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The Anatomy of Grey: A Theory of Interracial Convergence

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Introduction

In *Malone v. Civil Service Commission*,¹ Boston city authorities terminated the eleven-year employment of two firefighters who had falsified their employment applications.² Twin brothers Philip and Paul Malone allegedly transformed themselves from White to Black on their applications in order to benefit from a federal consent decree.³ Although their family had identified as White for three successive generations, the brothers claimed their Black ancestry from their maternal great-grandmother.⁴ They relied on the traditional, although controversial, rule in law and social practice of hypo-descent, or the “one-drop” rule, to justify their status.⁵ A hearing officer held

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1. 646 N.E.2d 150 (Mass. 1995).

2. *Id.* at 151.

3. *Id.* at 151 n.3.

4. *Id.* at 152 n.5.

5. *See id.* at 152 n.2 (explaining that the Malone brothers based the argument that they were African American on one alleged African-American great-grandmother); *see also* JAMES F. DAVIS, WHO IS BLACK: ONE NATION’S DEFINITION 5 (1997) (“In the South it became known as the ‘one drop rule,’ meaning that a single drop of ‘Black blood’ makes a person . . . Black. It is also known as the ‘one Black

that the twin brothers, who had lived most of their lives as White, "willfully and falsely identified themselves as [B]lack in order to receive appointments to the department."⁶ The officer based her determination of their racial identity on three criteria: visual observation of facial features, documentary evidence, and social reputation of the families.⁷ Under this test, the Malones failed to qualify as Black.⁸

In *DeWees v. Stevenson*,⁹ a Pennsylvania social service agency denied a potential adoption placement for Dante, a biracial Black/White child, with his White foster parents Victor and Mary Jane DeWees.¹⁰ Before the family accepted Dante as a foster child, Mrs. DeWees expressed to a social worker that she preferred a White child because she "did not want people to think that [she] or her daughter were sleeping with a [B]lack man."¹¹ As the court explained, the social worker concluded that Mr. and Mrs. DeWees "lacked the sensitivity to racial issues and inter-racial network of community resources needed to raise Dante."¹² In return, the foster parents argued that their views had changed in the two years that they fostered Dante and they were ready to "accept [him] as any other child."¹³ Nevertheless they did not view race as important to Dante's upbringing; they informed the social worker that race had "no impact" on the self-esteem and identity of minority children and refused to "manufacture [B]lack friends."¹⁴ Challenging the relevance of the child's racial identity, Mr. and Mrs. DeWees brought suit against the agency in federal court.¹⁵

Both *Malone* and *DeWees* demonstrate the inherent

ancestor rule,' some courts have called it the 'traceable amount rule,' and anthropologists call it the 'hypodescent rule' meaning that racially mixed persons are assigned the status of the subordinate group."); Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind,"* 44 STAN. L. REV. 1, 24 (1991) ("The rule of hypodescent. American racial classifications follow two formal rules: 1) *Rule of recognition*: Any person whose Black-African ancestry is visible is Black. 2) *Rule of descent*: (a) Any person with a known trace of African ancestry is Black, notwithstanding that person's visual appearance; or, stated differently, (b) the offspring of a Black and a [W]hite is Black.").

6. *Malone*, 646 N.E.2d at 151.

7. *Id.* at 151 n.3.

8. *Id.*

9. 779 F. Supp. 25 (E.D. Pa. 1991).

10. *Id.* at 26.

11. *Id.*

12. *Id.* at 27.

13. *Id.* at 26.

14. *Id.* at 27.

15. *Id.* at 26; see also *infra* Part III.

difficulties of rigid racial categorization. The two forms of racial subversion we examine here, passing and transracial adoption, effectively question the rigidity of racial boundaries. Passing facilitates the secret transference of racial membership,¹⁶ while adoption across the color line compels an open form of interracial kinship.¹⁷ Both require a journey into unfamiliar racial territory that reorients racial identity from a biological status to a performative measurement based on the choices made by the individuals involved.

But *Malone* and *DeWees* raise questions about the legal parameters of racial identity based solely on biological qualifications. The Malones took advantage of newly discovered Black ancestry to gain firefighter positions. There is no evidence that they attempted to engage in a process of developing a Black racial identity or affinity; their claim to Blackness stopped at biological qualification. The DeWees couple refused to recognize the impact of racial difference on their child. Instead, Dante's racial needs would be subsumed within the parents' colorblind interests.

Both cases present potential situations where transracial adoption and racial passing intersect. Passing, for those persons born as White, means confronting unearned racial privilege inherited at birth.¹⁸ This Article expands on traditional discussions of passing by offering a theory of racial identity divorced from biological considerations. The law fails to recognize the complexity of racial performance and identity, thus categorically simplifying a perceived polarity of Black and White. While the majority of passing scholarship focuses on the enduring legacy of White supremacy,¹⁹ much less work focuses on Whites

16. See Shannon Elizabeth Rush, *Equal Protection Analogies—"Passing": Race and Sexual Orientation*, 13 HARV. BLACKLETTER L.J. 65, 70 (1997) ("Passing reflects the individual's attempt to gain acceptance by hiding his or her identity and conforming to the dominant culture's expectations.").

17. See RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY AND ADOPTION* 402 (2003) (arguing that transracial adoption would benefit American race relations).

18. The most famous example may be JOHN HOWARD GRIFFIN, *BLACK LIKE ME* (Wings Press 2004) (1960), in which the White author medically darkened his skin and passed as Black in the segregated South.

19. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1710–13 (1993) (examining the social benefits that have come to those who have claimed ownership of Whiteness by passing); Robert Westley, *First Time Encounters: "Passing" Revisited and Demystification as a Critical Practice*, 18 YALE L. & POL'Y REV. 297, 346 (2000) (showing the "assumptions and ideological investments that underlie 'passing' as it has been traditionally been [sic] conceptualized support

relinquishing the trappings of race privilege—Whites who become “less White.”²⁰ This discourse, as it stands, lacks a rigorous examination of the ways in which Whites might join this destabilization of racial boundaries.

Transracial adoption provides one viable channel to discuss the possibilities of a form of White-to-Black racial identity transformation that directly challenges the law’s colorblind leanings toward the resolution of racial issues.²¹ Considering transracial adoption in this way grafts important norms of Blackness on the particular White parent who consciously strives to “adopt” an intense awareness of racial issues from the perspective of someone parenting a child of color.²² In efforts to love and protect the child, some adoptive parents reflect on privilege, either deliberately or unintentionally, as a result.²³ By confronting the meaning of “White identity” in relation to their Black surroundings, these adoptive parents engage along a continuum of what we term “interracial convergence.” We define interracial convergence as the deliberate occupation of the evolving boundary between Black and White. To examine the parameters of this concept, the Black Racial Identity Development Model (“BRID Model”) and the White Racial Identity Development Model (“WRID Model”) offer insight for lawmakers.²⁴ An

[W]hite supremacy”).

20. See *infra* Part IV.C.

21. See *infra* Part IV.

22. See *infra* Part IV.B.3.

23. See *infra* Part IV.B.3.

24. We limit our discussion to a racial binary of Black and White. We encourage further scholarship in this area that goes beyond our scope to address the unique and equally important issues of other racial groups. Other scholarship that employs an approach similar to ours includes WILLIAM E. CROSS, JR., *SHADES OF BLACK: DIVERSITY IN AFRICAN AMERICAN IDENTITY* (1991) and BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH AND PRACTICE (Janet Helms ed., 1990). Such psychological research has been adapted by more recent scholars to address the claim that Asians have been ignored by social scientist researchers. See, e.g., STANLEY SUE & JAMES K. MORISHIMA, *THE MENTAL HEALTH OF ASIAN AMERICANS* 12 (1982) (“It is clear that in order to conceptualize Asian American mental health, knowledge about culturally and historically determined support systems must be gained.”); Derald Sue, *Asian Americans: Social-Psychological Forces Affecting Their Life Styles*, in *CAREER BEHAVIOR OF SPECIAL GROUPS* 97, 97 (Steven Picou & Robert E. Campbell eds., 1975) (“[S]ocial sciences have generally ignored the systematic study of Asians in America.”). Similar realizations have been made with regard to Native Americans. See, e.g., Ronald G. Lewis & Man Keung Ho, *Social Work with Native Americans*, in *COUNSELING AMERICAN MINORITIES: A CROSS-CULTURAL PERSPECTIVE* 65, 65–72 (Donald Atkinson et al. eds., 1983). The same has been said for Latino/as, see, e.g., Ramona Laval, Efrain A. Gomez & Pedro Ruiz, *A Language Minority: Hispanics and Mental Health Care*,

interracial convergence should occur between the needs of the child and the racial identity development of the parent in order to provide the child with a healthy racial identity and upbringing.²⁵

Highlighting the complexities of racial passing and transracial parenting places greater emphasis on the parental duties in the discussion of the best interests of the child. While much attention appropriately focuses on the impact of transracial adoption on the Black child,²⁶ the necessary changes in the White parent receive less attention. Parents who transracially adopt potentially face some of the pressures of being Black in the United States.²⁷ In the eyes of adoption workers, these difficulties traditionally presented insurmountable hurdles. Black social workers sharply criticized White adoptive parents for lacking the ability to teach "survival skills" necessary for the child's racial identity development.²⁸ In this denouncement of transracial adoption, the White parents could never fulfill an emulable role for Black children.²⁹ Similarly, critics argue that transracial adoption neither physically augments the racial identity of the adoptive

3 AM. J. SOC. PSYCHIATRY 42, 48 (1983) ("Hispanics have consistently been found to be seriously underrepresented and to experience a variety of difficulties which serve as impediments to treatment."), and for Puerto Ricans, *see, e.g.*, Edward Christensen, *When Counseling Puerto Ricans*, 55 PERSONNEL & GUIDANCE J. 412, 412 (1977) ("We need to help them with problems *they* identify and for which they seek aid rather than what we assume are their problems.").

25. *See infra* Part IV.C.

26. *See, e.g.*, NAT'L ASS'N OF BLACK SOC. WORKERS, INC., POSITION STATEMENT ON TRANS-RACIAL ADOPTIONS (1972) (arguing that White parents do not serve Black children's needs), *reprinted in* III CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY 777, 777-80 (Robert H. Bremner ed., 1974).

27. *See infra* Part IV.C.

28. M. Elizabeth Vonk, *Cultural Competence for Transracial Adoptive Parents*, 46 SOC. WORK 246, 251 (2001) ("Survival skills refer to the recognition of the need and the ability of parents to prepare their children of color to cope successfully with racism. This skill is as important for transracial adoptees as for children of same-race parents, but may be more difficult to learn from European-American parents who have had little experience of racism directed toward them."); *see also* ELIZABETH BARTHOLET, FAMILY BONDS: ADOPTION AND THE POLITICS OF PARENTING 97-98 (1993) (recounting a story of a local chapter of the National Association of Black Social Workers criticizing a decision to place a Black child with an otherwise qualified White family); Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 43-48 (1994) (claiming that "color and community consciousness" make Black adoptive parents preferable parents for the creation of identity); Jacinda T. Townsend, *Reclaiming Self-Determination: A Call for Intra-racial Adoption*, 2 DUKE J. GENDER L. & POL'Y 173, 177-87 (1995) (arguing that Black parents are better equipped to teach Black children to live in a world of White privilege).

29. *See sources cited supra* note 28.

parents nor categorically qualifies them as racially empathetic.³⁰ We argue, alternatively, that it creates a space where Whites can challenge the stability of racial boundaries while expanding the ideas of interracial convergence.³¹ By working toward a racial outlook sensitive to what their child might see and experience, White parents may engage in a transformative dialogue and direct scrutiny of their own White privilege.³²

As authors, we approach this topic from different perspectives: as the White mother for twenty-one years of an adopted African-American son and as a Native/African-American male. Through the critical lenses of race, gender, and class, and through the methodology of storytelling, we offer intersected voices in the attempt to interpellate racial identity divorced from biology. This Article does not assume that White parents automatically gain racial awareness and credibility through the adoption of a Black child. Nor does it suggest that adoptive parents categorically possess the same outlook as Blacks who pass for White. We bring together the challenges of passing and adoption to offer a theory of fluid racial boundaries.

This Article proceeds in four Parts. Part I addresses traditional racial passing, where necessary subterfuge and identity performance undermined socially identified and controlled racial divisions. In this cautious challenge to the biological essence of White identity, passers exposed the different ways that White identities could be performed. Part II introduces the continuum of White identity development, beginning with a "pre-encounter" stage of racial self-awareness. This Part examines the contributing role of colorblindness and racial recklessness in supporting the existence of a pre-encounter stage. Part III introduces the transracial adoption debate as a method for discussing interracial convergence. Recent changes in federal adoption law require a colorblind placement process, which eliminates scrutiny of the racial attitudes of the adoptive parents. The DeWees parents, despite their deliberate ignorance of their foster child's racial needs, might have been approved under these new interpretations of the law. Part IV identifies the potential stages of a transformative White identity for adoptive parents. Our model begins with a colorblind, pre-encounter stage followed by a disorienting racial encounter stage to various stages that recognize the role of White privilege. This progresses toward a

30. See sources cited *supra* note 28.

31. See *infra* Part IV.

32. See *infra* Part IV.

stage of interracial convergence and, perhaps, a new, transformative White identity.

I. Invisible Racial Connections

Dear Friend,

I am [B]lack.

I am sure you did not realize this when you made/laughed at/agreed with that racist remark. In the past, I have attempted to alert [W]hite people to my racial identity in advance. Unfortunately, this invariably causes them to react to me as pushy, manipulative, or socially inappropriate. Therefore, my policy is to assume that [W]hite people do not make these remarks, even when they believe there are no [B]lack people present, and to distribute this card when they do.

I regret any discomfort my presence is causing you, just as I am sure you regret the discomfort your racism is causing me.³³

Passing harbors an invisible racial allegiance even as externally imposed on Adrian Piper. To the outside world, looks determine racial allegiance, but for Blacks who look White, their internal world represents a different affinity. Their appearance suggests to others a different identity than the one they personally experience while silently destabilizing the automatic correlation of race and phenotype.³⁴ A person may look White, but be Black or have a Black family.³⁵

Theories of racial passing abound. Traditionally, scholarship and art have focused on racial passing from Black to White, that is, a person of African descent with phenotypically White features deliberately living a public and/or private life as a White person.³⁶

33. Adrian Piper, *Angry Art* (1986), reprinted in RICHARD SCHECHNER, *PERFORMANCE STUDIES: AN INTRODUCTION* 136 fig.5.8 (2002) (italics added).

34. See, e.g., BROOKE KROEGER, *PASSING: WHEN PEOPLE CAN'T BE WHO THEY ARE* 8 (2003) ("With the props of appearance and talent, passers step out of identities dictated by genes, heritage, training, circumstance or happenstance.").

