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TRANSRACIAL ADOPTIONS IN AMERICA: AN ANALYSIS
OF THE ROLE OF RACIAL IDENTITY AMONG
BLACK ADOPTEES AND THE BENEFITS OF
RECONCEPTUALIZING SUCCESS
WITHIN ADOPTIONS

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INTRODUCTION

While still a relatively new phenomenon, transracial adoptions and the empirical studies documenting their effectiveness have evolved tremendously.¹ The emergence of this newfound knowledge of the detrimental impact of transracial adoption on black adoptees' racial identity warrants a change in adoption policies in the United States. This Note examines the development of transracial adoption in America and provides viable solutions to enhance the current

1. Andrew Morrison, *Transracial Adoption: The Pros and Cons and the Parents' Perspective*, 20 HARV. BLACKLETTER L.J. 167, 186–87 (2004).

statutes on transracial adoption. This Note challenges the characterization of a transracial adoption as a “success” based on the positive relationship between the adoptive parent and the child. Instead, it conceptualizes success as an adoptee’s sense of self-awareness as a black individual and positive cultural identity. First, Part I will delve into the history of transracial adoption in America. Second, Part II will explain the methodology of previous studies on transracial adoption and the corresponding critiques of those particular methods. Next, Part III will discuss the economic advantages of adopting a black child. Following that, it will list the states that take race into consideration. Finally, this Note will engage in a discourse of policy considerations that could potentially transform the experiences of many black adoptees.

I. THE HISTORY OF TRANSRACIAL ADOPTION IN THE UNITED STATES

A. The Emergence of Federal Laws Promoting Transracial Adoptions

Transracial adoptions in the United States have been legally permitted and facilitated by public adoption agencies since the 1950s.² Transracial adoption developed in the United States at the conclusion of World War II when many children needed homes.³ As the number of black children in foster care increased and the white parents desiring to adopt surpassed the number of white children available for adoption, many adoption agencies began to authorize white couples to adopt black children more frequently.⁴

Transracial adoption progressively increased until the National Association of Black Social Workers (NABSW) publicly declared their opposition to transracial adoptions in the early 1970s.⁵ The NABSW viewed transracial adoptions as a twofold threat to the individual black child’s racial socialization and to the progress of the black community as a whole.⁶

In 1994, Congress passed the Howard M. Metzenbaum Multiethnic Placement Act, which prohibited all adoption agencies receiving federal assistance from denying and delaying adoptions based solely on the “race, color, or national origin of the adoptive or foster parent, or the child, involved.”⁷ While the Multiethnic Placement Act

2. *Id.* at 170.

3. *Id.*

4. *Id.* at 171.

5. *Id.*

6. *Id.*

7. Multiethnic Placement Act of 1994, Pub. L. No. 103-382, § 553, 108 Stat. 3518 (1994) (amended 1996).

eliminated adoptive practices that based the adoption entirely on race, the Act still permitted the consideration of race.⁸ The Act provided that an agency could “consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.”⁹

Congress later passed the Interethnic Provisions of 1996, which further prohibited agencies from denying adoption based solely on race.¹⁰ Unlike the Multiethnic Placement Act, this statute did not explicitly include a provision permitting consideration of race as one factor among many in the adoption process.¹¹ Moreover, the 1996 amendment had “an enforcement provision whereby federally funded state programs and private programs receiving federal funds that violated [the Interethnic Provisions of 1996] would have their funding reduced by two percent for the first violation, three percent for the second violation, and five percent for the third and each subsequent violation during any fiscal year.”¹²

Black children are most likely to be affected by these federal statutes because black communities typically experience concentrated amounts of single-parent households, criminal incarceration, substance abuse, and poverty.¹³ From 2007 to 2016, approximately sixty-six percent of black children have been in single-parent households; whereas only twenty-four percent of non-Hispanic white children were in single-parent households.¹⁴ There is a similar racial disparity among the incarcerated, given that blacks are significantly overrepresented in prisons.¹⁵ In 2017, the Pew Research Center analyzed data from the Bureau of Justice statistics, which revealed that although blacks only comprised twelve percent of the United States adult population, blacks constituted thirty-three percent of

8. *Id.*

9. *Id.*

10. Interethnic Placement Act, 42 U.S.C. § 1996(b) (1996).

11. *Id.*

12. David Ray Papke, *Transracial Adoption in the United States: The Reflection and Reinforcement of Racial Hierarchy*, 2013 UTAH L. REV. 57, 77 (2013) (quoting Cynthia G. Hawkins-León & Carla Bradley, *Race and Transracial Adoption: The Answer is Neither Simply Black or White nor Right or Wrong*, 51 CATH. U. L. REV. 1227, 1244–45 (2002)).

13. Robert Joseph Taylor & Michael C. Thornton, *Child Welfare and Transracial Adoption*, 22 J. BLACK PSYCHOL. 282, 282 (1996).

14. *Children in Single-Parent Families by Race*, KIDS COUNT DATA CENTER, <https://datacenter.kidscount.org/data/tables/107-children-in-single-parent-families-by#detailed/1/any/false/870,573,869,36,868,867,133,38,35,18/10,11,9,12,1,185,13/432,431> [<https://perma.cc/P86D-XT7Q>] (last updated Jan. 2018).

15. John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison is Shrinking*, PEW RESEARCH CTR. (Jan. 12, 2018), <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison> [<https://perma.cc/R9QZ-S8Z8>].

the prison population.¹⁶ Conversely, although whites accounted for sixty-four percent of the United States adult population, they only made up thirty percent of the prisoner population.¹⁷ Thus, it is the intersection of these factors that usually contributes to the placement of large numbers of black children in foster care.¹⁸ Since the number of black children in foster care disproportionately exceeds the number of white children, adoption agencies often place black children in white homes to ensure that the children have a stable, permanent environment and reduce the amount of time that black children have to remain in foster homes waiting for a qualified same-race household.¹⁹

B. The Extent of Race Consideration in Adoption

Although the Interethnic Provisions of 1996 effectively precludes any consideration of race, some states have allowed race to be considered as one factor among many others.²⁰ In terms of the home study requirements and adoption statutes of different states, only Alabama, Maine, Michigan, Minnesota, Nebraska, New York, North Carolina, Oklahoma, South Carolina, Wisconsin, and Wyoming briefly mention race.²¹ However, those eleven states do not elaborate on the extent to which race is considered; nor do they provide an objective standard to determine if parents who are a different race than the child are suitable.²²

II. CRITICISMS OF THE METHODOLOGY OF THE EARLY STUDIES

A. The Problematic Nature of Using Personal Self-Esteem as an Indicator of Positive Racial Identity

Generally, black families seldom adopt white children because there are more white parents seeking to adopt white children, a vast

16. *Id.*

17. *Id.*

18. Taylor & Thornton, *supra* note 13, at 282.

19. Morrison, *supra* note 1, at 191–92. Although non-Hispanic white children comprised fifty-one percent of the overall population of children under eighteen, they only constituted forty-four percent of the children in foster care in 2016. *Foster Care: Differences by Race and Hispanic Origin*, CHILD TRENDS, <https://www.childtrends.org/indicators/foster-care> [<https://perma.cc/UDV4-ZZUW>] (last visited Mar. 22, 2020). However, non-Hispanic black children only comprised fourteen percent of the overall population of children under eighteen, but they made up twenty-three percent of the children in foster care. *Id.*

20. Papke, *supra* note 12, at 1061; *see also* 42 U.S.C. § 1996(b).

21. CHILD WELFARE.GOV, HOME STUDY REQUIREMENTS FOR PROSPECTIVE PARENTS IN DOMESTIC ADOPTION (2016), https://www.childwelfare.gov/pubPDFs/homestudyreqs_adoption.pdf.

