

UCLA

National Black Law Journal

Title

Transracial Adoption: "Child-Saving" or "Child-Snatching"

Permalink

<https://escholarship.org/uc/item/8zq4q79h>

Journal

National Black Law Journal, 13(1)

Author

Hermann, Valerie Phillips

Publication Date

1993

Copyright Information

Copyright 1993 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

Transracial Adoption: “Child-Saving” or “Child-Snatching”

I. INTRODUCTION

Transracial adoption has become one of the most controversial issues in domestic relations.¹ It ranks second only to interracial marriage in its tendency to trigger negative reactions in those who oppose the intermingling of the races. Some people react negatively and, sometimes violently, to any intermingling of the races, especially in the adoption context, because they believe that such interracial relationships are immoral and harmful to the child.² On the other hand, there are many who support the idea that race is irrelevant in selecting parents or in adopting children. The Supreme Court has interpreted the Fourteenth Amendment as broad enough to protect the basic right to choose partners and form a family.³

Since the late 1940s, Whites have been adopting Black children. In 1975, the National Association of Black Social Workers (hereinafter “NABSW”) criticized groups and agencies that promoted transracial adoption and argued that such adoptions deprived Black children of their culture, heritage, and survival skills necessary to live in a racist society.⁴

The purpose of this Note is to critique arguments made by the NABSW regarding the proper place for Black children within the adoption system. In Part II, I summarize adoption policies and procedures, the purpose of adoption, and the historical motivations for transracial adoption. In Part III, I analyze and discuss constitutional issues relating to transracial adoption. In Part IV, I set out the criteria used to measure what is in the best interest of the child. Finally in Part V, I discuss the issue of where Black children belong, highlight examples from the lives of transracial adoptees, and examine the past success and likely future of transracial adoption. I conclude that adoption agencies should seek the best home for Black children rather than the best Black home.

II. ADOPTION POLICIES AND PROCEDURES

A. *Adoption in the United States*

Adoption is the legal process where one takes into his or her family the

1. JOYCE LADNER, *MIXED FAMILIES* 57 (1977). Ladner cites Alfred Kadushin, who explains the conflicts that occur in transreligious adoptions. The late nineteenth century saw one of the most controversial periods in child welfare when Catholic organizations accused placement agencies of tempting Catholic children to abandon their faith. Some Catholics asserted that “[p]lacing Catholic children in Protestant homes was not charity, . . . but sectarian zeal designed to destroy a child’s faith in the religion of the parents.” This sentiment clearly parallels that of the National Association of Black Social Workers which claims that transracial adoption is White America’s genocidal plot to destroy Black America. See *infra* notes 17-19 and accompanying text.

2. *Loving v. Virginia*, 388 U.S. 1 (1967), and *Palmore v. Sidoti*, 466 U.S. 429 (1983), and other cases show that there are some Whites who oppose interracial relationships. The NABSW believes such relationships are detrimental to the perpetuation of the Black family and its identity and heritage.

3. U.S. CONST. amend. XIV, § 1. “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person . . . the equal protection of the laws.”

4. LADNER, *supra* note 1, at 75.

child of another and gives him or her the rights, privileges, and duties of a child and heir.⁵ The original purpose of adoption was to give the adopters heirs upon death.⁶ However, today one of the most important goals of adoption is to provide a home for displaced children.⁷ Another significant goal in the adoption process is to protect the rights of both adoptive parents and the birth parents.⁸

As with marriage, divorce, and other domestic relations, adoption is regulated primarily by state law. Only recently has the federal government enacted child welfare laws to encourage states to develop their child welfare systems.⁹ The United States Supreme Court has, in several cases, regulated domestic areas by invalidating prohibitions against interracial relationships.¹⁰ Such prohibitions have been held to violate the Equal Protection and the Due Process Clauses of the Fourteenth Amendment. Unless the state law creates a constitutional violation, persons seeking to adopt must strictly adhere to state statutes. For example, Code of Alabama § 26-10-4 states that the petitioner foster parent(s) must be financially able and morally fit to have the care, supervision, and training of such child, that such child [must be] suitable for adoption in a private family home, and that such change of name and guardianship is in the best interest of such child.¹¹

State statutes today do not substantially restrict who may adopt. In the past, such statutes permitted only adult, married couples to adopt a minor child. As the result of specific equal protection challenges, adoption privileges and rights have been extended to nontraditional parents.¹² Recently the laws have changed to include single persons and homosexuals as eligible adoptive parents.¹³ As the Alabama statute indicates, state standards for who can adopt are quite broad. Often state agencies apply additional standards such as the potential parents' age or race to find the best possible home for the child.¹⁴

Once people decide to adopt, the next phase is to select a child. Some choose their spouse's children after marriage. Here there remains a natural or blood tie to at least one of the parents and the child's roots remain intact. But for many who do not marry into such a situation and are unable to have children of their own, they must select a child who is related to no one they know. Usually they have no particular child in mind and they proceed with the assistance of a public or private child placement agency.

In the 1920s the "hard-to-place" child category included almost all children who needed a home.¹⁵ However, given the history of adoption where White children have been more rapidly placed than non-White children, the definition of hard-to-place children now includes primarily minority and

5. H.C. BLACK, BLACK'S LAW DICTIONARY (6th ed. 1990).

6. MORTON LEAVY, THE LAW OF ADOPTION 10 (1954).

7. *Id.* at 11.

8. *Id.*

9. See *infra* notes 100-102 and accompanying text.

10. See cases cited *supra* note 2.

11. ALA. CODE § 26-10-4 (1975).

12. *Id.*

13. WALTER WADLINGTON, DOMESTIC RELATIONS 968 (2d ed. 1990).

14. DERRICK A. BELL, JR., RACE, RACISM AND AMERICAN LAW 102 (3rd ed. 1992).

15. RITA SIMON & HOWARD ALTSTEIN, TRANSRACIAL ADOPTION 9 (1977).

handicapped children.¹⁶ In particular, race causes some children to become hard-to-place in adoptive settings and contributes to their prolonged stay in foster homes.

