the national government responsible for the protection of child rights) and the backers of private, philanthropic initiative. Uruguay was the leader of the former camp, offering a concrete model of state-run services aimed at guaranteeing child welfare -- programs for prenatal care, mother's canteens, day care centers, milk distribution and public schooling, among others. During the 20s, most delegates who participated in the Pan American Congresses, including those from the U.S. Children's Bureau, acknowledged the state's responsibility in promoting preventive measures to reduce adult mortality (thus leaving fewer orphans), guarantee working man's compensations, and raise salaries. Guy suggests that, in Europe, on the other hand, the 1924 Geneva Declaration of the Rights of Children issued by the International League to Protect Children gave little attention to the state's responsibilities. The idea that poor children should be helped was implicit in the document, but no institution or agency was named to guarantee that help.

In the Pan American debates, a fair balance was maintained for some time between, on the one hand, the state's obligation to furnish direct aid to promote child welfare and, on the other, philanthropic initiatives which dwelled on family morality and parental obligations to respect and defend child rights. It was not until the 1948 Pan American Children's Code, brought in by a new, post-war political climate, that the original Uruguayan accent on state promotion of child welfare gave way to a more liberal perspective. And, during the following decades, with military juntas taking over one Latin American country after another, the child rights discourse died down altogether, leaving in its stead a clear law-and-order accent for the control of potentially dangerous youth (*Ibid*).

Philip Alston (1994), writing on a more recent chapter in the international legislation of child rights describes a curiously similar, although less strung-out tug-of-war between opposing camps. According to this author,   the 1989 Convention on the Rights of the Child began to take shape at the end of the 70s, during the Cold War. The Polish representation to

the United Nations, intending to mark points on the human rights scoreboard, proposed to transform a 1959 non-binding document (the <u>Declaration of the Rights of the Child</u>) into a binding contract. The Reagan administration, unhappy to see someone from the Soviet block take credit for this initiative, countered with ten years of committee work, and significant rewriting that would include clauses bringing home the importance of civil liberties – exactly those which were supposedly lacking in the socialist block. Thus articles 12-15 – which speak of a child's right to the liberties of opinion, expression, religion, and association -- found their way into the Convention[29], at the same time that a "limited number of the provisions relating to economic and social rights" were somewhat downgraded (Alston 1994: 7; see also Walsh 1991).

Still other observers debate the efficacy of legislative emphasis on economic and social rights that cannot be realistically enforced. Those in favor of such laws argue that, although there is no way of systematically guaranteeing a child's rights to leisure, school, health, a family, etc., such "symbolic legislation" has an important prescriptive function. It furnishes a blueprint for how society ought to be. Critics, on the other hand, refer to such laws as "alibi legislation", suggesting they are enacted for mere propaganda purposes in lieu of realistic and effective measures(Vianna 1997). Villegas (2001) raises the hypothesis that, in Latin America, governments tend to intensify their reliance on symbolic legislation in times of crisis, exactly when they are unable to implement measures that have any real influence on reality[30]. One way or the other, this literature suggests that political power plays between and within nations exert subtle influences that may tip the scales in favor of one rights model or another.

Today, scholars generally agree that the definition of a child's best interest is inevitably forged according to value-laden criteria (Mnookin 1985; Eekelaar 1994; Alston 1994). These criteria may be shaped by a particular political climate, or they may be negotiated between

different categories of individuals, each with their specific aims and interests. Since children normally play only a minor role in the debate, the terms of their welfare are established by adults -- adults of varying status and occupying differential positions of authority. Professional intermediaries are frequently accused of imposing their biases on this issue, but, indeed, there are many other forces at play. For example, the adoptive child's right to an ethnic identity, often cited in adoption debates, no doubt stems largely from humanitarian concerns and beliefs about an individual's healthy psychological development. Yet, one might suggest that the theme enjoys great popularity because it meets with the approval of sending countries who are reluctant to see members of their younger generations permanently removed from the national scene. By invoking the child's best interest, these often poorer and politically less influential states manage to compete with receiving countries and maintain partial claim to the child living abroad.

