

# IN A WORLD NOT THEIR OWN: THE ADOPTION OF BLACK CHILDREN

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Zanita E. Fenton\*

## I. INTRODUCTION

**B**lack children should be the focus of adoption services in America today. There are a disproportionate number of Black children available for adoption. Black children stay in foster care longer than other children.<sup>1</sup> Black children are over-represented in the population as victims of abuse and neglect, homelessness, the AIDS crisis, and substance abuse.<sup>2</sup> Many of these children start life as "boarder babies."<sup>3</sup> Black children needing adoption, both directly and indirectly, are subject to racism, classism and the greater problems affecting society today. A decline in the value of public assistance benefits, the displacement of well-paying manufacturing jobs with low-paying service jobs for poorly educated workers, and the flight of middle-income Blacks and Hispanics from the cities have threatened the stability of minority families.<sup>4</sup> These and other factors make the prospects for a diminution in the number of children needing adoption unlikely.

Many of the issues and problems affecting the placement of Black children are the same problems endemic to the system as a whole and affect all children needing services. Nonetheless, there are many problems specific to Black children arising from the social history of this country and its impact on social services. Black children have special needs because many of the conditions affecting their placement are determined by discrimination and racism, developed historically and imbedded in the socio-psychological consciousness of society.

The system of adoption in the United States emerged in response to the needs of white couples and eventually came to include services for minority communities as well. Adoption developed in this country to meet the needs of rich, white, infertile couples who wished to have a family.<sup>5</sup> Because of the role of racism in the social development of this

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1. See Sandra M. Stehno, *The Elusive Continuum of Child Welfare Services: Implications for Minority Children and Youths*, 69 *CHILD WELFARE* 551, 559 (Nov.-Dec. 1990).
2. See generally *NO PLACE TO CALL HOME: SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES*, H.R. REP. NO. 395, 101st Cong., 2d Sess. (1990) [hereinafter *NO PLACE TO CALL HOME*].
3. See Stehno, *supra* note 1, at 556. "Boarder babies" are babies living in hospitals because child welfare agencies cannot find them homes. Most often these are babies born to substance abusers and AIDS victims.
4. See *id.* at 553.
5. See JOYCE A. LADNER, *MIXED FAMILIES: ADOPTING ACROSS RACIAL BOUNDARIES* 56-71 (1977); ANDREW BILLINGSLEY & JEANNE M. GIOVANNONI, *CHILDREN OF THE STORM: BLACK CHILDREN AND AMERICAN CHILD WELFARE* 35-36 (1972); Jacqueline

country, the Black community was excluded from social services. Black children in particular were denied any benefits of the adoption system. The more recent inclusion of Black children in the current system of adoption developed primarily because poor, urban, Black children have become the majority of children needing social services. Unfortunately, the system of social services has not been redesigned to accommodate the special needs of Black children. Over time, child welfare services have shifted their emphasis from the needs of childless white couples to the needs of healthy white children. Child welfare service administrators should go the next step to meet the needs of all children. The short supply of services available must be more focused for efficiency and effectiveness by at least re-evaluating the current formal adoption system to encompass the needs of Black children.

The scope of this Article does not specifically address the period of time before a child's availability for adoption. Of course, high level of entry of Black children into the child welfare system, the low rate of family reunification and the disproportionately low economic status of minority families influence the availability and selection of children. Discussion of this part of the adoption process would include addressing issues of maintaining families through available resources, so that children need not be placed for adoption, and addressing issues of when and how children are made available for adoption, so that their chances for adoption are maximized.

Black children are subject to discriminatory patterns by which they are less likely to receive services designed to secure their return to their biological family. Experts have found that, "even though Black parents are as active as whites in seeking the return of their children, white children return home almost twice as rapidly."<sup>6</sup>

Services to prevent foster care placement by strengthening and supporting families are woefully inadequate in low-income minority communities . . . . It is especially troubling to note that most family preservation programs considered to be models have originated in nonurban areas serving largely white populations, and these models have yet to be tested in urban, minority communities.<sup>7</sup>

In cases where Black children are made available for adoption, it is most often not until an age where it is most difficult to find an adoptive home. The current contexts of society in which Black families must survive, in conjunction with the inadequacies of the system for the needs of Black families trying to stay together, contribute significantly to the overwhelming number of Black children forced into the formal system of adoption.

To understand the problems affecting the placement of Black children, the factors that must be considered are the historical development

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Macaulay and Stewart Macaulay, *Adoption for Black Children: A Case Study of Expert Discretion*, 1 RESEARCH IN L. & SOC. 267, 267-69 (1978).

6. DOUGLAS T. GURAK, ET AL., *THE MINORITY FOSTER CHILD: A COMPARATIVE STUDY OF HISPANIC, BLACK AND WHITE CHILDREN* 82-83 (1982). See also Macaulay & Macaulay, *supra* note 5, at 278.

7. Stehno, *supra* note 1, at 554 (citation omitted).

of child welfare services, the context of discrimination and racism that have shaped society and attitudes and the cultural attributes of the Black community. These factors will affect proposals for improvement of the search methods and criteria for finding adoptive families within the traditionally accepted means. To improve and accelerate the placement of Black children in good homes, administrators must be willing to explore alternatives such as the use of the extended family, community organizations, transracial adoption, adoption alternatives, single parent adoption and adoption assistance.

## II. THE SOCIAL HISTORY OF ADOPTION IN AMERICA AND BLACK CHILDREN

### A. Exclusion from Formal Institutions

The formal system of adoption in America was established to meet the needs of infertile white, upper- and middle-class couples, rather than the welfare of children.<sup>8</sup> This original purpose is traceable to ancient Greece and Rome as a means of preventing the extinction of a family line.<sup>9</sup> A final Roman adoption incorporated the adoptee into the new family, severing ties with the biological parents completely.<sup>10</sup> Through the development of the American form of the system, social workers and volunteers were trained to provide children for childless white couples, in keeping with this original purpose.<sup>11</sup> The limited focus of the established system did not include the needs of Black couples or families or benefit Black children.

During the inception of child welfare services in the United States, poor and orphaned Black children were treated differently than poor and orphaned white children. Black children were cared for by the institutions of slavery; poor white children were placed in Almshouses or into indentured servitude as a means for their care.<sup>12</sup> The condition of Black children was the minimum standard above which white orphans were to be maintained. No matter how deplorable the conditions of white orphans became, they were not as bad as the conditions of Black slave children.<sup>13</sup>

The late nineteenth and early twentieth centuries marked a significant improvement for both Black and white children. The ratification of the Thirteenth Amendment was a turning point not only ending slavery for Black children, but also ending indentured servitude for white children. The creation of orphanages was a considerable reform affecting the welfare of white children.<sup>14</sup> Homeless Black children however, were allowed in Almshouses but excluded from orphanages as a matter of

8. See *supra* text accompanying note 5.

9. See generally Ruth-Arlene W. Howe, *Adoption Practice, Issues, and Laws*, 17 *FAM. L.Q.* 173-77, 173-97 (Summer 1983).

10. See Susan L. Brooks, *Rethinking Adoption: A Federal Solution to the Problem of Permanency Planning For Children With Special Needs*, 66 *N.Y.U. L. REV.* 1130, 1135 (1991).

11. See Macaulay & Macaulay, *supra* note 5, at 265-318.

12. See BILLINGSLEY & GIOVANNONI, *supra* note 5, at 25-27.

13. See *id.* at 24.

14. See *id.* at 25-27.

policy.<sup>15</sup> When foster care was established, it was primarily for the placement of white children as an alternative to orphanages and an alternative form of indenture.<sup>16</sup> It was not until the late twentieth century that child welfare institutions allowed participation of the Black community and its children in the range of services provided to the white community.<sup>17</sup> Even when the formal system began including services for Black children, the children of Black women were often turned away because their children were considered "unadoptable."<sup>18</sup>

The original intent of adoption services was to imitate nature.<sup>19</sup> "This system has tended to define adoption and adoptive homes in a way that excludes all but a very young, generally white child, free of any kind of physical or psychological handicap or even correctable condition."<sup>20</sup> In large part, because of the way the system of adoption has developed, the needs of less than conceptually "perfect" children have been ignored by social services.<sup>21</sup> At the same time, the apparent demand for "perfect" children has encouraged social welfare systems to continue as the agents of a system that provides healthy white babies for childless white couples with means.