22. *Id.*

majority of the foster children are black, and social workers are hesitant to allow black parents to adopt white children.²³ Since this is the national trend, many of the early studies of transracial adoption focused on the experiences of white adoptive parents and their black children.²⁴ Overall, researchers have found that adopted and non-adopted children do not differ in terms of personal self-esteem.²⁵

Taylor and Thornton's analysis of previous studies of transracial adoption draws attention to the lack of studies that focus on group identity among adopted children.²⁶ Instead of taking a broader, more comprehensive approach, many studies perpetually adopt a narrow approach and compare adopted children's personal self-esteem to those of non-adopted children.²⁷ Taylor and Thornton distinguish group identity from personal self-esteem by stating that "[g]roup identity is a bond with an ethnic/racial group whose members are perceived by themselves and others to have a common origin and culture, and shared activities in which the common origin or culture is an essential ingredient."²⁸ On the contrary, personal self-esteem is determined by "how one evaluates the overall self, regardless of racial/ethnic group."²⁹ Although one might be inclined to believe that an individual's personal self-esteem is consistent with their group identity, an individual is capable of possessing a positive personal self-esteem and weak ties to the group.³⁰

B. The Limitations of the Clark Doll Studies

While many of the early scholars studying transracial adoption used the Clark Doll Test as an indicator of a child's internalization of racial identity and group identity, this methodology does not delve into and assess the many other facets of group identity such as a sense of inclusion in the group, positive and negative attitudes toward the group, and participation in cultural activities.³¹ The Clark Doll experiment was originally conducted in the 1930s by two psychologists, Kenneth and Maime Clark, who were seeking to determine what kind of effect segregated schools had on children.³² When they handed

23. Morrison, *supra* note 1, at 169–70.

24. *Id.* at 185–86.

25. Taylor & Thornton, *supra* note 13, at 283.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Morrison, *supra* note 1, at 186; *see also* Taylor & Thornton, *supra* note 13, at 283.

32. *Kenneth and Maime Clark Doll*, NPS, <https://www.nps.gov/brvb/learn/history/culture/clarkdoll.htm> [<https://perma.cc/W7G9-NCD4>] (last updated Apr. 10, 2015).

black children two light-skinned dolls and two dark-skinned dolls, they found that the majority of black children labeled the black dolls as “bad,” and preferred the white dolls to the black dolls.³³

Joan Shireman and Penny Johnson conducted a longitudinal study in 1970 to research the racial identity of black adopted children.³⁴ When they administered the Clark Doll Test to the adopted children at age four, they found that most of the black children adopted by white parents knew that they were black and displayed a greater preference for the black doll than black children adopted by black parents.³⁵ When Shireman and Johnson conducted the Clark Doll test at age eight, the black children adopted by black parents displayed a drastic change in preference.³⁶ While the black children adopted by white parents’ preferences remained the same, the black children adopted by black parents experienced a lower preference for the white doll than the transracially adopted children.³⁷

Furthermore, the Clark Doll study is limited because it merely measures the racial group that the child prefers or his ability to correctly identify the racial group in which society would place him.³⁸ Self-labeling does not adequately capture the strength of an adopted child’s ties with his or her racial community.³⁹ Language, friendship, religion, and political ideology are additional factors that could be used as a better measurement of group identification.⁴⁰

In contrast, several of the studies that used a combination of interview methods to explore the racial identity of transracial adoptees revealed that they did not possess a positive racial identity.⁴¹ In 1983, Ruth McRoy and Louis Zurcher conducted a study comparing thirty white families who had adopted black children with thirty black families who had adopted black children.⁴² McRoy and Zurcher interviewed both the white parents and the black adopted children.⁴³ The transracially adopted children were more likely to

33. *Id.*

34. See generally Joan F. Shireman & Penny R. Johnson, *A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional*, 31 OXFORD UNIV. PRESS 172, 173–74 (May–June 1986).

35. *Id.* at 174.

36. *Id.*

37. *Id.*

38. Taylor & Thornton, *supra* note 13, at 283.

39. *Id.*

40. *Id.*

41. See Arnold R. Silverman, *Outcomes of Transracial Adoption*, 3 FUTURE OF CHILD 104, 110 (1993); see also Colleen Butler-Sweet, “A Healthy Black Identity” *Transracial Adoption, Middle-Class Families, and Racial Socialization*, 42 J. COMP. FAM. STUD. 193, 208 (2011).

42. Silverman, *supra* note 41, at 109.

43. *Id.*

attend predominantly white schools where they seldom encountered black peers or black role models; whereas the inracial group attended schools that were predominantly black.⁴⁴ While the children's responses to the Tennessee Self-Concept Scale and Twenty-Statement Test did not convey any differences in the self-esteem of transracial adoptees in comparison to the inracial adoptees, their responses revealed a stark difference in their racial identity.⁴⁵ Fifty-six percent of transracial adoptees self-identified as "either mixed, part-white, black-white, human or American;" thirty percent considered themselves black; ten percent stated that they were white; and one identified as Mexican.⁴⁶ On the contrary, inracial adoptees typically identified as black.⁴⁷

Out of the eighteen transracial families interviewed, sixty percent of them lived in predominantly white neighborhoods.⁴⁸ McRoy and Zurcher found that this group of transracial adoptees rarely discussed racial differences at home.⁴⁹ Even more concerning was their discovery that this group of transracial adoptees did not feel that they possessed anything in common with blacks and had no desire to associate with them.⁵⁰ The remaining forty percent of transracial families acknowledged their adopted child's racial identity, attempted to provide them with black role models, and enrolled them in integrated schools.⁵¹ As a result, their children had both white and black friends and frequently discussed racial identity issues with parents and peers.⁵² While proponents of transracial adoption may claim that the transracial adoptees' lack of interest in associating with other black people is simply a result of their socio-economic class, these statistics are nonetheless alarming.⁵³ Legislators should be mindful that transracial adoptees with lower levels of group identity could become marginalized and isolated as they "voluntarily reject their Black peers and institutions, while never experiencing total acceptance by their White peers."⁵⁴

Even when one controls for class, transracial adoptees still have a level of identity confusion.⁵⁵ Colleen Butler-Sweet employed a life story interview approach among monoracial, biracial, and transracial

44. *Id.*

45. *Id.* at 110.