A look at how interest groups pressure law-makers in North American and Brazil brings out yet another sort of power play inherent in plenary adoption -- that which pits birth against adoptive parents. One should remember that the groups from which "adoptable" children are drawn are generally those which have relatively little political clout. In North America, for example, when -- during the post war period -- the desire for adoptive children was intensified at the same time as the traditional supply of adoptable children dwindled, prospective parents turned their search toward native populations – the Inuit in Canada, for example, or Hawaiians or Native Americans in the United States. One by one, these groups resorted to political action in order to stem the hemorrhage of out-going youngsters. Lobby groups involving such powerful organizations as the NABSW (National Association of Black Social Workers) were active not only in restricting abuse, but also in promoting various forms of open and subsidized adoption to encourage in-group placements (Simon 1984; Carp 1998). In cases where adoption could not be avoided, interest groups pressured to guarantee minimum

rights for birth parents (Modell 1994). Thus, together with the trend toward legal "closure" of adoption processes, there emerged in 1960s America an opposing force -- that of birth mothers and adopted children pressuring for disclosure, that is, the reopening of adoption files for consultation by the interested parties[31].

Such lobbies do not exist in Brazil. The sort of poverty-stricken and often illiterate parents who sire adoptable children are not easily drawn into social movements. Brazilian adoption services are beginning to recognize the importance of keeping good records -- primarily to better serve the adopted children who are returning from abroad demanding to know something of their origins. But, even though consumer demands have brought state authorities to introduce adjustments to the system, there has been no concomitant move toward open adoption which might better attend the interests of "child producers".

International pressures will probably not be exerted to compensate the lack of birth parents' lobby groups in Third World countries. One reason is that international debates consistently reflect the dominant influence of adoptive parents who will, in all likelihood, have few objections to legislation in sending countries that permits them to sidestep the inconvenient policies they encounter at home[32]. They may well contend that to pressure for open adoption in sending countries would represent undue interference in national affairs. That this laissez-faire policy has the effect of encouraging adoption on terms which favor adoptive parents and disempower birth parents is conveniently overlooked.

CONCLUSIONS: A NEED TO REPOLITICIZE QUESTIONS OF CHILD WELFARE

One of the first conclusions we might draw from the preceding paragraphs is that the influence of international human rights legislation, such as the UN Convention on the Rights of the Child, is filtered through particular local and historical circumstances, including pertinent factors such as the position a region occupies, economically and politically, in the

world order.   Thus, open adoption which, in North American policies, is seen as increasingly coherent with a child's rights, is seen in countries such as Brazil as irrelevant if not inimical to these rights.

In the second place, we must face the possibility that many of these national variants have very little to do with local traditions. As we have pointed out, Brazilian laws on child placement and substitute families make absolutely no reference to traditional practices of child circulation. On the contrary, the authors of the new Children's Code make nary a reference to anything remotely resembling specific Brazilian (or Latin American, or simply non-mainstream) modes of being[33]. At the same time that one must be leery of the opposite extreme -- in which romantics uncritically extol the virtues of "native customs"[34] --, it is perplexing to observe the national legislators` complete disregard for the historical experience of a good part of the Brazilian population.

Supposing that this case is not exceptional, we may well wonder if Parker's recommendation, (cited earlier on), that the general principles of international legislation be adjusted to local realities through national and regional "conventions with a little `c`", is not more complicated than it would appear. True, a look at the debates on child rights which, at the end of the 80s, swept the globe, reveals many cases in which researchers and policy makers have highlighted local worldviews in order to attenuate the individualistic bent of Western law. They have given more weight to the interests of collectivities such as the extended family, clan, or tribe, and rethought definitions of parenthood and family, as well as directives on child labor[35].   On the other hand, there are more than a few cases in which legislators have shown open hostility to their constituents' traditional forms of family organization. In Burkina Faso, for example, the 1989 <u>Persons and Family Code </u>brands the people's basic kinship structure -- the lineage group -- as "parasitical" and declares that, in the future, the country's social life will be organized around the "biological family" to the

exclusion of the members of the extended family "who will inevitably become strangers to the nuclear family circle" (Belembaogo 1994: 216). In less blatant cases of prejudice against traditional values, the recommendations of jurists read like a 1950s manual in applied anthropology: how to use folk beliefs and customs as a means to effect social change and bring about a "modern" society. Not infrequently, profound value differences are glossed over, erasing, in the process, the awareness of conflicting political interests.