35. See, e.g., Harris, *supra* note 19, at 1712 (describing that most of her Black friends and colleagues seemed to know of a family member who had passed into White society).

36. For scholarship, see generally SAMIRA KAWASH, *DISLOCATING THE COLOR LINE* (1997), KROEGER, *supra* note 34; WERNER SOLLORS, *NEITHER BLACK NOR WHITE YET BOTH* (1997); NAOMI ZACK, *RACE AND MIXED RACE* (1994), and Adrian Piper, *Passing for White Passing for Black*, 58 *TRANSITION* 4 (1992). For films, see *THE HUMAN STAIN* (Miramax 2003), *IMITATION OF LIFE* (Universal International Pictures 1959), *PINKY* (Twentieth Century Fox 1949), *Queen* (USA Network 1993), and *SHOW BOAT* (MGM 1951). For drama, see BION BOUCICAULT, *THE OCTOROON OR LIFE IN LOUISIANA* (Mnemosyne Publishing Co., Inc. 1969) (1859). For painting, see Archibald Motley's works, *Octoroon* (1922) and *The Octoroon Girl* (1925), both

The majority of this literature covers the duality of existence in the concealment of racial identity with an emphasis on tactics of deception and defection.³⁷ As Randall Kennedy defines it, “passing requires that a person be consciously engaged in concealment.”³⁸ Racial passers may downplay their birth race and assume, actively or passively, another.³⁹ Being perceived as White enables the person to enter a White-privileged world previously denied to her.⁴⁰

A. *Racial Defection*

Generally, people pass in order to obtain benefits offered by membership in socially constructed categories.⁴¹ Passing requires that the person capitalize on his or her appearance to overturn the social and political limitations imposed by a racist society.⁴² Even though the passer cannot meet legally imposed definitions of Whiteness, he or she nevertheless declines to reveal his or her

available at <http://negroartist.com/negro%20artist/archibald%20motley/index.htm> (last visited Mar. 27, 2008). Literature includes WILLIAM WELLS BROWN, *CLOTEL* (Beford/St. Martins 2000) (1853); CHARLES W. CHESTNUTT, *HOUSE BEHIND THE CEDARS* (Univ. Ga. Press 1988) (1900); WILLIAM FAULKNER, *ABSALOM, ABSALOM!* (1936); JESSIE REDMON FAUSET, *PLUM BUN* (Beacon 1990) (1929); FRANCES HARPER, *IOLA LEROY* (Oxford Univ. Press 1988) (1892); NELLA LARSEN, *PASSING* (Modern Library Classics 2002) (1929); SINCLAIR LEWIS, *KINGSBLOOD ROYAL* (1947); MARK TWAIN, *THE TRAGEDY OF PUDD'NHEAD WILSON* (Oxford Univ. Press 1996) (1894).

37. Randall Kennedy, *Racial Passing*, 62 OHIO ST. L.J. 1145, 1145 (“Passing is a deception that enables a person to adopt certain roles or identities from which he would be barred by prevailing social standards in the absence of his misleading conduct.”); Rush, *supra* note 16, at 70 (“Passing reflects the individual’s attempt to gain acceptance by hiding his or her identity and conforming to the dominant culture’s expectations.”); Westley, *supra* note 19, at 307 (2000) (“‘Passing’ has been defined as crossing the race line and winning acceptance as [W]hite in the [W]hite world.”).

38. KENNEDY, *supra* note 17, at 285.

39. For an example of what might be thought of as passive passing, see Cheryl I. Harris’s story of her grandmother working at a Chicago department store in the 1930s. Harris, *supra* note 19, at 1711 (“No one at her job ever asked if she was Black; the question was unthinkable.”).

40. See KROEGER, *supra* note 34, at 8 (“Passing involves erasing details or certain aspects of a given life in order . . . to achieve desired ends.”).

41. Randall Kennedy recounts the example of the slave Ellen Craft who, in order to “obtain freedom for herself and her husband[,] . . . temporarily traversed gender as well as racial lines.” Kennedy, *supra* note 37, at 1148.

42. Harris writes that, though her grandmother’s “fair skin, straight hair, and aquiline features had not spared her from the life of sharecropping into which she had been born in . . . Mississippi . . . in the burgeoning landscape of urban America, anonymity was possible for a Black Person with [‘W]hite’ features.” Harris, *supra* note 19, at 1711.

hidden African ancestry.⁴³ In this newly accessed racial community, the Black passer not only assumes a new persona but also achieves privileges and overcomes exclusions garnered by racial identity.⁴⁴ Robert Westley defines passing as a “social process whereby the phenotypically qualified accept a racial identity in order to function within a system of racially justified privileges and exclusions.”⁴⁵ Disproving the permanency of race, the passer overcomes the socially-imposed principle of identity as an immutable characteristic.⁴⁶

Passing invokes negotiations of power. Deciding one’s own way of performing race in opposition to legal and social practice empowers the passer in his or her journey to secure personal and political privileges and rights.⁴⁷ Cheryl Harris joins this dialogue by asserting that “becoming [W]hite increased the possibility of controlling critical aspects of one’s life rather than being the object of others’ domination.”⁴⁸ Race shifting of this sort assumes an air of social protest, where the subversion of impenetrable boundaries resists and mocks the authority of racial absolutism.⁴⁹ Passing allows one to perform his or her own identity outside the context of traditional boundaries.⁵⁰

Passing does not always involve political empowerment, however. Some scholars criticize it as a literal example of racial desertion and abandonment of community pride. In the conscious transition from one race to another, passing engenders complaints

43. For an overview of the legally imposed definitions of Whiteness, and how they have changed over time, see John A. Powell, *The “Racing” of American Society: Race Functioning as a Verb Before Signifying as a Noun*, 15 *LAW & INEQ.* 99, 105–08 (1997).

44. See Kennedy, *supra* note 37, at 1147–56 (offering several examples of “passing stories”).

45. Westley, *supra* note 19, at 308.

46. Cf. *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 442–45 (1985) (discussing the parameters of immutability in the context of mental retardation).

47. See Kennedy, *supra* note 37, at 1189 (“Rather than seeking to chain people forever to the racial statuses into which they are born, we should try both to eradicate the deprivations that impel people to want to pass *and* to protect individuals’ racial self-determination, including their ability to revise racial identities.”).

48. Harris, *supra* note 19, at 1713.

49. See KAWASH, *supra* note 36, at 1189 (examining how passing can “undermine the dominant understanding of racial identities and racial knowledge”).

50. See, e.g., JAMES WELDON JOHNSON, *THE AUTOBIOGRAPHY OF AN EX-COLORED MAN* 499 (Avon 1965) (1912) (“I finally made up my mind that . . . it was not necessary for me to go about with a label of inferiority pasted across my forehead.”).

of race traitorism. Because the passer may abandon the Black community of origin, family and community members may oppose the decision to become White. As one African-American critic writes: "I feel that by passing, [Blacks] have cursed the memory of every dark skinned person on their family tree."⁵¹ Similar sentiments exist from the other end of the American racial binary, where Whites accede to the "hypo-descent rule" of viewing any person with even one distant Black ancestor as Black, passing or not.⁵² Given such sentiments, many passing Blacks were often seen as traitors, as they were "not merely passing, but trespassing."⁵³

The literature on passing also unfairly portrays fair-skinned Blacks as suffering inner turmoil and confusion.⁵⁴ In overly dramatic stories, the "tragic mulatto" could resolve her racial dissonance only through the inevitable solution of death.⁵⁵ With no firm grounding in the racial binary, according to these accounts, the doomed figure longs for a space where race does not matter and blood does not hinder.⁵⁶ F. James Davis describes the phenotypical and psychological tension of "[W]hite on the outside, but [B]lack on the inside."⁵⁷ Not fully accepted by many Whites and shunned by a segment of the Black community, as these authors argue, the passer finds no racial respite.⁵⁸ For some members of the Black community, the decision to pass for White revisits the divisions between the house servant and field hand dialectic⁵⁹ of class and color that signified that "lighter is better."⁶⁰

51. KENNEDY, *supra* note 17, at 330 (quoting Ronald E. Hall, *Blacks Who Pass*, in BROTHERMAN: THE ODYSSEY OF BLACK MEN IN AMERICA—AN ANTHOLOGY 471, 475 (Herb Boyd & Robert L. Allen eds., 1996)).

52. DAVIS, *supra* note 5, at 5.

53. Harris, *supra* note 19, at 1711.

54. See Hawley Fogg-Davis, *A Race-Conscious Argument for Transracial Adoption*, 6 B.U. PUB. INT. L.J. 385, 406 (1997) (characterizing the trope of the tragic mulatto as a "pathological racial identity confusion" and citing Hawley (Russell) Fogg-Davis, *Identity Under Construction: A "Tragic Mulatto" Goes to Work*, LIGHTHOUSE, Apr. 1993, at 111).

55. *Id.*

56. *Id.*

57. DAVIS, *supra* note 5, at 143 (describing conflict that arises from inter-racial confusion).

58. *Id.*

59. See Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487, 1510 (2000) (describing how lighter-skinned slaves often received better assignments on plantations than darker-skinned slaves).

60. See generally Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705 (2000) (discussing current differences in potential economic

The phenomenon of passing depends on acquiring an alternative racial perspective. Physical features such as fair skin and straight hair assimilate the passer into the aesthetic norm of the White world.⁶¹ Under this phenotypical cover, her appearance, knowingly or unknowingly, aligns her with White people.⁶² If she is deliberately passing, her actions confirm the expectations of the new White community.⁶³ This physical affinity with Whiteness allows her to experience some of her life as a presumed member of another race.⁶⁴ She passes for White, leaving others unaware of her intimate connections to the Black community.⁶⁵ Standing alone, the racial passer proceeds as an “undercover other” who bears a complex racial background invisible to the casual observer.⁶⁶

B. *Racial Intentions and Performance*

In the quote heading this Part, Adrian Piper, a woman of mixed racial descent, creatively announces her unrecognizable racial identity to people who mistake her for White.⁶⁷ Aware of the fact that most onlookers would not recognize her as Black, she arms herself with a printed performativity that corrects the misidentification and asserts her identity. Piper’s action demonstrates the nexus of race and recognition that marks her place on the continuum of racial identity.

The action of passing takes on two distinct forms, each one assuming a different method of performance of racial identity. In the first, passers deliberately and actively assume an alternate character as members of another race. By casting their lot with this group, they fashion a new identity for themselves that buries the vestiges of their former identity.⁶⁸ Along with the newly acquired identity as White, racial passers often have to distance

opportunities between light- and dark-skinned Blacks).

61. See generally Kennedy, *supra* note 37 (explaining how passing is primarily achieved through physical appearances, although there are some examples of oral passing as well).

62. KENNEDY, *supra* note 17, at 289–97.

63. See Rush, *supra* note 16, at 70.

64. See *id.*; KENNEDY, *supra* note 17, at 289–97.

65. See, e.g., Harris, *supra* note 19, at 1710–13 (describing a story where one mother passing at work must spend her day with White coworkers completely unaware of her different lifestyle, background, and experiences).

66. Angela Onwuachi Willig, *Undercover Other*, 94 CAL. L. REV. 873 (2006).

67. See Piper, *supra* note 33, at 6.

68. KROEGER, *supra* note 34, at 8.

themselves from Black issues.⁶⁹ The presumption of all-White company forces successful passers to sometimes endure racial insensitivity without recourse.⁷⁰ Racial survival demands *thinking* White and sublimating the opportunity to associate and relate to their community of birth.⁷¹ In the second form, passing can occur unintentionally. As non-deliberate passing, the persons stand aware that others perceive them as White, but they may either reject or accept the classification. If the accidental passers consent to the mistaken identification, their silence constitutes deception as understood in traditional passing.⁷² Adrian Piper, in the quote at the beginning of this Part, describes her own efforts to reject assumptions of her identity as White and illustrates the way she chooses to actively confront the racist conduct occurring in presumed White-only groupings.⁷³

C. *The Performativity of Passing*

Passing depends on the racial defector accurately living an alternative racial life.⁷⁴ Performance of identity, like the art of

69. *Id.*

70. In Nella Larsen's *Passing*, the primary character Clare Kendry, a light-skinned woman who married a White man without telling him of her racial background, was tortured by such comments. NELLA LARSON, *PASSING* 57 (The Modern Library 2002) (1929). At a risky gathering with other passers in the White world, she endured the vitriolic commentary of an unknowing White individual commenting that he did not "dislike them, [he] hate[d] them. . . . They [gave him] the creeps. The [B]lack scrimy devils." *Id.* Her reaction was "a leaping desire to shout at the man beside her: 'And you're sitting here surrounded by three [B]lack devils, drinking tea.'" *Id.* at 58. However, the primary character was forced to remain silent. *Id.*

71. For political or economic reasons, many well-known figures believe public knowledge of their Black ancestry might preclude their unfettered navigation within the White world. Most recently, actress Carol Channing, long regarded as the platinum blonde star of *HELLO, DOLLY!*, revealed her African heritage, stating that public knowledge of her father's Black ancestry would have tainted her stage and film career. CAROL CHANNING, *JUST LUCKY I GUESS: A MEMOIR OF SORTS* (2002). Other historical figures have also long been rumored to have "Black blood," such as President Warren Harding, J.A. ROGERS, *THE FIVE NEGRO PRESIDENTS* (1965), actor Humphrey Bogart, MARIO DE VALDES Y COCOM, *THE BLURRED RACIAL LINES OF FAMOUS FAMILIES* (2008), available at <http://www.pbs.org/wgbh/pages/frontline/shows/secret/famous/vansallees.html>, First Lady Jacqueline Kennedy Onassis, *id.*, and Founding Father Alexander Hamilton, Mitchell Owens, *Surprises in the Family Tree*, N.Y. TIMES, Jan. 8, 2004, at F4.

72. Accidental passing takes on many forms, such as a fair-skinned, White-appearing Black remaining silent upon hearing a racially offensive joke told by unknowing Whites. See, e.g., *supra* text accompanying note 33.

73. Piper, *supra* note 33 and accompanying text.

74. KROEGER, *supra* note 34, at 8.

acting itself, necessitates believability in its representation, and this surfaces as a successful intersection of reputation and appearance.⁷⁵ In addition to looking the part, one must fulfill societal expectations of racial behavior in order for the new racial representation to appear authentic.⁷⁶ The method of presentation comprises a large part of passing, and the performance does not exist in a vacuum. For racial passers and their friends and family who remain in the Black community, the representation as White requires mutual collusion in order to protect the secret.⁷⁷ Without the cooperation and consent of helpful and knowledgeable others,⁷⁸ racial passers endanger the matrix of deception.⁷⁹ This acting not only materializes as a sociological monologue but as an ensemble performance. Together, all parties themselves become actors in a drama that belies the perceived genetic indicators of racial privilege and exclusion.⁸⁰

For White individuals who form emotional and/or familial

75. JUDITH BUTLER, *GENDER TROUBLE* 140 (1990) (using gender as an example of how repeated acts or performance creates an appearance of an identity, which is used to fall in line with an existing reputation).

