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MATTERS

Reforming the Hague Convention on Child Abduction/Adoption

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Welcome to the podcast Matters and the series Hague Matters. I'm delighted to have with us today, Diane Kunz. Professor Diane Kunz. You could just say, how about Diane? We'll be informal. Okay, let's be informal. That's fine. And Diane, why don't you tell us a little bit about yourself and the work that you're doing in the field of Hague Conventions?

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Well, thank you so much for inviting me to your podcast. I think this is such an important topic. The situation of women and children in international law and in international affairs is something that we don't talk enough about.

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In my particular case, I have been involved in international domestic adoption through being the co-founder and executive director of the Center for Adoption Policy since 2001. We have worked with the State Department, with foreign governments, with individuals and organizations to make sure that children who are in need of permanent loving care

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outside of their birth or kinship family can look to resources that involve international adoption. It doesn't mean that international adoption is the only source of protection for them. We are not there to say it is going to be anything other than a viable alternative. That is our goal.

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It should not be prioritized over domestic adoption, but it should not be stigmatized because it involves transnational placement. But when we are talking about international adoption, we are not talking about child snatching or some of the processes in the past, which were done in ways that none of us

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would agree with. And we are certainly not talking about state-sponsored kidnapping, which is what is going on in Ukraine, when the Russian government is taking children, as the German government did before, as the Argentine, Spanish, and Chilean governments did. That is something else. We are talking about transparent, ethical, and accountable international adoption when it is appropriate in the best interest of the child.

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And when I say the best interests of the child, our belief is that if you look at each child individually and you contemplate what is best, not for children, not for this amorphous mass of people under the age of 18, but this particular child at this particular time, you will be safeguarding the best interests of the child. And that is what we are in favor of. And with international adoption,

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being part of the panoply of remedies within the ethical, transparent, accountable structure. So how does an international treaty fit into the scenario? Well, of course, the interesting thing that people don't always think about is that international adoption, and my down-to-earth example is the Oreo cookie.

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if you think of an Oreo cookie as having these two layers, that every international adoption, and I'm now going to talk about the United States law, because that is the easiest for me, but it is quite similar in other countries, is if you want to adopt in a way that will give your child permanent status, both legally as a child of yours, as an adoptive parent, or

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and or, but very importantly, a path to citizenship in the United States, you need to follow a series of procedures which are governed by three

things. U.S. law, that is the receiving country, the sending country law, that is the country that is sending the child, and international law. But before I go any further, I would like to emphasize something that is so often misunderstood about international adoption.

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which is that adoption by itself does not give a child citizenship. If you birth a child, if you're an American citizen and you have a biological child anywhere in the world, that child will get citizenship from you. If you are not an American citizen, but you give birth to a child,

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In the United States, that child will get citizenship in the United States because they were born in the United States. But if you adopt a child that was born someplace else, you can have a nice American adoption, but that child does not yet have citizenship. And we have something like 20,000 international adoptees in this country who never received U.S. citizenship.

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in part because this does not make logical sense. Many, we have examples of judges, of lawyers who say, well, you, the adoptive parent, you have adopted your child. Your child is now just like your biological child. It has all the rights and privileges of any child. No, that child does not. It does not have citizenship unless you've done other things.

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And this has caused great misery, deportations, and awful things, suicides, because of this misunderstanding. And I just want to emphasize this before I start. Adoption in and of itself doesn't give you citizenship. So having said that, back to, as I jokingly call it, the Oreo cookie. So in America, you start, if you want to adopt a child, internationally.

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You start by getting permission from USCIS, those are the immigration folks, Citizenship and Immigration Services to adopt a child. You file your forms, you show you have a home study showing that you are a suitable family

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You get financial information because under immigration law, the child cannot be a public charge. You do that. You get references. And the United States government gives you the approval. You may adopt a child. Now you have some contact abroad. It could be through an agency. It could be through a family. It could be through somebody who knows somebody, a lawyer, that person.

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finds a child, and that child must meet the sending country requirements of a child that could be adopted abroad. And that child is a citizen of the sending country. Therefore, the sending country has total control. It is up to them. Is this child adoptable? What does that mean?

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as the process been done by the strictures, laws, regulations, and practices of that sending country. And sending country signs off, says yes. But now you would like to, and hopefully take the case of when we had Chinese adoptions, you would get a full and final adoption in China. So now you are the adoptive parent of the child.

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because you have gone to China and you have adopted this child. But you cannot bring the child home yet, because now we must go to the other part of the Oreo cookie, the second half of it, those two wraparound wafers of American law, which is you need to get permission from the United States government to get that particular child.