## B. Legacies and Traditions Arising from Slavery

The traditions for adoption by the Black community are distinctly different from those of the white community. Black traditions are not often mentioned in the historical accounts of adoption in America. These traditions arose outside the development of formal "white" institutions. The precedent for Blacks in this country informally adopting and caring for homeless children developed during slavery. It was quite common for parents and children to be separated by slave-owners whose economic concerns did not include keeping families intact. A system of informal adoption by surrogate parents developed as a means of survival. Homeless and parentless children were taken in and became bona fide members of the families of relatives, neighbors, and total strangers.<sup>22</sup> Children who were sold or orphaned found many fictive and real aunts and uncles in other locations.<sup>23</sup> The extended family served the important function of maintaining family ties and rearing children. Grandparents, in particular, often cared for several generations of children.

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15. *See id.* at 27.

16. *See id.*

17. *See* LADNER, *supra* note 5, at 67.

18. *See* DAWN DAY, *THE ADOPTION OF BLACK CHILDREN: COUNTERACTING INSTITUTIONAL DISCRIMINATION*, 1-17 (1979).

19. One of the purposes of adoption agencies was to hide or deny the fact of adoption. Thus, the doctrine of matching was created. Hair color, eye color and even class were considered in matching parents to child. "The idea was that parents and child could establish a better relationship if differences were minimized." Macaulay & Macaulay, *supra* note 5, at 280. The extension of matching policy into ethnicity and race was expected. Race was the criterion most strictly followed. *See also* Howe, *supra* note 9, at 178; LADNER, *supra* note 5, at 58.

20. ANN HARTMAN, *FINDING FAMILIES* 11 (1979).

21. *See* RITA SIMON AND HOWARD ALSTEIN, *TRANSRACIAL ADOPTION*, 9-10 (1977).

22. *See* LADNER, *supra* note 5, at 64-65. *See generally* HERBERT GEORGE GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925*, 101-84 (1977).

23. *See* GUTMAN, *supra* note 22, at 185-229.

Part of the tradition was to ensure that children knew about their natural parents and what happened to them; secrecy was not a function of this system of adoption as it was in the white ideal for "creating" a family.<sup>24</sup> Because the fate of individuals in slavery tended to be erratic, single-parent families were also quite common, both male and female headed.

The extended family tradition continued in the Black community after the Civil War. Adoption in the Black community has historically been a matter of survival, regardless of the social or economic status of the adoptive parent(s). "Obligation toward non-slave kin was most powerfully expressed during and just after the Civil War in the attention ex-slaves gave to Black children orphaned by the sale and death of their parents, by parental desertion, and by wartime dislocation . . . . Care for such children in the wartime and early postwar years came from very poor Blacks over the entire South."<sup>25</sup> There were no formal institutions or services prior to the Civil War for the care of Black children. Even after the War, asylums for Black children were rare. During Reconstruction, there were social services for Black children that fell prey to racism and anti-populist budget cutting of the post-Reconstruction Era.<sup>26</sup> In essence, Black children were excluded from social services before World War II.<sup>27</sup>

Late in the twentieth century the child welfare services became more inclusive of Black children for three reasons. First, the migration of a large segment of the Black population from the rural South to the urban North concentrated the need for social services to the Black community in the cities. Second, public child welfare services have traditionally been utilized by poor people. While the white population was achieving relative economic security, Blacks and other minorities were slower to do so. Third, the advent of integrationist ideology led to the opposition of exclusionary practices, mandating that the Black community be included in services.<sup>28</sup>

Even though the Black population has been formally included in the system of social services, these services have never been as effective in the Black community as they have been in mainstream communities.

At no time in the history of this country have Negroes experienced, systematically and generally, the kind of social supports from the society which would even approach the intensity of the negative impact of slavery.<sup>29</sup>

The traditions of racism have limited the level of services available to the Black community. The extended Black family still has a primary role

24. See LADNER, *supra* note 5, at 65.

25. GUTMAN, *supra* note 22, at 226.

26. The Society of Friends from the Abolitionist Movement were instrumental in establishing orphanages for Black children with standards comparable to those of white children based on the Christian ethic. See BILLINGSLEY & GIOVANNONI, *supra* note 5, at 27. The Freedmen's Bureau was also a source of orphanages for Black children during the Reconstruction era. See ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 84 (1988).

27. See GURAK, ET AL., *supra* note 6, at 7.

28. See BILLINGSLEY & GIOVANNONI, *supra* note 5 at 86; LADNER, *supra* note 5, at 67 (citing BILLINGSLEY & GIOVANNONI).

29. ANDREW BILLINGSLEY, BLACK FAMILIES IN WHITE AMERICA 69 (1968).

today in the culture and informal system of social services within the Black community.<sup>30</sup> Appreciable numbers of Black families continue to exist as extended families where relatives outside the nuclear family are part of the household<sup>31</sup> and function in social capacities used for child care. The extended family in the Black community developed from necessity; it continues to exist and function where social services are inadequate to meet the needs of the Black community.

### III. CURRENT TRENDS

According to a recent House report, there has been no significant progress in reducing the length of stay of children in foster care and the number of children in foster care continues to increase.<sup>32</sup> While most children in foster care are white, the proportion of minority children in foster care is approximately forty-six percent, more than twice the proportion of minority children in the nation's child population.<sup>33</sup> Thirty-nine percent of the children stay in foster care for more than two years.<sup>34</sup> The median stay for Black children in foster care is one-third longer than the national median for all children.<sup>35</sup> Black children are less likely to exit foster care to a permanent placement than white children. Those Black children who do exit foster care remain longer before exiting than white children.<sup>36</sup>

Most of the problems and disfavorable statistics are readily attributable to deficiencies in the current welfare system. These include insufficient staff, inadequate training and a lack of financial resources. In the placement decisions concerning Black children, these deficiencies are coupled with the institutional biases of a system not originally created to meet the needs of Black children and the economic disincentives to locating Black families.<sup>37</sup> However, the factor pointed out most often as affecting the placement of Black children is that there is not a sufficient number of Black families to adopt Black children.<sup>38</sup> The statistics show-

30. See James S. Bowen, *Cultural Convergences and Divergences: the Nexus Between Putative Afro-American Family Values and the Best Interests of the Child*, 26 J. FAM. L. 491, 487-544 (1987-88).

31. See BILLINGSLEY, *supra* note 29, at 15-21 (describing three types of extended families and their functions in the Black community).

32. See NO PLACE TO CALL HOME, *supra* note 2, at 6. See also ROBERT B. HILL ET AL., RESEARCH ON THE AFRICAN-AMERICAN FAMILY: A HOLISTIC PERSPECTIVE 16 (1989).

33. See *id.* at 7.

34. See SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES, *supra* note 2, at 6.

35. See *id.* at 7.

36. See GURAK, ET AL., *supra* note 6, at 1.

37. See DAY, *supra* note 18, at 85. This author points out that certain factors make having Black clients seem disadvantageous: Black home studies may need more time; many of the measures that could be used for locating Black families and for placing Black children have the potential for lowering agency income; mass-media efforts tend to flood the agency with more work than can be easily handled; to accommodate working-class clients, evening and weekend hours need to be instituted; to deal with a Black clientele, effort must be taken to learn another's culture and to deal with one's own prejudices. See also TOM GILLES & JOE KROLL, NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, BARRIERS TO SAME RACE PLACEMENT 14 (1991) (stating that adoption agencies must operate under business realities).

38. See RITA J. SIMON & HOWARD ALSTEIN, TRANSRACIAL ADOPTEES AND THEIR FAMILIES: A STUDY OF IDENTITY AND COMMITMENT 8 (1987).

ing a lack of *approved* Black adoptive families are used as evidence that Black families do not adopt. Both the historical exclusion of the Black community by the child welfare system and informal adoption by the Black community refute this claim. Historic suspicion of agencies by the Black community, the biased criteria used by adoption agencies and the lack of comprehensive recruitment efforts from the predominance of agencies also contribute to the problems affecting the placement of Black children. Any strategy to remedy the situation facing Black children needing placement must focus on these factors that impede adoption and not upon the alleged lack of Black families to adopt.