In addition to the conditions placed on transracial adoptions described above, there is an ongoing battle between the NABSW and advocates of transracial adoption which hinders the placement of Black children. In 1972, the NABSW passed a resolution against transracial adoption. The resolution said that Black children should be placed only with Black families whether in foster care or for adoption,¹⁷ transracial adoption is a "lethal incursion on the Black family,"¹⁸ and that it is a "genocidal plot designed to destroy the Black race."¹⁹ Unfortunately, the NABSW's opposition to transracial adoption has the effect of keeping Black children in foster homes longer than necessary. Proponents of transracial adoption assert that when available adoptive parents meet the qualifications and requirements for adoption, race should not be the factor which deprives them of the right to adopt or the children of the opportunity to have a home.²⁰ In reviewing the competing views surrounding transracial adoption, this Note attempts to resolve what the best interest of the child standard means to Black children in the context of transracial adoption.

B. *History of Transracial Adoption*

In order to determine what the best interest of the child standard means in the transracial adoption context, one must examine the history of transracial adoption. In brief, transracial adoption began in the late 1940s, then increased in the mid-1950s; it decreased in the early 1960s, increased again in the mid-1960s, and became almost nonexistent by 1975.²¹

There are several reasons why transracial adoption developed. First, following World War II, many children around the world were left homeless.²² Many parents began what is known as intercountry adoptions which without doubt encompassed some transracial adoptions. Second, transreligious adoptions preceded the transracial adoption movement, and their acceptance was crucial to the development of transracial adoption.²³ Third, transracial adoption also began because some White people wanted desperately to have a child even if it meant adopting a child of another race, a child who was not a "blue-ribbon" baby.²⁴ Although some adoption agencies assisted in these adoptions, they were not deliberately advocating the development of transracial adoption.²⁵ They were merely serving those who were in need of a child.²⁶ Fourth,

16. JAMES ROSENTHAL & VICTOR GROZE, SPECIAL NEEDS ADOPTION, A STUDY OF INTACT FAMILIES 127, 149 (1992).

17. LADNER, *supra* note 1, at 74-75.

18. *Id.*

19. *Id.* at 77.

20. *Id.* at 93.

21. SIMON & ALTSTEIN, *supra* note 15, at 10. Transracial adoption has its negative status today because of social workers' attitudes towards it. Thus we have seen a steady decrease in transracial adoption.

22. RITA SIMON & HOWARD ALTSTEIN, ADOPTION, RACE, AND IDENTITY, FROM INFANCY THROUGH ADOLESCENCE 1-2 (1992).

23. *Id.*

24. LADNER, *supra* note 1, at 9.

25. SIMON & ALTSTEIN, *supra* note 15, at 2.

26. *Id.*

other factors contributing to transracial adoption included changing social attitudes regarding contraception, abortion, and illegitimacy during the sexual revolution.²⁷ White women who traditionally gave up their babies for adoption began keeping them, leaving fewer White babies (blue-ribbon babies) and more non-White babies to adopt.²⁸ In light of these social changes, White adoptive parents utilized transracial adoption to cope with their childlessness.²⁹

C. *Restrictions on Adoption*

Adoption agencies assumed that the best interests of the child were met if children were adopted and not left in foster homes.³⁰ The agencies did not, however, place the children with the first available parent(s). Agencies followed strict criteria for approving adoptions with religion, social status, and race as the most important criteria.³¹

Since agencies believed that children should look as much like the parents as possible, race was often the determining factor in placement. However, there were occasional exceptions where Whites adopted Black children. Interestingly, there are very few cases where Blacks adopted White children.

D. *Early History in Transracial Adoptions*

Joyce Ladner has documented that the earliest case of transracial adoption involving a Black child and White adoptive parents was in 1948 in Minneapolis, Minnesota.³² Laura Gaskin, a Black social worker, made the placement. After observing that child move between various foster homes and determining that there were no available Black homes, Gaskin placed the child with White parents.³³

The Minority Adoption Recruitment of Children's Homes ("MARCH"), organized in San Francisco in 1955, was the first agency that actively recruited Black adoptive parents for Black children.³⁴ Another group, Parents to Adopt Minority Youngsters ("PAMY"), was formed in 1957 in Minnesota to publicize the need for homes for minority children.³⁵

Despite their efforts, these organizations were not very successful in placing Black children in Black homes. When they found themselves unable to provide Black children with homes as quickly as they could for White children, the agencies began defining the children and possible minority families as "problems."³⁶ The agencies labelled the children as "hard-to-place" and the families as "hard to reach."³⁷ Because of the failure to find same race

27. *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973); *Lalli v. Lalli*, 439 U.S. 259 (1978).

28. LADNER, *supra* note 1, at 11.

29. LADNER, *supra* note 1, at 49. The Author believes that when adoptive parents view the child they adopt as second best, people become suspicious of their motives for adopting.

30. LADNER, *supra* note 1, at 56.

31. SIMON & ALTSTEIN, *supra* note 22, at 2.

32. *Id.* at 59.

33. *Id.*

34. *Id.* at 60.

35. *Id.*

36. *Id.*

37. *Id.*

homes for Black children, individual social workers like Laura Gaskin, at their discretion, placed the children interracially.