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Now, I'm giving you the bare bones. This sequence of events under the hague process is slightly different. But this is the easier way to explain the two countries' laws that intersect. Your child in China over there does not have an American passport. It has a Chinese passport. It needs to get a visa because it's a foreigner. They can't come to the United States. This child cannot come to the United States without a visa.

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And that's what the American embassy is going to give. But you are going to have to fulfill the American requirements. The process is being investigated by the U.S. government to make sure that your child meets the requirements of an adoptable child under U.S. law and also in cases of Hague Convention countries, which we'll get to in a minute, the Hague Conventions.

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Only once your child is deemed worthy of this, your child has met the requirements, you now get the visa, your child can be brought to the United States legally, and that will enable you to be able to have the proper path to citizenship with your child, which in the case of a country like China will be when your child comes home.

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and gets to the United States, your child will automatically become a citizen once you hand in your proper paperwork. So you see the double side, sending country, receiving country, share the responsibility for international adoption because international adoption, by definition,

involves two different separate countries with two sets of law. The new process, the Hague convention process,

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changed a lot of the traditional process because it overlaid on top of the sending country, receiving country laws, an international convention. And this came about in the period after the end of the Cold War, when a number of international conventions, convention being another word for treaty,

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were drafted and approved in a spirit of goodwill post-Cold War, we're all one world now, emphasis on rights of individuals. This was all designed to make a more fair, equitable international system, which could truly be globalized because the Cold War bifurcation between East and West was now apparently gone.

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In 1989, after many, many years of work, the United Nations passed, unanimously, the General Assembly of the United States unanimously ratified a treaty called the United Nations Convention on the Rights of the Child. That convention, which has been by every country in the world, except the United States, was designed to set forth a bill of rights, if you will, for children.

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As part of it, however, it covered international adoption and it covered international adoption in a way that was interpreted to denigrate international adoption and make it virtually unusable. Because what it said in Article 21B of the convention was denigrating

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To sum it up, basically, that international adoption would be something that would be allowed only in cases of last resort. And to quote the language exactly, and this is the UNCRC convention, a child could be internationally adopted if the child could not in any suitable manner be cared for in its country of origin and its birth country.

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In order to counteract this treaty, another treaty was drafted, and that's the Hague Convention on Inter-Country Adoption, which was designed, as one of the drafters put it, to say that international adoption was available. It was an alternative. It shouldn't be shunned. It should be one of the panoply of alternatives for children who don't have suitable care in their birth families or birth countries. So if I hear you...

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Sorry, Diane, if I hear you right, the intent behind the convention was a positive one. Absolutely positive. I actually have here, I actually got it out

here. This is the quote from the State Department lawyer. The Hague Convention suggests that inter-country adoption should be preferred over forms of care in the country of origin

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that do not offer the advantage of a permanent family. Because that's what it was saying. It says, this is better than international adoption is a better alternative for a child. The children need family. So it is better than institutional care, but it's also better than a foster family that's going to come and go. This is permanent family care. And that's what the Hague was designed to do that.

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this Hague Convention. Now, what is the Hague? The Hague is one of a series of, at this point, over about, I think it's 38 Hague Conventions now, a series of international treaties under a private law system designed beginning in the first decades of the 20th century to deal with questions of international law. Because in that period, you have more transportation, you have more international

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uh, transactions, you have people coming and going, it was realized that you need to have some sort of mechanism to deal with country A and country B. If the systems clash, what do you do? And part of it is commercial law. Part of it was family law. Part of it was process law. You know, how do you do international paperwork? And as you know, very well, there is an international convention on child abduction.

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which was done in 1980. And this provided an impetus for using the Hague system for international adoption. And so the idea was for the drafts people that this convention would show that international adoption should be a viable alternative, give a method for making it a viable alternative

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but also deal with the allegations and actual occurrences of corruption, which came to the public mind and to the front pages of the newspapers all around the world in the wake of the end of the Cold War and particularly the situation in Romania. When you had many, many people wanting to adopt children in Romania,

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at the end of the Cold War. These were children, there were tens of thousands of children who had been dumped is the only word by families who had been forced to have these children. They were living in institutions, horrific institutions in Romania. Many of them were dying of

AIDS because of tainted blood transfusions. The hearts of potential adoptive parents in the world were opened to these children.

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but untoward events also occurred. So the Hague was designed both to protect international adoption, but more importantly, to protect children, to make sure that the children who were being adopted were available for adoption under national and international law. And so the Hague is drafted in 93, signed in 94, but it doesn't come into effect in the United States.

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for many years. I want to just intercede here, Diane, to say that, just to give our listeners a little taste of what's to come, which is that both the Hague Convention on Adoption and on Child Abduction, actually the intent was right. It was focused on children, but both conventions ended up going rogue, is the word I'm going to use. Very well put. We supported the Hague.