Scholars today are generally agreed on the need to pass through local cultural institutions in order to implement international human rights standards. They recommend that international law be used as a "guiding principle" to rethink domestic cultural values, and underline the critical role of "participation", through public debate, as a way to bridge the gap between universalist orientations and local, relativizing policies (Levesque 1999). One should be wary, however, lest this " participation" follow a one-way track. Certainly, there can be little objection that discussions on human rights be incorporated into the cultural dynamics of local populations. On the other hand, one might ask how often local-level considerations that challenge hegemonic narratives provoke serious reflection on the part of law-makers.

This question is, of course, inspired in long years of ethnographic experience among the sort of families from which adoption children are normally drawn. Ortner (1995) reminds us that, in writing on "resistance" to hegemonic forces, ethnographers have an inconvenient habit of slipping into a Manichean viewpoint – dividing the world into good guys and bad guys. Little is to be gained by oversimplifying matters. Although here I have not gone into possible counter-arguments, I recognize that there could be many, well-founded objections to my thesis. "Traditional" child circulation among the Brazilian poor does not always give ideal results. It has included cases of abuse and discrimination (discussed elsewhere – Fonseca 1995). State-sponsored fosterage has been plagued with serious problems which must be reckoned with. And there are certain advantages to "modern" adoption (irrevocability, full

inheritance rights) which are not to be quibbled with. However, the position I have adopted in this paper – pointing out possible strong points in traditional child circulation and even public fosterage programs which conflict with hegemonic adoption policies – is designed to compensate thin patches in the debate. To suggest that, in some case, people may have gone overboard in their enthusiasm for plenary adoption, that children might be shared between households, or that fosterage might be an adequate – or even all-around preferable – policy for governments to invest in, the voices are few and far between.

The relativist stance advocated in this paper is not, then, a caricatural appeal for the preservation of native customs, much less for the respect of " essential" family values based on blood ties. It is rather an invitation to use ethnographic "curiosities" to rethink some of the "universalist" principles which guide international and, in many cases, national law. This course of action involves more than minor adjustments. The very insistence on *the* child's right to a name, a nationality, and a family – as anthropologists have pointed out (Modell 1994; Ouellette 1996; Yngvesson 1998) – is based on typically Western representations of fixed identity, a closed nuclear family, and exclusive state jurisdiction. Drawing inspiration from the vast stock of local diversity, these anthropologists have brought out not only the possibility but the existence of other ways of thinking – heterotopic families, enchained identities -- within the modern world. In like fashion, a small number of legal scholars (O'Neil 1988; Goonesekere 1994; Minow 1996) have questioned the very terms of legal discourse normally used to promote child welfare. While recognizing that a certain "manifesto rhetoric" might be politically useful, they suggest that the adversarial connotations of the rights discourse could be counterproductive in certain domains where, affiliations, connections and interpersonal relationships might better serve the legislation's stated purpose. Following this line of reasoning, I would suggest that the implicitly adversarial terms of the adoption process which proclaim the possibility of only one pair of

winners stacks the deck against Third World birth parents long before (if ever) they get to court.

We see then that – from state economic philosophy and pressure groups to the terms of legal discourse, adoption – just as most other items on the child rights agenda, is definitely a political issue. Thus, the mismatch between Brazilian law, even in its most progressive form, and child circulation practices in the *favela* is not an entire surprise. The voice of society's powerless sectors has been routinely left out of policy debates not so much by design (the channels of participation, in many places, do exist), but by lack of attentive listeners.

In this sense, international forums have great potential. For example, the report from the recent meeting of the Hague Convention's Special Committee[36] contains highly interesting comments. Certain sending countries practice only "simple" adoption while most receiving countries require all adoptions to be "full" and plenary. Contesting the automatic conversion of the former to the latter, Delegates to the Commission pointed out that:

> a simple adoption may sometimes be entered into, not because this is the only alternative available, but because the birth parents do not wish to sever all legal ties with the child. Reservations were expressed in respect of any system which treats conversion as an automatic process. Such an approach ran the risk of "disenfranchising" the birth parents, by giving the adoption effects beyond those for which the consent was given (Report 2000, art. 78).

It remains to be seen if such observations will not be lost amidst the much more lengthy passages aimed at eliminating private entrepreneurs' financial game and regulating official charges – concerns which adoptive parents take consistently to heart. Altogether, on the basis of our Brazilian experience, we would suggest that, unless the spiny issues of inequality are squarely confronted by all concerned, calling on 'insiders' will contribute very little to attaining the desired objective : adjusting human rights principles to local realities,..