The data on adoptions by Black families underestimate actual child placement in these homes. Informal adoption is not typically included in the statistics of how many Black families adopt Black children,<sup>39</sup> even though it is still part of the culture and tradition of Black communities for people in need to turn to their extended family.<sup>40</sup> Through the informal adoption process, extended families within the Black community adopt ninety percent of Black children born out of wedlock.<sup>41</sup> In addition, when socio-economic class is controlled, Black families adopt through agencies at a higher rate than white families.<sup>42</sup> These factors alone indicate that the unqualified statement that "Black families do not adopt" is false.

Since welfare agencies have historically excluded services to Blacks,<sup>43</sup> Blacks tend to be suspicious of these agencies and do not view them as a reliable form of support or help.<sup>44</sup> Discretion on the part of social workers and the judiciary is an important part of determining the best interests of the child in each individual case.<sup>45</sup> However, the discretion of individual social workers, judges and others necessary to providing services has perpetuated institutional biases and racism.<sup>46</sup> "[W]hite welfare agencies have in many cases developed a stigmatizing view of the character and capacities of the Black family."<sup>47</sup> Stereotypes depicting the

39. See Amuzie Chimezie, *Transracial Adoption of Black Children*, SOCIAL WORK, 297 (July 1975).

40. See Darlene B. Hannah, *The Black Extended Family: An Appraisal of Its Past, Present, and Future Statuses*, in THE BLACK FAMILY: PAST, PRESENT, & FUTURE (Lee N. June, ed., 1991); GILLES & KROLL, *supra* note 37, at 14; ROBERT B. HILL ET AL., *supra* note 32, at 16.

41. See Hannah, *supra* note 40, at 48.

42. See Macaulay & Macaulay, *supra* note 5, at 279 (citations omitted). In fact, Black families adopt four times more than white families. See NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, *TRANSRACIAL ADOPTION MYTHS*, Myth #7 (reporting the research of Health and Human Services in 1985) [hereinafter *Myths*].

43. See Valora Washington, *Community Involvement in Recruiting Adoptive Homes For Black Children*, 66 CHILD WELFARE 57, 58 (Jan.-Feb. 1987); GILLES & KROLL, *supra* note 37, at 14.

44. See Hannah, *supra* note 40.

45. See Margaret Howard, *Transracial Adoption: Analysis of The Best Interests Standard*, 59 NOTRE DAME L. REV. 510, 528 (1984).

46. See *Myths*, *supra* note 42, Myth #5 (indicating that understanding of cultural diversity is not widely held and quoting passages that show a "disturbing view of the Black family" in Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163 (1991)).

47. OWEN GILL & BARBARA JACKSON, *ADOPTION AND RACE: BLACK, ASIAN AND MIXED CHILDREN IN WHITE FAMILIES*, 137 (1983).

Black family in a pathological tangle of disintegration still prevail and affect services to Black families.<sup>48</sup>

The style of operation of social service agencies is an expression of white middle-class values and manifests both in the attitudes of agency staff and the approved adoptive families.<sup>49</sup> Factors including age, marital status, size of home and household and economic resources often exclude families viewed as outside white middle-class standards who are otherwise viable families. None of these factors are positive indicators as to parenting ability and should not serve automatically to preclude adoption. White middle-class ideals do not even encompass the existence of Black children. Black children, by the mere fact of their racial status, are labeled as "hard-to-place" or "special needs" children.<sup>50</sup> Terms such as "hard-to-place" and "unadoptable" have focused the problem with the child rather than with the system that does not adequately serve their needs.<sup>51</sup> "[T]he adoption system as it operated was shaped by ideas developed in the placement of white infants, and these ideas may have been important reasons why the system failed to serve Black children."<sup>52</sup> The concept of the "unadoptable child" has effectively perpetuated the myths and judgments about Black families' readiness to adopt and has created a self-fulfilling prophecy.<sup>53</sup>

Not only have white, middle-class ideals been an impediment to adoption by Black families, but also have not embraced the concept of mixed families. There is a systematic, institutional bias against transracial adoption. This limitation prevents the timely and effective placement of Black children. In essence, the limits placed upon the adoption of Black children far outweigh the opportunities.

The basic assumptions from which the system works need to be changed to be more inclusive of minority cultures. Trust must be built within the communities that need services. Greater efforts need to be made to include the Black community in a system that was not designed with it in mind. Use of Black social workers in Black neighborhoods, greater publicity efforts, and requirements more inclusive of Black culture<sup>54</sup> and the use of community-based organizations are all measures

48. See ROBERT B. HILL, ET AL., *supra* note 32, at 2; ROBERT B. HILL, *THE STRENGTHS OF BLACK FAMILIES*, 1-3 (1971). This author discusses the continuing pejorative affect of studies exploring the weaknesses of the Black family without also detailing the strengths. Works exploited because of this one-sided approach include: E. FRANKLIN FRAZIER, *THE NEGRO FAMILY IN THE UNITED STATES* (1966) and *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (aka, *The Moynihan Report*).

49. See Ann Hartman, *Some Key Practice Issues in the Adoptive Placement of Children With Special Needs*, in *ADOPTION OF CHILDREN WITH SPECIAL NEEDS: ISSUES IN LAW AND POLICY*, 61 (Ellen C. Segal ed., National Legal Resource Center for Child Advocacy & Protection, 1985).

50. See 42 U.S.C. § 673(a)(2)(A) & (B)(1988); *id.* § 673(c).

51. See Macaulay & Macaulay, *supra* note 5, at 293.

52. *Id.* at 274.

53. See Hartman, *supra* note 49, at 60.

54. See GILLES & KROLL, *supra* note 37, at 13-15. The authors cite both the lack of minority staff, where levels of trust on the interactive level may be established, and lack of people of color in managerial positions, where the initial decisions concerning the placement of Black children are made as barriers to same race placements. Though most agencies are currently cognizant of the need for more Black adoptive families, nationally there is still a general lack of recruitment of



that may rectify the adoption system as it applies to Black children. "Special Sensitivity is needed to assure that cultural differences are respected and that assumptions and limitations of the dominant culture and practices are not imposed in ways that put minority children at an even greater disadvantage."<sup>55</sup> Although these ideas have been tested and have been successful, they have not been implemented on a wide-scale basis. "Most Black children without homes are in the custody of traditional 'white' agencies that have not been affected directly by advances in Black adoption techniques."<sup>56</sup> One of the problems of typically white-run agencies affecting the availability of Black adoptive families is the tendency to respond only to families who seek their services. Instead, the agencies should seek families appropriate for the needs of the waiting children. This is a remnant of the historical development of the adoption system as it was a service for childless white couples.

Adoption agencies need to direct recruitment efforts towards the Black community. There has been an increase in individual recruitment efforts toward Black adoptive families since the 1980s.<sup>57</sup> These efforts have been incredibly successful.<sup>58</sup> They lend considerable weight to the

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Black families and a general use of poor recruitment techniques. The lack of flexible standards based on white middle-class values are a serious barrier to same-race placements.

55. THE NATIONAL COMMISSION ON CHILDREN IN NEED OF PARENTS, THE CHILD WELFARE LEAGUE OF AMERICA, *WHO KNOWS? WHO CARES? FORGOTTEN CHILDREN IN FOSTER CARE* 25 (1979). This Commission articulated recommendations to better serve minority children that are still applicable today and need implementation:

1. Agencies consider waiving or reducing fees when these fees pose an obstacle to an adoption between a minority family and child.
2. More minority and bilingual staff should be employed by social agencies.
3. Greater understanding of different ethnic backgrounds should be promoted through outreach programs, including group-family events and cultural awareness orientation for agency staffs to be carried out by representatives of minority groups.
4. Minority foster parents should be aggressively recruited through information exchanges, photo listings and media promotion.
5. Child welfare agencies should evaluate how well minority children in informal placement are doing and help these families to meet the requirements necessary to continue caring for the child where the environment is basically beneficial. These placements should also be given the legal protection of adoption whenever appropriate.
6. Cultural realities should be recognized in placing a child. For example, low income minority families need free legal assistance if they are to legitimize their informal adoptions. Placement standards should reflect parenthood as defined in the child's sub-culture rather than in the dominant culture.
7. When foster replacement of a minority child is considered, the child and his parents should each be represented by an advocate.
8. Schools of social work should seek out minority students. The curriculum should be updated to reflect cultural distinctions.
9. Case review bodies should, wherever possible, reflect the ethnic and cultural characteristics of the children in care.