Transracial adoption of American Black children actually became institutionalized in 1960 in Montreal, Canada.³⁸ Through the efforts of the Children's Service Center and parents who founded the Open Door Society, transracial adoption began gaining acceptance and momentum.³⁹ By 1969, the United States had 47 organizations whose main purpose was to advocate transracial adoption.⁴⁰ Some of the major ones were Families for Interracial Adoption, the Council on Adoptable Children, Opportunity, the National Council of Adoptive Parents, and Adopt-A-Child-Today.⁴¹ By 1970, every state had documented transracial adoptions except Alabama, Arkansas, Louisiana, Mississippi, and South Carolina.⁴²

E. *Motivations for Transracial Adoption*

Commentators have cited many reasons why White adoptive parents adopted transracially. Perhaps the most common reason is because transracial adoption is one way of coping with the inability to have one's own children.⁴³ Contrary to what many believe, people adopt transracially for basically the same reasons they adopt intraracially.⁴⁴ For such couples, it is not a simple matter to adopt intraracially. By 1970, the number of available White homes exceeded the number of available White children by 3,024 and the number of non-White children exceeded the number of approved non-White homes by 2,461.⁴⁵ Therefore, many White couples who are left with the option of adopting Black or other minority children exercise that option rather than choose to remain childless.

Occasionally, feelings of guilt concerning poor race relations between Blacks and Whites motivated some Whites to adopt transracially.⁴⁶ Many who adopted transracially believed that they were improving race relations.⁴⁷ Still other adoptive parents, moved by their concern for the plight of hard-to-place children were motivated to adopt. These parents usually had missionary or humanitarian attitudes towards adoption.⁴⁸ They believed that they should serve a needy child or to do some good for society.⁴⁹

F. *The Matching Concept*

As transracial adoptions increased, the concern of some agencies with

38. SIMON & ALTSTEIN, *supra* note 15, at 6.

39. *Id.*

40. *Id.*

41. *Id.* at 7.

42. *Id.* at 68.

43. SIMON & ALTSTEIN, *supra* note 22, at 1.

44. LADNER, *supra* note 1, at 39.

45. SIMON & ALTSTEIN, *supra* note 15, at 11. A table showing the number of "[a]pproved [h]omes and [a]vailable [c]hildren, by [r]ace and by [a]gency [a]uspices" indicated that in 1970 there were 21,416 approved White homes to 18,392 available White children. There were 1,584 approved non-White homes to 4,045 available non-White children.

46. SIMON & ALTSTEIN, *supra* note 22, at 11.

47. *Id.* at 39.

48. LADNER, *supra* note 1, at 50.

49. *See id.* For some, their most worthy contribution to a racially torn country was transracial adoption.

matching children as closely as possible to the adoptive parents diminished.⁵⁰ However, with the move by a few agencies to eliminate transracial adoption, the general assumption is that the best way to ensure family stability in the new parent-child relationship is to make sure the parent and child are similar physically, emotionally, and culturally.⁵¹ Similarities in these areas, some argue, prevent parenting failures.⁵²

Opponents of transracial adoption articulate two basic reasons why such adoptions should not take place. The first is that transracial adoption is doomed to failure,⁵³ and the second is that race mixing should be discouraged.⁵⁴ These attitudes and ideas regarding matching children and adoptive parents by race perpetuate long held beliefs encouraging absolute barriers to transracial adoption through state laws and state agencies.⁵⁵ In *Compos v. McKeithen*⁵⁶ and in *In re Gomez*⁵⁷ such laws banning transracial adoption were held unconstitutional because they violated both the parents' and the child's equal protection rights.

Race matching policies also conflict directly with the anti-discrimination laws of our country. Along with other rules of law, Title VI of the 1964 Civil Rights Act denounces the use of race by stating, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."⁵⁸ However, we have seen a different anti-discrimination norm in the context of adoption. Private and public adoption agencies recommend the use of racial guidelines although both receive federal funds. They are aware of their eligibility to receive federal fund because they contract with each other. Therefore, it appears that both private and public agencies are in direct violation of Title VI. But in the alleged best interest of the child, the agencies have continually justified their use of race matching in adoption. Such race matching policies have been held unconstitutional in areas such as interracial marriage and integration of public schools.⁵⁹

Several reported cases illustrate the representative attitudes toward transracial adoption in the 1950s and 1960s. In *In re Adoption of a Minor*,⁶⁰ the adoption court denied a Black man's petition to adopt his White step-child, reasoning that, "The boy when he grows up might lose the social status of a White man by reason of the fact that by record his father will be a negro.

50. SIMON & ALTSTEIN, *supra* note 15, at 51.

51. *Id.* at 2.

52. *Id.*

53. *Id.* at 15.

54. David Margolick, *A Mixed Marriage's 25th Anniversary of Legality*, N.Y. TIMES, June 12, 1992, col. 3, at B7.

55. Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1176 (1991). In the late nineteenth and early twentieth centuries, society's goal was to prevent interracial intermingling and interracial marriage, thus maintaining White racial purity and avoiding the mongrolization of the race. Laws regarding transracial adoption reflected the importance of maintaining racial separation in the family context.

56. 341 F. Supp. 264 (E.D. La. 1972).

57. 424 S.W.2d 656 (1967).

58. Bartholet, *supra* note 55, at 1229.

59. *Id.* at 1231.

60. 229 F.2d 446, 447 (D.C. Cir. 1955).

...⁶¹ Some states permitted adoptive parents to annul an adoption and return the child if, after a few years, the child was visibly of a different racial ancestry than the parents.⁶² Also, in *Ward v. Ward*,⁶³ which involved a custody dispute between a Black father and a White mother, custody was awarded to the father. The court said, "These unfortunate girls, through no fault of their own, are the victims of a mixed marriage and a broken home. They will have a much better opportunity to take their rightful place in society if they are brought up among their own people."⁶⁴

III. CONSTITUTIONAL ANALYSIS OF TRANSRACIAL ADOPTION

A. *Racial Classifications in Adoption*

Race classifications are inherently suspect and are presumed violative of the Fourteenth Amendment's Equal Protection Clause.⁶⁵ Such classifications will be upheld only if the state proves them necessary to achieve compelling state interests, and if there are no less onerous alternatives available.⁶⁶ Therefore, governmental procedures and policies that encourage different treatment of minority children and families are susceptible to an equal protection challenge.