76. See Rush, *supra* note 16 and accompanying text.

77. In Danzy Senna's novel *Caucasia*, a White mother and her biracial daughter continuously move around the New England area and pass the daughter off as Jewish. See DANZY SENNA, *CAUCASIA* 126–41 (1998). Their success as seemingly White females in their new town directly corresponds to their mutual adherence to racial role-playing. Without each representing and reflecting the other as Jewish, they would not have sustained their escape from Blackness. See *id.* They capitalize on the daughter's phenotype to distance her from the inherited history and racial traits of the Black father. See *id.* at 128–40.

78. GUNNAR MYRDAL, *AN AMERICAN DILEMMA* 683 (6th ed. 1944) (noting, in a seminal study of American race relations, the "conspiracy of silence on the part of the other Negroes who might know about it").

79. Blacks who condone passing sometimes agree with the deception as an "unpleasant but acceptable adaptation to racist mistreatment." KENNEDY, *supra* note 17, at 313.

80. Legal classification of race by reputation has a long legal history. In 1831, Justice William Harper, with the full knowledge of the appellant's racial background, declared that a White-appearing man of color received in the community as a White man could be legally classified as White. *State v. Davis*, 18 S.C.L. (1 Bail.) 558 (Ct. App. 1831). Even though the community knew that the appellant descended from a Black ancestor, the appellant's actions, motivations, and affiliations with White members of the community solidified his reputation and perception as White. *Id.* However, in a later case, the same court found that carrying out the antebellum performance of race required more than just how people treated the passers and how the passers thought of themselves. *White v. Tax Collector*, 31 S.C.L. (1 Rich.) 136 (Ct. App. 1846). Here, the court found that persons with visible traces of Black ancestry and solid alliances of White persons could not be deemed legally White because of the disqualifying phenotypical trait. *Id.*

bonds with Black individuals, the lessons of traditional Black to White passing differ because of the privileged position they occupy as a White person in society.⁸¹ For the most part, they have lived their lives with these privileges.⁸² Biologically, they represent the traditional conception of White, but their internal view of their own identity and privileges may be placed somewhere on the transformative continuum of interracial convergence.⁸³ They may not perform completely as White.⁸⁴ As in the case of the White-appearing Blacks, some of these Whites may choose to challenge the perceptions imposed by others about their expected performance of a White identity.

II. White Racial Identity Development

He followed me into the bathroom and stared at my face as he watched me brush my hair, and then he made an announcement.

"I also need a brown Mommy."

I froze. I knew I would have to deal with the differences in our race as he emerged from the protective love of his infancy, but so early? I wasn't ready. I was terrified. I scooped him up and hugged him tight. I thought about our experience the night before meeting a wonderful family from Zambia.

"That was a nice family we met last night, wasn't it? There was a brown Mommy, a brown Daddy and two brown little children. They all looked the same didn't they?" I set him down and perched myself on the edge of the bathtub. He nodded his head and touched my hair.

"And your Mommy isn't so brown is she?" He shook his head. "Maybe we should paint my face brown. Hmmm, what could we use?" Ryan laughed as he joined in the game. "Should we use a crayon?" I asked with a puzzled look on my face.

He giggled and ran to get his crayons. He pulled out the

81. See PATRICIA G. RAMSEY, *TEACHING AND LEARNING IN A DIVERSE WORLD: MULTICULTURAL EDUCATION FOR YOUNG CHILDREN* 28–30 (2d ed. 1998) (discussing how Whites are racially privileged throughout their life and how "Whiteness is the 'invisible norm' that sets the standards for everyone else's experience"); Frances V. Rains, *Is the Benign Really Harmless? Deconstructing Some "Benign" Manifestations of Operationalized White Privilege*, in *WHITE REIGN: DEPLOYING WHITENESS IN AMERICA* 77, 80 (Joe L. Kincheloe et al. eds., 1998) (explaining how "privileges acquired by being a person of light skin color are so institutionalized that they do not appear to be 'privileges' at all" to a White person).

82. See Rains, *supra* note 81, at 80–83.

83. See RAMSEY, *supra* note 81, at 30–32 (discussing the development and stages of White identity through integration).

84. *Id.*

*brown crayon but stopped as he weighed the enormity of the task.*⁸⁵

White adoptive parents face inordinate challenges in raising a Black child.⁸⁶ Similar to traditional passing, phenotype leads strangers to draw inaccurate conclusions about the racial affinity of the person who appears White.⁸⁷ The interests of White-adoptive parents and White-appearing Blacks converge in this grey zone. Each enters the space with different complex motivations, different positions of privilege, yet similar phenotypes.⁸⁸ Both types of passers share invisible yet personal ties with a Black community. Access to the secret revelations of White-only enclaves reveals to each a deeply ingrained resistance by many Whites to respectful common ground.⁸⁹ These racial voyeurs traverse boundaries and straddle spheres that once categorically excluded or accepted them. Indeed, public exposure of their grey space may label both as race traitors or trespassers and subjects each to the possibility of retributive hostility and isolation, if not actual violence.⁹⁰ Further examination of the elements of performativity in this grey racial space highlights key ingredients for combating the insidious role of Whiteness.

Dynamic models of racial development demonstrate a process of identity awareness facilitated by different experiences and periods of adjustment.⁹¹ For both Black⁹² and White models,⁹³

85. JANIS L. McDONALD, *LOVE IS NOT COLORBLIND: RAISING A BLACK CHILD IN A NOT SO POLITE WHITE SOCIETY* (forthcoming) (manuscript at 80–81, on file with authors) (italics added).

86. Some White adoptive parents as well as biological parents of biracial children describe their struggles meeting both the needs of their children and confronting their own racial identity issues. All of the parents locate themselves at different 'developmental' stages. See generally WALT HARRINGTON, *CROSSINGS: A WHITE MAN'S JOURNEY INTO BLACK AMERICA* (1992); JANE LAZARRE, *BEYOND THE WHITENESS OF WHITENESS: MEMOIR OF A WHITE MOTHER OF BLACK SONS* (1996); MAUREEN T. REDDY, *CROSSING THE COLOR LINE: RACE, PARENTING AND CULTURE* (1994); BECKY THOMPSON, *MOTHERING WITHOUT A COMPASS: WHITE MOTHER'S LOVE, BLACK SON'S COURAGE* (1997); FRANCIS WARDLE, *TOMORROW'S CHILDREN* (1999); JANA WOLFF, *SECRET THOUGHTS OF AN ADOPTIVE MOTHER* (1997); see also Joshua Carter Woodfork, *Shifting Whiteness: A Life History Approach to U.S. White Parents of "Biracial" or "Black" Children* (2005) (unpublished Ph.D. dissertation, University of Maryland) (on file with author).

87. See *supra* notes 61–66 and accompanying text.

88. See *supra* text accompanying notes 61–62; *infra* text accompanying notes 254–256.

89. See, e.g., *supra* note 70; *infra* text accompanying note 252.

90. See, e.g., *infra* text accompanying note 232.

91. See generally BLACK AND WHITE RACIAL IDENTITY, *supra* note 24; CROSS, *supra* note 24.

early stages of development reveal periods of low awareness, while later stages reflect deeper levels of consciousness.⁹⁴ Both models

92. Psychologist William Cross, with others, developed the BRID Model in response to previous Black identity models that depended on a "reaction to oppression" and "search for identity" models formulated by "deprivation-frustration factors." See CROSS, *supra* note 24, at 154. His BRID Model, instead, recognized the entire process of identity development, its dynamic growing nature, and how such prior models are only a stage or step in the whole process. *Id.* at 155–56. He termed this study as "Nigrescence models: the process of becoming [B]lack." *Id.* at 147. This model described the various stages of development as an individual progressed from a pre-encounter status where attitudes toward race range from low salience, to race neutrality, to anti-Black. *Id.* at 190–92. Next, there is an encounter stage where sudden surprising experiences are personalized. *Id.* at 198–201. The third stage, as described by Cross, involves various levels of immersion into Black culture and community, *id.* at 201–09, and the fourth stage, internalization, "marks the point of dissonance resolution and a reconstitution of one's steady-state personality and cognitive style." *Id.* at 210. Finally, the fifth stage, internalization-commitment, represents a "sustained commitment" to the development of a reconstituted identity. *Id.* at 220. Adaptations of this theory accepted by Cross recognized that this process may be recycled multiple times across the life span of an individual. *Id.* at 220–21. *But see* Camille Gear Rich, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134, 1173 n.125 (2004) (criticizing the Cross model and alternative adaptations by other scholars).

93. Scholars of the formation of White racial identity developed dynamic stages of White identity formation that partially parallel the BRID Model but adapt it to address the dominant pre-encounter stage of White identity development and address other major differences at all stages. The stages of the WRID Model are termed by different researchers as contact, disintegration, reintegration, pseudo-independence, immersion/emersion, and autonomy. Janet Helms, *Toward a Model of White Racial Identity Development*, in BLACK AND WHITE RACIAL IDENTITY, *supra* note 24, at 49–66; *see also* Margaret O'Donoghue, *Racial and Ethnic Identity Development in White Mothers of Biracial, Black-White Children*, 19 AFFILIA 68, 71 (2004). Critics of the WRID Model rejected the comparison to the BRID Model and contended that dominant or minority positions in society differently affect the formation of identity. Wayne Rowe et al., *White Racial Identity Models: A Critique and Alternative Proposals*, 22 COUNSELING PSYCHOLOGIST 129, 131 (1994). Critics specifically argue that the WRID Model focuses less on White identity and more on "how Whites develop different levels of sensitivity to and appreciation of other racial/ethnic groups." *Id.* These researchers argue a more appropriate model would focus on categories of White racial consciousness. *Id.* at 135. Even so, the authors agreed that "racial attitudes change following, and as a result of, experiences that cause dissonance in the person's cognitive structures or schemas." *Id.* Their critique suggests further that the focus on Black-White relationships in the formation of a model of White racial identity ignores the other racial groups and their impact on White racial identity formation. *Id.* at 132; *see also* Wayne Rowe & Donald R. Atkinson, *Misrepresentation and Interpretation: Critical Evaluation of White Racial Identity Development Models*, 23 COUNSELING PSYCHOLOGIST 364, 364–67 (1995).

94. CROSS, *supra* note 24, at 189–223; *see also* MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S (2d ed. 1994).

share a similar view of the initial state of racial development—what scholars describe as the “pre-encounter” stage.⁹⁵ Various researchers of the WRID Model characterize this stage as “conformity,”⁹⁶ “contact,”⁹⁷ and “avoidant-dependent.”⁹⁸ At this stage, Whites often have “minimal awareness of the self as a racial being” and, based on their unexamined stereotypes, view the societal subordination of racial minorities as stemming from either laziness, inferiority, or lack of education and wealth.⁹⁹ According to researchers, a large number of White individuals remain in this stage for their entire lives; thus, “the [pre-encounter] stage represents, perhaps, the most damning indictment of White racism”¹⁰⁰ Two important elements sustain the pre-encounter White identity: overlooking the influence of race and ignoring its effects.¹⁰¹

A. Colorblindness

Colorblindness originates in the refusal of White individuals to think of themselves as raced.¹⁰² This supposed absence of a racial identity presents substantial roadblocks in the ability to comprehend the way that racial minorities might interact with the world and, more ominously, the way the world may interact with minorities.¹⁰³ The adoption of a colorblind approach leads many Whites to profess equal treatment while failing to acknowledge the consequences of racial disparities and outcomes.¹⁰⁴ Dr. James

95. CROSS, *supra* note 24, at 190.

96. DERALD WING SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIFFERENT* 114 (1990); *see also* O'Donoghue, *supra* note 93, at 78.

97. Helms, *supra* note 93, at 55–58.

98. Rowe et. al., *supra* note 93, at 136.

99. SUE & SUE, *supra* note 96, at 114. In studies of White women parenting their biological biracial children, however, the stage may need a modification, since many of these women have had substantial contact with the Black or other minority community and, for the most part, do not usually fit the description of this stage as well as White people who have had virtually no contact with people of different races. O'Donoghue, *supra* note 93, at 68. While one qualitative study identified one White mother who remained at this stage, denying the relevance of race to her children's lives, this was not the common experience for the study group. *Id.* at 78–79.

100. SUE & SUE, *supra* note 96, at 96.

101. Helms, *supra* note 93, at 49–55.

102. Barbara Flagg, *Transparently White Subjective Decisionmaking*, in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* 85, 87 (Richard Delgado & Jean Stefancic eds., 1997).

103. *Id.*

104. *Id.*

Comer, a noted expert on Black child development, argued that "the [W]hite mind" permits a belief that the present experience of Blacks and Whites is the same, which "leads to faulty analysis, planning and action in efforts to deal with problems confronting [B]lacks."¹⁰⁵ He described the stark differences in the approach of Whites and Blacks to the same reality:

Observers who have not grown up in America are often perplexed by the ability of the [W]hite mind to remain impervious to racial realities. . . .

. . . .

. . . [It is] a kind of collective defect in the national ego and superego; a blind spot that permits otherwise intelligent people to see, think and act in a racist way without the expected level of guilt and pain. The syndrome is what I call the '[W]hite mind.'

. . . .

. . . The [W]hite mind operates consciously and unconsciously to deny that [W]hite racism gives [W]hites an unbeatable social, psychological and economic advantage over [B]lacks.¹⁰⁶

The superficial belief in colorblindness misinterprets the Kingian ideology of "not by the color of their skin but by the content of their character."¹⁰⁷ For pre-encounter Whites, the literal utilization of colorblindness obfuscates the reality of racial difference. Noticing but not considering race¹⁰⁸ represents the pre-encounter approximation of Jeffersonian equality.¹⁰⁹ The lurking existence of this silent White perspective directly controverts the

105. JAMES P. COMER, *BEYOND BLACK AND WHITE* 118 (1972).

106. *Id.* at 117.

107. "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character." Rev. Martin Luther King, Jr., *I Have A Dream*, Address at the March on Washington (Aug. 28, 1963), in *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 101, 104 (James M. Washington ed., 1992).

108. Neil Gotanda recognizes three elements of nonrecognition.

First, there must be something which is cognizable as a racial characteristic or classification. Second, the characteristic must be recognized. Third, the characteristic must not be considered in a decision. For nonrecognition to make sense, it must be possible to recognize something while not including it in making a decision.