46. *Id.*

47. *Id.*

48. Silverman, *supra* note 41, at 110.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *See id.* at 109–10.

54. Taylor & Thornton, *supra* note 13, at 287.

55. Butler-Sweet, *supra* note 41, at 208.

families.⁵⁶ She found that transracial adoptees possessed a more parochial viewpoint of “authentic blackness” because their parents conflated urban culture with black culture⁵⁷ by attempting to expose them to urban culture rather than black middle-class organizations.⁵⁸ Since the transracial adoptees did not view themselves as exhibiting the characteristics of urban poverty, they did not identify themselves as being “authentically black.”⁵⁹

III. ECONOMIC ADVANTAGES OF ADOPTING A BLACK CHILD

Although the purpose of the Interethnic Provisions was to decrease the length of time that black children remain in foster care and reduce their waiting time for adoptive parents, the provisions have not had a significant impact on the number of black children adopted from foster care.⁶⁰ In the United States, adults seeking to adopt a child can start the adoption process by contacting one of three main entities.⁶¹ First, adults can “[access] the public child-welfare system, which has custody over children who have been removed involuntarily from their birth parents pursuant to allegations of abuse or neglect, or whose parents have died, been incarcerated, or abandoned them.”⁶² Second, prospective parents can “[work] with a nongovernmental for-profit or not-for-profit agency to adopt a child whose birth parents have voluntarily placed him or her into the care of that agency for purposes of adoption.”⁶³ The third option would consist of the parents “arranging an independent adoption directly with [the] birth parents, without mediation by an agency though often with the assistance of attorneys or other adoption intermediaries.”⁶⁴

In order to promote adoptions, the state and federal government provide financial incentives for adults to adopt children.⁶⁵ Several states subsidize adoptions of “hard-to-place” or “special needs” children.⁶⁶ Further, the federal tax code allocates “a supplemental

56. *Id.* at 198.

57. *Id.* at 206.

58. *Id.*

59. *Id.* at 206–07.

60. Barbara Fedders, *Race and Market Values in Domestic Infant Adoption*, 88 N.C. L. REV. 1687, 1689 (2010); THE EVAN B. DONALDSON ADOPTION INSTITUTE, FINDING FAMILIES FOR AFRICAN AMERICAN CHILDREN: THE ROLE OF RACE AND LAW IN ADOPTION FROM FOSTER CARE (2008), <https://www.adoptioninstitute.org/wp-content/uploads/2013/12/MEPApaper20080527.pdf>.

61. Fedders, *supra* note 60, at 1689–90.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 1697.

66. Fedders, *supra* note 60, at 1697. A “child with special needs” includes “a child who, due to factors that include a child’s race, is determined to be more difficult to place.” *Id.*

adoption credit in addition to the standard adoption credit to those parents who adopt a child labeled ‘special needs’ by an agency.”⁶⁷ Similar to the states, the Internal Revenue Service (IRS) regulations can consider membership in a racial minority group as a factor when determining whether a child has “special needs” for purposes of tax credits.⁶⁸ Few states place an upper limit on, or significantly restrict, the amount of money that adoption agencies can charge.⁶⁹ Additionally, there is not a federal agency that is responsible for providing oversight of this process.⁷⁰

Broadly speaking, private adoptions are more expensive compared to adoptions from the public welfare system.⁷¹ Private adoptions can range from \$4,000 to \$100,000.⁷² Since black children are harder to place in adoptive homes, many agencies lower the price of adopting black children.⁷³ This provides an incentive for families who have a lower budget to be able to participate in the adoption process.⁷⁴ Agencies also lower the cost to appeal to families who are skeptical about adopting a child of a different race.⁷⁵ In 2013, one adoptive parent reported that it would have costed her approximately \$35,000 to adopt a white child; whereas, she only had to pay \$18,000 for a black child.⁷⁶ While agencies are lowering the costs to appeal to people with limited financial means, their practices may be deterring otherwise willing adults from adopting.⁷⁷ The executive director of Pact, a California agency that facilitates adoptive placements only for children of color, “noted that black adoptive parents do not trust and thus decline to work with agencies that employ race-based pricing—whether or not they could save money by doing so—because these parents view the practice as racist.”⁷⁸

In most instances, the adoption of black children is guided by the principles of supply and demand.⁷⁹ Significantly more white prospective parents enter the formal private adoption process than do adults of other races, and most of these white prospective parents

67. *Id.*

68. *Id.*

69. *Id.* at 1700.

70. *Id.*

71. Fedders, *supra* note 60, at 1694.

72. *Id.*

73. *Six Words: ‘Black Babies Cost Less To Adopt,’* NPR (June 27, 2013, 2:55 AM), <https://www.npr.org/2013/06/27/195967886/six-words-black-babies-cost-less-to-adopt> [<https://perma.cc/2N8X-QGWA>] [hereinafter *Six Words*].

74. *Id.*

75. *Id.*

76. *Id.*

77. *See* Fedders, *supra* note 60, at 1710.

78. *Id.*

79. *Id.*

express a preference for adopting white babies.⁸⁰ As a result, white infants are in the shortest supply relative to the available prospective adoptive parents who want to adopt them.⁸¹ Although some whites may desire a black child, many prefer to look abroad at African countries instead of adopting an African American domestically.⁸²

In addition, the adoption process for black children is more expedient than white children.⁸³ While economic principles have historically played a significant role in adoption, some agencies are transitioning to a uniform cost system.⁸⁴

IV. POLICY

While no single law is going to serve as a panacea for the competing interests involved in transracial adoptions, this section provides four solutions that permit race to be taken into account for the best interests of the child. Subsection A addresses the importance of allowing the permissive consideration of race in adoptions for the best interest of black adoptive children's safety. Subsection B proposes that Congress make cultural education a mandatory requirement. It also advocates for a more comprehensive cultural education that spans beyond just mere historical facts. The proposed cultural education program would require adoptive parents to forge meaningful relationships with black mentors and engage in discourse with their adopted children about various strategies to cope with the racial tensions that are ever present in American society. Subsection C proposes that adoption agencies consider the biological parents' preference for same-race adoptive parents. Subsection C also provides a comparative analysis of state statutes that include the biological parents' preferences to varying degrees. Subsection D provides case law that demonstrates that black children should be permitted to exert agency in choosing the racial identity of their prospective adoptive parents. Lastly, Subsection E discusses how adoption agencies should encourage the growing middle class of blacks to

80. Fedders, *supra* note 60, at 1695.

81. *Id.* at 1695–96.

82. Nichole Bazemore, *The Bias Against African-American Children in U.S. Adoption*, ADOPTION INSTITUTE (Mar. 22, 2016), <https://www.adoptioninstitute.org/news/the-bias-against-african-american-children-in-u-s-adoptions> [<https://perma.cc/673Y-GK5T>]. Americans adopted 6,441 children from other countries in 2014 even though there were approximately 108,000 children available for adoption in the U.S. as of July 2015. *Id.*

83. *Id.*; see also Elizabeth Raleigh, *Selling Transracial Adoption: Families, Markets, and the Color Line*, OAPEN (2018), <http://www.oapen.org/download?type=document&docid=642740> [<https://perma.cc/VS78-35DJ>] (explaining that adoptive parents will likely have to wait approximately eighteen to twenty-four months to receive a white child, but they can receive a black child in a shorter period of time).