REFERENCES CITED

ABREU, DOMINGO (2000) "No Bico da Cegonha: por uma Sociologia da Adoção no Brasil." Ph.D. diss, Universidade Federal do Ceará (Fortaleza).

ALSTON, PHILIP (1994) "The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights," International Journal of Law and the Family 8(1): 1-26.

BARROS RICARDO, RICARDO HENRIQUES, and ROSANE MENDONÇA (2000) "Desigualdade e pobreza no Brasil: retrato de uma estabilidade inaceitável," Revista Brasileira de Ciências Sociais 15(42) : 123-142.

BARTHOLET, ELIZABETH (1993) Family bonds: adoption and the politics of parenting. New York : Houghton Mifflin.

BELEMBAOGO, AKILA (1994) "The Best Interests of the Child: the Case of Burkina Faso," International Journal of Law and the Family 8(2): 202-226.

BLUM, ANN S. (1998) "Public Welfare and Child Circulation, Mexico City, 1877 to 1925," Journal of Family History 23(3): 240-271.

BOURDIEU, PIERRE (1987) "The force of law : toward a society of the juridical field, " Hastings Journal of Law 38(5) : 814-53.

CADORET, ANNE (1995) Parenté Plurielle: Anthropologie du Placement Familial. Paris: Harmattan.

CAMPOS, MARIA Machado Malta (1991) "Infância Abandonada - o Piedoso Disfarce do Trabalho Precoce": 117-153. In O Massacre dos Inocentes: a Criança sem Infância no Brasil, edited by José S. de Martins. São Paulo: Hucitec.

CARDARELLO, ANDREA D. L. (2000). "Du 'Mineur' a l'enfant-citoyen: Droits des enfants et droits des familles au Brésil," Lien social et politique 44: 155-166.

CARDOSO, RUTH (1984) "Creating Kinship: the Fostering of Children in <u>Favela</u> Families in Brazil": 196-203. In <u>Kinship Ideology and Practice in Latin America</u>, edited by Raymond T. Smith. Chapel Hill and London: the University of North Carolina Press.

CARP, E. WAYNE (1998) <u>Family Matters: Secrecy and Disclosure in the History of Adoption</u>. Cambridge: Harvard Univ. Press.

COLEN, SHELLEE (1995) "'Like a Mother to Them': Stratified Reproduction and West Indian Childcare Workers and Employers in New York": 78-102. In <u>Conceiving the New World order: the Global Politics of Reproduction,</u> edited by Faye D. Ginsburg and Rayna Rapp. Berkeley: University of California Press.

DONZELOT, JACQUES (1977) <u>La police des Familles</u>. Paris: Editions de Minuit.

EEKELAAR, JOHN. "The interests of the child and the child's wishes: the role of dynamic self-determinism. <u>International Journal of Law and the Family</u> 8(1): 42-61.

ENNEW, JUDITH (1995) "Outside childhood : street children's rights " : 201-214. In <u>Children's rights : Comparative Policy and Practice</u>, edited by Bob Franklin. London : Routledge.

FONSECA, CLAUDIA (1995) <u>Caminhos da Adoção.</u> São Paulo: Editora Cortez.

_____ (1999) "Circulation d'Enfants ou Adoption? : Les Enjeux Internationaux de la Filiation Adoptive," <u>Droit et Cultures</u> (Nanterre) 38 : 136-167.

_____ (in print) "An unexpected reversal: charting the course of international adoption in Brazil". <u>Adoption & Fostering Journal</u>.

FRANKLIN, BOB (1995) <u>Children's Rights: Comparative Policy and Practice</u>. London: Routledge.

GAFAR, JOHN (1998) "Growth, Inequality and Poverty in Selected Caribbean and Latin American Countries with Emphasis on Guyana," <u>Journal of Latin American Studies</u> 30: 591-617.

GOLDSTEIN, DONNA (1997) "Nothing Bad intended: Child Discipline, Punishment, and Survival in a Shantytown in Rio De Janeiro, Brazil": 389-415. In <u>Small Wars : the Cultural Politics of Childhood, edited by</u> N. Scheper-Hughes and C. Sargent. Berkeley: University of California Press.

GOONESEKERE, SAVITRI (1994) "The Best Interests of the Child: a South Asian Perspective," <u>International Journal of Law and the Family</u> 8(1): 117-149.