Gotanda, *supra* note 5, at 16-17. This colorblind approach to racial difference reflects the dominant perspective in both legal theory and social practice. *Id.* at 17.

109. See Alexander O. Boulton, *The American Paradox: Jeffersonian Equality and Racial Science*, 47 *AM. Q.* 467, 471 (1995) (exploring the possible meanings that Thomas Jefferson assigned to the word "equality" and saying, "[t]o some historians, equality in Jefferson's day was never considered to be a universal right but was a set of special privileges reserved for White males with property").

insistence on its innocence.¹¹⁰ The argument of not seeing color actually underscores not only the colorblind actor's ignorance of their raciality but also the inability to visualize and validate the *color* of the non-White.¹¹¹ In this process of othering, racial transparency, a close relative of colorblindness, punctuates rather than eliminates the importance of race.¹¹²

Common racial politics, even the term "people of color," fail to recognize the distinctive identity of Whiteness. Confronting this belief in racelessness, Professor Barbara Flagg describes the "transparency phenomenon."¹¹³ In this formulation, Whites do not experience or think of themselves as having a racial identity, and they view themselves as racially transparent.¹¹⁴ Flagg argues that transparency "ought to impel us to a radical skepticism concerning the possibility of race-neutral decisionmaking."¹¹⁵ Under this theory, colorblindness assigns racial issues to minorities rather than the White mainstream.¹¹⁶

Self-reflecting on a distinct identity does not naturally occur to Whites; normative ideas about race and how it is viewed assume a perspective cloaked in a perspective garb that ultimately reifies racial supremacy.¹¹⁷ Colorblindness, then, fails as an ideology of antiracism because it discounts the importance and difference of racial identity and its concomitant effects.¹¹⁸ "White people," Flagg

110. SUE & SUE, *supra* note 96, at 94.

111. *Id.*

112. *Id.*

113. Barbara Flagg, *'Was Blind but Now I See': White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 957, 977-78 (1993).

114. *Id.*; see also Barbara Flagg, *An Essay for Keisha (and a Response to Professor Ford)*, 14 DUKE J. GENDER L. & POL'Y 179, 188 (2007); Stephanie Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245, 245 (2005) (discussing Flagg's theory of the transparency phenomenon).

115. Flagg, *supra* note 113, at 1017.

116. *Id.* at 969 ("There is a profound cognitive dimension to the material and social privilege that attaches to [W]hiteness in this society, in that the [W]hite person has an everyday option not to think of herself in racial terms at all.").

117. *Id.*

118. Kincheloe and Steinberg, for example, write:

A cardinal aspect of the entire conversation about [W]hiteness is the fact that liberal and pluralist forms of multiculturalism and identity politics have not produced a compelling vision of a reconstructed [W]hite identity. A critical [W]hite identity that renounces its [W]hiteness, feels guilty about it, or seeks merely to court favor among non-Whites is ineffective in the struggle for justice, democracy, and self-efficacy. Here a key goal of a critical pedagogy of [W]hiteness emerges: the necessity of creating a positive, proud, attractive, antiracist [W]hite identity that is empowered to travel in and out of various racial/ethnic circles with confidence and

insists, "externalize race."¹¹⁹

B. Willful Racial Ignorance

Similar to colorblindness, willful racial ignorance fails to acknowledge the existence of race as a viable indicator of difference.¹²⁰ With the supposed irrelevancy of racial boundaries, no furtive lines exist. Furthermore, considering race as a recognizable characteristic opposes the precept of humanism that views race as an immaterial consideration in ethical judgment.¹²¹ In the "I don't see color" argument, not only do color lines cease to exist, but the identities and prejudices they supposedly engender exist as illegitimate and unnecessary divisions amongst people.¹²²

One version of this mode of thought surfaces as the scientific disbelief in racial groups.¹²³ In seeing race as a social construct rather than biological reality, supporters argue that race finds no fixed meaning because conceptions of membership change over time.¹²⁴ The ignorance approach invokes a form of racial

empathy.

Joe Kincheloe & Shirley Steinberg, *Addressing the Crisis of Whiteness: Reconfiguring White Identity in a Pedagogy of Whiteness*, in *WHITE REIGN, DEPLOYING WHITENESS IN AMERICA*, *supra* note 81, at 3, 12.

119. Flagg, *supra* note 113, at 970.

120. See Robert T. Carter & Janet E. Helms, *White Racial Identity Attitudes and Cultural Values*, in *BLACK AND WHITE RACIAL IDENTITY*, *supra* note 24, at 105, 106 (discussing Whites who deny their racial group membership); see also Wayne Rowe et al., *White Racial Identity Models: A Critique and Alternative Proposal*, 22 *COUNSELING PSYCHOLOGIST* 129, 136 (1994) (explaining unachieved White racial consciousness of the avoidant type).

121. See Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 10 *LA RAZA L.J.* 57, 95 n.120 (1998) ("[T]o maintain the terminology of difference is to make possible the continuance of . . . racism, which has usually been the basis for treating people worse than we otherwise might, for giving them less than their humanity entitles them to." (quoting Kwame Anthony Appiah, *The Conservation of "Race"*, 23 *BLACK AM. LIT. F.* 37, 48 (1989))).

122. A columnist for the *Chicago Sun Times* notes that "[t]he legacy of Dr. Martin Luther King Jr. has become so twisted that more [W]hite Republican conservatives spout 'I have a dream' and 'We must be judged not by the color of our skin but by the content of our character' than socially conscious African-Americans seeking to realize the achievement of King's 'Promised Land.'" Anthony Asadulla Samad, *The Twisting of Dr. King's Dream*, *CHICAGO SUN TIMES*, Jan. 15, 2006, at B3.

123. Anthony Appiah has argued for a turn to "ethnicity" instead of "race." López, *supra* note 121, at 95.

124. Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice*, 29 *HARV. C.R.-C.L. L. REV.* 61 (1994); see also Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in *CRITICAL RACE THEORY: THE KEY*

recklessness¹²⁵ where individuals overlook or ignore the racial needs and differences of others.¹²⁶ Eclipsing mere colorblindness, willful ignorance governs the interactions of Whites with others through a complete neglect or adamant refusal of the racial issues that surround them.¹²⁷ By ignoring the impact of race, denizens of the resistant pre-encounter stage view other factors, such as social class, education, or wealth, as the logical explanations for political and social disparity.¹²⁸ Race becomes nothing more than an indicator of physical appearance, such as the innocuous traits of hair or eye color.¹²⁹ This initial stage of racial identity development stunts the possibility of mutual racial understanding.¹³⁰

III. White Parents, Black Children: Racial Performativity

The party celebrated the visit of a famous [B]lack feminist poet and writer. I was in awe of her work and happy to get a chance to meet her on an informal basis. . . .

. . . Eventually I found myself next to the guest of honor. She reached out for Ryan and played with him for a second. The smile she gave my son was warm and tender. "Who are you, little one?" she asked.

Ryan ducked his head on my chest.

I smiled and greeted her. "That's Ryan," I volunteered. "I'm Janis. He is my son." She paused for a second and then handed him back to me. "Ah," she said, "well he is adorable. A beautiful child."

I smiled again. "I just want you to know you have given me

WRITINGS THAT FORMED THE MOVEMENT 357, 375 (Kimberle Crenshaw et al. eds., 1995) (discussing race as a social construction).

125. An example of racial recklessness may be found in James Weldon Johnson's *Autobiography of an Ex-Colored Man*, where a man passes for White without regard to consequence. James Weldon Johnson, *Autobiography of an Ex-Colored Man*, in *THREE NEGRO CLASSICS* 393 (Avon Books 1965) (1912).

I finally made up my mind that I would neither disclaim the [B]lack race nor claim the [W]hite race; but that I would change my name, raise a mustache, and let the world take me for what it would; that it was not necessary for me to go about with a label of inferiority pasted across my forehead.

Id. at 499.

126. López, *supra* note 121, at 94 (explaining an argument set forth by Orlando Patterson where "Patterson notes that race is not real").

127. Carter & Helms, *supra* note 120, at 106.

128. *Id.*

129. López, *supra* note 121, at 94 (explaining Patterson's theory about race as a social construct).

130. Carter & Helms, *supra* note 120, at 106.

many hours of pleasure reading your work."

She thanked me and turned away to another admirer. . . .

. . . .

The next morning I took Ryan to his daycare center on the grounds of the law school and met Leslie in the school cafeteria for breakfast. . . .

"Thanks so much for including us in the party," I said as we set our cups of tea at a table by the window. "I had a nice time and everyone seemed to like having Ryan there. I don't get to go to too many parties these days," I smiled as I shook my head at her offer of sugar.

"It was a lovely time. At the end of the day everything worked out fine." Leslie turned her cup thoughtfully. She seemed to have something on her mind.

"I was a little disappointed that I didn't get a chance to talk to our special guest that much." I said. "She had so many other people who wanted to talk to her and she got distracted soon after I started to talk with her."

Leslie stopped turning her cup. "Well, I think it was hard for her, you know. She didn't really approve of you having Ryan." Leslie stopped and looked at me with concern. I knew she didn't want to hurt my feelings.

"You mean because I am [W]hite?" I asked.¹³¹

Advocates of race-matching for the adoption of Black children argue that White parents lack the capacity to instill healthy racial values in Black children.¹³² Black children, activists say, belong

131. MCDONALD, *supra* note 85 (manuscript at 69–71) (italics added).

132. For a general summary of the different arguments and the social science concerns, see Cynthia Hawkins-León & Carla Bradley, *Race and Transracial Adoption: The Answer Is Neither Simply Black or White nor Right or Wrong*, 51 CATH. U. L. REV. 1227, 1232–42 (2002) and Ruth-Arlene W. Howe, *Old Prejudices and Discrimination Float Under a New Halo*, 6 B.U. PUB. INT. L.J. 409, 471 (1997) ("Widespread, unregulated occurrences of private placements of infants of African-American descent with non-African-American adoptive parents place these children at risk of alienation from their natural reference group."). See also HAWLEY FOGG-DAVIS, THE ETHICS OF TRANSRACIAL ADOPTION 57–58 (2002) (highlighting Howe's argument that "only [B]lack parents can give [B]lack children the right bundle of [B]lack 'traditions and impulses'"); James Bowen, *Cultural Convergences and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interests of the Child*, 26 J. FAM. L. 487, 510 (1988) ("Thus, if child development (and specifically the socialization process) is as complex as many scholars suggest, it may be that a Black child cannot be reared into a self-actualizing Black adult by non-Black (adoptive or foster) parents."); Jacinda T. Townsend, *Defining Family: Adoption Law and Policy*, 2 DUKE J. GENDER L. & POLY 173, 178 (1995) ("[A] White parent cannot teach a Black child to maneuver according to the different standard to which that child will be held by White culture."); Tanya Washington, *Loving Grutter: Recognizing Race in Transracial Adoption*, 16 GEO. MASON U. CIV. RTS. L.J. 1, 4 (2005) ("In a society that has

with Black parents in order to develop a strong sense of racial belonging.¹³³ Only same-race placements, according to these advocates, equip Black children with necessary “survival skills.”¹³⁴ As described by Judge Theodore Newman¹³⁵ in a dissenting opinion in 1982,

Blacks and other minorities develop survival skills for coping with such racism, which they can pass to their children expressly, or more importantly, by unconscious example. . . . Parents of interracial families may attempt to learn these lessons and then teach them, but most authorities recognize that this is an inferior substitute for learning directly from minority role models. . . . Few [W]hite parents even claim they can teach such skills.¹³⁶

From this belief flowed a rationale that adopted Black children fare better in families that can “pass” as their naturally occurring relatives.¹³⁷

embraced colorblindness as the extant or desired state of race relations and the legal ideal, well-meaning and loving adopting parents, who are unaware of or resistant to acknowledging the significance of race as a distinct experience may be unable to effectively prepare their adopted children to adapt to and operate within their racialized environment, to the detriment of adoptees.”); Marlon N. Yarbrough, *Trans-racial Adoption: The Genesis or Genocide of Minority Cultural Existence*, 15 S. U. L. REV. 353, 355–56 (1988) (“Afro-Americans who have nurtured their survival skills through their culture to overcome these negative reinforcements, strongly emphasize the paramount importance of placing Afro-American offspring in Afro-American homes.”).

133. See *infra* text accompanying notes 143–46 (discussing position statement of National Association of Black Social Workers).

134. See, e.g., Perry, *supra* note 28, at 68 (explaining argument that transracial adoptions should be adoptions of the last resort with preference given for available Black families and additional governmental efforts given to increase the number of potential adoptive Black families).

135. Judge Theodore R. Newman received his Juris Doctor from Harvard Law School in 1958. Theodore Newman—Biography, http://www.dcca.state.dc.us/dccourts/docs/DCCA_Bio_Newman.pdf (last visited Mar. 27, 2008). He served as a Judge on the Superior Court of the District of Columbia from 1970 until 1976 when he was appointed by President Gerald Ford to the D.C. Court of Appeals. *Id.* He served as Chief Judge until 1984. *Id.*

136. *In re R.M.G.*, 454 A.2d 776, 802 (D.C. Ct. App. 1982) (Newman, C. J., dissenting) (citations omitted).

137. RACHEL MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* 126–27 (2001) (“Race is pertinent because agencies try to replicate ‘naturally occurring’ biological families.”); Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1172 (1991) (“[T]he idea that what is ‘natural’ in the context of the biological family is what is normal and desirable in the context of adoption.”); Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 215 (1995) (“The desire to have genetically related children is not entirely natural, but is determined by our political and cultural context. We often perceive a special relationship created by a

In what has been termed "biologism,"¹³⁸ agencies sought to recreate a "normal" family that corresponded to collective expectations about racial possibilities.¹³⁹ This attempt to imitate a "naturally occurring" biological family¹⁴⁰ reinforced the problematic belief that strong family attachments required a genetic link between parent and child.¹⁴¹ Thus, Black parents, by the fate of classification alone, were asserted as the optimal, and perhaps the only, people who could effectively parent Black children.¹⁴²

The issue of racial fitness in parenting escalated in 1972 when the National Association of Black Social Workers ("NABSW") issued a position paper that vehemently denounced the practice of transracial adoption.¹⁴³ The organization opined:

We affirm the inviolable position of [B]lack children in [B]lack families where they belong physically, psychologically and culturally in order that they receive the total sense of themselves and develop a sound projection of their future.

. . . .

. . . Black children in [W]hite homes are cut off from the healthy development of themselves as [B]lack people, which development is the normal expectation and only true humanistic goal.¹⁴⁴

Transracial adoption, they argued, provides inadequate care for Black children.¹⁴⁵ Being raised in a White family deprives Black children of a solid connection to a Black community, Black people, and a Black identity.¹⁴⁶ For some, only within the context of a Black family can Black children learn the survival skills¹⁴⁷

shared genetic identity.").