84. *Six Words*, *supra* note 73.

adopt black children. Ultimately, color-consciousness, rather than color-blindness, should be the overarching driving force in the development of public policy that will serve the best interests of black adopted children.⁸⁵

A. Congress Should Reinstate the Permissive Consideration of Race in Adoption Placements for the General Safety and Well-Being of Black Adopted Children

First, Congress should restore part of the language of the Multiethnic Placement Act in order to ensure that black children adopted by white parents possess a level of self-awareness and understand the negative implications of being black in America. Specifically, Congress should reinstate the permissive consideration of race provision and encourage adoption agencies to conduct a thorough investigation of the capacity of the prospective white parents to meet the cultural needs of their child.⁸⁶

Substantial weight should be given to placing black foster children with black adoptive parents as a matter of safety. As black adopted children develop into teenagers, they should be privy to the fact that wearing a hoodie at night could render them a suspicious person and could ultimately cost them their lives as in the case of Trayvon Martin.⁸⁷ Black adoptive children must learn that it is imperative to comply with the police so that a minor stop for a traffic violation will not transform into a full-blown arrest, as in the case of Sandra Bland.⁸⁸ Even if black adopted children never have

85. David Crary, *Changes Urged in Transracial Adoption Laws: Child Advocates Say System Harms Black Kids in Foster Care*, SFGATE (May 27, 2008, 4:00 AM), <https://www.sfgate.com/news/article/Changes-urged-in-transracial-adoption-laws-3282627.php> [<https://perma.cc/29EZ-6GYF>].

86. See Multiethnic Placement Act of 1994, *supra* note 7.

87. In *Zimmerman v. State*, the Court found George Zimmerman, a neighborhood watch volunteer, not guilty of second-degree murder or manslaughter after he shot Trayvon Martin. Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (July 13, 2013), <https://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html> [<https://perma.cc/YU7S-EXU9>]; see also Zimmerman v. State, 114 So. 3d 446 (Fla. Dist. Ct. App. 2013). Zimmerman, who was twenty-eight years old, claimed that he killed Martin an unarmed, black seventeen-year-old, in self-defense because Martin was wearing a hoodie and appeared suspicious. See *Tragedy Gives The Hoodie a Whole New Meaning*, NPR (Mar. 24, 2012 5:44 AM), <https://www.npr.org/2012/03/24/149245834/tragedy-gives-the-hoodie-a-whole-new-meaning> [<https://perma.cc/BX4E-U4MY>].

88. K.K. Rebecca Lai, Haeyoun Park, Larry Buchanan & Wilson Andrews, *Assessing the Legality of Sandra Bland's Arrest*, N.Y. TIMES, <https://www.nytimes.com/interactive/2015/07/20/us/sandra-bland-arrest-death-videos-maps.html> [<https://perma.cc/A8JQ-VKSH>] (last updated July 22, 2015). On July 10, 2015, a Texas state trooper pulled Sandra Bland over for failing to use a turn signal. When the officer asked Bland to stop smoking her cigarette and ordered her to step out of her car, she refused. The officers forcefully

an encounter with officers, they need to be aware of the fact that their ordinary college campus could transform into a hostile area overnight and resemble the racial dynamics of the late nineteenth and early twentieth centuries.⁸⁹ Black adoptive children must understand that their very existence is viewed as a perpetual threat and is accompanied by a plethora of negative stereotypes as in the case of DeShawn Currie.⁹⁰

Raising black children consists of a two dimensional socialization process.⁹¹ Parents are tasked with teaching black children appropriate moral behavior and independence.⁹² However, many black parents have the additional responsibility of equipping their black children with the necessary skills and knowledge to combat racial prejudice and develop a positive sense of self as a black person in America.⁹³ In addition, parents must teach black children how to be cognizant of their social position within the larger social structure and how to

held Bland down while arresting her. Bland was found dead in her jail cell on July 13, 2015. While the autopsy report indicated that Bland's cause of death was suicide, many of her family and friends remain skeptical that her death was a suicide. *See also After A Traffic Stop, Teen Was 'Almost Another Dead Black Male,'* NPR (Aug. 15, 2014, 3:52 AM), <https://www.npr.org/2014/08/15/340419821/after-a-traffic-stop-teen-was-almost-another-dead-black-male> [<https://perma.cc/ND7Z-6KL4>]. Alex Landau, a black male who was adopted by white parents, stated that his parents never talked about race when he was growing up. Landau had a rude awakening while in college when he was pulled over for allegedly making an illegal left turn. When Landau asked the officers if they had a warrant to search his car, the officers relentlessly beat him to the point that it required forty-five stitches to close up the lacerations on his face. *Id.*

89. Hawes Spencer & Sheryl Gay Stolberg, *White Nationalist March on University of Virginia*, N.Y. TIMES (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/white-nationalists-rally-charlottesville-virginia.html> [<https://perma.cc/5EKH-6PEC>]. On August 11, 2017, several hundred White Nationalist men marched throughout the University of Virginia's campus with torches in protest against the proposed removal of a Robert E. Lee statue. *Charlottesville Mourns Woman Killed in Rally that Turned Violent*, WASH. POST (Aug. 16, 2017), https://www.washingtonpost.com/life-style/kidspost/charlottesville-mourns-woman-killed-in-rally-that-turned-violent/2017/08/16/29975362-8296-11e7-902a-2a9f2d808496_story.html?utm_term=.5150a4d15671 [<https://perma.cc/V4BB-YL6W>]. This protest occurred only one month after the Ku Klux Klan held a "Unite the Right" rally in the city of Charlottesville to oppose the same statue. One counter-protester died as a result of a car driving toward the counter-protesters. *Id.*

90. Gail Sullivan, *Police Mistake White Family's Black Foster Son for Burglar*, WASH. POST (Oct. 9, 2014), https://www.washingtonpost.com/news/morning-mix/wp/2014/10/09/police-mistake-white-familys-black-foster-son-for-burglar/?utm_term=.f0aa54859a16 [<https://perma.cc/YG78-CWE4>]. DeShawn Currie was an eighteen-year-old black adoptee who had been living with his white adopted family for approximately one year. Currie's adoptive parents typically left the door unlocked for Currie so that he could enter after school. When a neighbor observed Currie walking into his own house, the neighbor called the police to report a burglary. Once the police arrived, they asked Currie for his ID, pepper-sprayed Currie, and then handcuffed him. His white adoptive parents eventually resolved the matter with the police. *Id.*

91. Taylor & Thornton, *supra* note 13, at 284.

92. *Id.*

93. *Id.*

conduct themselves.⁹⁴ Although white adoptive parents might have taken a few sociology classes and might have read about the discrimination that blacks face in America, mere textbook knowledge will not suffice.⁹⁵ It is crucial that Congress amend the Interethnic Provisions of 1996 to include a consideration of race because white parents may consciously or unconsciously ignore racial discrimination due to their privileged racial status in American society.⁹⁶ While white adoptive parents may be knowledgeable about issues pertaining to the black community, their understanding of the consequences of being black in America may still be limited due to their privileged perspective.⁹⁷

Furthermore, Congress should permit the consideration of race because it promotes the best interest of the black adopted child.⁹⁸ When white adoptive parents' perceptions of racial disparities in America are distorted, then they can potentially hinder their black children's ability to cope with racial discrimination.⁹⁹ For instance, Smith, Juarez, and Jacobson conducted an empirical study of white adoptive parents and black adoptive children by interviewing both parties.¹⁰⁰ The researchers found that many of the black children were instructed to repress their anger toward whites when confronted with a negative racial encounter.¹⁰¹ Not only were the black adopted children silenced and prevented from expressing their discontent with negative racial situations, but they were also taught that their criticisms and feedback were unreasonable.¹⁰² In a similar study, Shireman and Johnson found that adopted black children occasionally experienced overt racial slurs or discrimination in the white neighborhoods in which they resided.¹⁰³ Although parents addressed the racial discrimination, they minimized it and reacted to it as they would to general name-calling.¹⁰⁴ Some of the adoptive parents even devalued the importance of race, with "more than half of them wishing their children to identify with the human race, as black and white, or in some manner other than black."¹⁰⁵

94. *Id.*

95. *Id.* at 286.

