

RECLAIMING SELF-DETERMINATION: A CALL FOR INTRARACIAL ADOPTION

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The wholesale marketing of Black children to suit the economic interests of others was one of the cruelest aspects of slavery. Sons and daughters who were traded away from their parents would later struggle in vain to remember their families, their customs, and their countries of origin. Even the extended families which evolved in the transient slave communities were continually fragmented as children and their caretakers were merchanted to different plantations according to the whims of White slavemasters.¹

Although due to quite different circumstances, today the Black community continues to lose its children. At present, government sponsored entities,² overlooking the potentially harmful consequences of transracial adoption,³ remove Black children from their communities through transracial adoption with Whites who are unable to secure children of their own race.⁴

Part I of this Note provides an overview of transracial adoption legislation leading up to the Multiethnic Placement Act (MPA) of 1994 and critiques the Act. Part II considers the effects of the transracial placement of Black children. This section focuses on the survival skills Black transracial adoptees would or would not acquire in a White home and the effect such an adoption may have on their racial identities and sense of community. Part III examines the current state of the law regarding the transracial adoption of Native American children. This section concludes that Black children should be accorded similar treatment, and moreover, that Black parents should be encouraged to adopt thereby diminishing the lengthy wait faced by adoptees.

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1. See generally NATHAN I. HUGGINS, *BLACK ODYSSEY: THE AFRO-AMERICAN ORDEAL IN SLAVERY* 154-82 (1977) (describing the effects of slavery on the Black family). The words "White" and "Black" are capitalized as proper adjectives in this Note because the author feels they most accurately describe two ethnic subsets in contemporary U.S. society.

2. This Note primarily addresses adoptions effected through government agencies or government sponsored entities, rather than private adoptions.

3. See Zanita E. Fenton, *In a World Not Their Own: The Adoption of Black Children*, 10 HARV. BLACKLETTER J. 39, 61 (1993).

4. See, e.g., JOYCE A. LADNER, *MIXED FAMILIES* 62 (1977) (discussing an increase in White parents' desire to adopt an infant of any race as the availability of White infants decreased); *Examining Barriers to the Adoption of Children: Hearing Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 103d Cong., 1st Sess. 71 (1993) (statement of William L. Pierce, Nat'l Council for Adoption) (explaining that in 1969, 38% of the children in the foster care system awaiting adoption are Black, but only 25% of children adopted from foster care are Black) [hereinafter *Hearings*].

I. TROUBLING DEVELOPMENTS IN TRANSRACIAL ADOPTION

Current adoption legislation presumes to shorten the delay that has heretofore plagued the adoption of a minority child, but a whole league of other problems remain unresolved. This section critiques current transracial adoption legislation in view of the history of the practice.

State sponsored transracial adoption garnered attention as it became increasingly widespread. In 1967, two state adoption statutes specifically prohibited transracial adoption.⁵ As social mores changed in the late 1960s and early 1970s, many Whites found it acceptable to adopt minority children.⁶ Transracial adoption became standard practice in many states as the supply of White infants decreased⁷ and Whites found themselves unable to secure children of their own race.⁸

In the early 1970s, Black and Native American children, among others,⁹ were being adopted out of their communities at alarming rates.¹⁰ The Black community mobilized to reclaim its lost children, and in 1972, the National Association of Black Social Workers (NABSW) issued a statement opposing transracial adoption under any circumstances.¹¹ Although the Congress

5. See *Compos v. McKeithen*, 341 F. Supp. 264 (E.D. La. 1972) (ruling that a Louisiana statute prohibiting transracial adoptions was unconstitutional); see also *In re Adoption of Gomez*, 424 S.W.2d 656 (Tex. Civ. App. 1967) (ruling that a Texas statute prohibiting transracial adoption violated of the Equal Protection Clause of the U.S. Constitution).

6. Margaret Howard, *Transracial Adoption: Analysis of the Best Interest Standard*, 59 NOTRE DAME L. REV. 503, 510-14 (1984) (discussing reasons for the increase in transracial adoptions during the seventies).

7. A study by the Alan Guttmacher Institute found that the rate at which unmarried White women give their babies up for adoption has decreased, while the same rate for unmarried Black women has remained constant. Tamar Lewin, *Fewer Children Up for Adoption, Study Finds*, N.Y. TIMES, Feb. 27, 1992, at A15.

8. Fenton, *supra* note 3, at 61.

9. This Note does not address the transracial adoption of Latino or Asian children, nor does it address intercountry adoption.

10. In 1969, over 1000 Black children were placed with Whites nationwide. In 1971, the number of such placements peaked at 2574 and the number of agencies reporting transracial adoptions increased from 345 to 468, from 1969 to 1971. DAWN DAY, *THE ADOPTION OF BLACK CHILDREN* 93 (1979). While 4486 Black children were adopted by Blacks in 1971, 2574 were adopted out of their communities into White homes. Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1179 n.27 (1991) (citing Jacqueline Macaulay & Stewart Macaulay, *Adoption for Black Children: A Case Study of Expert Discretion*, in 1 RESEARCH IN LAW AND SOCIOLOGY 265, 284-85 (1978)). Thus, over a third of all adoptions of Black children were adoptions out of their community. Before the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901-1963, 25% to 35% of all Native American children were adopted out of their tribes. Michael E. Connelly, *Tribal Jurisdiction Under Section 1911(b) of the Indian Child Welfare Act of 1978: Are the States Respecting Indian Sovereignty?*, 23 N.M. L. REV. 479, 480-82 (1993).