Although race is a presumptively invalid classification, courts have allowed it as a factor in child placements. Courts, however, have repeatedly held that race may not constitutionally be the sole reason for an adoption decision,⁶⁷ but that it may be considered as one important factor in the decision.⁶⁸

Many domestic relations professionals advocate that race should be considered in trying to find the best home for the child. However, race should be applied in a way so as not to disadvantage a child in the adoption process. In *In re R.M.G.*,⁶⁹ the court held that if race is relevant in an adoption contest, the trial court must make detailed findings as to 1) how each family's race is likely to affect the child's development of a sense of identity, including racial identity; 2) how the families compare in this regard; and 3) how significant the racial differences are between the families when all the factors relevant to adoption are considered together.⁷⁰

The landmark case that set the standard for how race should be considered in child placement proceedings is *Palmore v. Sidoti*.⁷¹ Linda Sidoti Palmore (petitioner) and Anthony Sidoti (respondent), both Caucasians, divorced

61. Since Blacks have historically been perceived as subordinate to Whites, White children who are adopted by Black parents would be treated poorly and as though they were themselves Black.

62. MO. ANN. STAT. § 453.130 (Vernon 1952) (repealed 1982).

63. 216 P.2d 755, 756 (1950).

64. Bartholet, *supra* note 55, at 1178.

65. *Regents of the University of California v. Bakke*, 438 U.S. 265, 305 (1978).

66. *Id.*

67. *Compos v. McKeithen*, 341 F. Supp. 264 (E.D. La. 1972).

68. *Drummond v. Fulton County Dep't of Family & Children's Services*, 563 F.2d 1200, 1205-06 (5th Cir. 1977). This was perhaps the most significant case raising issues in transracial adoptive placements. Here, White foster parents had custody of a mixed race child for over two years. The agency refused to allow them to adopt and they alleged constitutional violations of equal protection and due process.

69. 454 A.2d 776 (D.C. Cir. 1982).

70. *Id.*

71. 466 U.S. 429 (1983).

in May 1980 in Florida. The state trial court awarded the mother custody of their three-year-old daughter. In September 1981, the father sought custody of the child because the child's mother was living with a Black man, Clarence Palmore, Jr. Linda Sidoti and Clarence Palmore married two months later. The state court removed the child from her mother's custody and placed the child with her father, asserting that the child's best interests would be served thereby. The court reasoned that the father's resentment of the mother's choice of a Black husband was insufficient to deprive the mother of custody, but that a racially mixed household would have a detrimental effect on the child if she remained there. The U.S. Supreme Court unanimously agreed that change in custody violated the Fourteenth Amendment's Equal Protection Clause and reversed the lower courts' decisions.

B. *Summary of Palmore v. Sidoti*

The Supreme Court stated that the lower court correctly targeted the child's welfare as the controlling factor,⁷² however, it blatantly based its holding entirely on race.⁷³ As the *Palmore* majority states, "A core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race."⁷⁴

The issue presented was "whether the reality of private biases and the possible injury they *might* inflict are permissible considerations for removal of an infant child from the custody of its natural mother."⁷⁵ The Supreme Court held that however real the effects of racial prejudice, the best interest of the child is not served by removing it from its natural mother [or from the only psychological parents it has ever known].⁷⁶ The "hypothetical effects of private racial prejudice" cannot dictate to public officials "sworn to uphold the Constitution" what course of action to take.⁷⁷ Although *Palmore* has been a very significant precedent, it has been inadequate to the extent that it does not clarify how to determine what is in the best interest of the child.

IV. WHAT IS IN THE BEST INTEREST OF THE CHILD?

A. *The Best Interest of the Child Standard Defined*

Child placement and adoption decisions are governed by the best interest of the child doctrine.⁷⁸ The best interest of the child test was formulated by

72. *Id.*

73. Many adoption agencies follow this pattern of pronouncing their actions as being in the best interest of the child. In reality, however, they then make determinations based only on race.

74. *Palmore*, 466 U.S. at 432 (citing *Shelley v. Kraemer*, 334 U.S. 1 (1948), *Ex parte Virginia*, 100 U.S. 339, 346-47 (1880), and *Strauder v. West Virginia*, 100 U.S. 303, 307-08, 310 (1880)).

75. 466 U.S. at 433 (emphasis added). The same issue applies to transracial adoption where, for example, the only parents some Black children have ever known are the White foster parents who wish to adopt them.

76. The Court cited *Buchanan v. Warley*, 245 U.S. 60 (1917) (cited in *WADLINGTON*, *supra* note 13), as another instance in which racial prejudice has been invoked to justify racial classifications. The Court held unconstitutional a Kentucky law which forbade Negroes to buy homes in White neighborhoods. The purpose of the law was to "promote the public peace by preventing race conflicts."

77. Emphasis added. See *Palmer v. Thompson*, 403 U.S. 217, 260-61 (1971).

78. *Palmore v. Sidoti*, 466 U.S. 422 (1983); *Painter v. Bannister*, 258 Iowa 1390, 140 N.W.2d 152, 157 (1966).

Justices Cardozo and Brewer.⁷⁹ In promoting the best interest of the child standard, states consider a number of factors to balance the rights and interests of the parents and children involved. In adoption proceedings, for example, some of the factors include race, religion, marital status,⁸⁰ sexual orientation of the parent(s), income, and age.⁸¹ But whatever factors a state designates for consideration, placement agencies, judges, attorneys, and parents are bound to act in the best interest of the child.

All displaced children clearly have an interest in becoming part of a secure family and safe home. But often in the area of transracial adoption, agencies determine that the child's cultural identity is more important than a stable home. It appears that in these instances the best interest of the child takes second priority to other interests (e.g., social and political interests). The best interest standard is intended to be neutral. But when the child's race becomes the determining factor, the standard is no longer neutral.