96. *Id.*

97. Taylor & Thornton, *supra* note 13, at 286.

98. *See generally id.* at 289.

99. *Id.* at 285–86.

100. Darron T. Smith, Brenda G. Juarez & Cardell K. Jacobson, *White on Black: Can White Parents Teach Black Adoptive Children How to Understand and Cope With Racism?*, 42 J. BLACK STUD. 1195, 1203 (2011).

101. *Id.* at 1217.

102. *Id.* at 1218.

103. Shireman & Johnson, *supra* note 34, at 175.

104. *Id.*

105. *Id.*

Congress should allow adoption facilities to consider race as the part of the best interest analysis in order to ensure the psychological well-being of black adopted children.¹⁰⁶ As a matter of policy, it is unacceptable to silence a child's negative critiques of racial discrimination and minimize the severity of the racial situation.¹⁰⁷ While the primary goal of foster care is to place children in stable homes, the analysis should not end at that rudimentary level; Congress should expand its best interest analysis to include the potential white parents' ability to help their black child cope with discrimination.¹⁰⁸

B. Cultural Education Must Be Mandatory and Comprehensive

Second, Congress should make cultural education and socialization a mandatory requirement in transracial adoptions. Racially socializing black children can be challenging even for black parents.¹⁰⁹ There is scant empirical evidence on how black parents protect their children and foster a positive personal identity.¹¹⁰ Thus, there is no precise formula that provides a systematic way to effectively socialize black children.¹¹¹ Although there are black parents who fail to instill a positive group identity in their children, white parents present a different type of risk to black children's personal identities because of their privileged status.¹¹²

The several studies that have researched the socialization of black children adopted by white parents reveal that many white adoptive parents attempt to mitigate this risk by actively surrounding their black children with members of their own race in order to foster a positive cultural identity.¹¹³ Many adoptive parents in the transracial adoption studies educated their children on their black cultural heritage, engaged in activities with members of the child's race, and made constant efforts to socialize with black people.¹¹⁴ While this behavior is laudable, this should not be a choice left to the discretion of white foster parents.

It is imperative that white adoptive parents continually educate their black children about black culture in a variety of ways.¹¹⁵ Failure to do so could cause their children to internalize racist and

106. See Taylor & Thornton, *supra* note 13, at 286–87.

107. See generally Smith, Juarez & Jacobson, *supra* note 100, at 1216–19.

108. See *id.*

109. Taylor & Thornton, *supra* note 13, at 285.

110. *Id.*

111. See *id.*

112. *Id.* at 286.

113. Morrison, *supra* note 1, at 188.

114. *Id.*

115. Taylor & Thornton, *supra* note 13, at 284–85.

discriminatory behavior.¹¹⁶ This, in turn, could lead to black adoptive children experiencing psychological distress.¹¹⁷

From 1971 to 1991, Rita Simon and Howard Altstein conducted a longitudinal study of transracial adoptees.¹¹⁸ Simon and Altstein learned that in the early years, many white adoptive parents were enthusiastic about introducing the adopted child's culture into the family's day-to-day life.¹¹⁹ However, as time progressed, the children expressed that they did not want to continue engaging in cultural activities and receiving lessons in black history.¹²⁰ This finding from Simon and Altstein's study further bolsters the proposition that cultural awareness must be more than mechanically reciting historical facts.¹²¹ Adoptive parents should be required to periodically engage in a dialogue with their adoptive child about his or her personal experiences with racism.¹²² Also, parents should be encouraged to have a discussion with their child about how their child processes current events involving hostility toward minorities.¹²³

Similarly, although white adoptive parents in Smith, Juarez, and Jacobson's study taught their black adoptive children to take pride in black cultural achievements, the researchers found that white parents focused more on prominent blacks such as George Washington Carver and Jackie Robinson.¹²⁴ They observed that white adoptive parents used the narratives of influential black people to emphasize the importance of individualism and meritocracy rather than facilitating an open discourse about the racial structure of American society that perpetually privileges white people over black people.¹²⁵ Therefore, Congress should mandate that white parents educate their children on Black history, foster relationships with black people, and engage in conversations about current race relations in America.

Moreover, cultural education must not only consist of a "talk;" rather it should be an ongoing conversation.¹²⁶ While many white

116. *Id.* at 286.

117. *Id.* at 287.

118. Rita J. Simon & Howard Altstein, *The Case for Transracial Adoption*, 18 CHILD. & YOUTH SERV. REV. 5, 13–15 (1996).

119. *Id.* at 17.

120. *Id.*

121. *See generally* Smith, Juarez & Jacobson, *supra* note 100, at 1224.

122. *See id.*

123. *See id.*

124. *Id.* at 1214.

125. *Id.*

126. Chad Goller-Sojourner, *Raising Black Children to Become Black Adults*, ADOPTIVE FAMILIES MAG., <https://www.adoptivefamilies.com/transracial-adoption/talking-with-black-children-about-police-racism-safety> [<https://perma.cc/8U29-M9GY>] (last visited Mar. 22, 2020).

people may think that “if [a person is] not doing anything wrong, [he or she has] nothing to worry about,” many black people are aware that others see them differently than they perceive themselves.¹²⁷ Since black parents teach black children about the realities of being black in America and “what awaits them outside the safety of their homes,” their children are prepared to deal with unpleasant racial encounters.¹²⁸ However, “[t]ransracially adopted Black children are likely to experience far more dramatic transitions because they have lived under the cover of whiteness.”¹²⁹

Ideally, Congress could formulate a comprehensive statute providing cultural education on racial discrimination and techniques to cope with racial injustices in addition to exposing the adopted children to positive black icons. Although black adopted children are typically grateful to their white adoptive parents, many still experience a dissonance that could likely be reduced if the federal government required training on coping techniques.¹³⁰ Chad Goller-Sojourner, a black man who was adopted by a white couple in 1972, described this dissonance by stating, “My source of love and hate came from the same well[.] My parents looked just like the same people who were calling me a nigger or porch monkey. . . . My mother and my parents were in my corner, but it was still difficult to process.”¹³¹

C. Adoption Agencies Could Take the Biological Parents’ Preference for Same-Race Adoptive Parents into Consideration

Third, Congress should create a provision that allows the genetic parents to express a preference for placing their child in a home of the same race.¹³² Kentucky’s statutory code reflects Congress’ goal

127. *Id.*

128. *Id.*

129. *Id.* Goller-Sojourner uses the phrase “[t]he cover of whiteness” to describe the phenomenon that occurs when black children are a part of predominantly white circles. *Id.* According to Goller-Sojourner, “Not only do these circles temporarily afford transracially adopted Black children many of the rights, protections, and privileges afforded their white contemporaries, they also insulate them from many of the hard truths surrounding what it is to be Black in America.” *Id.* The cover of whiteness is dangerous for naïve black children because “[a]s soon as the Black child separates from the pack, all rights, protections, and privileges previously afforded are immediately revoked.” *Id.*

130. See *Growing Up “White,” Transracial Adoptee Learned To Be Black*, NPR (Jan. 26, 2014, 10:57 AM), <https://www.npr.org/2014/01/26/266434175/growing-up-white-transracial-adoptee-learned-to-be-black> [<https://perma.cc/9PDJ-JTSR>].