11. The statement provides, in part:

Black children should be placed only with Black families whether in foster care or for adoption. Black children belong, physically, psychologically and culturally in Black families in order that they receive the total sense of themselves and develop a sound projection of their future. Human beings are products of their environments and develop their sense of values, attitudes and self concept within their family structures. Black children in white homes are cut off from the healthy development of themselves as Black people. Our position is based on: 1. the necessity of self-determination from birth to death, of all Black people. 2. the need of young ones to

failed to respond to the concerns of the Black community, agencies decreased transracial placements of Black children.¹² Congress finally responded on a national level in 1978 by passing the Indian Child Welfare Act (ICWA), which promoted the placement of Native American children in tribal homes.¹³ In contrast to the federal statutory protection provided for Native American children, there was no national response to the concerns of the Black community. Currently, only a few state statutes safeguard the interests of Black children by expressly dictating a preference for their placement with Black parents.¹⁴

Some state legislatures have gone in the other direction and adopted statutes prohibiting the use of race as a determinative consideration in adoption proceedings.¹⁵ In Texas, for example, race may not be considered in the decision-making process unless a family of the child's ethnicity is immediately ready to adopt.¹⁶ Behind this legislation is the theory, claimed by proponents of transracial adoption, that preferences for the intraracial adoption of

begin at birth to identify with all Black people in a Black community. 3. the philosophy that we need our own to build a strong nation. . . . Included in the socialization process is the child's cultural heritage, which is an important segment of the total process. This must begin at the earliest moment; otherwise our children will not have the background and knowledge which is necessary to survive in a racist society. . . . We the participants of this workshop have committed ourselves to go back to our communities and work to end this particular form of genocide.

Howard, *supra* note 6, at 517-18 (quoting Postion Paper from the National Ass'n of Black Social Workers (Apr. 1972), reprinted in RITA J. SIMON & HOWARD ALSTEIN, *TRANSRACIAL ADOPTION* 50, 52 (1977)).

12. The number of Black children placed with Whites had fallen from 2,574 in 1971 to 831 by 1975. During the same time period, the number of agencies reporting adoptions increased from 468 to 565. DAY, *supra* note 10, at 93.

13. The Indian Child Welfare Act of 1978, 25 U.S.C. § 1915(a) (1988) ("In any adoptive placement of an Indian child under State law, a preference shall be given, . . . to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.").

14. E.g., CAL. FAM. CODE § 8708 (West 1994); MINN. STAT. ANN. §§ 259.28, 259.255 (West 1992). These two statutes require an attempt to place a child with relatives or with a family of the same racial or ethnic heritage before turning to other placement alternatives. Some state statutes, such as Washington's, require recruiting families for minority children, although not specifically Black families for Black children. WASH. REV. CODE ANN. § 74.13.031 (1982 & West 1995) ("Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children . . .").

15. See COLO. REV. STAT. ANN. § 19-5-104 (Bradford Supp. 1994); CONN. GEN. STAT. ANN. § 45a-727 (West 1993 & Supp. 1994); ILL. ANN. STAT. ch. 750, para. 50/15.1 (Smith-Hurd 1993); KY. REV. STAT. ANN. § 199.471 (Baldwin 1991); MD. CODE ANN., FAM. LAW § 5-311(b)(2) (1991 & Supp. 1994); MICH. COMP. LAWS ANN. § 710.22(B)(ii) (West 1993 & Supp. 1994); N.J. STAT. ANN. § 9:3-40 (West Supp. 1994); PA. CONS. STAT. ANN. § 23.2724(b) (1991). The language of these statutes, while not prohibiting the consideration of race in adoption proceedings, do not mandate that race will not be the determinative factor.

16. TEX. FAM. CODE ANN. § 16.081 (West Supp. 1995) provides that "the court may not deny or delay the adoption . . . on the basis of race or ethnicity of the child or the prospective adoptive parents." The practical effect of this statute, in some cases, may be that no effort whatsoever is made to place the child with a Black family unless that family is immediately available.

minority children delay placement. Courts have followed suit and are beginning to require that race play a diminished role in adoption decisions.¹⁷

The most recent entry in the transracial adoption fray is the Multiethnic Placement Act of 1994.¹⁸ Designed to reduce delays for Black adoptees, the Act provides:

an agency, or entity, that receives federal assistance and is involved in foster care placements may not (A) categorically deny to any person the opportunity to become an adoptive or 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 race, color, or national origin of the adoptive or foster parent, or the child, involved.¹⁹

At first blush, a later section of the Act seems to address the concerns of the Black community with regard to the transfer of Black children to Whites. Section 553(a)(2) provides that the agency may "consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents . . . as one of a number of factors. . . ."²⁰ However, when coupled with the previous section, the overall effect of the MPA affords these concerns little or no weight. The above language requiring no delay or denial in the placement of a child makes the Act's *modus operandi* one of "first come first served."²¹ First, under the MPA, when a White family is waiting to adopt there may be little or no effort to place a Black child with a Black family.²² Second, even if there is a Black family waiting to adopt, the MPA's requirement that race must be considered only in conjunction with "other factors" diminishes race's role while enlarging the role of factors that have traditionally excluded Black families from adopting Black children.²³

This two-fold effect of the MPA could be disastrous for Black families. The adoption process will not accord proper consideration to the role of race in adoption proceedings, thereby failing both Black children and Black parents who might not be given a fair opportunity to adopt.