GUY, DONNA J. (1998) "The Pan American Child Congresses, 1916 to 1942: Pan Americanism, Child Reform, and the Welfare State in Latin America," <u>Journal of Family Histo</u>ry 23(3): 272-291.

HECHT, TOBIAS (1997) <u>At Home in the Street: Street Children of Northeast Brazil.</u> Cambridge: Cambridge University Press.

HOELGAARD, SUZANNE (1998) "Cultural Determinants of Adoption Policy: a Colombian Case Study," <u>International Journal of Law, Policy, and the Family</u> 12(1): 202-401.

JOHNSON, KAY, HUANG BANGHAN & WANG LIYAO (1997) "Infant Abandonment and Adoption in China," <u>Population Development Review</u> 24(3): 469-510.

KANE, SARALEE (1993) "The Movement of Children for International Adoption: an Epidemiologic Perspective," <u>The Social Science Journal</u> 30(4): 323-339.

KIM, Eleana (2001) "Korean Adoptee Autoethnography: Refashioning Self, Family and Finding Community", Paper presented at the Conference/Workshop on International Adoption: Where, How and to Whom Adopted Children 'Belong' Amherst.

KLIGMAN, GAIL (1992) "Abortion and international Adoption in Post-Ceausescu Romania," <u>Feminist Studies</u> 18(2): 405-419.

LADD, ROSALIND E. (1996) <u>Children's Rights Revisioned: Philosophical Readings</u>. Belmont, CA: Wadsworth Publishing.

LEVESQUE, ROGER J. (1999) "Piercing the Family"S Private Veil : Family Violence, International Human Rights, and the Cross-Cultural Record ". Law & Policy 21(2) : 161-187.

MANAÏ, D. (1990) "La Dispense de Consentement en Matière d'Adoption: Autonomie Individuelle et Contrôle Social," Déviance et Société 14(3): 275-294.

MEZNAR, JOAN (1994) "Orphans and the Transition from Slave to Free Labor in Northeast Brazil: the case of Campina Grande, 1850-1888," 27(3) Journal of Social History 499-516.

MINOW, MARTHA (1996) "Rights for the Next generation: a Feminist Approach to Children's Rights". In Children's Rights Re-Visioned: Philosophical Readings. Edited by Rosalind Ekman Ladd. Belmont: Wadsworth Publishing Company.

MNOOKIN, R. H. (1985) In the Interest of Children: Advocacy, Law Reform and Public Policy. New York: W.H.Freeman and Co.

MODELL, JUDITH S. (1994) Kinship with Strangers: Adoption and Interpretations of Kinship in American Culture. Berkeley: University of California Press.

_____ (1998) "Rights to the Children: Foster Care and Social Reproduction in Hawai'i". In Reproducing Reproduction: Kinship, Power, and Technological Innovation, edited by Sarah Franklin and Helena Ragoné. Philadelphia: University of Pennsylvania Press.

MOORE, SALLY FALK (1989) "History and the Redefinition of Custom on Kilimanjaro": 277 – 301. In History and Power in the Study of Law, edited by June Starr and Jane F. Collier. Ithaca: Cornell University Press.

NABINGER, SYLVIA (1994) L'Adoption d'Enfants Brésiliens. Ph.D.diss., Université de Jean Moulin - Lyons III, Faculté de Droit.

O'NEILL, ONORA (1988) "Children's rights and children's lives". Ethics 98: 445-452, 457-463.

ORTNER, SHERRY (1995) "Resistance and the Problem of Ethnographic Refusal", Comparative Studies in Society and History 37(1): 173-193.

OUELLETTE, FRANÇOISE-ROMAINE (1996) "Statut et Identité de l'Enfant dans le Discours de l'Adoption," Gradhiva 19: 63-76.

PANTER-BRICK, CATHERINE and MALCOLM T. SMITH, eds. (1999) Abandoned Children. Cambridge: Cambridge University Press.

PARKER, STEPHEN (1994) "The Best Interests of the Child -- Principles and Problems," International Journal of Law and the Family 8(1): 26-41.

PICONTÓ-NOVALES, TERESA (1998) "The Application of Spanish Child Welfare Law," International Journal of Law, Policy, and the Family 12: 180-201.