131. *Id.*

132. Many states have progressively passed open adoption legislation that enable the birth parents of adopted children to retain contact with the children once they have been adopted. See U.S. DEP’T OF HEALTH AND HUMAN SERV., WORKING WITH BIRTH AND ADOPTIVE FAMILIES TO SUPPORT OPEN ADOPTION (2013), https://www.childwelfare.gov/pubPDFs/f_openadoptbulletin.pdf. Several states have shifted to allowing birth mothers to

of eliminating discriminatory race-matching policies with the enactment of the Interethnic Provisions of 1996 while also preserving the right of biological parents to have a voice in the adoption process.¹³³ Section 199.471 of Baldwin's Kentucky Revised Statutes Annotated states, "Petitions for adoption of children placed for adoption by the cabinet or a licensed child-placing institution or agency shall not be denied on the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, unless contrary to the expressed wishes of the biological parent(s)."¹³⁴

Massachusetts' statutory code considers the biological parents' religious preferences first and then locates alternative placements only if it is in the best interests of the child.¹³⁵ Congress should use Section 5B of the Massachusetts General Laws Annotated as a model for transracial adoption laws. Section 5B states

If, at the time of surrender of the child for adoptive custody, the parent or parents of said child requested a religious designation for the child, the court may grant a petition for adoption of the child only to a person or persons of the religious designation so requested, unless a placement for adoptive custody based on such request would not have been in the best interests of the child. If a request for religious designation is not given effect, such reasons in support of such determination shall be made a part of the records of the proceedings.¹³⁶

MASS. GEN. LAWS ANN. Ch. 183–210, § 5B (West 2018).

The last sentence of the statute is particularly important because it holds agencies accountable for articulating a legitimate reason for making a decision that is contrary to the requests of the birth parents.

Currently, Michigan has a provision that allows parents who participate in the selection process for the adoptive parent to select from the "entire pool of potential adoptive parents who have been determined suitable to be adoptive parents of adoptees."¹³⁷ Similarly, Arkansas has a provision that permits the genetic parent of the child to state a preference for a particular religious background, and the court attempts to abide by the preference by placing the child with a family that "meets the genetic parent's religious preference, or if a family is not available, to a family of a different religious background

meet and choose the adoptive parents in order to allay the birth mothers' fears of relinquishing their child to an unknown couple. See Raleigh, *supra* note 83, at 118.

133. KY. REV. STAT. ANN. § 199.471 (West 2018).

134. *Id.*

135. MASS. GEN. LAWS ANN. Ch. 183–210, § 5B (West 2018).

136. *Id.*

137. MICH. COMP. LAWS SERV. § 722.957 (LexisNexis 2018).

that is knowledgeable and appreciative of the child's religious background."¹³⁸ This bifurcated standard should be incorporated into transracial adoption laws on a national scale.

D. Black Children Should Be Allowed to Exert Agency in Choosing the Race of Their Prospective Adoptive Parents

Fourth, Congress could allow the potential adoptive child to express a preference for a parent of the same race or a different race once they reach a certain age. Many of the early challenges to adoption agencies race-matching emanated from white foster parents who had decided that they wanted to legally adopt the child under their care.¹³⁹ When white foster parents realized that race-matching adoption practices were hindering them from adopting their black foster children, the white parents sued in federal courts.¹⁴⁰ Since the inception of transracial adoption in America, some of the focus has been on the desires of white parents.¹⁴¹ Congress should shift the entire focus to the child by giving the children a preference, especially since adoption is supposed to be a service for children.¹⁴² As of 2016, only twelve states and the District of Columbia require courts to take the child's wishes into consideration when assessing the best interests of the child during an adoption proceeding.¹⁴³

Kenny A. v. Perdue illustrates the importance of including black foster children in the selection of their adoptive parents.¹⁴⁴ In *Kenny A. v. Perdue*, Plaintiffs brought a class action lawsuit on behalf of foster children against the Governor of Georgia and several state agencies.¹⁴⁵ Plaintiffs sought injunctive relief to rectify the failure of the state's foster care system to provide them with safe and appropriate placements and services.¹⁴⁶ The black plaintiffs averred that their equal protection rights were violated by Defendants' policy of delaying or denying the adoption of black children by suitable white adoptive parents.¹⁴⁷ Defendants argued that their adoption matches were made "without regard to the race or ethnicity of the child or adoptive parent, except in very limited circumstances such

138. ARK. CODE ANN. § 9-9-102 (2018).

139. Papke, *supra* note 12, at 1060.

140. *Id.*

141. *See id.*

142. THE EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 60, at 8.

143. *Determining the Best Interests of the Child*, CHILD WELFARE, https://www.childwelfare.gov/pubPDFs/best_interest.pdf (last updated Mar. 2016).

144. *Kenny A. v. Perdue*, 2004 U.S. Dist. LEXIS 27025, at *20–22 (N.D. Ga. Dec. 13, 2004).

145. *Id.* at *5.

146. *Id.*

147. *Id.* at *20–21.

as when a child has had extreme negative experiences with racism.”¹⁴⁸ When those rare circumstances arose, Defendants contended that “taking race into account [wa]s permissible because it [wa]s narrowly tailored to serve a compelling interest in protecting and nurturing the child.”¹⁴⁹ In addition, Defendants argued that the Plaintiffs could not proffer any evidence that their adoption decisions were arbitrary or capricious or made with discriminatory intent.¹⁵⁰

Plaintiffs cited findings by the “Department of Health and Human Services’ Office of Civil Rights (OCR) that the state [wa]s not complying with the Multiethnic Placement Act.”¹⁵¹ Furthermore, Plaintiffs stated that an inference of discriminatory race matching could be drawn from aggregate adoptions data.¹⁵² Out of the 144 African-American children whose adoptions were finalized by the state agencies in 2002, only three were adopted by families with at least one non-African-American parent.¹⁵³

Since the court determined that there was a genuine issue of material fact concerning the allegedly discriminatory race-matching practices, the court denied Defendants’ motion for summary judgment on the equal protection claim.¹⁵⁴ Thus, *Perdue* demonstrates that black foster children may want to be included in the decision-making process of selecting their prospective parents; it also conveys the court’s recognition of the validity of this desire.