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The Center for Adoption Policy, we thought it was a good thing. And yet the year the Hague is first implemented in the United States, 18,000 children were adopted internationally. And this was the year that the legislation was signed. It didn't go into effect. That was in 2000. Last year, 1,500 children were adopted. This is not the trajectory that anybody in the field of international or domestic adoption expected.

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What became, you know, because just to put it this way, what we thought was a shield to protect international adoption has been used as a sword to denigrate it. And we never expected that.

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And that's fascinating because a parallel process has unfolded with the Hague conventional child abduction. And in fact, in a perverse way, is being used to reunite women and children who are fleeing abuse with their abusers. So this was a completely unintended outcome of the convention in the end.

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What I want to let my listeners know is you're going to give us a little bit of the journey of how that happened, how the intent of the convention and what it's become today are divorced from each other, and some idea of the institutions that implement these conventions and how the convention ended up going rogue.

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reconvene on that topic. You put it so well, and I look back on this, and I'm sure you feel the same way. You look back sometimes and wonder

how we got here. How did this happen? Because we had the adoption community, certainly in regard to the adoption convention, had such high hopes that this was the way to save international adoption, that the UNCRC language

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which has become customary international law because every country but the United States has enacted it, was so negative about international adoption. This was going to say, well, you see, here it is. Here is this ethical, transparent, accountable way to do it. And we will preserve it as a viable alternative. And instead, the Hague Convention became yet another tool to denigrate and ultimately practically destroy international adoption.

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And I think the other thing I want to leave our listeners with is also trying to understand whether issues of women and children really, whether a Hague convention is an appropriate forum to take something like this up. Because I know that you mentioned that 38 conventions, most of these are administrative, technical, relating to international law. And then you have these two conventions relating to family law.

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And how do these two conventions work vis-a-vis those other conventions that are really quite administrative and bureaucratic and bringing women and children into the picture? So, Diane, give us a little taste of what's going to come in the next podcast. I hope that we will talk about will be how the Hague Convention became part of United States law, which was not automatic. It was a 15-year process.

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and what the difference between the pre-Hague and the post-Hague international adoption position in the United States has become. Because one of the things, and I think this is very important for our listeners to think about, is prior to this Hague Convention, we did not have a federal government policy on adoption.

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Adoption is a matter of state law in the United States. It was a matter of 50 different states doing what they did. We had agreements over certain parts, but the federal government did not have an international adoption policy. The Hague meant it would. What that became was not what people thought. And that evolution is what we get to discuss.

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Very much looking forward to the second part of this podcast, Diane. And I think you just have an incredible insight and also looking forward to

hearing all the work you've been doing with the state department, which I think is also very exciting. So stay tuned. Well, thank you. And I look forward to together piecing the puzzles of these two Hague conventions and brainstorming ideas of how we can put the voice, the voice of women and children

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into the foreground rather than what we see now, which is that those voices are not being heard. So thank you very much. Thank you.



Welcome to the second part of our series on Hague matters. We are delighted once again to have with us Diane Kunz, who will continue the discussion on the Hague Convention on Inter-Country Adoption. It's a pleasure to have you with us today, Diane. Well, thank you so much for having me.

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I'm going to pick up a little bit from the first podcast where we talked a little bit about the description of the Hague convention on adoption. You mentioned that there are 38 Hague conventions. Two of these deal with women and children specifically. How do you see the intersection of international law and women and children vis-a-vis the Hague conventions?

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What is fascinating to me looking back on the 1990s, which now is history, it is 30 years since the Hague Convention on Adoption, that in the period toward the end of the Cold War, going a tad further back, the 80s and 90s, this explosion of international documents, international conventions, treaties, documents,

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that were intended to unite the world in a democratic and peaceful way and serve as a method of integration. Because for the first time since pre-World War I, we had one world order. We didn't have

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the breakup into the fascist blocs and the democratic blocs in the 1920s and 30s. We didn't have the Cold War bipolar world. We had one world. And it's interesting that the UNCRC, the United Nations Convention on the Rights of the Child, the most ratified treaty in history, is actually approved by the General Assembly in the same month that the Berlin Wall fell. And so you have

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international diplomats, bureaucrats, really feeling empowered that they can bring these, I'm going to use the word backward, but let's say retrograde states of this Cold War world. This is Eastern Europe. They're thinking a lot about Eastern Europe and what's going to happen there, less so about what we would call the global South, much more about Eastern Europe,

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We're going to give them structures of law. Because these are countries that never had democracy. They were remnants of the Habsburg, the German, the Ottoman Empire, the Russian

Empire. So we're going to give them structures, and we're going to do it by having this law about children, and especially for family law. Because remember, family law is also affected by these state structures.