B. *Applying the Best Interest Standard*

Instead of examining each individual adoption case to determine whether certain adoptive parents who happen to be White are good for a Black child, opponents of transracial adoption focus solely on the child's race. Turning such personal and familial matters into political battles over Black power and Black ownership of Black children often proves to be a mistake which is very harmful to the children involved. The insistence that Black children belong to the Black community has even caused the death of Black children. Recently 60 Minutes featured a segment on transracial adoption.⁸² The story, produced by Marti Galovic, showed what horrible mistakes agencies can make when they make placements on the basis of race alone. The case arose in Hamilton County, Ohio, where county social workers sought to have a young Black boy, Maurice "Reecie" Lamar West, removed from his White foster parents, Dale and Jan May. The juvenile court judge gave the social workers five months to find a Black home for the boy. If no suitable Black home was located, the Mays would have been allowed to adopt him. The social workers did find a Black adoptive family. However, because the social workers were adamant about disallowing a White family to raise Reecie, they ignored warning signs about the Black couple's qualifications for adoption. Reecie was removed from the Mays' home in May and he died four months later from severe beatings by Gerald and Bernice Kilburger. The Kilburgers were charged with assault and manslaughter. The case illustrates all too clearly why race should not be the deciding factor in adoption cases. It also illustrates why the best interest doctrine needs additional refinement.

79. WADLINGTON, *supra* note 13, at 936. But they did not *per se* define the test. Instead, Justice Brewer, in *Chapsky v. Wood*, 26 Kan. 650 (1881), rejected the notion of the parents' primary right and introduced the best interest of the child test. In *Finlay v. Finlay*, 240 N.Y. 429, 148 N.E.2d 624 (1925), then Judge Cardozo affirmed this rule.

80. Uniform Marriage & Divorce Act § 402, 9A U.L.A. 561, 573-576 (1987).

81. WADLINGTON, *supra* note 13, at 964-68.

82. 60 Minutes: *Transracial Adoption, Black and White* (CBS television broadcast, Oct. 25, 1992).

C. *Transracial Adoption v. Institutionalization*

There are many reasons why transracial adoption is preferred over the continued institutionalization of a child. Even though foster care is intended to be temporary, many children remain in foster homes for several years. Some are never returned to their biological families. Foster children spend on average four years in care and over 30% are in care more than five years.⁸³ Many children are juggled between placements for long periods of time. This instability is detrimental to their emotional development, and thus prevents them from forming lasting relationships.⁸⁴ Joseph Goldstein, Anna Freud, and Albert Solnit assert that children need a continuous and stable relationship with an adult to develop properly. They used the phrase "psychological parent" to describe the adult with whom the child forms emotional attachments.⁸⁵ They state that,

Whether any adult becomes the psychological parent of a child is based thus on day-to-day interaction, companionship, and shared experiences. The role can be fulfilled either by a biological parent or by an adoptive parent or by any other caring adult—but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be.⁸⁶

Agencies and courts need to consider these types of factors when they determine transracial adoption issues.

D. *What Is the Least Detrimental Alternative?*

Transracial adoption provides for a permanent family setting which is of paramount interest to the child. As some social workers fear, such placements can be and are detrimental to some children. They may face difficulties such as rejection by their neighbors and peers. But the overriding advantage of having a supportive family is more important than the disapproval of third parties. Pragmatically, one should be looking for the solution that poses the least amount of risk to the child. For many homeless Black children, the alternative to transracial adoption is not intraracial adoption, but nonadoption and deprivation of a stable family life. Therefore, Goldstein, Freud, and Solnit reject the best interest standard and suggest employing the least detrimental alternative standard⁸⁷ in the context of child placement. Under that standard, agencies would compare the detrimental effects of long-term institutionalization with the affects of transracial adoption.

The NABSW and other opponents of transracial adoption, however, argue that intraracial adoptions are better for Black children. But research shows that there is an insufficient number of intrarace homes for intraracial placements.⁸⁸ By comparison, transracial adoption is far less detrimental to a child's emotional health than institutional or foster care. Dr. Delores Al-

83. *Smith v. Organization of Foster Families*, 431 U.S. 83 (1977).

84. JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT SOLNIT, *BEYOND THE BEST INTEREST OF THE CHILD* 18 (1973).

85. *Id.* at 17-20. Children need psychological parents in order to grow emotionally and psychologically. Foster homes often do not meet the requirements of psychological parenthood.

86. GOLDSTEIN et al., *supra* note 84, at 19.

87. *Id.* See also Margaret Howard, *Transracial Adoption: Analysis of the Best Interest Standard*, 59 NOTRE DAME L. REV. 503, 533 (1984).

88. DELORES ALDRIDGE, *PROBLEMS AND APPROACHES TO BLACK ADOPTIONS*, THE FAMILY COORDINATOR 407, 408 (Oct. 1974).

dridge, Coordinator and Assistant Professor of Black Studies at Emory University, argues that agencies have projected their own failure to find homes for Black children onto the Black community and the children themselves by calling them hard-to-place and by advancing the myth that Blacks do not adopt.⁸⁹ She claims that the problem does not lie with the Black community or with Black children because Black people have a long history of informally adopting relatives, relatives' children, and neighbors' children. The fact that these adoptions have been informal should not make them less credible than formal adoptions.⁹⁰ But social and economic conditions for Black people have progressively gotten worse making the option of adding more children to the family through adoption less practical. The crucial point is that historically, Black families regularly adopted, but for many reasons, the number of Black families now willing to adopt has declined drastically.⁹¹