17. See, e.g., *In re* Petition of R.M.G. & E.M.G., 454 A.2d 776 (D.C. 1982) (reversing a judgment permitting Black parents to adopt rather than White foster parents).

18. Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, §§ 551-54, 108 Stat. 3518, 4056-57 (1994) (to be codified at 42 U.S.C. § 5115a (1994)) [hereinafter MPA]. The bill was sponsored by former Sen. Howard Metzenbaum (D-Ohio) and passed into law October 20, 1994. Native American children are expressly excluded from the MPA. See *infra* note 65 and accompanying text.

19. *Id.* § 553(a)(1) (emphasis added).

20. *Id.* § 553(a)(2).

21. See also TEX. FAM. CODE ANN. § 16.081, *supra* note 16.

22. See Barbara Vobejda, *Legislation Fans Flames of Heated Interracial Adoption Debate*, WASH. POST, Mar. 19, 1994, at A4 (alluding to opponents of the MPA who say it will pressure states to place a child in the first available home without attention to cultural and racial dynamics).

23. For a discussion of these factors, see *infra* Section III.

II. THE SIGNIFICANCE OF CONSIDERING RACE

I was eight years old when my grammar school decided on a Civil War theme for our fifth and sixth grade musical production. They chose "Dixie" as one of the songs in the program. My mother was outraged and insisted that I would not sing. The night of the program, the other children happily sang while the eyes of the music teacher, my classmates, and their parents who had been told bore right through me and my sealed lips. I was more than a little self-conscious. I felt as if I had cast a cloud on everyone's parade. Still, I was proud of myself for not singing, and happy that my mother had cared enough to ask me not to.

I share this incident to illustrate the subtle quandaries one faces when parenting a minority child in a White dominated society. This story also exemplifies the indispensable role that Black parents assume in assuring the healthy development of Black children.

Three commonly noted components of healthy development include survival skills, identity, and sense of community.²⁴ This Section argues first, that whether or not transracial adoptees and their parents choose to recognize it, the formula for Black children's success differs from that of their White counterparts. Second, transracial adoption harms Black children by blocking the development of a healthy Black identity. For this reason, transracially adopted children are wrongly being called upon to bear the burden of creating a multiracial world. It will prove impossible for Black children to penetrate the racism of the dominant culture, and their interracial placement exacts too great a price. Finally, the Black community is harmed by the cultural deterioration that results from the removal of its children.

A. Survival Skills

Black parents impart to their children a code for survival in a White world that is often antithetical to Black interests. Proponents of transracial adoption dismiss the importance of these survival skills and point to other "skills" that Whites are in a better position to impart to Black children.²⁵ The implicit assumption underlying their view is that "survival" is nothing more than adapting to the dominant White culture. Under their reasoning, Whites are presumed to be in the best position to teach Black children how to "maneuver in the white worlds of power and privilege."²⁶

24. The Court of Appeals for the District of Columbia describes factors courts should consider in transracial adoption cases, all of which are components of a child's identity, including: "[a] child's sense of belonging in the family and community, the child's self-esteem and confidence, and the child's ability to cope with problems outside the family." In the Matter of R.M.G., 454 A.2d 776, 791-92 (D.C. 1982). See also LADNER, *supra* note 4, at 102-25.

25. See Bartholet, *supra* note 10, at 1222 (citing material advantages associated with having White parents); Kim Forde-Mazrui, *Black Identity and Child Placement: The Best Interests of Black and Biracial Children*, 92 MICH. L. REV. 925, 952 (1994) (drawing a parallel between the success of a transracial adoptee because the culture of the home is consistent with dominant culture).

26. Bartholet, *supra* note 10, at 1227; see also Forde-Mazrui, *supra* note 25, at 952.

This troubling assertion further implies that the material advantages possessed by many Whites will better assure a Black child's success than other assets that Black parents possess. Material or economic advantages, however, are not the equivalent of "coping skills." Teaching Black children how to "maneuver in circles of power and privilege" only helps these children if the single barrier to their entry into that world is a lack of the material assets more commonly held by Whites. In reality other barriers do exist, and, 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.²⁷ Within the dominant culture, for example, a Black teenage male is not free to walk or drive in a predominantly White neighborhood after dark, even if it is the teenager's own neighborhood.²⁸ A Black law professor must learn to rely on people other than their mostly White colleagues for institutional news or discussion of ideas, and must learn not to bristle when mistaken for a member of the school's cleaning staff.²⁹

Moreover, Black parents also teach their children when it is important not to accept the different norm society has imposed upon them. "Comfort and security" in their racial and cultural identity "are critical to the mental health of [Black] adults . . . [as they manage] the sometimes subtle racism" found in everyday life.³⁰ This security "must be learned from those who have developed survival skills based on this identity."³¹ Black parents teach their children when it is important for them, as Black people with a sense of self-esteem, not to accept different standards. During my school's musical production, for example, I could have "sung Dixie."³² I could have acquiesced in this affirmation of the White world, leaving my White teachers and peers with their comfort level intact. Certainly, acquiescing would have made me a more popular child at my Southern school. However, as a Black child, had I participated in the farce of "singing Dixie," my self-esteem and racial identity, something of great importance to my survival skills today, would have been irreparably damaged.