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So the international law gurus are saying to themselves, you know, we can provide this. And they determinatively say, this was something that I was very interested in. When they had these anniversary, you know, celebrations for the Hague, you have a former head of the Hague, the Secretary General, Hans Van Loon. And he says, we did this with the intent of affecting countries' domestic law.

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we are going to change your domestic law by doing this treaty. Now, this is something that particularly in America, nobody thought about, that this unelected body that votes on things when you have countries with completely antithetical systems, such as the Muslim countries that don't allow adoption, but are voting on an adoption treaty, that

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that by ratifying this treaty, the United States was going to have to change its state laws. This is unprecedented, but it had a particular effect on women and children in these two conventions. And it truly came as a surprise, I think, to most American family lawyers and to Congress.

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because Congress is given the Adoption Treaty and also the Abduction Treaty, and I'm more familiar with the Adoption Treaty, and said, well, this is going to preserve international adoption. Okay, well, that's good, and we're all in favor of it, and it's going to make it more honest, and that's good. But as the great men of The Hague and women continue their work, and they embrace anti-adoption,

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What the Hague becomes, this international treaty meant to protect women and children, becomes not a shield for women and children, but a sword to destroy the protections that our own laws have. That is fascinating. How did that happen? Well, I think what we did, when you have the drafters of the Hague, the people who pushed for the Hague in the State Department,

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They have three aims. One is to counteract the UNCRC because the UNCRC Article 21 prioritizes in-country care over everything. And it prioritizes in particular foster care, institutional care. International adoption is never going to happen under Article 21.

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So the people who are in favor of international adoption say to themselves, well, we've got to come up with something else. And we can do that because there is a provision of the UNCRCs that says, but you can have some other treaties to compliment what we're doing. So they come up with a Hague and the first, one of the reasons they go to the Hague, this private law convention,

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that used to do more transactional things is because they have the abduction convention. It's there. It seems to have worked. We really don't know how much it's worked in 93 because it only is 10 years old, but it seems to provide an avenue and a structure and a place where we can all go because we've already been there. And so we have this treaty and it's supposed to do three things. The first thing is to preserve adoption, international adoptions.

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to make it more, to say, well, no, this is modifying the draconian aspects of the UNCRC. It's going to leave a root. The second thing it's going to do is to provide just the technical recognition so that if you are adopted in country A and you come to country B, that that adoption

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is given full faith and credit, and the child has the right of a real identity because you don't want to have stateless children. So that's good. And the third thing is to provide an ethical, transparent, and accountable method that is going to allow for these adoptions not to be questionable because these are children. We don't want adoptions that are tainted by fraud. We don't want adoptions that are tainted

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by illegal acts, which then becomes an issue as to what you consider illegal and what you consider improper. And therein lay part of the problem. But these were the goals of the Hague. And it is sold to the Congress and to the American adoption community as a way to preserve adoption.

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But slowly and surely, the ideology behind the UNCRC, the ideology that says that international adoption is per se evil, that there's no good international adoption, infiltrates the Hague. And this comes about for several reasons, one of which is the fact, and I cannot deny it, no one would deny it,

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is that bad things were done historically in the name of international adoption. We cannot possibly say it because my research, my new book that is in the process of being edited, shows that international adoption was primarily caused by sending countries, not the United States, not the Western countries,

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The parents in these countries really wanted to adopt children, yes, but the motivating force was the sending countries who did it for reasons of population control and population issues, overpopulation, underpopulation, prejudice, prejudice against unwed mothers, prejudice against various interest groups, and poverty. And they, so it's not a question of,

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of a stealing of children by the West. It is a question of countries, many of whom are Western countries. The big sending countries to the United States in the 40s and 50s were Ireland, Greece, and West Germany. These were not third world countries. These were not developing world countries. They want to get rid of specific populations. And the United States families are happy. Remember, and what's important to say is prior to these treaties,

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International adoption was not a US government anything because the federal government wasn't involved in it at all, except for immigration issues. Adoption was a matter of state law. These were families who were doing it. You needed a visa. Then it gets involved, but it's not a policy. It's not a practice. Now, there is a second half which influences European countries, which is adoption from their colonial states. And that is something that

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in our post-colonial world, in our reparations world, in our world of looking about the past and realizing the sins of the past, that is going to be a negative factor, which doesn't affect the United States as much because we're not adopting from countries that we owned. We didn't have that empire. We don't have the Dutch adopting from Indonesia, the Belgians adopting from the Congo.

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the French adopting from the French Congo. We don't have that aspect to our system. But what you have is this post-colonial ideology, which impacts very much countries like Holland, like France, like Sweden, you know, viewing past issues and thinking, how do we atone? We atone by banning adoption now.