Although many of the recent empirical studies show that trans-racial adoptees have difficulty developing a positive black identity,¹⁵⁵ *Perdue* presents the significant, competing interest of providing adoptees with a stable home in a timely fashion. Congress could reconcile these interests by implementing a policy that permits black adoptees of a particular age to select their racial preference for adoptive parents. Thus, those that simply desire to exit the foster system as quickly as possible, could choose the first parent(s) that is available while those that would prefer parents that racially resemble them could wait for black adoptive parents.

Minnesota Statute Section 260C.212 strikes a reasonable balance between the competing interests of the child and the state by employing a holistic approach.¹⁵⁶ In *In re Petition of S.G.*, white foster

148. *Id.* at *21.

149. *Id.*

150. *Perdue*, 2004 U.S. Dist. LEXIS 27025, at *21.

151. *Id.*

152. *Id.* at *22.

153. *Id.*

154. *Id.* at *22–23.

155. See Silverman, *supra* note 41, at 110; Butler-Sweet, *supra* note 41, at 208.

156. MINN. STAT. § 260C.212, subd. 2(b).

parents of two black children filed a petition for adoption contesting the children's grandmother and step-grandfather's petition for adoption.¹⁵⁷ Upon consideration of the petitions, the district court found that it was in the best interests of the children to be adopted by their foster parents and granted their petition.¹⁵⁸ When the grandparents appealed to the Minnesota Court of Appeals, the court held that the district court did not abuse its discretion and thus denied their petition.¹⁵⁹

On appeal to the Minnesota Supreme Court, the grandparents argued that the district court erred in not giving them preference pursuant to Minnesota Statute Section 259.57(2)(c).¹⁶⁰ However, the foster parents asserted that the best interests of the children was the primary issue.¹⁶¹ Moreover, the foster parents contended that the district court was required to make an individualized determination of the children's needs based on the ten factors listed in the Minnesota statute rather than favoring the adoption of children by their relatives.¹⁶² The court concluded that the best interests standard required an individualized assessment of the needs of the child.¹⁶³ In order to conduct an individualized determination, the court considered the following factors:

(1) the child's current functioning and behaviors; (2) the medical needs of the child; (3) the educational needs of the child; (4) the developmental needs of the child; (5) the child's history and past experience; (6) the child's religious and cultural needs; (7) the child's connection with a community, school, and faith community; (8) the child's interests and talents; (9) the child's relationship to current caretakers, parents, siblings, and relatives; and (10) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.

The grandparents claimed that the district court abused its discretion on several grounds, one of which included the court's finding with respect to the children's cultural needs.¹⁶⁴ Additionally, the grandparents argued that the court improperly analyzed and underestimated the cultural value that the grandparents could provide to

157. *In re Petition of S.G.*, 828 N.W.2d 118, 119–20 (2013).

158. *Id.* at 120.

159. *Id.*

160. *Id.*

161. *Id.* at 123.

162. *Id.*

163. *In re Petition of S.G.*, 828 N.W.2d at 125.

164. *Id.* at 125–26.

their grandchildren. The grandparents essentially claimed that the district court “gave no weight to their ability to best meet the children’s cultural needs.”¹⁶⁵

Although the district court’s findings were scant at best, the Minnesota Supreme Court’s limited standard of review did not permit it to deem the district court’s analysis of the best-interest factors an abuse of discretion.¹⁶⁶ The district court’s analysis was limited to the foster parent’s claim that she believed it was necessary for the children to learn about their family and its traditions.¹⁶⁷ The district court also considered the fact that the foster parents had adopted two sons who were Asian-American and black, respectively, and a black friend lived with the family.¹⁶⁸ While the Minnesota Supreme Court noted its concern with the gross simplification of the children’s needs and the district court’s blanket acceptance of the foster parents’ cultural competence based on their “belief that diversity is very important,” the Court ultimately gave deference to the district court’s findings.¹⁶⁹ Even though Minnesota’s best-interest standard extends an immense amount of discretion to trial judges, it still provides a workable standard that other states should use as a model.

E. Adoption Agencies Should Encourage the Growing Middle Class of Blacks to Adopt

While pro-transracial adoption advocates claim that white adoptive parents are better able to financially support black children and that it is unlikely that enough black families will qualify to adopt black children based on their historically lower incomes and less formal education, this trend may be changing. A Pew Research study indicated that an increasing number of blacks are completing high school and college.¹⁷⁰ In 2017, 87% of blacks twenty-five and older had a high school diploma.¹⁷¹ The number of blacks “ages twenty-five and older who have completed four years of college or more has roughly doubled . . . from twelve percent in 1993 to 24% in 2017.”¹⁷² In addition, approximately 45% of black married-couple families earned a median family income of \$47,056 in 2016 and approximately

165. *Id.* at 126.

166. *Id.* at 127.

167. *Id.*

168. *In re Petition of S.G.*, 828 N.W.2d at 126.

169. *Id.*

170. Kristen Bialik, *5 Facts About Blacks in the U.S.*, PEW RESEARCH (Feb. 22, 2018), <http://www.pewresearch.org/fact-tank/2018/02/22/5-facts-about-blacks-in-the-u-s> [<https://perma.cc/D7LS-PEXT>].

171. *Id.*

172. *Id.*

\$49,549 in 2017, which falls in the middle class bracket.¹⁷³ Therefore, as the number of educated black people continues to increase, there could be more black families that are qualified to adopt than in previous years. Also, the black immigrant population has increased tremendously since 1980, so their children, who will likely become personally acquainted with the racial dynamics of American society, may decide to adopt if they are infertile.¹⁷⁴ While there may be more white families who are financially suitable for adopting black children, the number of eligible black adoptive parents is steadily increasing and should be taken into consideration by adoption agencies.

In 2010, Pact, a California agency that facilitates adoptions solely for children of color, placed eighty percent of its children in same-race households.¹⁷⁵ Pact attributed its high success rate of placing children in same race households to the fact that it constantly recruits adoptive families of color and has a racially diverse staff and board of directors.¹⁷⁶ Pact's organizational structure demonstrates that it is equally important to have a diverse pool of potential parents as well as a diverse staff whose various cultural perspectives can add immense value to the adoption process.

In addition to changing the racial composition of the staff, who play a vital role in the adoption process, it is imperative to have more black adoptive parents in order to effect change on a macro level. In 2014, England amended its Children and Families Act by removing the requirement that adoption agencies give consideration to a child's race, similar to the United States Interethnic Provisions of 1996.¹⁷⁷ Sargent suggests that this legal innovation was designed to promote post-racialism in England.¹⁷⁸ Thus, the primary goal of this amendment was to present the legal system as one that does not "privilege" or "recognize the existence of differing races and ethnicities."¹⁷⁹ While the amendment may have been celebrated as a move toward a more post-racial society, Sargent posits that it is

173. U.S. Census Bureau, *Selected Population Profile in the U.S.: 2017 Am. Community Surv. 1-Year Estimates*, AM. FACTFINDER, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> [<https://perma.cc/A6BM-QDT8>] (last visited Mar. 22, 2020). According to the Pew Research Center, "[m]iddle income households . . . had incomes ranging from about \$45,200 to \$135,600 in 2016." Richard Fry & Rakesh Kochhar, *Are You in the American Middle Class? Find Out With Our Income Calculator*, PEW RESEARCH (Sept. 6, 2018), <http://www.pewresearch.org/fact-tank/2018/09/06/are-you-in-the-american-middle-class> [<https://perma.cc/X8DR-H9MS>].