*Id.*

56. Washington, *supra* note 43.

57. *See generally* Washington, *supra* note 43.

58. Frequently cited examples of successful programs that locate significant numbers

argument that the statistics falsely indicate that the Black community does not adopt Black children and that there are not enough Black families willing to adopt Black children. Agencies located in Black neighborhoods and staffed with Black social workers have shown marked success over agencies in white neighborhoods with white social workers that expect Black couples to come to them seeking services.<sup>59</sup> Unfortunately the collection of these individual recruiting efforts have not been widespread or comprehensive and cannot solve all the problems in placing Black children.

Child welfare agencies must dismantle other common barriers to the recruitment of Black families. These agencies must develop recruitment techniques for Black families.<sup>60</sup> Welfare agencies should extend their hours to accommodate working potential parents. They should simplify and shorten adoption application forms. Agencies should establish and abide by a timetable for responding to initial inquiries and processing applications. The original standards established by adoption agencies were created for the purpose of making adoption difficult.<sup>61</sup> Agencies should discard these overly burdensome standards that were designed to limit the number of adoptive white couples to the small number of white children available for adoption. These standards serve to limit the number of potential Black adoptive families and to discourage Black families from seeking to adopt through these agencies.<sup>62</sup>

Agencies should reduce some of the financial and administrative burdens that discourage Black families. Finances are a serious concern for the survival of any family. For Black families in particular, which are disproportionately represented among the poor,<sup>63</sup> the costs associated with adoption may be prohibitive. Fees present a considerable barrier to many potential Black adoptive families. The psychological connotation of "purchasing a child" is objectionable from a historical perspective as being tied to concepts of slavery.<sup>64</sup> At least, better communication as to the purpose of these fees would be helpful in reducing the barriers created by fees.<sup>65</sup>

Agencies should make information concerning adoption assistance more available to families. Subsidized adoption programs are designed to reduce foster care case loads. Subsidized adoption is more cost efficient than foster care and would establish a net savings for the welfare

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of Black families for waiting Black children are Homes for Black Children and One Church, One Child. See, e.g., HILL ET AL., *supra* note 32, at 118.

59. See Macaulay & Macaulay, *supra* note 5, at 289-90.

60. See, Washington, *supra* note 43; HILL ET AL., *supra* note 32, at 47.

61. See GILLES & KROLL, *supra* note 37, at 15. The most common standards that adoption agencies followed included: income and middle-class life-style, including a well-kept home large enough for the child to have a room of his own; the wife had to be a full-time mother without work outside the home; the couple needed to offer medical evidence of infertility and could have no other children; the couple had to have excellent mental and physical health. See Macaulay & Macaulay, *supra* note 5, at 275. See Generally DAY, *supra* note 18, at 21-42.

62. See GILLES & KROLL, *supra* note 37, at 15; Macaulay & Macaulay, *supra* note 5, at 277.

63. See HILL ET AL., *supra* note 32, at 8-13.

64. See GILLES & KROLL, *supra* note 37, at 13.

65. See *id.* at 33-34.

system.<sup>66</sup> This is in large part because of the reduction of administrative costs spent towards the adopted child. In addition, the subsidy does not necessarily last forever. The adoptive parents are required to report annually to the agency on the status of the child and the continuing need for a subsidy.<sup>67</sup>

Black children are eligible for adoption assistance because of their racial status.<sup>68</sup> Subsidized adoption is an under-utilized option, however, especially for the adoption of Black children. This is in great part because of the negative view of subsidized adoption. This includes the view that financial dependence by the adoptive parents would diminish their capacity as "full" parents,<sup>69</sup> the view that such programs have a welfare connotation and a stigmatizing effect; and the view that the adopted children would react negatively to their parents receiving money for their support.<sup>70</sup>

Adoption assistance must be distinguished from welfare.<sup>71</sup> The welfare connotations may have the greatest negative effect on the assisted adoption of Black children considering the prevailing, negative, and often unfounded view of Blacks within the welfare system.<sup>72</sup> Unfortunately, negative attitudes concerning welfare and stereotypes concerning Black people continue to discourage agencies from utilizing and advertising the availability of assistance and Black families from accepting such assistance.<sup>73</sup> Information concerning adoption assistance should be more widely available to the public because it could eliminate a considerable barrier to families that would otherwise be eligible to adopt and eliminates a significant disincentive to foster families to adopt.<sup>74</sup>

Child welfare agencies should dispel the myths surrounding adoption assistance. A subsidized adoption gives the adoptive parents the same rights and responsibilities to the adoptive parents as given in any legal adoption.<sup>75</sup> The fear that parents will adopt only for the money should be dispelled. "[S]uch a program [does not] make it possible for unqualified persons to adopt a child, since all the usual adoption requirements apply with the exception of financial ability."<sup>76</sup> The subsidy

66. See generally George Gregory Seelig, *The Implementation of Subsidized Adoption Programs: A Preliminary Survey*, 15 J. FAM. L. 732 (1976-77).

67. See Sanford N. Katz & Ursula M. Gallagher, *Overview: Subsidized Adoption in America*, 10 FAM. L.Q. 3, 8 (Spring 1976).

68. See UNITED STATES CHILDREN'S BUREAU, *SUBSIDIZED ADOPTION IN AMERICA*, 4 (1976).

69. See GILLES & KROLL, *supra* note 37, at 33. One director states "An inability to pay is in no way a reflection on one's innate ability to parent," *id.*

70. See Katz & Gallagher, *supra* note 67, at 4.

71. Ellen C. Segal, *Adoption Assistance and the Law*, in *ADOPTION OF CHILDREN WITH SPECIAL NEEDS: ISSUES IN LAW AND POLICY*, 163, n.79 (Ellen C. Segal ed., National Legal Resource Center for Child Advocacy and Protection, 1985).

72. See *supra* text accompanying note 48.

73. See COMMITTEE ON LABOR AND HUMAN RESOURCES, SUBCOMMITTEE ON AGING, FAMILY AND HUMAN SERVICES, *THE EXTENDED FAMILY: SOCIETY'S FORGOTTEN RESOURCE*, 5 (1982) [hereinafter *THE EXTENDED FAMILY*]. See also, *supra* text accompanying note 48. See, e.g., Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1235 (1991).

74. See *id.* at 127.

75. See Katz & Gallagher, *supra* note 67, at 6.

76. *Id.*

is not intended to increase the wealth of the family. The needs of the child are the focus and essential basis for providing the subsidy. The financial status or ability of the family is not a condition for certification of the subsidy,<sup>77</sup> which eliminates both the stigma and arguments that families may adopt purely for the financial assistance.<sup>78</sup> Adoption assistance can mean the difference between languishing in the foster care system and receiving a permanent home.

Real action that considers the needs of the Black community and the realities of American society is what is needed to accelerate the placement of Black children in permanent homes. Unfortunately, implementation of solutions and changes in attitude have been minimal to date.

Indeed, it is very clear that when notified of the availability of children and persuaded that the agency is sincere, Black adoptive applicants do come forward in considerable numbers. And when appropriate criteria are used in processing Black applicants, considerable numbers of Black applicants make it through to adoption.<sup>79</sup>

The question is no longer "what needs to be different" or even "if changes will be effective," but clearly is "when will the issues be addressed with actions in a comprehensive manner."

#### IV. WHAT HISTORY SHOULD TEACH US—ALTERNATIVES TO FORMAL TRADITIONS

The current system of adoption is not effective for Black children. The lessons from history show the way to improvements in the system's effectiveness for Black children. Solutions should include addressing the greater problems of society, such as racism and classism, as they affect the child welfare system. The biases and modes of operation that limit the adoption of Black children by both potential Black as well as white adoptive parents should be addressed and corrected. Agencies should utilize that which has been shown to be effective for Black children—the extended Black family.