E. *Unavailability of Black Homes*

Often, Black people have been discouraged from formally adopting because of the arbitrary requirements maintained by agencies. Some of these requirements look at level of income, type of home, what community the family lives in, or level of education instead of the parents' ability to love and nurture the child.⁹² Aldridge says, "What agencies have in essence done has been to make Black children villains when in fact they were victims of a cruel and insensitive welfare system."⁹³ And, Aldridge says, what the agencies need to do is reconsider their arbitrary policies and standards which "screen out" rather than "screen in" Black parents.⁹⁴

During the past two decades agencies have begun to develop new programs for locating adoptive parents for Black children. For example, in Detroit, Michigan, an agency called "Homes for Black Children" within its first year of operation placed over 100 Black children.⁹⁵ In Chicago, Illinois, the Afro-American Family and Community Service Agency placed children in approximately 60 families.⁹⁶ Aldridge says that from these efforts in locating homes for hard-to-place children, four significant factors contributed to getting Black people to adopt. They are:

1. Involvement with the Black community;
2. Philosophy and commitment of the agency or group;
3. Aggressive recruitment practices; and,
4. Development of policies and practices based on the lifestyles of the Black community.⁹⁷

In restructuring their commitment, the agencies must realize that Black

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. ALDRIDGE, *supra* note 88. Homes for Black Children was established in 1971.

96. ALDRIDGE, *supra* note 88. Afro-American Family and Community Service Agency was established in 1972.

97. ALDRIDGE, *supra* note 88, at 408. Traditionally White agencies should recognize Black lifestyles. With such recognition should come the liberalizing of adoption requirements. They also need to be aware of the Black extended family network.

lifestyles are not identical to White lifestyles, and focus on the strengths of Black people rather than their weaknesses. Even though a Black family may not be highly educated or affluent, they may have very positive things to offer a foster child such as a home, love, and friendship.

Part of this commitment is aggressively recruiting Black families. This can be accomplished by informing and educating the Black community about the need for adoptive parents through various forms of media and passing the information through churches, community leaders, and organizations. But agencies cannot actively seek available homes if they are unaware of or disapprove of the lifestyles of the Black community. The Office of Child Development and Department of Health, Education and Welfare (now Health and Human Services) along with the George Washington University prepared a study in which Black adoptive parents said that they were offended by agency practices. The complaints were that there was too much red tape and time involved, and that the agencies emphasized external factors such as income and housing rather than their ability to provide a loving home.⁹⁸ Aldridge suggests that agencies need to take these criticisms and work toward changing their standards.⁹⁹ This Author agrees with the proposals for agency reform and asserts that all communities need to be aware of the availability of adoptees.

F. *Federal Government's Involvement in Minority Placement*

Although adoptions are within the states' domain, the federal government has addressed adoption since 1978. Congress, in 1978, amended the Child Abuse Prevention and Treatment Act¹⁰⁰ to include the Adoption Opportunities Act¹⁰¹ which was the first federal effort in encouraging adoption of children with special needs. Included in the definition of children with special needs are hard-to-place children. The Act required the Secretary of Health and Human Services to 1) initiate improvement of state legislation with national, state, and local child and family services organizations and 2) provide assistance through public and private nonprofit organizations and minority groups.

The Adoption Assistance and Child Welfare Act of 1980¹⁰² reduced financial barriers to the adoption of minority children.¹⁰³ This was accomplished by allocating money to each state that has implemented an adoption assistance program for children with special needs.¹⁰⁴

V. WHERE DO BLACK CHILDREN BELONG?

A. *NABSW's Position on Transracial Adoption*

In light of the history of transracial adoption, we must ask, "Where do Black children really belong?" There are some domestic relations profession-

98. ALDRIDGE, *supra* note 88.

99. *Id.*

100. 42 U.S.C. §§ 5101-5107 (1988).

101. 42 U.S.C. §§ 5111-5115 (1988).

102. 42 U.S.C. §§ 620-28, 670-76 (1988).

103. ELLEN SEGAL, ADOPTION OF CHILDREN WITH SPECIAL NEEDS 59 (1985).

104. *Id.*

als today who continue to believe that intraracial adoption is preferred to transracial adoption. In 1972 the NABSW stated:

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 environment and develop their sense of values, attitudes and self concept within their family structures. Black children in White homes are cut off from healthy development of themselves as Black people.¹⁰⁵

Others joined with the NABSW to argue that transracial adoption was detrimental to the Black community and that it deprived Black children of their Black heritage and survival skills needed to exist in a racist society.¹⁰⁶

The NABSW also has said, "It is their (White people's) aim to raise Black children with White minds. . . . We are on the right side of the transracial adoption issue. Our children are our future."¹⁰⁷

The NABSW forcefully asserts that Black children belong with other Blacks regardless of whether that child is in a permanent home or not. The impetus behind this claim is the struggle for Black autonomy (self-governance or Black independence from White governance).¹⁰⁸

B. *Reactions to the NABSW's Position*

Black autonomy became the working idea in the area of child welfare when the NABSW announced that transracial adoption was a "lethal incursion on the Black family [that] must be stopped."¹⁰⁹ Naturally, such a strong position forced adoption agencies and White adoptive parents to consider the issues raised by the NABSW and to confront their own values, motivations, and beliefs concerning transracial adoption. White adoptive parents had to consider the consequences of all parties involved in rearing a child of a different race.¹¹⁰ And after the denouncement issued by the NABSW at its 1972 annual meeting, the number of children transracially adopted substantially declined.¹¹¹

The NABSW's characterization of transracial adoption as a social problem evoked intense reactions. Some White parents lashed out just as strongly as the NABSW had. Some resigned. Many felt personally criticized and accused the Black social workers of making judgments they were not qualified to make since none of the social workers personally knew any of the adoptive parents. Many adoptive parents felt that it was wrong and unjust for their parenting skills to be attacked simply because they were White and their children were Black. Others called the NABSW's position "reverse racism."¹¹²

105. LADNER, *supra* note 1, at 75. This statement started the nationwide controversy over transracial adoption and is credited with having caused the decline in transracial adoption.