138. See generally Carrie L. Wambaugh, *Biology Is Important, but Does Not Necessarily Always Constitute a "Family": A Brief Survey of the Uniform Adoption Act*, 32 AKRON L. REV. 791 (1999).

139. MORAN, *supra* note 137, at 126–27.

140. *Id.*

141. See generally Hawley Fogg-Davis, *Racial Randomization: Imagining Nondiscrimination in Adoption*, in ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS 247 (Sally Haslanger & Charlotte Witt eds., 2005).

142. MORAN, *supra* note 137, at 126–27.

143. NAT'L ASS'N OF BLACK SOC. WORKERS, INC., *supra* note 26, at 777–80.

144. *Id.* at 777–78.

145. *Id.*

146. *Id.*

147. In *In re R.M.G.*, the District of Columbia Court of Appeals defined "survival skills" as "ways to cope with discrimination encountered in the world outside the family." 454 A.2d 776, 792 n.37 (D.C. Ct. App. 1982).

necessary to defend themselves in a majority White country.¹⁴⁸ Deflecting Black children from Black homes, according to this view, amounts to “cultural genocide” and results in children devoid of a strong racial identity.¹⁴⁹ White parents, they believed, simply cannot impart the necessary knowledge. No shared space exists to grant White parents the racial sensitivity and understanding of Black people.¹⁵⁰ Interracial convergence, by reason of biology alone, can never occur.¹⁵¹

Even without a federal law that prevented White parents from adopting Black children, the number of transracial adoptions rapidly dropped as a result of the NABSW’s statement.¹⁵² The sharp drop in the numbers of White parents adopting Black children—by almost one-half in three years—reflected the strong policy impact of the social workers’ statement.¹⁵³

The NABSW’s position paper incensed many prospective

148. For a better understanding of the critique that these children lack survival skills as Black children, see RUTH G. MCROY & LOUIS ZURCHER, *TRANSRACIAL AND INRACIAL ADOPTES: THE ADOLESCENT YEARS* (1983). In this study, the authors attributed the self-identity difficulties of transracial adoptees to the attitudes of the adoptive parents. *Id.* at 136. They reported that a significant percentage of the transracial adoptees are often uncertain about their identity and this is determined by how their parents wish to view them. *Id.* Of concern is the fact that these children are inclined to devalue their Black heritage, to “act as similar as possible to their [W]hite peers and [W]hite family members and to renounce any similarities or allegiances to [B]lacks. These children were likely to refer to themselves as part [W]hite.” *Id.*

149. Sandra Patton-Imani, *Redefining the Ethics of Adoption, Race, Gender, and Class*, 36 *LAW & SOC’Y REV.* 813, 835 (2002) (pointing out that NABSW’s statement never actually mentions the word “genocide”—this characterization has demonized the organization for the past thirty years).

150. *See id.*

151. *See id.*

152. White-Black transracial adoption first occurred in 1948. FOGG-DAVIS, *supra* note 132, at 3. The numbers peaked in the late 1960s, reaching approximately 2,500 in 1971. *Id.* After the first NABSW statement in 1972, the numbers declined to 1,569 that year and then down to 831 three years later. *Id.* Yet in the context of the transracial adoption of Native American children, the story is different. This paper does not intend to comment on the Indian Child Welfare Act, 25 U.S.C. § 1901 (2000), but we mention it here to demonstrate the disparate critiques of transracial adoption and how the approaches elicit different considerations of the need to maintain a strong culture and community for adoptive children. *See* Kevin Noble Maillard, *Parental Ratification: Legal Manifestations of Cultural Authenticity in Cross-Racial Adoption*, 28 *AM. INDIAN L. REV.* 107, 110 (2003) (“The ultimate purpose of the ICWA was to retain a greater number of Indian children within Indian communities, in families that would reflect the values and traditions of Native culture.”).

153. Bartholet, *supra* note 137, at 1180.

transracial parents.¹⁵⁴ Opponents responded with a legal and political agenda to eliminate race-based placement decisions.¹⁵⁵ Congress passed the Multiethnic Placement Act ("MEPA")¹⁵⁶ in partial satisfaction of their efforts. MEPA prohibited race as the sole basis for denying an adoption, but allowed racial considerations to be a factor in placement decisions.¹⁵⁷

Before Congress passed MEPA, placement agencies relied on the Department of Health and Human Services ("HHS") guidelines

154. See, e.g., *id.* Elizabeth Bartholet attacked race matching policies as representing "a coming together of powerful and related ideologies—old-fashioned [W]hite racism, modern-day [B]lack nationalism, and what I will call 'biologism'—the idea that what is 'natural' in the context of the biological family is what is normal and desirable in the context of adoption." *Id.* at 1172. She admits, however, "[i]t may be that studies are incapable of measuring the value to a [B]lack child of being raised by [B]lack parents as part of a [B]lack community with a sense of its unique [B]lack cultural heritage." *Id.* at 1209. She insists that studies of Black children adopted by White parents demonstrate no negative impact on the children's well-being. *Id.* But cf. MCROY & ZURCHER, *supra* note 148, at 146 (demonstrating that Black children raised by White parents are uncertain about their identity; they are more likely to devalue their Black heritage and refer to themselves as White); Joan F. Shireman & Penny R. Johnson, *A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional*, 31 SOC. WORK 172, 172–76 (1986) (noting that although the Black children adopted by White parents have intellectual knowledge of their heritage, they have little contact with Black people).

155. FOGG-DAVIS, *supra* note 132, at 43–51. In *Nobody's Children*, Elizabeth Bartholet argues that social workers continue to work against the dictates of MEPA/Section 1808 by using "cultural competence" inquiries about the prospective adoptive parents. ELIZABETH BARTHOLET, *NOBODY'S CHILDREN* 26 (1999). She argues against all efforts to match children in same-race adoption placements. *Id.*

156. Howard M. Metzenbaum Multiethnic Placement Act (MEPA) of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994).

157. Under section 553(a)(1) of MEPA,

[a]n agency, or entity, that receives federal assistance and is involved in adoption or foster care placements may not (A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, *solely* on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

Id. § 553(a)(1), 108 Stat. at 4056 (emphasis added). MEPA then qualifies this prohibition in section 553(a)(2).

An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.

Id. § 553(a)(2).

for assessing racial awareness and sensitivity.¹⁵⁸ Like MEPA, the

158. U.S. DEPT OF HEALTH & HUMAN SERV. & MINN. DEPT OF HUMAN SERV., WORKERS' ASSESSMENT GUIDE FOR FAMILIES ADOPTING CROSS-RACIALLY/CROSS CULTURALLY. The *Workers' Assessment Guide for Families Adopting Cross-Racially/Cross-Culturally* was used to determine a potential parent's ability to meet the "unique identity needs of children who live with a family of a race or culture other than his/her own." *Id.* at 1. Those unique needs were:

1. To live in an environment that provides the child an opportunity to participate in positive experiences with their culture, religion, and language.
2. For association with same race adult and peer role models and relationships on an ongoing basis.
3. For environmental experiences that teach survival, problem solving, and coping skills which give the child a sense of racial and ethnic pride.
4. A parent who can understand and relate to the child's life and daily relationship to racial and cultural differences and who can respond to those experiences with acceptance, understanding and empathy.
5. For a parent who accepts and can help the child to accept the child's racial and cultural ancestry and can comfortably share knowledge and information about the child's racial and cultural ancestry with the child.

....

7. To have a parent that has knowledge of special dietary, skin, hair, and health care needs.

Id. at 1-2. The guidelines also described the following "desirable" qualities for potential parents:

1. An understanding of their own sense of personal history and how that helped form their values and attitudes about racial, cultural, and religious similarities and differences.
2. An understanding of racism and whose life experiences have given them an understanding of how racism works and how to minimize its effects.
3. Life experiences and personal history which have given them the capacity or ability to parent cross-racially/culturally.
4. Commitment to and capability of demonstrating empathy with the child's family of origin regardless of the socio-economic and lifestyle differences between them and the child's family.
5. Capacity and commitment to provide the child with positive racial and cultural experiences and information and knowledge of their race and culture.
6. Capability of preparing the child for active participation in or return to the child's racial and cultural community.
7. Adequate support of those significant to them in their decision to parent cross-racially/culturally.
8. Residence in a community that provides the child with same race adult and peer role models and relationships on an ongoing basis.
9. Tolerance and ability to deal appropriately with the questions, ambiguity, or disapproval which arise when people assume that the child is the applicant's birth child.
10. Willingness to incorporate participation in cross-racial/cultural activities into their lifestyle and participate in race/cultural awareness

HHS Guidelines permitted consideration of the racial needs of the child while forbidding decisions based solely on the race of either parents or child.¹⁵⁹ Cases analyzing the HHS guidelines shed some light on how MEPA was intended to operate.

In *DeWees v. Stevenson*,¹⁶⁰ the case discussed in the Introduction to this Article, the social worker responsible for adoption placement decisions recommended against placement with the foster parents because they failed to demonstrate the necessary sensitivity to the racial-identity needs of the biracial child.¹⁶¹ He relied on the HHS Guidelines in force at that time and recommended against the adoption.¹⁶² The plaintiffs challenged his decision on equal protection grounds.¹⁶³

The federal court in *DeWees* permitted the use of racial considerations as an indication of parental fitness.¹⁶⁴ This approach allowed for an assessment of attitudes to determine the best interest of the child adopted by adults of a different race.¹⁶⁵ To justify this holding, the judge concluded that "state agencies cannot ignore the realities of the society in which children entrusted to them for placement will be raised, or the affect [sic] on children of those realities as documented by professional studies."¹⁶⁶ Reiterating that racial classifications are "inherently suspect," the judge nevertheless found it was a compelling state interest to consider the impact of race on the best interest of the child.¹⁶⁷ The court viewed the agency decision as a judgment on the prospective parents' attitudes and not on their "race per se."¹⁶⁸

The *DeWees* court's discussion of the HHS Guidelines demonstrates the simultaneous pliancy and transparency of the

training.

Id. at 2-3.

159. MEPA and the HHS Guidelines permitted considerations of both the child's needs for cross-racial/cultural experiences and the prospective foster or adoptive parents' ability to provide those experiences, but the HHS Guidelines provided much more detail on particular issues that should be considered before making a final decision. Compare *supra* note 156, with *supra* note 158.

160. 779 F. Supp. 25 (E.D. Pa. 1991).

161. *Id.* at 27.

162. *Id.*

163. *Id.* at 26.

164. *Id.* at 29.

165. *Id.*

166. *Id.*

167. *Id.* at 28 n.4 (citing *McLaughlin v. Pernsley*, 693 F. Supp. 318, 324 (E.D. Pa. 1988), *aff'd*, 876 F.2d 308 (3d Cir. 1989)).

168. *Id.* at 29.

later enacted MEPA. On one hand, MEPA prohibited the use of race as determinative in adoption placements.¹⁶⁹ On the other hand, it allowed for critical examinations of the adopted child's racial needs and of whether the attitudes of the adoptive parents converged with the needs of the Black child.¹⁷⁰ Thus, inquiries into the racial attitudes of the prospective parents conformed to MEPA's interests of racial fairness. MEPA served the interest of the child while prohibiting categorical disqualifications on the basis of race alone.

Policies favoring the racial interests of the minority child soon changed to reflect the legal ideal of colorblindness.¹⁷¹ Less than one year after MEPA's passage, a successful political campaign resulted in amendments to the law.¹⁷² Congress amended MEPA in section 1808 of the Small Business Job Protection Act of 1996.¹⁷³ MEPA/Section 1808 manifests the colorblind ideal by prohibiting racial considerations in adoption placements.¹⁷⁴ Unlike the parental scrutiny allowed by MEPA, MEPA/Section 1808 disallows decisions based on the racial difference between parent and child.¹⁷⁵ MEPA/Section 1808 also regulates placement agencies in their investigations of parental racial awareness or sensitivity.¹⁷⁶ For most children, the

169. See *supra* note 157.

170. See *supra* note 157.

171. See Fogg-Davis, *supra* note 141, at 45 (describing the role of colorblind theory in the transracial adoption debates in 1995).

172. *Id.* at 47 (describing efforts to repeal MEPA).

173. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1808, 110 Stat. 1755, 1903 (1997).

174. Section 1808(a)(3) states:

[N]either the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may . . . deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved . . .

Id. § 1808(a)(3), 110 Stat. at 1903.

175. *Id.*

176. The Office for Civil Rights and the Administration for Children and Families jointly developed an "Internal Evaluation Instrument" to help agencies determine their compliance with MEPA/Section 1808. Letter from Richard M. Campanelli, Dir., Office for Civil Rights, & Wade F. Horn, Assistant Sec'y, Admin. for Children and Families, to OCR Reg'l Managers & ACF Reg'l Adm'r (July 10, 2003), available at <http://www.hhs.gov/ocr/mepa/interneval.pdf>. According to the Instrument, there are "significant legal penalties" for racial discrimination in adoption and foster care decisions. OFFICE FOR CIVIL RIGHTS & ADMIN. FOR CHILDREN & FAMILIES, MEPA/SECTION 1808 INTERNAL EVALUATION INSTRUMENT 2 (2003), available at <http://www.hhs.gov/ocr/mepa/interneval.pdf>. If a state fails to comply with MEPA/Section 1808, the state may lose up to five percent of its Title

assessment assumes a colorblind approach to their best interests.

The American legal system has also favorably endorsed colorblindness.¹⁷⁷ Equal treatment of Blacks and Whites, under this approach, eliminates any inquiry, no matter how useful, of race.¹⁷⁸ Regrettably, this assumes that racial categories themselves do not invoke various starting points of privilege. The business of not seeing race gladly presumes equal racial footing in ignorance of the inequities embedded in institutional structures and legal protections that preclude the realization of truly equal treatment.¹⁷⁹ In the adoption context, this colorblind approach eliminates the consideration of the fitness of Whites to parent Black children unless a compelling state interest in child welfare exists.¹⁸⁰

In 2003, the NABSW reaffirmed its conviction in race-

IV-E funds for a fiscal quarter. *Id.* The Instrument instructs agencies to consider race only in the “rare” individualized assessment of a child’s needs. *Id.* at 10. To comply with MEPA/Section 1808, an agency must ensure that agencies do not consider race, color, and/or national origin in placement decisions unless it “is necessary to meet the best interests of the child.” *Id.* at 11.