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And that is really unfortunate. And the most unfortunate thing is the country that is most involved in atoning for adoption by banning it is the Netherlands. And the reason that is extremely unfortunate for the future of international adoption and the Hague is that as Michelle Bernier-Toth, who's a high ranking official of the State Department said 20 years ago, she said,

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The Netherlands has an outsized influence on the Hague. So if you have the country in which the Hague Permanent Bureau is situated saying adoption is evil, that subverts and perverts the whole meaning of the Hague International Adoption Treaty. And nobody saw it coming.

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This is one of the things you look at and realize that it is much better to be a historian than a political scientist because political scientists have to, they think they can predict the future.

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And, you know, I have now lived through the fall of the Berlin Wall. I've lived through what happened with the Hague. I've lived through, now we have what's happened in the Middle East. And nobody ever predicts the big events or gets them right, which is why it's much better to be the person who looks backwards because you know the outcome.

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So just getting back to your point about the Hague Convention being permanently situated in the Netherlands, how does that body work? What is the Hague? Who is overseeing it? How are they elected? What kind of power do they have on the implementation of the convention? Well, the Hague has permanent officers. They have a secretary general and they have staff.

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and the staff and it's funded by the members of the Hague. You've got two kinds of countries. You've got the countries that actually belong to the Hague Convention and countries who signed the treaties but don't belong. But all the major countries of the West belong to the Hague or Hague members.

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So all the European countries, the United States, the former dominions, the UK, and they fund this bureaucracy. It's very similar in operation to the UN's permanent bureaucracy, that you have countries that fund it. They agree to have a permanent staff. The Hague staff is not very big. It's not as big as, and that's another problem. The Hague staff is not that big.

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They used to be more procedural and not do as much. But when they appointed a very activist Secretary General, Hans Van Loon, he decided that he was going to be a much bigger player in these issues. But because they don't have much staff, a lot of times they will ask for reports and they will rely on groups like UNICEF.

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but UNICEF is against international adoption. So you will not be surprised to learn that when they do reports, they are not in favor of international adoption. That this outsourcing, and this is actually a very interesting

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factor in child welfare policy is that how much is outsourced to various NGOs. I mean, the NGO explosion of the last 50 years has not been covered sufficiently. The fact that you've got these groups that are privately funded, that have agenda, but they pop up and they offer their services, they offer their expertise. So when you had the Hague thinking about whether or not

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you would have Guatemala or Vietnam be hoarded the benefits and privileges of being a Hague international adoption country, and you turn to the UN experts, you don't have to ask where this is coming from, because you know where it's coming from. It's going to end up, no, no, it's not good. It's bad for this reason and that reason. But it is accorded the respect of the Hague.

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And the respect of this framework and you get the people who work for the Hague tend to be people who go along with this ideology. And one of the most amusing things in an ironic sort of way was they had a 30th anniversary Zoom confab for the Hague inter-country adoption agreement in May. And they had a panel on birth issues and adoptees, you know, and so they have a birth mother from Columbia.

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And she talked, she's going to talk about what it was like being a birth mother. And, and, and clearly they had expected to have someone who was very bitter about the experience and talk about what it was like in that way. And she said, this was the best thing that I did. I was so glad that I made this adoption plan. I w my child was a child of rape. I had two other children. I didn't have the money. Everything was handled well.

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I've met my birth child since she's become an adult. Her adoptive parents are great. And the Hague lawyers, you can see their faces on the Zoom, the people who've convened this, and their eyes are just like saucers and they're, but wait a minute, but what was your bad experience? She said, I didn't have one. This was the right thing to do. I mean, this is what, they had scripted something that didn't happen that way because they have a worldview.

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And that worldview has now been completely exemplified by their Hague Illicit Practices Toolkit, which is an advisory document which has been promulgated that, among other things, has a quote that has to be read to be believed. It's a footnote that says, just because something is an adoption best practice, it can still be what we view as an illicit practice.

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What can I say? But it is this very small, not well understood body that is not democratic, because that's the other issue. How is it that an unelected, undemocratic people have never heard of group? Because at least when the United Nations does something like this, people have heard of it. How many people in the street of America can know that you're

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Ability to adopt a child from Bulgaria is going to be influenced by a small group of people in a historic palace in a small city in the Netherlands that you know nothing about. And that is what happened.

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And as I'm listening to you speak, Diane, I'm seeing all these parallels with the other Hague Convention on abduction because it's a different aspect and different issues, of course, but the same structure of reliance on a particular set of NGOs

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being driven by a certain ideology. And of course, the funding now is very important. Who funds the Hague Permanent Bureau? And it sounds like the people who fund it define the ideology and the operational aspects of the Bureau. Well, what happens with all these treaties is you read the words of the treaty, and it reminds me of the words of the Soviet constitutions.