27. Marlon N. Yarbrough, *Trans-racial Adoption: The Genesis or Genocide of Minority Cultural Existence*, 15 S.U. L. REV. 353, 355 (1988) (listing media stereotypes and other negative reinforcements that Black parents must teach their children to overcome).

28. See generally Sheri L. Johnson, *Race and the Decision to Detain a Suspect*, 93 YALE L.J. 214, 214 (1983) (discussing a California statute requiring detention of "suspicious" persons which resulted in a law-abiding black man being stopped fifteen times in two years for walking through white neighborhoods).

29. In the supposedly enlightened law school setting, one survey reported such an incident. See generally Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989).

30. Letter from Lillian B. Lansberry, *Responses to "Where Do Black Children Belong?"*, 1 RECONSTRUCTION 46, 53 (1992). See also *In the Matter of B. Children*, 391 N.Y.S.2d 812, 814 (1977) (recognizing, in a ruling granting custody to Black parents, that the concept of "Black pride" is crucial to a child's adjustment in life and his place in the world).

31. Lansberry, *supra* note 30, at 53.

32. Being asked to "sing Dixie" could also be understood, in this context, as a metaphor for the general expectation that Blacks act in complicity with White cultural hegemony.

B. Identity

A strong Black identity is essential to the development of coping skills and cannot be discounted in considering placement politics. Yet, transracial adoption advocates assert that Black children survive well only to the extent they lose themselves within the dominant culture. Kim Forde-Mazrui claims that "[f]or transracial adoptees the culture of their home is identical or consistent with the dominant culture: 'acting white' comes naturally and, consequently, so does interpersonal or academic success."³³ In his view, it is of paramount importance that Black transracial adoptees assimilate with the dominant culture.³⁴ The fact that such adoptees are isolated from their own culture, or that they learn to measure interpersonal and academic success according to the standards of the dominant culture,³⁵ are regarded as unfortunate, yet irrelevant, byproducts of this process.

Proponents of transracial adoption interpret adoptees' reluctance to identify themselves as "Black" as evidence that they perceive race not to be a defining factor in their world.³⁶ Forde-Mazrui relates the following hypothetical:

[C]ompare two hypothetical people. When asked who they are, the first replies: 'I am a husband and a father, a writer, a teacher, and a musician. I am also Black. . . .' The second person replies: 'I am Black, I am a doctor; I am a mother, a wife. . . .' The first person may feel equally or more positive about being Black although he gives it less significance . . . [one] method to cope with a personal characteristic disfavored by society is to recognize its insignificance. . . .³⁷

While Forde-Mazrui asserts that *less* race consciousness would benefit Black children,³⁸ the unfortunate reality is that we live in a society in which race is still a primary point of judgment.³⁹ Racism remains prevalent in this country.⁴⁰ Even if Black people try to be colorblind, they will be viewed and judged first and foremost as Black people, and then, perhaps, as teach-

33. Forde-Mazrui, *supra* note 25, at 952.

34. *Id.*; *c.f.* *The Minnesota Transracial Adoption Study, A Follow-Up of IQ Test Performance at Adolescence*, 16 *INTELLIGENCE* 117, 117 (1992) (concluding that transracial adoptees when "reared in the culture of the tests and the culture of the school benefits [their] IQ scores and school achievements").

35. See, e.g., Stanley Aronowitz, *The Trap of Environmentalism*, in *THE NEW ASSAULT ON EQUALITY: I.Q. AND SOCIAL STRATIFICATION* 198, 199 (Alan Gartner et al. eds., 1974) (noting that IQ tests do not measure intelligences that are meaningful within the Black community, such as the capacity of the Black child to survive in the everyday life of the ghetto).

36. Bartholet, *supra* note 10, at 1218 (citations omitted) ("[S]ome transracial adoptees [describe] themselves as bi-racial or American or human, rather than black . . . they think race is not the most important factor in defining who they are.").

37. Forde-Mazrui, *supra* note 25, at 950.

38. *Id.*

39. See Yarbrough, *supra* note 27, at 355.

40. See generally *R.A.V. v. St. Paul*, 112 S. Ct. 2358 (1992); *State v. Plowman*, 838 P.2d 558 (Or. 1992); Brian Levin, *Bias Crimes: A Theoretical and Practical Overview*, 4 *STAN. L. & POL'Y REV.* 165, 171 (1993).

ers, musicians, fathers, or wives. Ignoring racism is an ineffective means of excising it from one's psyche.