177. See Morris B. Abram, *Affirmative Action: Fair Shakers and Social Engineers*, 99 HARV. L. REV. 1312, 1312 (1986) (arguing that the civil rights movement should “turn its attention back to first principles—the zealous regard for equal opportunity and the promotion of color-blind law and social policy”); Jim Chen, *Unloving*, 80 IOWA L. REV. 145 (1994) (arguing that the United States is a Creole Republic and that the only way to continue to uphold ideals of equality is to ignore racial classification); Jerome McCristal Culp, Jr., *Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims*, 69 N.Y.U. L. REV. 162 (1994) (describing the general attitude towards colorblindness as positing “inattention to race as a moral requirement of all ‘right’ thinking people and all good law”); Terry Eastland, *The Case Against Affirmative Action*, 34 WM. & MARY L. REV. 33, 45–46 (1992) (arguing that straying from the principle of colorblindness in affirmative action programs has harmed the goal of racial justice).

178. See sources cited *supra* note 177.

179. See generally Neil Gotanda, *A Critique of “Our Constitution Is Colorblind”*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, *supra* note 124, at 257, 257–75 (arguing that the Supreme Court’s “color-blind constitutionalism . . . fosters [W]hite domination” by limiting the remedies available to redress historical Black oppression); see also Flagg, *supra* note 102, at 87 (arguing that supposedly race-neutral criteria for granting promotions was “in fact covertly race-specific” because they were based on “norms adopted by a dominantly [W]hite culture”); cf. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, *supra* note 124, at 63, 69–74 (responding to criticisms of reparations by focusing on the experiences of oppressed minorities).

180. See, e.g., *Deweese v. Stevenson*, 779 F. Supp. 25, 29 (E.D. Pa. 1991); cf. *Grutter v. Univ. of Mich.*, 539 U.S. 306 (2003) (permitting race to be used as a factor in admissions decisions at the University of Michigan Law School).

matching.¹⁸¹ The updated position statement reiterates concerns about identity development.¹⁸² According to the statement, children of African ancestry “learn about their identity from within the home and community.”¹⁸³ Identity is deemed critical to the ability “to negotiate the world, understand one’s barriers and realities, and feel[] good about self. Identity forms the basis of character development, pride, and belief in achievement.”¹⁸⁴ The emphasis on identity underscores NABSW’s belief in developing a strong Black identity in children of African descent. The NABSW has criticized MEPA/Section 1808 and countered with an emphasis on the cultural needs of transracially adopted children who “are far too often cut off from their culture of origin and their African ancestry. . . .”¹⁸⁵ The child’s racial background, the NABSW argues, necessitates an identification with Black culture.¹⁸⁶ Thus, prospective White parents cannot transmit cultural values that foster a healthy racial identity.¹⁸⁷ Descent and identity, according to this syllogism, are equivalent and inclusive.¹⁸⁸ Deviations from the genealogy/awareness nexus fail to meet the minimum standard of fitness for parenting Black children.¹⁸⁹ In the original, much publicized position statement in 1972, the NABSW did not recognize the possibility of interracial convergence.¹⁹⁰

Although the NABSW continues to raise these issues, it joins others in the complex conclusions about the formation of racial identity. Familial, social, and spiritual forces can affect the child’s developing views of self both positively and negatively.¹⁹¹ The stages of cognitive development of self identity and racial identity

181. See generally Nat’l Ass’n of Black Soc. Workers, Preserving Families of African Ancestry (2003), <http://www.nabsw.org/mserver/PreservingFamilies.aspx> [hereinafter NABSW] (last visited Mar. 28, 2008).

182. See NABSW’s website discussion on Developmental Issues. *Id.*

183. See NABSW’s website discussion on Developmental Issues. *Id.*

184. *Id.*

185. See NABSW’s website discussion on Policy Statement and Recommendations. *Id.*

186. See NABSW’s website discussion on Cultural Influences. *Id.*

187. See *id.* (“People of African ancestry have distinct traits and characteristics that are important to raising healthy children of African ancestry.”).

188. See *id.*

189. See *id.*

190. See NAT’L ASS’N OF BLACK SOC. WORKERS, INC., *supra* note 26, at 780 (“We stand firmly . . . on conviction that a [W]hite home is not a suitable placement for [B]lack children and contend it is totally unnecessary.”).

191. See NABSW’s website discussion on Developmental Issues and Cultural Influences in NABSW, *supra* note 181.

in children¹⁹² have been examined in the particular context of transracially adopted children.¹⁹³ During the period between 1970 and 1998, empirical studies tended to show that transracial adoptees seemed as well adjusted as same-race adoptees.¹⁹⁴ Additional studies, however, highlighted the difficulties these children experienced in developing healthy racial identities.

In 1981, researchers Alstein and Simon reported on a study of transracially adopted children.¹⁹⁵ Alstein and Simon found that "the children were more racially color blind and more indifferent to race as a basis for evaluation than any other group reported in any previous study . . ." ¹⁹⁶ Sixty-three percent of the children had mostly White friends.¹⁹⁷ Only three percent of the children had mostly Black friends.¹⁹⁸ Fifteen percent of the children identified themselves as White.¹⁹⁹ Only forty-five percent of the Black children identified themselves as Black.²⁰⁰

Another study by McRoy, Zurcher, Lauderdale, and Anderson reported no differences in overall self-esteem between transracially and inracially adopted children.²⁰¹ However, Black children in integrated communities had stronger positive feelings about their racial identities than children whose parents downplayed their racial identity.²⁰² A follow-up study supported the importance of positive racial environments on transracial adoptees' well-being.²⁰³

192. See generally BARRY J. WADSWORTH, *PIAGET'S THEORY OF COGNITIVE AND AFFECTIVE DEVELOPMENT: FOUNDATIONS OF CONSTRUCTIVISM* (Virginia L. Blanford et al. eds., 5th ed. 1996).

193. See, e.g., BEVERLY DANIEL TATUM, "WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA?" 187-90 (1997). For information on the general formation of personal identity, see BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH, AND PRACTICE, *supra* note 24, ERIK H. ERICKSON, *IDENTITY YOUTH AND CRISIS* (1968), and RAMSEY, *supra* note 81, at 28-42.

194. See, e.g., CHRISTOPHER BAGLEY ET AL., *INTERNATIONAL AND TRANSRACIAL ADOPTIONS* (1993); Penny R. Johnson et al., *Transracial Adoption and the Development of Black Identity at Age Eight*, 66 *CHILD WELFARE* 45, 45-55 (1987); Shireman & Johnson, *supra* note 154, at 172-76.

195. See generally RITA J. SIMON & HOWARD ALSTEIN, *TRANSRACIAL ADOPTION: A FOLLOW-UP* (1981).

196. *Id.* at 1.

197. *Id.* at 10-11.

198. *Id.* at 11.

199. *Id.* at 14.

200. *Id.* at 16.

201. Ruth G. McRoy et al., *Self-Esteem and Racial Identity in Transracial and Inracial Adoptees*, 27 *SOC. WORK* 522, 525 (1982).

202. *Id.*

203. Ruth G. McRoy et al., *The Identity of Transracial Adoptees*, 65 *SOC.*

Studies of Black racial identity development show the needs of the child of color, helping the parent to understand how his or her own identity issues will affect the child.²⁰⁴ According to the BRID Model, there are four stages in racial identity development.²⁰⁵ The first stage, termed pre-encounter, describes a low level of racial awareness and a devaluation of one's own group.²⁰⁶ Encounter, the second stage, describes the confusion precipitated by eye-opening racial incidents.²⁰⁷ The third stage of immersion-emersion in Black issues involves an intense refocus of racial values, such as Afrocentrism, and rejection of the White norm.²⁰⁸ Further development, indicated by the fourth stage, internalization-commitment, involves a developing racial self-confidence and flexibility of thought that promotes interaction across racial boundaries.²⁰⁹

In addition to questions about the needs and identities of transracially-adopted children, attention must also focus on the White racial identity development of adoptive parents. For both, racial privilege, or the lack thereof, becomes an integral part of the unchallenged norm and a significant factor in the formation of self identity for the child.²¹⁰ The Black child challenges those privileged norms in the second or third stage of the BRID Model.²¹¹ If the White parent fails to recognize the significance of these encounters, as discussed in the studies of some transracial families, then the child suffers.²¹²

CASEWORK 34, 34-39 (1984). Substantial critiques have surfaced that challenge the methodologies of these studies based on the sample size, the emphasis on parental self-reporting of child adjustment, the lack of information on late-adolescent adoptees, and "inadequate outcome measures." See, e.g., Hawkins-Leon & Bradley, *supra* note 132, at 1233, 1237 n.53-55, 1269-74; Perry, *supra* note 28, at 59; Washington, *supra* note 132, at 15-22. For social science literature that provided research results supporting opposition of transracial adoptions, see Arnold R. Silverman & William Feigelman, *Adjustment in Interracial Adoptees: An Overview*, in *PSYCHOLOGY OF ADOPTION* 187, 187-200 (David M. Brodzinsky & Marshall D. Schechter eds., 1990).

204. See CROSS, *supra* note 24, at 190; see also Janet Helms, *An Overview of Black Racial Identity Theory*, in *BLACK AND WHITE RACIAL IDENTITY*, *supra* note 24, at 9-32.

205. CROSS, *supra* note 24, at 190.

206. *Id.* at 190-98.

207. *Id.* at 198-201.

208. *Id.* at 201-09.

209. *Id.* at 209-20.

210. See RAMSEY, *supra* note 81, at 28-30 (discussing race and privilege).

211. See *id.* at 32-34.

212. See, e.g., McRoy et al., *supra* note 201, at 525 (describing the importance of the parent's acceptance and affirmation of the transracially-adopted child's racial

The legal relevance of research on White racial identity development merits further attention as it relates to the laws permitting colorblind decisions on transracial adoptions. Parents who remain oblivious to their prospective child's racial needs jeopardize the child's development of a healthy racial identity. Parents who engage on the continuum of White racial identity development may perceive and address their child's identity issues as they develop.

IV. Transformative White Identity: Interracial Convergence

*I wish I could say that I knew enough then to learn about [B]lack culture and incorporate that information into my choice of names for my son. I didn't. I guess I wanted to claim him. I wanted to make him a part of my family, a part of me and my first list of names, and my ultimate choice of a first name, consisted primarily of Irish or Celtic names. "Liam" and "Devlin" were close contenders, but I finally decided on Ryan. My choices surprised me; I wanted to share my heritage and make it part of his. I didn't know then what a gift of his own heritage he would bring to me throughout the years, nor did I understand how much he would help me understand my own.*²¹³

A. The Pre-Encounter Stage

Many adoptive parents live in the pre-encounter stage of the WRID Model,²¹⁴ where White identity does not exist as a salient or perhaps a consciously recognized characteristic.²¹⁵ These parents either do or do not believe in racial difference or they adopt a colorblind approach to the effect of race in society.²¹⁶ Acknowledgement of racial privilege or subordination goes unnoticed.²¹⁷ This pre-encounter stage constitutes a form of racial

identity).

213. MCDONALD, *supra* note 85 (manuscript at 33–34) (italics added); *see also* WOLFF, *supra* note 86, at 67–68 (discussing the emotions involved in choosing a Hebrew name for an adopted child from a Hispanic and African-American background); Woodfork, *supra* note 86, at 69–84.

214. *See generally* Flagg, *supra* note 113, at 957, 970–73 (discussing the transparency phenomenon which is “the tendency of [W]hites not to think about [W]hiteness, or about norms, behaviors, experiences, or perspectives that are [W]hite-specific”).

215. *See id.*

216. *See* Bartholet, *supra* note 137, at 1226.

217. *See id.*; Flagg, *supra* note 113, at 957, 970–73.

recklessness²¹⁸ without regard to the child's racial needs. Parents who remain in this stage fail to comprehend the potential transformations of their own White identity.

For White parents, adopting across the color line is a conscious decision.²¹⁹ Despite this deliberate effort to create a hybrid family, for many, racial blindness remains. Adoptive parents have the power to make complex choices that influence how their child may develop racial identity and self-esteem. The present laws seem to permit adoptive parents to choose deliberate blindness to racial difference or deny the recognition of racial identity. They may choose to appropriate the cultural manifestations of one race without directly addressing the full meaning of that racial identity.²²⁰ Or, they may choose wholesale adoption of a different racial identity for the parent only, the child only, or for both.

As the WRID Model demonstrates,²²¹ these types of parental choices reflect a pre-encounter state of racial awareness. Most constructions of racial reality depend on whether people can be placed in a pre-encounter stage with respect to racial relationships or somewhere along a post-encounter continuum.²²² The question remains whether White parents possess the potential to progress beyond the pre-encounter stage of colorblindness or racial recklessness in the development of their own White identity.

B. Encounter and Disorientation

I looked forward to that time of camaraderie shared by mothers out with their babies. In the past I had often approached mothers with infants and joined in the admiring

218. See *supra* discussion Part II.B.

219. See, e.g., Bartholet, *supra* note 137, at 1169–70 (“In choosing which line to join, I had to think about race, and to think on a level that was new to me. I had to try to confront without distortion the reality of parenting someone of another race—since the child and I would have to live that reality. I had to decide whether I wanted a child who was a racial look-alike or not. . . . And then when I finally did adopt I began life as part of a Peruvian-American family, part of a brown-skin/white-skin, indian-caucasian mix of a family.”).

220. See, e.g., Alan Silverman, *The Future of Children*, 1 ADOPTION 108, 110 (“Eighteen [transracial] families (60%) lived in predominantly [W]hite communities, and their children attended predominantly [W]hite schools. Racial differences were rarely discussed at home, and the children felt that they had little in common with [B]lacks and had no desire to associate with them.”).

221. See *supra* notes 91–100 and accompanying text.

222. See generally CROSS, *supra* note 24, at 190–223 (discussing the five stages of the BRID Model: Pre-encounter, Encounter, Immersion-Emersion, Internalization, and Internalization-Commitment).

coos and talk that typically occur when a baby is present. Even without a baby in tow I would receive broad smiles from the mothers who loved to hear what they already knew—that their babies were wonderful. Conversations would ensue because of my praise of their child.