106. Bartholet, *supra* note 55, at 1180.

107. *Id.* at 1220.

108. LADNER, *supra* note 1, at 73.

109. *Id.* at 74.

110. *Id.* at 75.

111. *Id.*

112. *Id.* at 76. The voice of White adoptive parents is crucial to changing negative attitudes about transracial adoption. Many have failed to speak out probably because their good intentions were seen as racist acts. The resignation that comes from such accusations is understandable.

They vowed that the social workers would never succeed in taking their children away from them.¹¹³

C. *Discord Among Opponents of Transracial Adoption*

Most supporters of the NABSW viewed transracial adoption as a conspiracy to destroy the Black race. The thrust of the argument from supporters was that White parents were not able to give children their Black identity which they would inevitably need to survive in a "hostile, racist society."¹¹⁴ Two weeks after the NABSW passed their resolution to be committed to the placement of Black children in Black homes, Audry Russell, a member of the Transracial Adoption Task Force, went to the North American Conference on Adoptable Children in St. Louis and told a group of parents that a child's identity came from his own family and their teaching, and that one cannot give a child Black identity if one does not himself have it.¹¹⁵

But even among the Black social workers, there is discord and difference of opinion. Some Black social workers praised White families for taking on the responsibility of rearing homeless Black children when Black families themselves shirked this responsibility.¹¹⁶ Many Blacks understand the NABSW's position, but feel that if White parents did not adopt Black children, many children would spend much of their childhood in foster care. Their principal sentiment is that "a White home is better than no home."¹¹⁷

D. *Positive Black Image v. Positive Self-Image*

History shows us that many Black parents have not been entirely successful in transmitting a positive ethnic identity to their children.¹¹⁸ In arguing this point, we can look to examples of the many Black mothers who, soon after their children's birth, begin straightening the hair of their very young female children.¹¹⁹ This may seem like a trivial matter but Francis Wardle, Ph.D., says that because we live in a society very aware of physical differences, we are intent on assigning characteristics to people based on those differences and children as young as two years old are interested in physical differences including skin color and hair texture.¹²⁰ Wardle emphasizes that children also learn the negative value often associated with certain physical characteristics such as coarse, kinky hair¹²¹ and the positive values associated with "western standards of physical beauty."¹²² Racial identity is important to a child's

113. Bartheolet, *supra* note 55, at 76.

114. *Id.* at 77. Do orphaned Black children have a Black identity? Do they have any identity? Probably not.

115. Bartheolet, *supra* note 55, at 77.

116. *Id.*

117. *Id.*

118. Paulette Caldwell, *A Hair Piece: Perspective on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 382. Madame C.J. Walker, an important figure in Black history, became famous by inventing products designed to straighten Black women's hair.

119. Caldwell, *supra* note 118, at 382 n.55. See also PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 187-89 (1984).

120. Francis Wardle, *Transracial and Interracial Adoption: The Myth of Cultural Genocide*, INTERRACE 30 (March/April 1992).

121. *Id.*

122. Caldwell, *supra* note 118, at 383.

healthy development insofar as it is not ignored. It should not, however, be considered as the most crucial factor in that development.

Another argument presented against transracial adoption is that the child will be improperly socialized and will thus be rejected by Blacks and Whites. To be properly socialized, the child must be taught directly or indirectly that he or she does not belong to either Blacks or Whites. Some say that the improperly socialized person will only be able to live marginally in either world because allegedly they will not be prepared to function in either.¹²³ Contrary to this belief, one set of White parents says that these difficulties can be overcome if the parents use their initiative and imagination to reinforce the child's pride in himself and his ethnicity.¹²⁴ For example, Janet Lifshin explained that when their Black adopted son expressed the desire to be like his White adoptive parents, the father removed a brown egg and a white egg from the refrigerator, cracked both of them, and shared with the son the perfect similarity that their family had with the eggs. Although their shells or skins were of different colors, their beings or essences were the same.¹²⁵ In fact, studies on racial attitudes have found no relationship between racial integrity based on the children's surrounding and upbringing and their self-esteem or adjustment to Blacks or Whites.¹²⁶

Those who defend transracial placements seem to be committed to bringing about an integrated society. It is this view that gives the impression that White adoptive parents make their personal dream of an integrated society come true by adopting across racial lines and through living out their commitments. These placements do not force transracially adopted children to live marginally in both Black and White cultures. The children can function in both societies and make smooth transitions from one to the other.

E. *The Politics of Transracial Adoption*

Some Blacks no longer value the idea of an integrated society, but instead seek a separate but equal society, which was strongly rejected in the civil rights era because separate was deemed inherently unequal.¹²⁷ When people show concern for hard-to-place children by adopting them and providing them with life's necessities and more, it is a far stretch to call them racists. But the members of the NABSW make the stretch because, as Ladner says in citing Kadushin, "the 'child saving activity of one group is perceived as a child snatching activity by another.'"¹²⁸

Often members of the NABSW and their allies have not visited the home of an interracial adoptee.¹²⁹ They do not personally know the parents or the children.¹³⁰ Yet they have rendered a verdict before meeting one of these families. As one Black social worker said, "It is not necessary for me to know something about the individual Whites who are adopting Black babies. I know enough about White people—enough to make me know that I don't

123. OWEN GILL & BARBARA JACKSON, *ADOPTION AND RACE* 5 (1983).

124. Janet Lifshin, *Good Eggs*, *All* 39 *INTERRACE* (May/June 1992).

125. *Id.*

126. Bartholet, *supra* note 55, at 1220.

127. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

128. LADNER, *supra* note 1, at 57.

129. *Id.* at 25.