##### A. Transracial Adoption—One Issue Among Many

Transracial adoption has received a considerable amount of attention in the last two decades. This is primarily because anything to do with race relations often receives considerable attention. Unfortunately, this issue, in and of itself, is not the one having the greatest impact on the placement of Black children. Transracial adoption is but one issue that needs to be dealt with in the greater context of the child welfare system and the state of race relations and in this country. On the other hand, the controversial nature of this issue, both in academia and in the general public, tends to focus more attention of the mainstream media on the plight of Black children waiting for adoption than it otherwise would have.

77. See Seelig, *supra* note 66, at 735.

78. See Segal, *supra* note 71, at 129–30.

79. Dax, *supra* note 18, at 38.

The literature concerning transracial adoption of Black children constitutes a wealth of information. However, the arguments and central focus of this literature is not on the greater problems facing Black children, but on this one controversial issue. In addition, the literature tends to take extreme positions either advocating or opposing transracial adoption. Advocates of this practice tend to minimize the institutional racism affecting the placement of Black children into Black homes. Opponents of this practice tend to minimize this potential solution for children needing permanent placement. Issues concerning race have never been cut and dry with one solution or one factor affecting the results. This is also the case with race and adoption—issues cannot be considered in a vacuum.

Transracial adoption should be an integral part of a holistic solution designed to address the problems of the entire system that concerns Black children. Given the current needs of the large number of Black children waiting for adoption, transracial adoption should not be discouraged or prevented. But, given the history of racism in this country and the current social contexts in which racism is still a prevailing part of life for Black people, transracial adoption cannot be viewed as the quick and easy solution to accelerate the placement of Black children in permanent homes.<sup>80</sup> Nor should it be an immediate patchwork solution based on naked statistics that do not address the underlying impetus for those statistics.

The current adoption system needs to accommodate the ethnic diversity of the children and potential-parents involved. It does seem easier for a system established by white mainstream culture to look to the white community for solutions rather than dealing with the Black community and Black culture. Culture is easily dismissed when it is minority culture subsumed by the mainstream rather than in reverse.<sup>81</sup> There are a large number of white parents waiting to adopt a child. But the recruitment of white families to adopt Black children solely for the reason that there is a dearth of white children available would be tantamount to perpetuating the system established to provide babies for childless white couples.<sup>82</sup> This is particularly true when the search for Black families to adopt Black children has not been vigorously pursued.

There is, of course, no excuse for the racist bias, embedded in society and reflected in the system of adoption, that considers the "mixing of the races" and transracial adoption as inappropriate and undesirable. A

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80. *But see* Bartholet, *supra* note 73. The author states that since "the resources devoted to . . . making inracial adoption work have been limited and are likely to be limited in the foreseeable future," *id.* at 1203, the white families waiting to adopt should be a primary avenue for finding placements for the large number of Black children awaiting adoption, *id.*

81. "To say that the inherent nature of Blackness as a cultural construct is irrelevant to the question of Black child development is both to negate the existence and viability of Black culture and to preclude the possibility of Afro-American family values that diverge from Euro-centric values." Bowen, *supra* note 30, at 510.

82. *See* Bartholet, *supra* note 73, at 1197. Bartholet suggests the systematic recruitment of white parents to adopt Black children. I reject this proposition by pointing out that since the system was established for white adoptive parents and is systematically a more effective system for them, the same need to recruit white parents does not exist. *See* discussion *infra* this part.

substantial number of Black children spend unnecessary lengths of time in the foster care system when willing adoptive families are not even considered. If a white family is genuinely interested in adopting a Black child, with all factors being considered, they should be allowed to do so.

As a practical matter, a qualified white couple seeking to adopt a Black child would not have any real difficulties,<sup>83</sup> considering the number of waiting Black children. But realistically, most white people choose not to consider adopting Black children. On the other hand, those white people who do seek to adopt Black children are not typically motivated by a desire to participate in cultural genocide of the Black community.<sup>84</sup> All options for reform, including transracial adoption, that will enable the adoption of more Black children should be explored in a realistic manner.

### 1. *The History*

The history of transracial adoption and race relations in this country needs to be understood in order to realistically implement transracial adoptions. The history of racism in this country is one that has been contrary to the legal "mixing of the races." This history includes anti-miscegenation statutes and prohibitions against transracial adoption. "It is not, of course, that miscegenation and other forms of interracial contact have been absent in the United States. In fact, they have been persistent. But they have been more or less illicit, unsanctioned by the wider society."<sup>85</sup> This custom stems from slavery, where it was not unusual for the white slave master, and on occasion the white slave-mistress, to have sexual relations with Black slaves and to maintain several of his or her own children as slaves. The mores of slavery are at the root of the ideology precluding legal interracial unions or formal recognition by the white community of bi-racial children.

It was not until after the Emancipation Proclamation that individuals sought to legitimize interracial unions. However, the legality of anti-

83. In fact, the current number of Black children placed transracially is not insignificant. See *Myths*, *supra* note 42, Myth #2. Approximately 22%, where estimable, of Black children awaiting adoption are placed transracially. See GILLES & KROLL, *supra* note 37, at 12.

84. But see the position paper developed at the National Association of Black Social Workers Conference (1972), reprinted in RITA SIMON & HOWARD ALSTEIN, *TRANSRACIAL ADOPTION*, 50-52 (1977) [hereinafter *NABSW POSITION PAPER*]. The National Association of Black Social Workers (NABSW) originally released a position paper in 1972 condemning the practice of transracial adoption of Black children as a form of "cultural genocide" and stating that, "Black children belong physically, psychologically and culturally in Black families . . ." This position was reaffirmed in an update in 1978 and again in 1986 in *PRESERVING BLACK FAMILIES: RESEARCH AND ACTION BEYOND THE RHETORIC*. NABSW has since qualified this position stating that their original stance was not based on racial bigotry or the feeling that white parents could not love or parent Black children, but on the need to preserve the Black family. See Leora Neal & Al Strumph, *Transracial Parenting: If It Happens, How White Parents and the Black Community Can Work Together*, *ADOP TALK*, 6 (Winter 1993) (discussing options to ensure successful transracial adoptions).

85. BILLINGSLEY, *supra* note 29, at 66.

miscegenation statutes remained until 1967,<sup>86</sup> less than thirty years ago. One of the stated reasons for miscegenation statutes was to prevent suffering of the children of such marriages who would automatically be Black and not accepted by either race: "[W]hat the matter came down to, of course, was visibility. Anyone whose appearance discernibly connected him with the Negro was held to be such."<sup>87</sup> Current arguments which state that bi-racial children and children of mixed parentage do not belong to just one race, naively ignore the history of the definition of "Black" in American society.<sup>88</sup> It should be noted that the great majority of Black people in this country today are the product of both white and Black lineage. Bi-racial children are not a new phenomenon arising suddenly from the legality of interracial marriage. Interracial unions continue to be viewed as deviant from social norms<sup>89</sup> and bi-racial children continue to be viewed as Black.

Transracial adoption has been far from a common occurrence in American history. The first noted occurrences were international transracial adoptions.<sup>90</sup> The periods where transracial adoptions were at a height tended to coincide with the social forces from white paternalism.<sup>91</sup> After World War II, the Korean War, and the Vietnam War, Americans became aware of large numbers of Asian children available for adoption.<sup>92</sup> This was in part because many of these orphans were children of American soldiers. The inception of trans-country adoption is one of the factors contributing to the abandonment of strict race-matching policies. But the acknowledgement of bi-racial children of Black lineage and the transracial adoption of Black children did not really occur until after international children of other races, closer in appearance to the white race, were acknowledged. It was the practice in the 1950s that agencies would place white-appearing children with white couples.<sup>93</sup> Bi-racial children were adopted if they had predominantly white features, with the hope that they would not produce Black babies.<sup>94</sup> If the white-appearing child eventually became black-appearing, it was often the case

86. *Loving v. Virginia*, 87 S. Ct. 1817 (1967).

87. WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO*, 168 (1977).

88. See generally Winthrop D. Jordan, *American Chiaroscuro: The Status and Definition of Mulattoes in the British Colonies*, 19 WILLIAM & MARY Q. 183-200 (1962) reprinted in *RACE RELATIONS AND THE LAW IN AMERICAN HISTORY: MAJOR HISTORICAL INTERPRETATIONS* 188 (Kermit L. Hall ed., 1987). "In 1705 the Virginia Assembly defined a mulatto as 'the child, grand child, or great grand child of a negro . . . .' North Carolina wavered on the matter, but generally pushed the taint of Negro ancestry from one-eighth to one-sixteenth." *Id.* at 190. Definitions like these have shaped American social classifications and have a continuing effect on perceptions of race.