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And because when I was a child, I read the Soviet Constitution and I was very impressed by it. You know, I'd seen a copy of it and I read it and it was great. I mean, you had the freedom of the press and the freedom of this and that. The words were wonderful. They had, of course, no relation to reality.

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If you look at these international treaties, you look at the Hague. We looked at the Hague. I was involved in this, not as much. We started working in adoption in 2001. So the United States had already ratified, had already approved it, hadn't technically ratified it yet. So I wasn't involved in it, but I was already an adoptive parent. I read it. It seemed like a good thing because the words were,

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Good. But just like the U.S. Constitution, we go through our Constitution and it changes in how it's interpreted. We didn't see that this was susceptible of being interpreted with all these various toolkits and guides to good practice and documents that when they put flesh on very good bones, turned out to pervert the meeting that was sold to us as the meeting.

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And another example which we have seen now, which is a most recent example, is the fact that the Hague structure envisioned two kinds of countries, countries that belong to the Hague and did international adoption and countries that didn't. Because there was a recognition that the Hague

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was based on having a decent domestic welfare system, it was understood that many countries were not able to do that, to have a Hague-worthy system. So they could still do international adoption. They could still do international adoption with Hague members. You have to both be, both the sending country and the receiving country have to be Hague members for the Hague to be applicable. That's what it said in the document. That's what it says in the IAA.

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But also little by little, the Hague Permanent Bureau and certainly from the US State Department, we've seen this, they've erased this difference. So when I spoke a month ago to someone in the State Department and I say, well, you're talking about Nigerian, he's saying this, this, and this, the Hague says, I said, why are you talking about the Hague? It's not a Hague country. Oh, well, you know, it's good practice, but it doesn't apply.

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Why doesn't it apply? Why are you applying it? Because this is something they've decided to look at to change their kaleidoscope in a way that will, again, fit an ideology that virtually bans international adoption, makes it untenable. Because it is viewed, let me just add one more thing, because it is viewed as cultural genocide, a relic of the past, taking the

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the patrimony of the nation without what we consider, and I think with your treaty as well, the number one value to me should be the best interest of the individual child. And the way these

treaties operate, they're always talking about the perfect future, but they're ignoring the little steps that would make life better for the individual child.

23:11

And that is the tragedy. That's very well put, Diane. If you had to harbor a guess on trying to reform the permanent bureau at the Hague, how would you go about it? If we had a consensus, or frankly, if we had an American government that wanted

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to have a different abduction treaty and a different adoption treaty, we could start by getting the communities involved, listening to what people like you say, and what I say, to protect women and children, the women and children who exist now, and then use the influence in the government to change how the Hague

24:05

permanent bureau works, because if the United States said, we are not going to subsidize what you're doing, that would have an effect. It is the power of the purse. And we have not, but unfortunately, you have many, many people in our bureaucracy who agree with the Hague. That's the sad thing, that there are many people who view

24:33

international adoption, and I speak more on that issue, as an evil, as something that should be consigned to the past, as they look to this holistic worldview of children belong to countries. They don't belong in families, they belong to countries. And there is something wrong with a country that doesn't want

24:59

to raise all its children, even though they still don't want to raise all their children. Because countries have ideologies. Countries have beliefs. There is poverty. There's overpopulation. There are many reasons why a country would support an international adoption program. And why not? Well, it fits within a colonialist, imperialist, ideological framework, which has been deemed by the great and good

25:29

of Western countries to be bad. And that is really unfortunate because again, if you ask most people, the same people had never heard of the Hague and you said, well, is it better to be in an orphanage in country X or in a family in country Y? They'd say, well, a family, why not? And yet, you know, this comes down to, and we have heard this phrase over and over, well,

25:56

Yeah, there's, you know, you are a bandaid. This one UN person said this to us. Yeah, you're a bandaid. You know, you cover up the problems. We need to expose the problems and then we will fix these structural deficiencies in sending countries and we will overhaul their holistic system in a holistic way and it'll all be solved. But, you know, at this conference when this woman said this, but what about the children now?

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while you're reaching this wonderful goal, can't disagree with your goal more. I agree with your moment. It's great. But while you're getting there, there are children who are born. There are children who are born who have Down syndrome, who will not have lives in their own country, except in an institution. Would you not want them to have a life someplace else?

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Do you think, Diane, that maybe the United Kingdom might be a better country to take up this reform than the US? I think the US advocacy is required, but maybe we need to think about some

of the European countries who might be more open to the reform. It's difficult in the UK. I would actually say that maybe France would actually be better. France, Italy, and Spain.