130. *Id.*

think they know how to raise Black children."¹³¹ This social worker and others are blindly devoted to their political cause. There are no set guidelines on how to raise a Black child, just as there are no rules on how to raise any child. Parents rear their children through trial and error. No one knows how to raise children, they learn as they go. Certain studies have shown that these parents are convinced that the welfare of the child should be placed above everything else, and they reject the notion that politics has any place in the child welfare area.¹³² It is probably fair to say that homeless children are not particularly interested in the political aspects of their Blackness or other ethnicity. They are interested in remedying their homelessness. So too should social workers and available adoptive parents.

Many Black social workers give the impression that their only goal is to prevent transracial adoption rather than to find homes for the children.¹³³ Perhaps the NABSW could lend more credibility to its cause if its members were themselves adopting Black children. But this does not appear to be taking place.¹³⁴ Whites who have counterattacked by asserting that if their opponents were adopting Black children there would be no need for Whites to do so.¹³⁵ Yet the NABSW claims possession of Black children when referring to them as "our children." The NABSW does not serve as guardian to Black children in foster care. It is erroneous to assume that Blacks or Whites automatically make better parents for adopted children simply because of race. For some White parents, the Black social workers are exaggerating problems which might be caused by transracial adoption.¹³⁶ They accuse these social workers of being racists.¹³⁷

F. *Annihilation of the Black Community*

The Black community is in no real threat of destruction by transracial adoption because there are so few Black children who are adopted by White families. In 1971, there were 2,574 Black-White adoptions, and in 1972, there were 1,569. By 1974, there were about 733.¹³⁸ The Chicago Child Care Society's longitudinal study indicates that transracial adoptees develop a "strong sense of Black identity and racial pride and feel more comfortable than the in racial adoptees with other Black Americans."¹³⁹

Despite the positive predictions of such studies, many are adamant in their opposition to transracial adoption because of its "potential" negative effect on minority children. But there is evidence that transracial adoption presents many advantages for a child. Dr. Alvin Poussaint of Harvard University, who has authored numerous articles and books about children, has

131. *Id.* The politics and controversy of transracial adoption receive much more attention than the positive aspects which show its success.

132. LADNER, *supra* note 1, at 94.

133. *Id.*

134. *Id.* at 25.

135. *Id.*

136. *Id.* at 97.

137. *Id.* at 96.

138. RITA SIMON & HOWARD ALTSTEIN, *TRANSRACIAL ADOPTION: A FOLLOW UP* 55 (1981).

139. Bartholet, *supra* note 55, at 1217. Bartholet contends that a greater percentage of transracial adoptees develop a sense of Black identity and Black preference than the inracial adoptees at age four, with the inracial adoptees catching up at early adolescence. This study gives the assurance that transracial adoptees are not harmed or deprived by their placements. *Id.*

interviewed children who grew up in biracial families. He found that the children tended to dismiss the alleged disadvantages of their circumstances and emphasized the advantages.¹⁴⁰ The adoptees felt that they had two cultures instead of one which was to be promoted over the other.¹⁴¹ Poussaint also reported that they interacted easily in both Black and White worlds and more readily made friends with different kinds of people. Some felt less threatened by the White world because they had not only been exposed to it, but lived in it, unlike other Black or biracial children, and they felt that they were less narrow-minded and more tolerant of differences.¹⁴² And of the children interviewed, they all said that they would consider interracial marriage for themselves.

VI. FUTURE OF TRANSRACIAL ADOPTION

The struggle surrounding transracial adoption can, at times, be reduced to another battle between Black and White interests. Some Black people clearly want to protect the rights of Black children and promote Black pride and integrity. Some White adoptive parents want to maintain their right to adopt any child they choose, though probably not at the expense of Black children's racial integrity. There should be no conflict between these two interests when both objectives can be achieved. The NABSW's policies, however, are potentially more harmful than helpful to homeless Black children.

Many fail to see that racial and cultural differences can be maintained and advanced without promoting racial separatism. Elizabeth Bartholet stated, "transracial adoptive families constitute an interesting model of how we might better learn to live with one another in this society. These families can work only if there is appreciation of racial difference, and love that transcends such difference . . . ; the evidence indicates that these families do work."¹⁴³

Inevitably, race will be considered in adoption cases. However, race should not be considered if it means delay in finding a permanent home for a child. The state and its agencies should not be allowed to hinder the creation of such families when they could set very good examples of working nontraditional families. NABSW errs in its insistence that Black children's health and happiness can be protected only by Black parents.

VII. CONCLUSION

More adoptive parents should utilize the legal system to enforce their rights when they are denied the opportunity to adopt a child of another race. Several studies have assessed the psychological effect of transracial adoption on adoptees. Overall, the results are positive and similar to those of inracial adoptions.¹⁴⁴

The purpose of this Note is not to assert that transracial adoption is better than inracial adoption. This Author asserts that the harsh attacks on transracial adoption are unwarranted given the number of Black children who

140. Bartholet, *supra* note 55, at 1217.

141. *Id.*

142. *Id.* at 1221.

143. *Id.* at 1248.

144. ROSENTHAL & GROZE, *supra* note 16, at 130.

remain in foster care for years because no one has adopted them. The dangers of transracial adoption that the NABSW charges are grossly exaggerated. And the damage done to children who are shifted to and from different institutions is understated. We cannot condemn transracial adoption at the expense of the children. It is not frivolous to encourage Black children to have pride and appreciation for their heritage, but it is almost impossible to instill such values when these children lack what many take for granted: a home, parents, companionship, and family stability. A hungry stomach must be fed before a hungry heart, and a heart before a hungry soul. Once these children have the basics and no longer agonize over whether the basics will be available for them tomorrow, they can then start to care about cultural values. And when there are enough Black families volunteering to adopt all homeless Black children, there will no longer be a need for White adoptive parents to do so. We should strive to find the best possible home for Black foster children, not just a Black home.

BY VALERIE PHILLIPS HERMANN*

* Ms. Hermann is a 1992 graduate of The University of Alabama School of Law and is pursuing a career in higher education administration.