89. See BILLINGSLEY, *supra* note 29, at 65. Although social attitudes are changing over time, this statement is still applicable. There is some evidence that interracial marriage is increasing, but there is also significant evidence that social attitudes towards these couples and their offspring are still negative and changing only at the slowest of paces.

90. See DAY, *supra* note 18, at 11.

91. See SIMON & ALSTEIN, *supra* note 21, at 10-11.

92. See Joan Mahoney, *The Black Baby Doll: Transracial Adoption and Cultural Preservation*, 59 UMKC L. REV. 487, 488 (1991).

93. See DAY, *supra* note 18, at 96.

94. See Macaulay & Macaulay, *supra* note 5, at 279.

that the child was rejected and returned to the agency.<sup>95</sup> This was all consistent with the purpose of creating perfect families by providing babies for white couples.

The civil rights movement brought another wave of transracial adoptions where paternalistic concerns were turned inward. One author cites three reasons for the 1960s period of placing Black children in white homes: the lack of available white children, increasing acceptance of transracial adoptions, and the choice of white parents who considered their adopting Black children as part of their commitment to racial integration.<sup>96</sup> Even during this period, Black children were not often considered as a first choice by white parents considering transracial adoption. Non-white children who were not Black, or Black children with white features were preferred first.<sup>97</sup> This pattern of selection still continues.

Transracial adoption has expanded in recent years, largely because of the number of white couples seeking to adopt children far exceeds adoptable white children. The availability of abortion, contraception and education concerning reproduction has contributed to the diminished number of available white babies. Unwed mothers in the Black community have historically received less stigmatization from their own community and have been less likely to use abortion as an option than white unwed mothers.<sup>98</sup> Now, non-white babies are the most available.<sup>99</sup> Only after the availability of white infants diminished to the point where there are more adoptive white parents than available white babies, has the issue of transracial adoption become so pronounced.<sup>100</sup>

Arguments for transracial adoption as a means of providing babies for the couples waiting to adopt are essentially furthering the historical purpose of providing children for childless white couples. This is not to say that transracial adoption should be avoided. The purpose and the means of accomplishing transracial adoption should be carefully evaluated so that it is not merely the perpetuation of an antiquated, biased system. The needs of Black children are what should be considered, whereby the entire system is addressed so that all options, including transracial adoption, are considered.

## 2. *Constitutional Concerns*

There are necessarily constitutional issues whenever race is concerned. Present policies of race matching and race preference statutes<sup>101</sup> in adoption law are the focus of current discourse concerning adoption law.<sup>102</sup> The history of racism in this country has included practices of

95. See DAY, *supra* note 16, at 96.

96. See Mahoney, *supra* note 92, at 488-89.

97. See Macaulay & Macaulay, *supra* note 5, at 280; SIMON & ALSTEIN, *supra* note 21, at 86-87.

98. See Roberta J. Turner, *Affirming Consciousness: The Africentric Perspective*, in CHILD WELFARE: AN AFRICENTRIC PERSPECTIVE, 48 (Joyce E. Everett, et al., eds., 1991).

99. See DAY, *supra* note 18, at 9-11.

100. See SIMON & ALSTEIN, *supra* note 21, at 46; Howard, *supra* note 45, at 510.

101. See, e.g., MINN. STAT. §§ 259.28, subd.2; 259.255; 259.455 (1992).

102. Predating these discussions and an analog to the use of race as a factor in adoption decisions is the use of religion in adoption decisions. It is fairly well accepted that



segregation that have become impermissible by law, but continue in practice. Anti-miscegenation statutes were permissible until 1967 when the landmark decision of *Loving v. Virginia*<sup>103</sup> declared them unconstitutional. It was at this time that policies using race in custody and adoption decisions were seriously questioned. The current law is that race may not be used in determining custody decisions as to the natural parent.<sup>104</sup> Race may not be used presumptively to preclude adoption.<sup>105</sup> Race may not be used as the sole determining factor in making placement decisions.<sup>106</sup> Race remains a factor where the best interests of the child are concerned.<sup>107</sup>

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whereas religion may not be the sole determinant in placement decisions, it is a relevant factor that may be considered along with other factors taken into account. See *In Re Adoption of "E"*, 279 A.2d 785 (1971); See also, *Dickens v. Ernesto*, 330 NYS 2d 346 (1972). Religious matching statutes are considered advisory without precluding adoption on the sole factor of religion or delaying the placement of a child. See generally 48 ALR 3d 383.

Race matching policies are based on more than mere physical characteristics as previous matching policies were. See *supra* text accompanying note 19. Race also has cultural connotations. The Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. sec. 1901, acknowledges the need for cultural preservation in regards to Native Americans. See generally Stan Watts, *Voluntary Adoptions Under the Indian Child Welfare Act of 1978: Balancing the Interests of Children, Families, and Tribes*, 63 S. CAL. L. REV. 213 (1989). Many advocates try to promote similar policies for the placement of Black children. See, e.g., Bowen, *supra* note 30. But see, Howard, *supra* note 45 (discussing the distinctions between the factors affecting Black children and Indian children). Current state matching statutes are based on cultural preservationist ideas similar to those in the ICWA. See, e.g., *supra* text accompanying note 101.

103. 87 S.Ct. 1817 (1967) (holding that prevention of marriage on the sole basis of race violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment).
104. *Palmore v. Sidoti*, 466 U.S. 429, 104 S.Ct. 1879 (1984). The holding narrowly prescribes that racial classification can not justify removing an infant from the custody of the *natural mother*. Even though the court acknowledges that, "It would ignore reality to suggest that racial and ethnic prejudices do not exist or that all manifestations of those prejudices have been eliminated," *id.* at 433, it is not clear from this decision whether race may be used as a factor in child placement decisions in adoption. See also Twila Perry, *Race and Child Placement: The Best Interests Test and the Cost of Discretion*, 29 J. FAM. L. 51, 56 n.17 (discussing the dispute as to whether *Palmore* has relevance for adoption and foster care).
105. *Compos v. McKeithen*, 341 F.Supp. 264 (1972); accord *In Re Adoption of Gomez*, 424 S.W.2d 656, 659 (Tex. Civ. App. 1967); cf. *McLaughlin v. Pernsley*, 693 F.Supp. 318, 324 (E.D.Pa. 1988) (holding race may not be determinative for long-term foster care decisions).
106. *In Re Adoption of a Minor*, 228 F.2d 446 (1955) (where a Black step-parent could not be prevented from adopting a white step-child based solely on race or on distinctions of "social status" for whites and Blacks); *Fontaine v. Fontaine*, 133 N.E.2d 532 (1956); *Tucker v. Tucker*, Wash App., 542 P.2d 789 (1975).
107. See *Drummond v. Fulton Cty. Dept. of Family, Etc*, 563 F.2d 1200 (1977) (where race was used as one factor in denying adoption to white foster parents of a Black foster child, it was not used in an automatic fashion as to exclude) *cert. denied*, 437 U.S. 910 (1978); *In Re Petition of D.I.S.*, 494 A.2d 1316 (D.C. App. 1985) (holding that race may be a factor using a flexible standard in adoption decisions); *In Re R.M.G. and E.M.G.*, 454 A.2d 776 (D.C.App. 1982) (holding that a statute taking race into account is constitutional as long as it is applied properly); *In Re DeF*, 307 A.2d 737 (1975) (allowing race to be considered as relevant to an adoption proceeding regardless of the omission of race from the adoptive-parents application);

It is constitutionally clear that race cannot be used as a presumption preventing adoption or custody in child placement decisions. Whether the use of race as a factor, non-exclusive of other factors, in adoption placement decisions is permissible is what is not as clear. Elizabeth Bartholet proposes a race-blind approach as one means of eliminating continued prejudices against mixed families in this country and generally stymieing the continuation of racism.<sup>108</sup> Though this goal is admirable, it is not appropriate for children, who are least equipped, to have to provide the solution for the racial inequities in our society.