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Not the UK. In the UK, the social work establishment, which is run by the government, controls international adoption. And they are just so against it. They do not have private social workers. You have to be approved by your council. And they are just so imbued with this ideology.

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But France, Italy, Spain, those are countries that have been much more open to international adoption. And especially if you're talking about countries with which they did not have historic ties, because then you avoid the colonialism issue. And there is no reason not to, again, nobody, this is the problem too. We have one other problem, which is, or we have so many other problems, I should say, but one particular one, which is that

28:08

If you are against international adoption because you think it is a colonialist, racist enterprise, you say ban international adoption. Three words. The people who are in favor of international adoption never said we should just adopt every child. It's not an answer to everything. But it could be an answer for some children.

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children who in their country of origin are simply not gonna have the care like a child that my friend adopted who has arthrogryposis, which is a genetic condition makes your joints stiff. They don't move. In China, that child would simply be in an orphanage. Yeah, that child has come here

29:00

He has had several surgeries, major surgeries and constant care. He runs, he walks, he plays soccer. He would not have had that life. And there wasn't a family in China that would adopt him now, maybe in 20 years, but not now. Why can't we continue that? Why would we not want to support this result as one of a number of solutions for children in need?

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Our goal is to help children. And yet this one has been so denigrated within an ideological construct that it has become virtually impossible to do. And that is a tragedy.

29:46

My next question to you is looking a bit closer at the work you've done in the US, which is to try and get the US to take a position that would reform the Hague Permanent Bureau. I believe that you were also part of an effort, some litigation against the State Department. And also you've done presentations to Congress, I believe, on adoption. So how have you approached the process of reform

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within the US? Well, I used to be much more hopeful about the process of reform in the US. One of the big problems that we are facing over the last 10 years is the fact that there are fewer parents who need adoption. And I think we have to be honest about this.

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that the growth of assisted reproductive technology, the growth of surrogacy has given parent, potential adoptive parents another route. We now have virtually every state in the United States allows, all states obviously allow assisted reproductive technology. Many insurance companies pay for it. Last year, we had over 80,000 pregnancies from assisted reproductive technology.

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and we had 1500 adoptions, international adoptions. So the numbers, the need, the desire for international adoption has gone down drastically. Ironically, many, many of the people who use assisted reproductive technology would adopt if they could, but it's knowing that international adoption is so difficult and uncertain with another possibility that,

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it just lessened the urgency of it to the nth degree. The irony is one of the objections to international adoption has long been the fact that women are being exploited. This was something that was brought up. But if you want to read cases of women being exploited, it's in the surrogacy field. It is astonishingly awful what has happened to women because

32:12

In adoption, the woman is pregnant. You're not making women become pregnant. Here you are making women become pregnant. You are not representing them by lawyers in many cases. There's a huge disparity of influence and income. And yet this is going on. And the irony of it has not escaped us who've been working in the adoption space. But what this means is a lessened

32:41

pressure on Congress. Congress, the House, the Senate, they work, they respond very well to constituents. And when constituents say, this is what I want, it focuses their minds. Unfortunately, we have fewer constituents. And, you know, you can look at this on the pop culture phrase way too, you know, that when in the 1990s, you had, you know, people like

33:10

Meg Ryan, Steve, what do you call it? Jeff Bezos, Hunt, Ambassador Hunt, Huntsman, John Huntsman, who's become his ambassador to China. What do these people do? They adopt international. In this decade, what do people who want celebrities like Beyonce, Kim Kardashian, what do those celebrities do? Sarah Jessica Parker,

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Do they adopt internationally? No. They have children through surrogacy. That's where the zeitgeist is. That's where the flow is. And that also hurts our ability to influence the government because it made a difference when the ambassador to China, Huntsman, comes and he stands on the balcony in Beijing, Tiananmen Square, with his adopted daughter from China. This is influential. But we're not having that any longer.

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And so the bureaucracy and the Congress is less receptive to change. We have tried. We have tried through legislation. We had opportunities, we thought, to fix various parts of the legislation in the United States. They all failed for various reasons. And not that we don't still try, but it is dispiriting. In terms of the bureaucracy, it is very hard...

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Under the Trump administration, there seemed to be a glimmer of hope of changing the State Department's views on international adoption because Vice President Pence was very in favor of adoption. And he convened a meeting, and we went to the White House, and it was all very exciting. But it didn't affect the people who were doing the day-to-day policy.