With Ryan it was different. The first time I approached a group of [W]hite mothers, [W]hite babies and multi-colored strollers I began to learn about silence and the emotions it could evoke. Ryan looked adorable. Their children looked adorable. I smiled and said hello. No response. No smiles, no overtures of praise, no manifestation of welcome whatsoever. As I continued my effort by praising the cute babies, the mothers seemed to move physically closer together, closing ranks: lips tightened, eyes narrowed, they looked as if they feared I would snatch their babies in order to get one of my own kind.²²³

The encounter stage for White adoptive parents involves jarring interactions to their own or other Whites' pre-encounter norms.²²⁴ The parents, according to the WRID Model, may either refuse to integrate the discordant experiences or transition into a more integrative stage of the WRID Model.²²⁵ This segment of the model describes the progression from initial disruptive encounters to anger and denial and eventually to a reformation of White identity.²²⁶ The research studies tend to merge a number of different descriptive phases within this category.²²⁷

223. McDONALD, *supra* note 85 (manuscript at 43–44) (italics added); see also SHARON RUSH, *LOVING ACROSS THE COLOR LINE* 66–69, 74–75 (2000) (describing teacher's silence when a Black child should have been placed in an advanced class and teacher's refusal to recognize the effect of placing the one Black child's exhibit out of view during parental visits); WOLFF, *supra* note 86, at 148 (“*But we cannot make Ari our biological child, we cannot recolor ourselves to match, and we cannot turn the world into a place where biology and color don’t matter.*”); Bartholet, *supra* note 137, at 1170 (“As the months go by I begin to hear troubling comments. ‘Oh, he’s from Peru. I didn’t know they came that dark there. . . . But he really seems to be doing very nicely.’ I realize that I need to develop responses for the things people will say to him and in his presence.”); cf. REDDY, *supra* note 86, at 157 (“Thus, although [W]hite women can never live [B]lack women’s lives in racist society, and therefore cannot engage in many of the practices that structure [B]lack women’s thought, [W]hite women *can* learn how that thought works, can attend to the practices from which it arises, and can take account of it in our own ways of thinking.”).

224. See *supra* Part III.

225. See *supra* Part III.

226. The description includes stages of dissonance, resistance, and immersion, SUE & SUE, *supra* note 96, at 114–15, or “disintegration” and “reintegration,” Helms, *supra* note 120, at 49, 58–61. See also O’Donoghue, *supra* note 93, at 79.

227. See SUE & SUE, *supra* note 96, at 114–15; Helms, *supra* note 120, at 49, 58–61; O’Donoghue, *supra* note 93, at 79.

From a legal perspective, the broadness of this stage fails to enunciate the incremental development of parental racial fitness. In order to highlight this second stage, the component parts of the process involved need further explication, at least with respect to transracial adoptions. Further scientific studies providing this breakdown would offer more comprehension of this critical phase. Interracial convergence, which we define as the deliberate occupation of the evolving boundary between Black and White, requires a more rigorous sociological and legal examination of the unique challenges posed at the stages of 1) initial racial disorientation, 2) awareness of repetitive racial incidents, and 3) reckoning with privilege. Successive stages in our proposed model of interracial convergence require further sociological studies to build upon these critical initial experiences.

1. Initial Racial Disorientation

The baby-stroller experience described above illustrates the encounter stage. Old expectations of camaraderie amongst new mothers quickly disappear. In these disorienting experiences, a new silence jars against the White adoptive mother's consciousness.²²⁸ Becoming a parent of a Black child activates a steep learning curve about racial dissonance.²²⁹ Experiences of disorientation resound with other White mothers of Black children.²³⁰ In a dizzying array of events, ugly encounters, and conversations, the parent begins to realize the reality of racially motivated incidents.²³¹

At the start of our first conversation, Sammie recalled an elderly woman calling her [W]hite trash in the checkout line at the grocery store as she stood in line with her Biracial son. Carol recollected an encounter when her daughter was a baby and a car pulled up next to her in a parking lot. Once the woman in the other car saw her daughter in the back seat, the stranger yelled, "You bitch, nigger lover," and aggressively followed Carol in the car. Elaine noted a time that her husband was told that 'those kind' like their Black daughter

228. See Margaret Brining, *Moving Toward a First-Best World: Minnesota's Position on Multiethnic Adoptions*, 28 WM. MITCHELL L. REV. 553, 583 n.105 (2001) ("[S]ome parents who have adopted transracially [note]: 'Race matters.'" (quoting GAIL STEINBERG & BETH HALL, *INSIDE TRANSRACIAL ADOPTION 9* (2000))).

229. See *id.* ("When those parents are [W]hite and lack first-hand experiences with racial bias and stereotyping directed towards them, their learning curve to understand and anticipate their children's life experience is likely to be a long one." (quoting STEINBERG & HALL, *supra* note 228, at 9)).

230. See *id.*

231. See *id.*

were not allowed toilet privileges on the premises. Karen felt uneasy when her family was seated in the back of an empty restaurant. Leslie continued to dislike the bagger at her local grocery store who insisted on asking, "Is she Black or White, what is she?" when encountering her Biracial daughter. Church members voted about whether to retain one mother and her husband as leaders in the church when they first adopted their Biracial child, eventually deciding in their favor.²³²

Hurtful incidents as experienced by these mothers conflict with their prior knowledge and expectations of race.²³³ The euphoria of forming a new family may cloud the reality of racial difference until the occurrence of the first disorienting experience.²³⁴ Realizing the inadequacy of her knowledge, the White adoptive parent should recognize that protecting a Black child requires a new parental response. White adoptive parents may gradually perceive the wave of difference that assaults them in daily life as they unconsciously pass back and forth across racial boundaries.²³⁵ Once overt racial acts occurred in the story above, the White adoptive parents "questioned situations and scenarios for racial undertones."²³⁶

From a legal perspective, this response potentially justifies inquiry into racial attitudes that foster the best interests of the Black child.²³⁷ Legal scholars as well as social-science scholars conclude that individuals view their lives based on preconceived, and often unconscious, ways of processing information.²³⁸ These

232. NORA ROSE MOOSNICK, *ADOPTING MATERNITY: WHITE WOMEN WHO ADOPT TRANSRACIALLY OR TRANSNATIONALLY* 116–17 (2004).

233. *See id.* at 117.

234. *See id.*

235. *Id.*

236. *Id.*

237. *See* Charles R. Lawrence, III, *The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317, 317–18 (1987) (describing the effects on a young, Black student of stereotypical images contained in a book).

238. *See, e.g., id.* at 318. This ground-breaking work on "unconscious racism" challenged the idea that the law should only prohibit intentionally-based racism on an understanding of how unconscious stereotypes work to produce the harm of discrimination. *See id.* at 318–20. According to Lawrence,

[m]uch of one's inability to know racial discrimination when one sees it results from a failure to recognize that racism is both a crime and a disease. . . . This failure is compounded by a reluctance to admit that the illness of racism infects almost everyone. . . . Acknowledging and understanding the malignancy are prerequisites to the discovery of an appropriate cure. But the diagnosis is difficult, because our own contamination with the very illness for which a cure is sought impairs our

cognitive processes reflect stereotypes of categorization²³⁹ that organize human comprehension of the outside world.²⁴⁰ Here, stereotypes persist until a disorienting event challenges the cognitive authority of the categorization. In direct opposition to this standard categorization, consciousness of this pervasive mindset gradually reformulates information held in previously unconscious stereotypes.²⁴¹ Until the categorization is modified to include the new information, for example, that White mothers of White children may not be as pleased to engage a White mother with a Black baby, the White mother is not prepared to develop strategies to protect her child and herself in the event of repeated occurrences of this type of behavior.

Disorientation results from the dissonance of behavioral observations and cognitive expectations. For White adoptive parents, new challenges to expected patterns of behavior may reorient their subjective position with successive repetitions of racially charged incidents. The aberration of the first instance leads to confusion, but the White parents may resolve the racial meaning of the second, third, and fourth occurrences.

comprehension of the disorder.

Id. at 321; see also Richard Delgado, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279, 2294 (2001); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 949 (2006); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Employment Discrimination Law*, 27 STAN. L. REV. 1161, 1161–64 (1995). Krieger and others utilized interdisciplinary theories in the new field of social cognitive neuroscience to identify the possibilities of cognitive behavior modifications that could lead to dismantling previous subconscious stereotypes. See Greenwald & Krieger, *supra*, at 962. Krieger is interested in this application to employment discrimination theories in law. See *id.* at 965–67.

239. See Greenwald & Krieger, *supra* note 238, at 949; Krieger, *supra* note 238, at 1187.

240. See Krieger, *supra* note 238, at 1188–89. For Krieger, stereotypes operate to simplify and categorize complex data, and occur throughout the processing of information. See *id.* This categorizing can be, and often is, unconscious and unintentional. See *id.* Critics of this work, as it is applied to the area of discrimination theory, note that this could provide an excuse for discrimination and may remove the element of responsibility for racism. See Olatunde C. A. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374, 380 (2007); Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the “Cluelessness” Defense*, 7 EMP. RTS. & EMP. POL'Y J. 401, 440–41 (2003).

241. See Williams, *supra* note 240, at 440; Greenwald & Krieger, *supra* note 238, at 964.

2. Awareness of Repetitive Racial Incidents

"I think it is so wonderful of you to be doing this."²⁴² White parents of Black children often hear remarks like this.²⁴³ The repetition of this statement by other Whites raises a red flag.²⁴⁴ A seemingly innocuous remark assumes new meaning from this additional racial vantage point. White parents of White children often hear: "How lucky you were to be able to adopt a child."²⁴⁵ Unlike with the White-on-White family, others view the transracial parents' adoptive luck as benevolent charity. Repeated experiences of differential praise force these parents to contemplate and actively address these kinds of responses.²⁴⁶

242. MCDONALD, *supra* note 85 (manuscript at 43).

243. *See id.*; cf. RUSH, *supra* note 223, at 24 (describing her growing awareness of the nature of repetitive comments assuring her that the child did not look Black).

244. *See* MCDONALD, *supra* note 85 (manuscript at 43); cf. WOLFF, *supra* note 86, at 131 (saying she is offended when people call her adopted Black son "brother" or ask him if he will be a professional basketball player when he grows up). Cognitive psychology studies note that attention to repetitive information that jars with preconstructed categories of information processing may change those categories. *See* Krieger, *supra* note 238, at 1188-90. Counseling psychologists report that sudden jarring information may push the individual toward change by paying attention to subtly hostile acts, or "microaggression," previously ignored. Anderson J. Franklin, *Invisibility Syndrome and Racial Identity Development in Psychotherapy and Counseling African American Men*, 27 COUNSELING PSYCHOLOGIST 761, 779 (1999).

245. MCDONALD, *supra* note 85 (manuscript at 43).

246. Janet K. Swim et al., *Experiencing Everyday Prejudice and Discrimination*, in PREJUDICE: THE TARGET'S PERSPECTIVE 37, 38-39 (Janet K. Swim & Charles Stangor eds., 1998). The authors cite studies to demonstrate that people who experience discrimination learn to anticipate and strategize how to deal with the prejudice.

[I]ndividuals can engage in proactive coping Proactive coping includes the anticipation of stressful events and preparations to prevent or mute the effects of the stressor. . . . [T]argets can use their knowledge and awareness of when, where, by whom, and in what manner prejudice is most likely to occur in order to assess the likelihood that they will encounter prejudice in particular situations and to structure their interactions and environment to minimize or avoid the hurtful aspects of encountering prejudice and discrimination.

Id. Research studies also show how people decide whether they are the victims of prejudice.

Part of the experience of being a frequent target of prejudice is deciding whether particular events are indicative of prejudice or discrimination. . . . [T]he first step in the assessment of events [is] deciding whether an event is acceptable. If the event is not perceived to be acceptable then the person decides whether there are acceptable excuses for the behavior or a specific event and whether the behavior can be attributed to the target's ethnicity.

Id. at 44. The authors noted, however, that there are few studies on the frequency of these experiences. *Id.* at 46.

White parents may grow receptive to changing considerations of racial boundaries, culture, and life. Daily affirmations, or reminders, of their connection to their Black child surface in interactions with those who challenge the racial status quo.²⁴⁷ The parental instinct to protect the child from harm emboldens the parent with a newly acquired awareness of the impact of these seemingly innocuous encounters.²⁴⁸ Successive occurrences of incidents, both harmful and uncomfortable, may assist the White parent's development of "coping strategies".²⁴⁹ One researcher who studied White biological mothers of biracial children describes the person in this stage as one who "is forced to deal with inconsistencies or experiences that are at odds with . . . her denial of race. . . . and to examine his or her own values."²⁵⁰ Stemming from these lessons learned, the parent may choose to avoid such encounters or seek advice and support from allies.²⁵¹

3. Reckoning with Privilege

Rob got up to answer the doorbell. His friend, a guy who played ball on one of Rob's many adult softball teams, arrived. He had offered to save Rob money on the repair by fixing the dishwasher on his free time. It was a great favor from the "friend."

*I stayed in the living room, happily out of the conversation about hoses and dispensers, but gradually the ugly words spoken by the "friend" filtered into my consciousness. He told a "joke" about "slicing up a nigger's prick like so many polish sausages." I heard the strain of momentary silence followed by a nervous laugh from my brother. I could feel myself start to tremble.*²⁵²

247. See MCDONALD, *supra* note 85 (manuscript at 42–45); WOLFF, *supra* note 86, at 130–32.

248. See WOLFF, *supra* note 86, at 133.

249. See Vonk, *supra* note 28, at 251; Ruth-Arlene W. Howe, *Redefining the Transracial Adoption Controversy*, 2 DUKE J. GENDER L. & POL'Y 131, 133 (1995). Primarily, the term "coping strategies" refers to the racial adjustment of African-American children, and the inability of White adoptive parents to impart this knowledge. See *id.* at 160 ("It would appear that 'a loving home' and 'loving parents' may not be enough within a society such as ours where diversity and difference are not honored, but denigrated. More care, not less, needs to be given to assessing the appropriateness of placing a Black child with parents of another race."). Here, we apply the term to White parents. See Washington, *supra* note 132, at 46 (describing parental responsibility to help Black children learn about racial difference).

250. O'Donoghue, *supra* note 93, at 79.

251. See *id.* at 78–79.

252. MCDONALD, *supra* note 85 (manuscript at 90) (italics added). For another

Some White parents choose to ignore the dissonance and remove their new perceptive lenses as long as possible, perhaps forever. But the Black child discovers color differences whether or not the parents choose colorblindness.²⁵³ In the return to the pre-encounter stage, even silence represents a decision. For others, shame²⁵⁴ and discomfort incite increased racial consciousness or a “progressive [W]hite identity that is psychologically centered and capable of acting in opposition to racist activity.”²⁵⁵ At this point, the White parent approaches a level of racial consciousness that brings her in theoretical kinship with traditional racial passers. In this shared space, White-appearing but Black-leaning persons exist upon unsettled racial ground.²⁵⁶ They have no choice but to reject or integrate.

Interracial convergence in the context of White parents and Black children must be a deliberate, color-conscious choice and activity. The responsible mother needs to acknowledge the racial privilege that separates her from her child. When she is with her child, frequently, but not always, she loses some previously assumed privileges of Whiteness. When she is not with her child, she receives the old privileges from White strangers. These choices confront the converger every time she crosses the invisible boundary that identifies her as a White woman or a White woman with a Black child. The invisible ability to remain silent when viewed as a privileged White person separates her from her child of color.²⁵⁷ At times, the converger finds temptation in the ever-

story about a visitor’s racist insults, see RUSH, *supra* note 223, at 89–91, 153–55.