While transracial adoptees may feel they are adjusting well to the culture into which they were thrust, in reality they pay a price in order to fit in. These adoptees must, in effect, "sing Dixie," and children can only act White for so long before they mourn that they are not White.⁴¹

Confronting racism with a "solidified Black self-concept" and an awareness of the subjugation of one's race may "counter-balance . . . negative role ascriptions that the dominant society assigns to Blackness in America."⁴² Given the dominant culture's general approval of Western European features as the standard of beauty, for example, it is doubtful that White parents recognize the need to instill Black children with a sense of pride in their physical appearance.⁴³ Would White parents stress to their daughter the importance, and often political significance, of not chemically altering her naturally kinky hair? Would the subconscious racism that even Elizabeth Bartholet concedes exists among White parents,⁴⁴ who are, after all, products of their White environment, allow hairstyle to be an issue? Would White parents assume the universality of their value system and view the chemical alteration of Black hair as an indicator of proper grooming habits? Would White parents dissuade their Black child from "singing Dixie"? In other words, would White parents see the importance of *not* wanting their child to fit in?

A strong Black identity is inextricably linked to the healthy survival of Black people in a society where Blackness is often given negative ascriptions. The refusal to acknowledge the centrality of one's race, under such circumstances, concedes to the power of these negative ascriptions through the mechanism of denial.⁴⁵ In order to counteract racism, one must view race not in neutral terms but in absolutely positive terms. For these reasons, a sense of Black identity, provided by the Black parents who are best able to inculcate it, is crucial to Black children's development.

41. See KENNETH CLARK, PREJUDICE AND YOUR CHILD 42-46 (1963) (discussing the results of the "dolls test," in which Black children preferred White dolls and stated that the Black dolls were lazy, stupid, or dirty, and the "coloring test," in which Black children colored fruits, leaves and mice correctly but colored themselves either a lighter shade such as yellow or peach, or a bizarre color such as green. Clark's tests revealed that Black children felt conflicted between the color they wished to be, White, and the color they were, Black.).

42. James S. Bowen, *Cultural Convergence and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interests of the Child*, 26 J. FAM. LAW 487, 527 (1987-88); see also Lansberry, *supra* note 30, at 53 (stressing the importance of adult role models of the same racial and cultural backgrounds so that children may gain comfort and security in their racial and cultural identity).

43. See Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. SOC. CHANGE 33, 63 (1994).

44. Bartholet, *supra* note 10, at 1249; see also LADNER, *supra* note 4, at xxii (describing a White couple who said that their adopted Black children's ability to dance well was hereditary and who allowed their friends to use the word "nigger" in the children's presence).

45. See Howard, *supra* note 6, at 517-18 (quoting Position Paper from the National Ass'n of Black Social Workers (Apr. 1972), reprinted in RITA J. SIMON & HOWARD ALSTEIN, TRANSRACIAL ADOPTION 50, 52 (1977)).

C. Community

Asserting that Black children should manage in a White world by becoming less conscious of their identity prioritizes assimilation over the preservation of a distinct Black culture. While it is difficult in our White dominated culture to be apprised of the cultural contributions of Blacks,⁴⁶ the Black community maintains its own set of family values, including collective responsibility, self-determination, and cooperative economics.⁴⁷ These values help define a communitarian Black society that can be contrasted with an individual rights based dominant society.⁴⁸

Transracial adoption's proponents value a multiracial society only to the extent that adoptees are able to put aside their Blackness and feel comfortable in a White world.⁴⁹ Many argue that deficiencies in upbringing, and not racism and White ethnocentrism, cause many Blacks not to readily assimilate. They suggest that Blacks reared in the dominant White culture succeed through assimilation.⁵⁰ However, while Black adopted children who assimilate may enrich White culture in a non-threatening manner,⁵¹ ultimately, their Black values disappear when they are antithetical to White values. Because the minority culture is the one that is commonly viewed as the subordinate, "additional" one, Black transracially adopted children bridge the gap between cultures by adapting to the norms of the dominant White culture.

Meanwhile, no one suggests Black parents adopt White babies to create the proverbial melting pot.⁵² Instead, transracial adoptions result only in Black children's loss of their own culture's values.

46. Even as schools integrated they ignored Black culture. "Dick and Jane" were given brown faces but retained their White middle class traits. Even today, to be acknowledged in textbooks, the contributions of individual ethnic minorities must satisfy "Anglocentric norms of acceptability." For example, Martin Luther King, Jr. is frequently discussed while Malcolm X is not. Additionally, as Black children are exposed to White institutions on field trips, White children are not correspondingly exposed to important institutions in the Black community. See Kevin Brown, *Do African Americans Need Immersion Schools? The Paradoxes Created by Legal Conceptualizations of Race and Public Education*, 78 IOWA L. REV. 813, 838-39 (1993).

47. These concepts, known in Swahili as Ujima, Kujichagulia, and Ujaama respectively, are three of the seven Swahili principles identified by Amiri Baraka as the core of the Black American value system. IMAMU AMIRI BARAKA (FORMERLY LEROI JONES), *7 Principles of US Maulana Karenga & The Need for a Black Value System*, in KAWAIDA STUDIES: THE NEW NATIONALISM 9, 9-10 (1972).

48. See generally ROBERT STAPLES & LEANOR B. JOHNSON, *BLACK FAMILIES AT THE CROSSROADS: CHALLENGES AND PROSPECTS* 194-220 (1993).