Questions of whether race should be a factor in making adoption placement decisions do not recognize that race is already intrinsically a part of adoption placements. As discussed earlier, the history and development of child welfare institutions has been predicated on the needs of one community. In the current social constructs of American society, where discrimination, racism, social stereotypes, and racial tensions persist, a race-blind approach in the placement of children would be inappropriate in determining the best interests of the child.

It should be obvious that in rendering the disposition "best suited to the protection and physical, mental, and moral welfare of the child," the hearing court and the reviewing court *must* take into account *any* and *all* factors which bear upon the child's welfare and which can aid in the court's necessarily imprecise prediction about that child's future well-being.<sup>109</sup>

Is the use of race, as a contributing factor, precluded by the Due Process and Equal Protection clauses of the Constitution?<sup>110</sup> To comport with these clauses, a legitimate state objective must not impinge upon a recognized fundamental right. Is adoption a right included within the fundamental rights of child-bearing<sup>111</sup> and child-rearing?<sup>112</sup> Not even the rights of a natural parent are absolute in certain contexts.<sup>113</sup> It seems a

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Compos v. Mckeithen; In Re Adoption of Baker, 185 N.E.2d 51, 53 (1962); Tucker v. Tucker, at 791.

108. See Bartholet, *supra* note 73, at 1245-54.

109. In Re Davis, 465 A.2d 614, 620 (Pa. 1983).

110. The plaintiffs, foster parents, in *Drummond* claimed that the use of race as a factor in making placement decisions violated the Equal Protection Clause. The court concluded that the use of race as one factor was not unconstitutional. The plaintiffs in *Petition of R.M.G.* also claimed that the use of race as a factor in making placement decisions violated the Equal Protection Clause. This court also decided this was not on its face unconstitutional, while noting that the application could be. See also, Bartholet, *supra* note 73, at 1226-45. Bartholet argues that current race matching and preference policies are anomalous to any other current law regarding race. Her view is that, "adoption agencies should be prohibited from exercising *any significant preference* for same-race families." *Id.* at 1248.

111. Meyer v. Nebraska, 262 U.S. 390, (1923) (establishing the right "to marry, establish a home and bring up children"). See also, Roe v. Wade, 410 U.S. 113 (1973); Eisenstadt v. Baird, 405 U.S. 438 (1972); Griswold v. State of Conn., 381 U.S. 479 (1965).

112. Pierce v. Society of Sisters, 268 U.S. 510 (1925) (establishing the parental right to direct the upbringing and education of their children).

113. See Roe v. Wade (weighing the interests of the woman and the state in child bearing decisions); Baby M, 525 A.2d 1128 (denying visitation to the natural mother on the basis of right to contract). See also, Anita L. Allen, *Privacy, Surrogacy, and the Baby M Case*, 76 GEO. L.J. 1759, 1774-82 (discussing the conflicting privacy-right assign-

stretch to claim that individuals or married couples have the right to adopt an unrelated child.<sup>114</sup> The Supreme Court has never established a fundamental right to adopt. Nor has the Court held that children have a fundamental right or a privacy interest in an adoptive family.<sup>115</sup> Even if a fundamental right to "family" extended to adoption, the state's interest in the successful placement of children awaiting adoption should be compelling enough to withstand scrutiny<sup>116</sup> of the use of race in determining the best interests of the child.<sup>117</sup>

With the impact that racial issues has on society, race is a *relevant* and *necessary* factor in making placement decisions. The best interests standard requires that all relevant factors be considered. Not that race, or any other factor alone, can be determinative of a placement outcome; but race must be considered as having relevance and potential impact on the life of the child awaiting adoption. Each case should be evaluated individually for the needs of the child. Race should be considered in conjunction with the other factors affecting the placement of a child. Excluding race as a factor formally, does not exclude the impact that race has on the adopted child.

Classifications by race are presumptively invalid under the Equal Protection clause. In the context of adopting Black children, in what sense is equal protection required? If it is equal access to the system for adopting children, on the whole, white parents have the most access to the system. Should there be equal access to adopting Black children? Or should equal access be broadly applied to the possibility of adopting

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nations in a surrogacy arrangement) (1988). *cf. Drummond* (holding that the relationship between foster parents and foster child is not a constitutionally protected liberty interest).

114. *Smith v. Organ. of Foster Families For E. & Reform*, 97 S.Ct. 2094 (1977) (holding that whereas a foster family is more than "a mere collection of unrelated individuals," it does not have the same rights as a biological family/parent).
115. *Drummond*, 563 F.2d at 1209 (holding that the foster child has no liberty interest not to be moved from home to home); *Child v. Beame*, 412 F.Supp. 593, 603 (1976) (holding that there is no fundamental right to be adopted into a stable and permanent family).
116. "Strict scrutiny" is the standard that must be used for suspect classifications, race in particular. *City of Richmond v. J.A. Croson Co.* 109 S. Ct. 706 (1989); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978). However, there may also be applications of an intermediate level of scrutiny in certain contexts. *See Fullilove v. Klutznick*, 448 U.S. 519, (1980) (Marshall, J., joined by Brennan and Blackmun, J.J., concurring in the judgment); *Bakke*, 438 U.S. at 357 (1978) (Brennan, J. opinion); *Plyler v. Doe*, 457 U.S. 202 (1982). It has been suggested that an "intermediate" standard would be appropriate in the context of adoption. *In Re Petition of R.M.G. and E.M.G.*, 454 A2d. at 785 (Ferren, J., giving the opinion of the court, while considering an intermediate level of scrutiny, chose to apply strict scrutiny; Newman, C.J., dissenting, would have applied the intermediate level of scrutiny). Even with the use of "strict scrutiny," at least one court has determined that the statutory use of race as one factor in adoption placement decisions, withstands scrutiny. *Id.* (applying a three-step analysis in determining the relevance of race).
117. *See Palmore v. Sidoti*, 104 S.Ct. 1879, 1888 (1984) (stating that, "the best interests of the child is indisputably a substantial governmental interest for purposes of the Equal Protection Clause); *In Re Petition of R.M.G. and E.M.G.*, 454 A2d. at 786 (finding that the advancement of a child's best interest has implicitly been treated as a "compelling" governmental interest, citing, e.g., *In Re Adoption of A Minor*; *Drummond v. Fulton County Department of Family & Children's Services*; *Compos v. McKeithen*; *Beazley v. Davis*, 545 P.2d 206 (1976). *See also*, *Perry*, *supra* note 104, at 57-58.

a child? If equal access to adopting Black children were required, then equal access to white children would also be required.<sup>118</sup> A proposed system to comply with these concepts would operate on a first come, first served basis.<sup>119</sup> All approved prospective parents would be placed on the same list to get the first available child. Given the different needs of every individual concerned, this would not seem to serve the best interests of the child or the concerns of the potential adoptive parents.

All children should have an equal opportunity to be adopted. Unfortunately, it has been shown that Black potential adoptive couples are excluded at least equally as much from adopting Black children as are white couples. The climate of litigation on the issue of transracial adoption has made agencies more reluctant to insist on the virtues of same race placements, making it easier to place with available white parents than to seek out the Black families that have been historically and systematically excluded.<sup>120</sup> Indeed, Black children lose out on two fronts by the systematic denial of Black parents and by the historic social denial of white parents. It should be recognized that the racial status of these children is a significant reason they are affected in this manner. To ignore race in placement decisions would compound the problem.

The use of race as a factor in adoption placement decisions should be viewed as a benign classification. It has been suggested that this benign classification should not be considered as a form of affirmative action justifying the use.<sup>121</sup> Indeed, affirmative action does not accurately describe this situation. This use of race is not a means of rectifying past discrimination or intended to benefit Black parents as a group.<sup>122</sup> Nor is it a case where remedial efforts discriminate in reverse.<sup>123</sup> The interest here warranting the benign use of race is the state's interest in promoting the well-being of a child by determining her best interests.<sup>124</sup>

All factors, including race, should be considered in an already imprecise determination of the best interests of the child. Although this is not the situation of affirmative action, an analogy to the *Bakke* decision is fully relevant. In the case of *Bakke*, preferential college admissions decisions could not be made in a manner that would preclude the admission of others based on race.<sup>125</sup> However, it was not suggested that a race-blind approach was required. In fact, several of the Justices indicated that a race-blind approach would be inappropriate.<sup>126</sup> The

118. See Perry, *supra* note 104, at 121. The transracial placement of white children with families of another race is extremely rare. Day only found four cases. See DAY, *supra* note 18, at 99. Current statistics from Oregon indicate that 0% of transracial placements from 1991 were of white children. See *Myths*, *supra* note 42, Myth #8.