REPORT AND CONCLUSIONS of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption, 28 November-1 December 2000

RIBEIRO, FERNANDA B. (1998) "Conselho Tutelar e Negociação de Conflitos," Ensaios FEE (Porto Alegre) 19(2): 286-305.

RWEZAURA, BART (1998) "' Competing images" of childhood in the social and legal system of contemporary sub-Sahara Africa." International Journal of Law, Policy, and the Family 12: 253-278

SANTOS, BOAVENTURA DE SOUZA (2000) "Law and democracy: (mis) trusting the global reform of courts". In Globalizing institutions: case studies in regulatinon and innovation, edited by B. Souza Santos e Jane Jensen. Aldershot: Ashgate..

SCHEPER-HUGHES, NANCY (1990) "Theft of Life," Society (September/October): 57-62.

_____ (1992) Death Without Weeping: the Violence of Everyday Life in Brazil. Berkeley: University of California Press.

SELMAN, PETER (2000) Intercountry Adoption: Developments, Trends and Perspectives. British Agencies for Adoption and Fostering (BAAF).

SIMON, RITA J. (1984) "Adoption of black children by white parents in the USA": 229-242. In <u>Adoption: Essays in social policy, law, and sociology</u>, edited by Philip Bean. New York and London: Tavistock Publications.

STEPHENS, SHARON (ed.) (1995) <u>Children and the Politics of Culture</u>. Princeton University Press.

THÉRY, IRÈNE (1992) "Nouveaux Droits de l'Enfant: la Potion Magique?" <u>Esprit</u> mars-avril: 5-30.

VIANNA, LUIZ WERNECK (1996) "Poder Judiciário, "Positivação" do Direito Natural e História," <u>Estudos Históricos</u> 9(18): 257-424.

VILLEGAS, MAURICIO GARCIA (2001) "Notas preliminares para la caracterización del derecho en América Latina", Paper presented at the Workshop "Bases for the Construction of a Latin American Juridical Sociology", Instituto Internacional de Sociologia Jurídica, Oñati, Spain.

WALSH, BERNADETTE (1991) " The United Nations Convention on the Rights of the Child : a British View ." <u>International Journal of Law and the Family</u> 5 : 170-194.

YNGVESSON, BARBARA (1998) "States of Origin: Race, Roots and Nation in the Adoption of Children Transnationally." Presented at the annual meeting of the American Anthropological Association, Philadelphia

YNGVESSON, BARBARA (2000) "'Un Niño de Cualquier Color': Race and Nation in Intercountry Adoption": 247-305. In <u>Globalizing Institutions: Case Studies in Regulation and Innovation,</u> edited by Jane Jensen and Boaventura de Souza Santos. Aldershot : Ashgate.

[1] Hereafter referred to as the UN Convention.

[2] The emphasis on local interpretation and application of the Convention is reinforced by clauses requiring party states to submit periodic reports on each nation's progress toward implementing common goals (Levesque 1999).

[3] Statistics from the National Adoption Information Clearinghouse.

[4] Elsewhere (Fonseca in print), I analyse the sudden drop in intercountry adoptions which occurred in Brazil, as well as certain other sending countries during the late 1990s.

[5] Aside from the U.N. Convention on the Rights of the Child, see also the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

[6] I conducted fieldwork and interviews on child circulation in three different phases: 1981-2, 1986-1988, and 1993-1994. The first two periods of ethnographic data-gathering put me in touch with 120 households in two different neighborhoods, in which I registered, altogether, some one hundred cases of child circulation. During the latter period, I conducted intensive interviews with thirty-six women, scattered throughout the working-class neighborhoods of Porto Alegre, who had participated in child circulation networks.

[7] The Brazilian Workers' Party has governed the city of Porto Alegre since 1987, and the state of Rio Grande do Sul since 1999.

[8] See Panter-Brick and Smith (1999) for a critical assessment of this term.

[9] These children are referred to, in Portuguese, as *filhos de criação – filhos*, meaning children, and *criação* meaning something between "raising" and "creating".

[10] See Blum (1998) for the description of a similar use of state institutions by the poor (in this case) in nineteenth century Mexico.

[11] Interview with a state judge, qutoed in *Isto E*, 26 août l990. See also *Folha de São Paulo* 27/12/99.