35:05

The way this is another unfortunate, bad, in my view, bad problem that arose from our ratification of the Hague, which is they put international adoption together with international abduction in the Office of Consular Affairs. And that was a tragic error. I keep using the word tragedy here, but these are tragedies because every time you have a child that grows up in an orphanage

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and ends up on the streets or ends up, you know, in a totally uncared for ends up not being able to breathe because they didn't have the operation. It is a tragedy. And the functional way the bureaucracy worked made the enforcement and the, the work, the

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I, the implementation of international adoption from the US point of view, much more difficult because they put it in a bureau that does management. It does overseas citizen services. It does visas. It does hospitals. It does education for foreign service officers. It's a management bureau. It's like buildings and grounds in your high school. You know, it doesn't do policy. It doesn't do diplomacy.

36:26

It's separated. It is so far removed from diplomacy that when Ukraine just about two months ago passed a new law on international adoption, I told them. You may well ask why they needed to learn it from me. Why didn't they know it themselves? Because they're the State Department. I am not. But the people who were working on this, because this was a policy issue, are in a different department.

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And so they have, they have this, they're able to say no, but they're not allowed to say yes. As part of our legislative attempts, we wanted to move international adoption over to a different part of the state department. And that did not happen. We tried, you know, wouldn't be great to have these international institutions.

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And I really believed it would make the world a better place. And especially on something like children. I mean, there's not so much ideology involved. It's good to have international recognition of adoption. It's good to have ways of doing things in an agreement that you should keep the records of children. I mean, these seem good.

37:44

What we didn't see, people like me who were internationalists, who want to be internationalists, that these international organizations could be hijacked by people with very different goals. And we would find ourselves bound by it. So when you have countries who are voting on this Hague toolkit that I mentioned, some of the countries ban adoption. Why are they voting on this?

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They don't even think it should exist. And I'm not saying they should have adoption, but I'm not quite sure why we agreed to a process where they would get to decide how we have adoption. And that's something that we did not foresee that these international institutions did not work as we envisioned them into the 21st century.

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But I don't see a Democratic administration ever pulling out of the Hague. And it's so low level. And that's what we found out with the Trump administration. I mean, just not talking about the incompetencies or whatever about it, but that this issue is never going to be at the forefront. The president has a list of issues. Every president has one of what they care about. The president that did try to make a difference

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and did inject himself very much. The two presidents were President Clinton and President Bush, the second President Bush. Second President Bush was very involved in adoption issues. And he, under his administration, if he were president, with the people he had and the ways he did things, if they were to be elected now, you could see a real push to change the Hague.

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But absent somebody like that, I don't see, well, I don't see Trump doing it. I don't see the Biden administration doing it. Nikki Haley, though, because she did actually bring up adoption in the debate. Because her husband's adopted. And interestingly, he was adopted from foster care, which is the most common form of adoption in this country now. And does...

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bring in the issue of how bad it is to be in institutional care. And she would be somebody who you could appeal to. And that's what you need. I think your best chance is a president or secretary of state that has a personal devotion to the issue. And as she raised her hand, and for no reason particularly brought this up, I said, well,

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Maybe we can have her, you know, if she were to become president. I say I am only talking about adoption issues, not endorsing any candidates, not talking about police, you know, any other issues, politics, but just saying that that is a way forward. She would be a way forward. George Bush was a way forward. Bill Clinton was a way forward.

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So there have been moments in the past where you do have an individual or an administration that does take up this issue. And that, I think, is quite hopeful. If you had one ask for reforming the Hague Convention on Adoption today, what would be the most prescient issue? I wouldn't start with the Hague Convention at all.

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I would start with the State Department. I would start with passing a bill that would do several things. I would amend the Inter-Country Adoption Act. That's our law that ratified the Hague Treaty. And I would move international adoption out of

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Where it is, I would make it a direct report to the Secretary of State. The way the Office of Women is, the Office of DEI Office is a direct report. So you have the direct go straight back up and has that influence.

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I would remove the processing of visas for adopted children from the visa office to instead to citizen services, which would mean that you wouldn't have the people whose job it is to keep fraudsters out also adjudicating on visas. And I would, in my legislation, say that international adoption is something that the United States government supports.

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We put our weight behind it, just as we did this year. I know you have seen all the demonstrations on Pride Day and Pride flags that have the same U.S. institutional backing for a child's right to be in a permanent loving family, wherever that be, put at the same level as what we have done, and rightly so for the LGBT community.

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And I think that's quite a brilliant solution for reform, not just for the adoption convention, but I think also for the abduction convention. The people working to reform these conventions need to think about where are the efforts going to be most effective.

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effective and you know how to really get get a reform going at the individual country level which hopefully will accumulate up to the permanent bureau and set the stage for reform so on that

note dan i just want to thank you for your time and this very engaging discussion and i hope you will come back and we will have more discussions and get really more into the weeds of

43:38

Always happy to do it. Thank you for having me. And so I look forward to episode three. Yes, exactly. Thanks a lot. Bye-bye.