253. See *supra* text accompanying note 85.

254. Joe L. Kincheloe & Shirley R. Steinberg, *Addressing the Crisis of Whiteness: Reconfiguring White Identity*, in WHITE REIGN: DEPLOYING WHITENESS IN AMERICA, *supra* note 118, at 3, 10–14 (explaining shame as either a rejection of White identity and elevation of non-White cultures or an adoption of a reactionary form of right-wing identity).

255. *Id.* at 10.

256. See France Winddance Twine, *Racial Logics and (Trans)Racial Identities: A View from Britain*, in MIXED MESSAGES: MULTIRACIAL IDENTITIES IN THE “COLOR-BLIND” ERA 217, 217–32 (David L. Brunsma ed., 2006) (describing the racial identification of White mothers of biracial children).

257. In Margaret O’Donoghue’s study of White mothers of biracial children, one mother said:

The whole aspect of realizing that Whiteness carries privilege was phenomenal to me. There’s definite privilege to being White, and I only recognized that privilege when I was with my kids and realized I was not getting privileges. I was not afforded certain niceties; I just wasn’t given certain considerations when I was with my children. And then, on the other hand, which never happened before, if I was dealing with an African American service person, I always got little extras, once they saw my kids.

present ability to revert to the privileged White world for a moment of guilty rest.

For White adoptive parents of non-White children, this may mean rejecting any form of "converging" activity or, more likely, adopting a pseudo non-White identity. Like the traditional passers who rejected their Black identity by believing that they had become White, these individuals adopt a psychological identity as non-White.²⁵⁸ The researchers describe the possibility that, at this stage, a person may experience a "White liberal syndrome," which results either in "a paternalistic attitude toward or an over-identification with another group."²⁵⁹ Studies have demonstrated that members of the other group reject such over-identifications, which leads the person "either back to the protective confines of the White culture or to the next stage."²⁶⁰

The decision to identify closely with another racial group exposes the converger to an alternative racial consciousness. For everyone—not only for herself and her child—she must attempt to imagine the world as it would affect Black people beyond her child. By connecting individual experiences with larger patterns of racial hostility, the adoptive parent begins to comprehend racial incidents beyond her own realm of privilege.²⁶¹ Traversing beyond havens of White safety brings her toward political empathy with Black people in a way that the majority of Whites fail to understand.²⁶² With growing identification, she may begin to

... So, yes, through the kids, I had to confront my Whiteness. . . . But, you are; when you are by yourself, you still have that little passport, you know, that invisible passport that gets you in everywhere, but you just never think of anything the same again.

O'Donoghue, *supra* note 93, at 77; see also REDDY, *supra* note 86, at 5 ("I don't think a [W]hite person can really *assimilate*; the color line doesn't work that way. I'm still [W]hite. I think I stand on the color line itself, not on one side of it. Or maybe I'm like a bridge, stretching across the line, touching both sides, but mostly in the middle somewhere." (quoting a friend)); RUSH, *supra* note 223, at 5 ("The years with my daughter, however, reveal that being a White person of goodwill is not good enough in the struggle to achieve racial equality. Sometimes I am powerless to mediate the racial incidents involving my daughter.").

258. O'Donoghue, *supra* note 93, at 79.

259. *Id.*

260. *Id.*

261. See *id.* at 76–77.

262. See LAZARRE, *supra* note 86, at 65 ("[My son was] frequently stopped by the police and asked to identify himself though he was doing nothing suspicious or wrong. He was frequently 'mistaken' for a mugger, a thief, a troublemaker of some kind."); RUSH, *supra* note 223, at 111–12 (recalling when an elderly White lady at an airport accused her six-year-old of stealing her purse); THOMPSON, *supra* note 86, at 58–59 ("So who am I protecting, except myself, by turning off the audiotape

understand the meaning behind bell hooks's statement. "All [B]lack people in the United States, irrespective of their class status or politics, live with the possibility that they will be terrorized by [W]hiteness."²⁶³

C. Augmenting a White Racial Identity

*This kind of understanding changes everything. Only when I became [B]lack by proxy—through my son, through my daughter—could I see the racism I had been willing to tolerate. Becoming [B]lack, even for a fraction of an instant, created an urgency for justice that I couldn't feel as only a [W]hite man, no matter how good-hearted.*²⁶⁴

The latter stages of the WRID Model²⁶⁵ involve a gradual confidence about racial identity as well as commitment to

of A Lesson before Dying when Adrian is with me? So much I need to know. I feel wobbly in the knees, wanting so much to be up to the task, looking to those around me for help, overwhelmed when I can't find it."); MCDONALD, *supra* note 85 (manuscript at 97) (describing the failure of White people on the beach to come to the aid of a two-year-old Black child); *id.* (manuscript at 101) (recalling an incident when her three-year-old was called "mother-fuckin' nigger"); *id.* (manuscript at 145) (describing an early experience of police brutality toward house cleaners); *id.* (manuscript at 174) (recounting an incident when her eleven-year-old son followed her into a real estate office and was assumed to be a potential robber); *id.* (manuscript at 175–78, 385–86) (describing death and dangers for Black male teenagers and the need to develop strategies to protect them); *see also*, Twine, *supra* note 256, at 217–32 (recounting experiences of White parents of African-descent children).

263. Nelson M. Rodriguez, *Emptying the Contents of Whiteness: Toward an Understanding of the Relation between Whiteness & Pedagogy*, in WHITE REIGN: DEPLOYING WHITENESS IN AMERICA, *supra* note 81, at 31, 49.

264. HARRINGTON, *supra* note 86, at 447 (italics added); *see also* RUSH, *supra* note 223, at 5, 165 ("Until a few years ago, I thought I had already crossed the [color] line many, many years ago. My 'slowness in getting it' doesn't reflect my lack of intelligence or concern for racial equality It took a long time to understand how pervasive racism is because there is so much denial about it that denial becomes a part of a White person's psyche—especially with each generation that is further and further removed from the days of slavery and Jim Crow."); WOLFF, *supra* note 86, at 128–29 ("The assumption of my [W]hiteness bothers me, because I can no longer look at the world with the presumption that things are 'right.' What I see is the false, [W]hite premise upon which standards of goodness and normalcy are based. For me, now, the world is forever askew; something is missing. It has always been missing, but I previously lacked the personal stake that is prerequisite to racial enlightenment.").

265. *See generally* SUE & SUE, *supra* note 96, at 104–07 (describing the introspection and integrative awareness stage of identity development); Helms, *supra* note 120, at 49, 61–62 (discussing the Pseudo-Independent stage of identity development); O'Donoghue, *supra* note 93, at 80–81 (describing Level 3 of White racial identity of mothers of biracial children); Rowe et al., *supra* note 93, at 142–43 (discussing the integrative type of White racial consciousness).

integrate and respect the racial identity of others.²⁶⁶ At this point, “[a] nonracist White identity begins to emerge,” a stage where Whites have “a secure, confident sense of themselves as members of a White group and [do] not feel defensive about being defined as White.”²⁶⁷ For the active converger, a slow but dynamic transformation occurs daily. As the White adoptive parent becomes self-conscious about racial privilege, the response from some non-Whites begins to change. Between previous race strangers, trust and respect begin to flow. In this mutuality of growth, the converger embarks upon a difficult journey that offers a new sense of community. Here, the parent obtains stronger convergence skills and incentives and new opportunities to protect and nourish her child’s sense of belonging and well-being.²⁶⁸

Efforts to shed privilege and live with true dignity for self and others help the converger forge a healthier version of White identity.²⁶⁹ Adoptive parents working toward this goal attempt to shed the false accoutrements of privilege that have formed Whiteness as an identity of power.²⁷⁰ In a critique of the colorblind ideal, Nelson Rodriguez argues that White people have emptied the contents of Whiteness, rendering the concept of White racial identity as nonexistent.²⁷¹ White individuals must look back “to provide a way, an inroad, to know (name) [W]hiteness itself in relation to one’s own identity politics, as well as to provide a strategy for fighting assimilation and forgetfulness”²⁷² They must address the oppressive existence of Whiteness before changing their own identity into something else. Only in this way, according to Rodriguez, can White people inject new meaning that is “antiracist, anti-homophobic, and anti-sexist.”²⁷³ Interracial convergence does not adopt a pretend identity that approximates traditional racial passing; rather, it engages the passer in the conscious rehabilitation of Whiteness.²⁷⁴ At this point, if it is not

266. See O’Donoghue, *supra* note 93, at 80–81.

267. *Id.* at 80.

268. See Washington, *supra* note 132, at 42.

269. See O’Donoghue, *supra* note 93, at 76–77, 80–81.

270. *Id.*

271. See generally Nelson Rodriguez, *Emptying the Contents of Whiteness: Toward an Understanding of the Relation Between Whiteness & Pedagogy*, in *WHITE REIGN: DEPLOYING WHITENESS IN AMERICA*, *supra* note 81, at 31, 31–60.

272. *Id.* at 49.

273. *Id.* at 33.

274. All White parents who adopt Black children are at different stages of this process: either remaining in the pre-encounter stage forever, moving to the recognition of repetitive dissonance and loss of privilege, or entering some phase of

too late, the White adoptive parent may serve the best interests of the Black child.

Conclusion: Interracial Convergence

They began dating . . . but her doubts about a long-term relationship continued. That changed . . . when she was invited to visit with [his] multicultural family at their home (Some of his siblings are Asian, others [B]lack or [W]hite, and among them are several with serious handicaps.)

. . . .

At one point, she and [his mother] were speaking about the racial composition of Bridgewater, [she] recalled. "She said to me, 'We're one of only two [B]lack families in Bridgewater.' And I looked at this woman with her blond hair and blue eyes and I laughed, and then suddenly she realized what she had said, and she started laughing, too."²⁷⁵

Current adoption law mandates colorblindness.²⁷⁶ This legal ideal of downplaying race ignores cultural, societal, and economic allocations of inequities and privileges. It preserves the privileged White perspective exemplified in the "pre-encounter" stage²⁷⁷ rather than the perspective of those who suffer the harms.²⁷⁸ This benefits the rights of prospective parents seeking to adopt Black children. Although MEPA/Section 1808 purportedly addressed the problem of vast numbers of minority children in foster care, it ignored the parental responsibilities of raising a Black child. Effectively, the colorblind law permits racially insensitive parents to adopt transracially without scrutiny of their potential to meet the child's best interests. A return to the original principles of MEPA would recognize the disconnect between the pre-encounter stage and a more integrative stage of understanding difference.

A more inclusive understanding of the development of White

integrative and committed confidence of their own White identity. See O'Donoghue, *supra* note 93, at 77–81. No one ever finishes this work. Sharon Rush suggests that for those who form intense emotional bonds, like those experienced by some in parenting, "transformative love" goes beyond "empathy" and imposes both the joys and the devastating emotional pain of seeing the effects of racial inequities inflicted on your child. RUSH, *supra* note 223, at 168–72.

275. Shannon Donnelly, *Téa Graves & Matthew Previn*, N.Y. TIMES, Aug. 3, 2003, at 9 (italics added) (recounting the engagement of Ms. Graves, an attorney, to Mr. Previn, also an attorney and the son of actress Mía Farrow).

276. See *supra* text accompanying notes 171–176.

277. An example of this is affirmative action. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 538 U.S. 959 (2003).

278. See Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, *supra* note 124, at 63, 63.

racial identity would allow some, but not all, White parents to adopt transracially. Evidence suggests that the parental approach to transracial adoption affects the child's racial identity.²⁷⁹ As demonstrated in the model of identity development in White adoptive parents, both parents and child may progress through different stages of racial awareness.²⁸⁰ These latter stages of development approach the standards of fitness supported by the NABSW, which categorically assumes the racial competence of all Black adoptive parents. Concomitantly, according to this position, White adoptive parents cannot recognize the racial needs of Black children.²⁸¹ This overinclusive stance fails to account for the overlap between those Black and White people who occupy a similar racial space.

Convergers and racial passers meet in this grey zone. Both passers simultaneously look and feel White and non-White. In traversing racial boundaries, they live a double life that leads them to reconsider the inviolability of White racial privilege. As critical observers, they constantly adjust their actions and reactions to make sense of the assaults of racial dissonance. Jolted out of the pre-encounter stage by the repetitive nature of disorienting experiences, the White adoptive parents may or may not begin to reckon with racial privilege. The critical comprehension of difference propels some into a new understanding of their own racial identity.

Preventing Whites from transracially adopting unfairly denies Black children lingering in foster care of a loving home. Opponents of race matching denounce the practice not only as a racial restriction on family formation, but also as a schematic disintegration of racially mixed families.²⁸² However, the

279. See *supra* text accompanying footnotes 196–203.

280. In the child's infancy, the parent may exist in the pre-encounter stage. But, as the child becomes more aware and enters the encounter stage of Black identity development, the pre-encounter parent may deny or reinterpret the validity of the child's disquieting experiences with resultant double injury to the child.

281. See *supra* text accompanying notes 143–151.

282. See, e.g., Hawkins-León, *supra* note 132, at 1267 ("Race-matching violates state and federal civil rights laws, as well as constitutional guarantees against racial discrimination. African American children are stigmatized as hard-to-place because same-race matching policies *make* them hard to place and jeopardize their opportunity for permanent placement. . . . [MEPA/Section 1808] successfully 'repudiates the antiquated White-supremacist notion that the mixing of races should be prohibited' and replaces it with the notion that '[a]doption is about matching a parent to a child, not a parent to a race.'" (alteration in original) (quoting Douglas R. Esten, *Transracial Adoption and the Multi-Ethnic Placement Act of 1994*, 68 TEMP. L. REV. 1941, 1980 (1995); R. Richard Banks, *The Color of Desire: Fulfilling Adoptive Parents' Racial Preferences Through Discriminatory*

colorblind mantra of "love is enough" arrogantly dismisses the importance of critical race thinking amongst White adoptive parents. It stubbornly refuses to affirm the responsibility of White parents to address the vulnerable needs of children of color. Raising Black children demands recognition, development, and protection of their unique social standpoint. In an effort to promote and develop Black racial pride in adoptive children, proponents of race matching relentlessly insist on a strict limitation of Black children to Black homes. This rigid demarcation forces an underinclusive categorization of prospective parents for Black children.

Convergers challenge the immutability of racial boundaries. Instead of absurdly positing the non-existence of race, or rejecting its social construction, performativity emerges as the critical indicator of racial affiliation. In this grey zone, interracial convergence offers an alternative conceptualization of the color line that extends beyond traditional roles of blood and biologism. This racial subversion relies on a color-conscious affirmation of difference rather than an empty adherence to colorblindness.