49. See *In the Matter of the Welfare of D.L.*, 486 N.W.2d 375, 378 (Minn. 1992) (citing the trial judge's denouncement of White attempts to accept Blacks only to the extent that they resemble the majority); Perry, *supra* note 43, at 79-81 (explaining that "colorblind individualism" is in fact a way to ignore the voice of the Black community).

50. Cf. Bartholet, *supra* note 10, at 1225 (pointing to one of the advantages to growing up transracially as being "uniquely comfortable in dealing with whites").

51. *Id.* at 1225 ("The parents tend to describe their lives as significantly changed and enriched . . . having developed a new awareness of racial issues.") (citations omitted).

52. As of 1979, one researcher found only four cases of agencies placing White children with Black families. DAY, *supra* note 10, at 99 (citations omitted).

While condemning opponents of transracial adoption for promoting community interests through the individual adoptee,⁵³ proponents of transracial adoption advocate the placement of the individual Black child with Whites as a form of social engineering designed to ease the tensions of an increasingly multicultural society.⁵⁴ In so doing, these children unknowingly take a small step towards the demise of Black culture. Assimilationist policies create a dominant monolithic norm rather than a true multicultural society, and even suggest cultural genocide.⁵⁵

III. A MODEL FOR THE BLACK COMMUNITY: THE INDIAN CHILD WELFARE ACT OF 1978

This section examines remedies aimed at reducing the placement of Black children in White homes.⁵⁶ The Black community, like the Native American community, deserves federal statutory protection which recognizes that Black adoptees' best interests include placement in Black adoptive or foster homes. Legislation protecting the Black community should incorporate methods to maintain the family unit including culturally specific parental fitness standards and comprehensive family service programs. In addition, adoption agencies must address the obstacles blocking Black families from formally adopting and reform the adoption system so that it retains Black families interested in adoption.

Blacks are not alone in having an interest in placing their children with members of their own community. Native American children are placed in tribal homes under federal law⁵⁷ and Catholic and Jewish groups have generally succeeded in obtaining the intrareligious placement of children.⁵⁸ Blacks' interest in intraracial adoption is similar to Native Americans' interest in such placement.⁵⁹ Consequently, the National Association of Black Social Workers proposed the National Black Heritage Child Welfare Act (BCWA) in 1986 as an amendment to the Indian Child Welfare Act of 1978 (ICWA). The BCWA used the ICWA as its "normative model" and mandated

53. Peter Hayes, *Transracial Adoption: Politics and Ideology*, 72 CHILD WELFARE 301, 305 (1993).

54. Rebecca L. Koch, *Transracial Adoption in Light of the Foster Care Crisis: A Horse of a Different Color*, 10 N.Y.L. SCH. J. HUM. RTS. 147, 175 (1992); see also Bartholet, *supra* note 10, at 1226 ("In a society torn by racial conflict, these [transracial adoption] studies show human beings transcending racial difference.").

55. Perry, *supra* note 43, at 73-75 (explaining that cultural genocide can be accomplished in small parts which, when considered as a whole and over time, will contribute to the total elimination of a culture).

56. Over a third of all adoptions of Black children were adoptions out of their community. See *supra* note 10.

57. Indian Child Welfare Act, *supra* note 13, § 1902.

58. Twila Perry, *Race and Child Placement: The Best Interests Test and the Cost of Discretion* 29 J. FAM. LAW 51, 114-15 (1990) (citing relevant histories of religious placement) (citations omitted).

59. See *infra* note 67 and accompanying text.

same race placements of Black children.⁶⁰ Unlike the ICWA, the BCWA never passed.⁶¹

The ICWA's primary purpose is to "protect the best interests of Indian children" by establishing standards for the placement of these children "in foster or adoptive homes which will reflect the unique values of Indian culture."⁶² By passing the ICWA, Congress recognized that the placement of Native American children within their ethnic communities is a socially and culturally desirable practice.⁶³ In addition, Native American children receive special consideration under the Multiethnic Placement Act (MPA),⁶⁴ as the ICWA is expressly excluded from its scope.⁶⁵

Black culture, though diluted by the ravages of slavery and racial apartheid, has survived as a distinct and rich culture⁶⁶ which both needs and deserves preservatory measures such as those afforded to Native American culture. In fact, many of the same social threats that fostered an increase in transracial adoption from the Native American community also exist in the Black community.⁶⁷

One threat to minority families is a declaration of parental unfitness which can lead to a child being taken from her family. Because poor minority families receive many state social services, social workers evaluate these families more often than they evaluate middle class families to determine parental fitness, suitability to adopt, and other similar matters. Social workers are likely to misreport child abuse and neglect in Black and Native American communities because parental fitness evaluations are based on cultural indications, such as the number of people living under one roof. These standards make minority families appear less fit than White families,⁶⁸ resulting in more minority families losing their children to social service agencies.⁶⁹

Culturally specific parental fitness standards would protect the interests of Black children in the foster care system by allowing Black parents to retain custody of their children if they live in a caring home, regardless of the fact that the home may not conform with the dominant White paradigm.

60. Yarbrough, *supra* note 27, at 360 n.30.

61. *Id.* at 360.