[12] The video "Ciranda, Cirandinha: the circulation of children in working-class families, Brazil" by C. Fonseca, A. Cardarello, N. Godolphim, and R. Rosa (Laboratório de Anthropologia Visual - Universidade Federal do Rio Grande do Sul, 1994) includes the testimony of two women on this subject.

[13] Hereafter, in this article, referred to as the Brazilian Children's Code.

[14] According to a recent assessment of the World Bank, in Brazil today, despite a certain number of social protection programs that provide some compensation for families affected by recent economic crises "many of the most vulnerable, especially those in the informal sector, are not protected". (www.worldbank.org/poverty/data/trends/regional.htm).

[15] In Porto Alegre, for example, a 1994 survey carried out by member of my research group indicated that there were only 80 children in foster homes, against 350 in institutional care, and 243 given in adoption that year. During the past decade, the program of substitute families has been so reduced that, in January of 2000, there existed only four such homes (interview with state social worker).

[16] One should not ignore that, contrary to the Brazilian case, in Europe and North America, children in state-sponsored foster care far outnumber the annual toll of adopted children.

[17] *Isto É* 13/5/98, 25/11/98, 28/12/98.

[18] A 1985 Brazilian study, looking into the homes of over 150,000 woman who had given up a child before its first birthday (whether to relatives, foster parents or the state institution), found that the major motivating factor was « lack of adequate financial conditions » (Campos 1991).

[19] Cf. Article 23 of the *Children's Code*.

[20] See similar dilemmas among Spanish child welfare workers who were given, by the 1987 Child Welfare Bill, the power to judge "neglect" and remove children from their families without passing through the courts (Picontó-Novales 1998).

[21] For example, people who have recently suffered the loss of a child might be judged inadequate candidates because they have not "completed the mourning process".

[22] This statistic coincides with Kane's estimate that, during the 1980s, fully two-thirds of the children given in inter-country adoption were under one year of age.

[23] Studies by Scheper-Hughes (1990), Hoelgaard (1998), and Abreu (2000) point to the sympathy many individuals – judges and adoption workers – demonstrate with regard to inter-country adoption.

[24] See Yngvesson (2000) for a perceptive analysis of these arguments in the Indian setting.

[25] Modell (1998) and Colen (1995) both offer important contributions to this line of investigation.

[26] Until 1988, adoptive parents had to be at least 30 years old. For a plenary adoption, the child could not be over 7. With the new constitution, these ages were changed to 21 and 18 respectively.

[27] In her study of 400 adopted families in the state of Paraná, Ligia N.D. Weber also shows that whereas upper-middle class parents go through official procedures at juvenile court, lower-income couples tend to adopt in the traditional (and illegal) *adoção à brasileira*. (1999. "Famílias adotivas e mitos sobre laços de sangue", Páginas brasileiras de adoção – Netscape).

[28] Statistic from the National Adoption Information Clearinghouse.

[29] Ironically, it is exactly these articles which are frequently criticized as "pseudo-rights" which, in the case of children, cannot be granted without the adult tutor's (or judge's) permission (Théry 1992).

[30] There is some indication, however, that this "alibi function" is not limited to the Latin context, that -- together with the welfare state's decline -- it has been globalized (see Théry 1991).

[31] Carp (1998) points out that the birth parents' movement in the States gained impetus only after children adopted into high-income households reached majority and began to voice interests which coincided, to some extent, with those of birth parents.

[32] Bartholet is but one of many American adoption enthusiasts who urges potential adopters "ranked low on the agency fitness scales" to try their chances overseas: "the single person or the couple over forty will be able to find at least a few countries abroad where they can adopt" (1993 : 142). Making an analogy with well-known patterns in the realm of industry, we might say that the First World has out-serviced the production of children in order to avoid pesky restrictions imposed by its own adoption boards.

[33] According to Santos (2000), such attitudes are typical of semi-peripheral countries in which new laws, rather than respond to internal dynamics, reflect "high-intensity globalizing pressures", dominated by American legal models.

[34] Moore (1989) provides an eloquent critique of the romantic's tendency to reify "custumary" law.

[35] See the special issue of the *International Journal of Law, family, and policy* on the principle of a "child's best interests" (1994, vol. 8). Collaborators from Zimbabwe, Burkina Faso, Egypt, India and other non-Western countries test and, in general, demonstrate the trans-national validity of the UN Convention.

[36] Report And Conclusions Of The Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption, 28 November-1