174. Bialik, *supra* note 170, at 147.

175. Fedders, *supra* note 60, at 1710–11.

176. *Id.* at 1711.

177. Sarah Sargent, *Transracial Adoption in England: A Critical Race and Systems Theory Analysis*, 11 INT'L J.L. Context 412, 412 (2015).

178. *Id.* at 420.

179. *Id.*

possible that the amendment was passed to clandestinely maintain social hierarchies.¹⁸⁰ Sumi Cho explained how post-racialism serves the interests of the majority by stating that “post-racialism insulates white normativity from criticism . . . The post-racial state disseminates a new set of ‘rules of the game’ of who will be a political actor”¹⁸¹ Similar notions of post-racialism are equated with transracial adoptions in the United States.¹⁸² Smith, Juarez, and Jacobson’s research demonstrates the veracity of Cho’s statement.¹⁸³ Even though white parents had adopted black children, the researchers found that many of the black children were instructed to repress their anger toward whites when confronted with a negative racial encounter.¹⁸⁴

The rhetoric that was used before the passage of the Interethnic Provisions also reflects the racial hierarchy that is ever present in America.¹⁸⁵ On November 3, 1993, the Los Angeles Times published an article entitled, “Salvation or Last Resort?: Thousands of [B]lack [C]hildren [A]re [W]aiting to be [A]dopted. Do they belong only in black families”¹⁸⁶ Black, middle-class adults can uproot this image of whites as “saviors” of black people by adopting more black children.¹⁸⁷ Since families have the primary responsibility for the socialization of children, black middle-class adults should adopt black foster children in order to provide a home where their children can feel at liberty to voice their criticisms of the racism that they experience on an individual level as well as the racist, institutional structures within the larger society.¹⁸⁸ While there are many white adoptive parents who seek out black role models for their adoptive children, black middle-class adults have the ability to serve as positive role models as adoptive parents within a nuclear family structure rather than as mere outsiders.¹⁸⁹ Even if middle-class black families

180. *See id.*

181. *Id.* (quoting Sumi Cho, *Post Racialism*, 94 IOWA L. REV. 1589 (2019)).

182. Karen Valby, *The Realities of Raising a Kid of a Different Race*, TIME, <http://time.com/the-realities-of-raising-a-kid-of-a-different-race> [https://perma.cc/9Y6A-G2HD] (last visited Mar. 22, 2020).

183. Smith, Juarez & Jacobson, *supra* note 100, at 1217.

184. *Id.*

185. *See* Lynn Smith, *Salvation or Last Resort?: Thousands of Black Children Are Waiting to Be Adopted. Do They Belong Only in Black Families? A Few White Parents Say No and Are Fighting to Change What They Believe Are Restrictive Adoption Laws.*, LA TIMES (Nov. 3, 1993), http://articles.latimes.com/1993-11-03/news/vw-52825_1_transracial-adoptions [https://perma.cc/9VS2-MDPA].

186. *Id.*

187. *See generally* Valby, *supra* note 182, at 6.

188. *But see* Smith, Juarez & Jacobson, *supra* note 100, at 1217.

189. Amy Ford, *Finding Black Role Models For My Children*, ADOPTIVE FAMILIES, <https://www.adoptivefamilies.com/transracial-adoption/black-role-models/> [https://perma.cc/9J3G-YHNB] (last visited Mar. 22, 2020).

live in predominantly white neighborhoods, there is a greater chance that black children will be acquainted with other black people because their parents will likely interact with other black families in social settings or by attending the same religious institution.¹⁹⁰

CONCLUSION

While this Note recognizes the benefits of transracial adoption in that it provides a stable home to many black children who would otherwise remain in the foster care system, it also analyzes a range of policy reforms that could be implemented to better serve the best interests of black adoptees. While transracial adoptees may generally have positive self-esteem, this Note challenges the assertion that a positive self-esteem is indicative of a “successful” adoption.¹⁹¹ Empirical studies reveal that many transracial adoptees tend to lack a strong racial identity.¹⁹² Thus, they do not experience the double-consciousness that is crucial to the survival of blacks in America. In the *Souls of Black Folk*, W.E.B. Du Bois coined the term, “double-consciousness” and described it as

a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.¹⁹³

Not possessing this double-consciousness and understanding the realities and life-threatening consequences of what it means to be black in America can cause transracial adoptees to have a rude

190. See David Masci, Besheer Mohamed & Gregory A. Smith, *Black Americans are more likely than overall public to be Christian, Protestant*, PEW RESEARCH (Apr. 23, 2018), <http://www.pewresearch.org/fact-tank/2018/04/23/black-americans-are-more-likely-than-overall-public-to-be-christian-protestant> [https://perma.cc/UXND-M459]. “More than half of all black adults in the United States (53%) are classified as members of the historically black Protestant tradition.” *Id.* Although “eight-in-ten American congregants still attend services at a place where a single racial or ethnic group comprises at least 80% of the congregation, one-in-five now worship in congregations where no single racial or ethnic group predominates in such a way.” See Michael Lipka, *Many U.S. congregations are still racially segregated, but things are changing*, PEW RESEARCH (Dec. 8, 2014), <http://www.pewresearch.org/fact-tank/2014/12/08/many-u-s-congregations-are-still-racially-segregated-but-things-are-changing-2> [https://perma.cc/HAT8-QXXX].

191. Taylor & Thornton, *supra* note 13, at 283.

192. Silverman, *supra* note 41, at 110; Butler-Sweet, *supra* note 41, at 206.

193. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 3 (1903), https://faculty.uml.edu/sgalagher/WEBDuBois-Souls_of_Black_Folk-1-14.pdf.

awakening when they encounter law enforcement officials or other people who have implicit biases about black people.¹⁹⁴ Therefore, it is imperative that Congress reinstate the permissive consideration of race in adoption placements for the general safety and well-being of black adopted children. In addition, cultural education for transracial adoptees must be mandatory and comprehensive. Furthermore, the adoption process could be enhanced if adoption agencies take the biological parents' preference for same-race adoption into consideration. If black adoptive children possess a level of maturity, they should be allowed to exert agency in choosing the race of their prospective adoptive parents. Lastly, adoption agencies should encourage the steadily increasing black middle-class population to adopt. Ultimately, finding a family that best suits the interests of black children requires implementing policies that properly equip black children with the knowledge necessary to be cognizant of how others perceive them while yet being proud in their racial identity. It is only when black adoptive children possess both qualities that the American adoption system can truly pride itself in facilitating successful adoptions. For far too long "[d]efinitions [have] belong to the defines, not the defined," but now is the time to transform minds and create an adoption system that protects and empowers black adoptees.¹⁹⁵

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194. See *After A Traffic Stop, Teen Was 'Almost Another Dead Black Male,' supra* note 88, at 2; see also Sullivan, *supra* note 90.

195. *Twelve of Toni Morrison's Most Memorable Quotes*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/books/toni-morrison-quotes.html> [<https://perma.cc/RBL3-WPFG>] (quoting TONI MORRISON, *BELOVED* (1987)).

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