62. Indian Child Welfare Act, *supra* note 13, § 1902.

63. *Id.*

64. See *supra* notes 18-23 and accompanying text.

65. MPA, *supra* note 18, § 553(f) ("Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978.")

66. See *supra* notes 47-48 and accompanying text.

67. See generally Connelly, *supra* note 10, at 481-82 (citations omitted).

68. Pereta Rodriguez & Alan S. Meyer, *Minority Adoptions and Agency Practices*, 35 SOC. WORK 529, 530 (1990).

69. See Howard, *supra* note 6, at 505 (explaining that "a greater surveillance of poor families resulted from their contact with welfare agencies."); Diane Allbaugh, *Tribal Jurisdiction Over Indian Children: Mississippi Band of Choctaw Indians v. Holyfield*, 16 AM. INDIAN L. REV. 533, 536 (1991); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1434 (1991) (citing evidence that doctors are reluctant to report expecting White mothers for substance abuse but do not hesitate to report expecting Black mothers).

The ICWA, as first proposed, provides a model for culturally specific standards to determine parental fitness:

in making . . . a determination [of parental fitness to retain custody], poverty, crowded or inadequate housing, alcohol abuse or other nonconforming social behaviors on the part of either parent or extended family member in whose care the child may have been left . . . shall not be prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standards to be applied . . . shall be the prevailing social and cultural standards of the Indian community in which the parent . . . resides . . . or maintains social and cultural ties.⁷⁰

Many inner-city Black families with children, like many tribal families, live in substandard conditions,⁷¹ and factors such as age, marital status, size of home, and household economic resources negatively characterize Black families that do not conform to the White middle class norm.⁷² Therefore, guidelines, similar to those above, which use a different set of cultural standards to determine parental fitness should be promulgated to protect the interests of Black children.

Besides changes in parental fitness standards, preventative measures are needed to help Black families keep their children. Current efforts to sustain the Black family as a unit have proven inadequate,⁷³ and despite Black parents' equally active efforts to seek the return of their children, White children return home almost twice as rapidly as Black children.⁷⁴ Again, the ICWA provides a model. Comprehensive family service programs similar to those provided in the ICWA to prevent the disintegration of Native American families, including family development centers, day care, and family counseling services⁷⁵ would ensure that adoption out of the Black community is a last resort used only when all efforts at maintaining the family have been exhausted.

Congress, with the ICWA, accepted the Native American communities' interest in placing children intraethnically by accounting for the interest of the individual child and the larger Indian tribe.⁷⁶ In contrast, the MPA focuses on the individual child separate from the larger minority community.⁷⁷

70. S. 1214, 95th Cong., 2d Sess. Tit. I § 101(b) (1978).

71. See generally, STAPLES & JOHNSON, *supra* note 48.

72. Fenton, *supra* note 3, at 46.

73. In fact, most family preservation programs originate in nonurban areas serving mostly White populations and the models for such programs are never tested in urban inner city minority communities. Sandra M. Stehno, *The Elusive Continuum of Child Welfare Services, Implications for Minority Children and Youths*, 69 CHILD WELFARE 551, 554 (Nov.-Dec. 1990).

74. DOUGLAS T. GURAK ET. AL., *THE MINORITY FOSTER CHILD: A COMPARATIVE STUDY OF HISPANIC, BLACK, AND WHITE CHILDREN* 83 (1982).

75. See generally, Indian Child Welfare Act, *supra* note 13, §§ 1931-1932 (citing numerous family services programs including child abuse prevention and counseling, prevention and treatment of alcohol and drug-related violence and immediate shelter and assistance for victims of family violence).

76. *Id.* § 1901(3) ("[T]here is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and . . . the United States has a direct interest . . . in protecting Indian children.").

77. MPA, *supra* note 18, § 552(b) ("It is the purpose of this subpart to . . . (1) decreas[e]

Some proponents of the MPA perceive cultural preservation as antithetical to a child's timely placement.⁷⁸ However, children's timely placement and cultural preservation could complement one another if obstacles to intraracial adoption are removed. Popular rhetoric asserts that the long waits experienced by Black children in the foster care system are due to Black families' unwillingness to adopt.⁷⁹ In fact, Black families have always adopted from their extended families,⁸⁰ and have the potential for a high intraracial placement rate if given consideration similar to Native American families.

When efforts to maintain the Native American family fail, the ICWA furnishes preference guidelines for intraethnic placement of Native American children. These guidelines prefer placement with a member of the Indian child's extended family.⁸¹ The MPA does not mandate placement preferences; rather, it ensures that no such preferences can exist. By destroying the possibility of placement preferences, the MPA blocks the ability of the Black community to determine its own fate. For example, until federal placement preferences are enacted, custody with suitable Black grandparents can be challenged by White foster parents.⁸² Through lobbying for legislation with the features of the ICWA,⁸³ the Black community can move toward extended family or grandparent preferences in placement decisions.

Furthermore, Black families have always adopted not only from extended family but from strangers' families as well.⁸⁴ The rate Black children have been adopted outside of formal adoption agencies has never been low; hurdles to intraracial adoption emerge when Blacks attempt to adopt through state sponsored government agencies. Black parents who come forth to adopt through government agencies are often discouraged.⁸⁵ Social workers at times carry with them the idea that White families are more qualified than Black families to adopt children. These biases may unconsciously be communicated to Black families.⁸⁶ For example, some Black parents who

the length of time that children wait to be adopted."); *see also supra* note 14 (citing California and Minnesota as states that provide a preference for the placement of Black children with Black families).

78. Hayes, *supra* note 53, at 305.

79. Koch, *supra* note 54, at 153.

80. Fenton, *supra* note 3, at 45; *see also* Bowen, *supra* note 42, at 493 ("Of all children born out of wedlock, about 67 percent of [W]hite children [are placed with formal adoption agencies, while only] 10 percent of Black children are [s]o placed; [the other 90 percent of these children] are retained by the Black extended family.").

81. Indian Child Welfare Act, *supra* note 13, § 1915 ("[A] preference shall be given . . . to a placement with (1) a member of the Indian child's extended family; (2) other members of the Indian child's tribe; (3) other Indian families.").

82. *See In the Matter of D.L.*, 486 N.W.2d 375 (1992).

83. Indian Child Welfare Act, *supra* note 13, § 1901-1963.

84. Fenton, *supra* note 3, at 42; *see also* Bowen, *supra* note 42, at 493.

85. *See Rodriguez & Meyer, supra* note 68, at 529-30 (discussing research that concludes that although many adoptive parents are successfully serving minority communities, obstacles still exist which discourage Black families from formalized adoption).

86. *See generally Rodriguez & Meyer, supra* note 68, at 529 (citing one study where 20% of prospective Black parents who had adopted said they felt uncomfortable in adoption agencies because of their race, and 44% said that some social workers attitudes were too "[W]hite middle class," though 90% of all Black parents who adopted were satisfied with their adop-

have been interviewed by adoption agencies say they are made to feel inferior due to social workers' condescending attitudes regarding their incomes, their marital status, and the number of people living in their households.⁸⁷

Prospective Black parents, besides being discouraged by social workers' attitudes, are deterred by agency adoption procedures. First, agencies charge fees before they will process an application. This requirement is an especially acute obstacle for Black parents who are sensitive to the "negative historical association with the buying and selling of babies."⁸⁸ Second, many minority families are never made aware that subsidies are available when special-needs children are placed in low-income households.⁸⁹ Third, adoption agencies are often closed when working families could come.⁹⁰ Finally, agency forms are burdensome and often do not account for cultural differences.⁹¹

Many obstacles exist because these procedures were implemented specifically to limit the number of adoptive White couples seeking a small number of White children.⁹² Agencies could retain more Black families in the adoption process through procedural reforms aimed to increase, rather than limit, the number of adoptive parents. Eliminating or reducing fees, informing low-income families of available subsidies, increasing agency hours, and simplifying agency forms would help maintain minority families in the adoption process. In addition, agencies could hire more Black social workers. Perhaps when staffing patterns reflect the ethnic composition of minority communities, a more positive attitude toward adoption agencies will exist in those communities.

Existing organizations known and trusted by prospective Black parents have been successful in recruiting Black adoptive families through publicity and recruitment efforts.⁹³ In Virginia, for example, the One Church One Child campaign makes 100-150 annual non-relative placements.⁹⁴ It is claimed that Homes for Black Children in Detroit "in its first year of operation placed more [B]lack children than the other [thirteen] existing agencies

tion agency); LUCILLE J. GROW & DEBORAH SHAPIRO, *TRANSRACIAL ADOPTION TODAY* 22 (1975) (describing the characteristics of a typical social worker).

87. See Rodriguez & Meyer, *supra* note 68, at 529-30 ("Census data have shown that [B]lacks and Hispanics are more likely than [W]hites to have low incomes, to live in crowded housing, and to be single. . . . [S]taff attitudes cited as discouraging minority applicants were insensitivity, superiority, and rigidity.").

88. *Id.* at 530.

89. Rodriguez & Meyer, *supra* note 68, at 530 (citing a survey in which 63% of minority families who adopted were not made aware of subsidies granted to families who adopt special needs children).

90. Fenton, *supra* note 3, at 48.

91. *Id.*

92. *Id.*

93. Some existing minority parent organizations have helped recruit Black adoptive parents, including, the Black Adoptive Parents Support and Information Group (Washington, D.C.), Black Adoption Committee for Kids and RESPOND (Missouri), Ministers for Adoption Support Group (Mississippi), Group of Adoptive Black Parents (Cincinnati), Friends of Black Children (North Carolina), and One Church One Child (Various states). Fenton, *supra* note 3, at 65 n.174.

94. *Hearings, supra* note 4, at 77.

combined."⁹⁵ Self-determination of the Black community must be left intact so that it not only retains and recruits prospective Black adoptive parents through its own community-based organizations, but also continues its informal adoptive network of extended families.

IV. CONCLUSION

The widespread placement of Black children with Whites is an unacceptable solution to current placement needs. Black children deserve to have their sense of identity and community intact. The larger Black community must teach its children how to survive in order to ensure that the Black community itself survives. Efforts are needed not only to keep natural parents with their sons and daughters, but also to find Black adoptive parents when these efforts fail. It is time for the Black community to act, for perhaps the first time in U.S. history, to ensure that only the Black community will control the fate of their Black children.

95. *Id.* at 61.

LESBIAN & GAY ADOPTION