119. See Mahoney, *supra* note 91, at 498-99.

120. See GILLES & KROLL, *supra* note 37, at 27.

121. See *In re R.M.G. and E.M.G.* (Mack, J., concurring, rejecting both *Loving v. Virginia* and *Bakke* as inapplicable to the use of race as a factor in adoption placement decisions); Bartholet, *supra* note 73, at 1234; Mahoney, *supra* note 91, at 490.

122. However, the historical discussions detailed *supra* do indicate there very well could be a case for remedial action for rectifying the institutional racism effecting the placement of Black children in any family, Black or white.

123. See *City of Richmond v. J.A. Croson*, 109 S. Ct. 706 (1989).

124. See *supra* text accompanying note 117.

125. 438 U.S. 270, 271.

126. *Id.* at 327 (opinion of Brennan, J., joined by White, Marshall, and Blackmun, JJ.,

court endorsed the use of race as a *factor* in making admissions decisions, so that each decision is made based on the unique qualifications of the individual.<sup>127</sup> This rationale is congruent with racial preference statutes for adoption placements. Race should not be used in a dispositive manner, but as a *factor* that allows each placement decision to be decided individually. To deny consideration of any one factor would be to ignore what may have consequences for the interests the child's well being.

### 3. *The Realities*

To put the option of transracial adoption in perspective, it is unlikely that the wholesale promotion of transracial adoption will solve problems for the vast majority of waiting Black children.

Much evidence exists that transracial adoption would not reduce the number of children in "temporary" foster care or institutions. "[O]nly 1% or less of white families willing to adopt Black children request children who are most in need of families: children over (8) years of age; sibling groups and emotionally and physically handicapped children." Like most of their Black counterparts, most whites waiting to adopt want infants, although they will accept toddlers. Across the country, there are waiting lists of Black families who want to adopt pre-school children. To be sure, the potential white adoptive parents want pre-school children is indicated by the difficulty and inability adoption agencies have in placing white children who are older or handicapped.<sup>128</sup>

In addition, white couples only marginally qualified (via white middle-class standards) to adopt healthy white infants have adopted Black babies instead.<sup>129</sup> The theory is that white parents who already had children did not need a perfect white baby, or that couples only marginally qualified would otherwise not receive a baby.<sup>130</sup> Even if there could be a perfect numbers match between waiting Black children and waiting white families, there are still other considerations.

The psychological development and well being of children are of great concern to both opponents and proponents of transracial adoption. The primary reason stated in opposition to transracial adoption is concern for the identity and emotional development of the child.<sup>131</sup> To refute this, proponents point out studies concluding that transracial adoptions are good experiences benefitting children and that prolonged foster care and institutionalization have seriously detrimental effects on the emo-

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noting that "claims that law must be 'color blind' or that the datum of race is no longer relevant to public policy must be seen as aspiration rather than as description of reality.").

127. *Id.* at 317.

128. Bowen, *supra* note 30, at 506 (quoting NEW YORK CHAPTER NATIONAL ASSOCIATION OF BLACK SOCIAL WORKERS, TRANSRACIAL ADOPTION UPDATE 5 (1978)). See also, GILLES & KROLL, *supra* note 37. The current statistics provided indicate that Black infants and toddlers are placed more than any other group of children, whether placed same race or transracially.

129. See Macaulay & Macaulay, *supra* note 5, at 282.

130. See *id.*

131. See NABSW POSITION PAPER, *supra* note 84.

tional development of children.<sup>132</sup> However, studies of transracially adopted children show a range of experiences, both good and bad.<sup>133</sup> In addition, there are notable problems with these studies:

(a) the lack of empirical data on the crucial adolescent years since virtually all of the studies have focused on pre-teen years; (b) the fact that the studies are based largely and often exclusively upon interviews, not observation, and not with the children but with the parents; (c) observer bias—the pre-selectivity on social, income, education and attitude criteria, *inter alia*, of parents who are likely to be or become adopters interracial; (d) the lack of objectivity in evaluations of success by parents who have adopted interracial and the consequently unrealistic measures of the relative success of such interracial placements; and (e) the failure of the studies to control for variables other than race.<sup>134</sup>

Concerns of emotional development necessitate value judgements. The studies have a host of problems that will never allow us to have a definitive answer concerning the effects of race on adoption placements in each individual case. Adoption is not an exact science where you can plug in the variables and automatically predict what will be the best and worst situation for a child. It is futile to contrast the potential harm that may come to a Black child in a cultural atmosphere different from her own to the psychological effects of long-term foster care or institutionalization. This is a highly speculative venture.

Race must be considered in order to attain permanence and stability as perceived by the child. Racial issues are still prevalent and effect everyone's life, especially the lives of Black children. The mere fact that there is controversy concerning transracial adoption is a strong indicator of this. Black children, regardless of the race of their adoptive parents, will have to deal with racial issues. The crucial point is making sure

132. See, e.g., Bartholet, *supra* note 73, at 1223–26; Howard, *supra* note 45, at 506–09.

133. Day indicates a range of experiences on the part of parents and relatives and a range of attitudes towards transracially adopted children attributable to American prejudices that families should not be mixed. See DAY, *supra* note 18, at 89–119. Fiegelman and Silverman noted that transracial adoptions was a means of promoting the well-being of children without homes but also noted that family attitudes and the Parents' commitment to familiarizing their adopted children to Black culture was important. See WILLIAM FIEGELMAN & ARNOLD R. SILVERMAN, *CHOSEN CHILDREN: NEW PATTERNS OF ADOPTIVE RELATIONSHIPS* 117–20 (1983). Grow & Schapiro indicate a high rate of success among the transracial adoptees studied while noting that issues concerning race created problems when not sufficiently addressed by the family. See LUCILLE J. GROW & DEBORAH SHAPIRO, *BLACK CHILDREN, WHITE PARENTS: A STUDY OF TRANSRACIAL ADOPTION* (1974). Ladner notes that the adoptees studied had a wide range of experiences and that no generalizations could be made. See LADNER, *supra* note 5. Simon & Alstein have a three-book series, with an intended fourth, detailing their longitudinal study of transracial adoptees and their families. The third book encompasses all three phases of the study and details both benefits and problems attributable to transracial adoption. See RITA J. SIMON & HOWARD ALSTEIN, *ADOPTION, RACE, AND IDENTITY: FROM INFANCY THROUGH ADOLESCENCE* (1992); SIMON & ALSTEIN, *supra* note 701; SIMON & ALSTEIN, *supra* note 38.

134. Bowen, *supra* note 30, at 520 (discussing Judge Newman's dissent in *Petition of R.M.G.*, 454 A.2d 776, 798–99 (D.C.App. 1982)). See also, Howard, *supra* note 45, at 535–36.

that the adoptive family is able to deal with racial issues that may be faced by the adopted child. "Recognizing, understanding, accepting, and learning to cope with racial differences seem critical tasks for the child adopted by racially different parents."<sup>135</sup> Even if transracial adoption were promoted on a more wide-spread basis, race would still need to be considered, including individual attitudes and motivations of potential parents, environment, and the attitudes of the child.

It is expedient to argue that use of race in placement decisions serves to delay the placement of Black children.<sup>136</sup> However, it is not merely the use of race as a factor that has served to delay and limit the placement of Black children. The biases and attitudes concerning race upon which the system has developed<sup>137</sup> are inherent components of a system that still operates in a manner that ignores the specific needs of Black children and that culturally excludes the Black community from services. Eradication of race from statutes will not automatically eradicate the social biases and prejudices that created the system in the first place.

There would also be a cost for the eradication of race from placement decisions that would have a serious impact on the child. For example, for older children, who may already have an established view of cultural norms, race may be a critical consideration. Also, where there is a shortage of healthy white infants in the current system for adoption, parents desperate for a healthy child may be approved without regard to their racial attitudes or how their attitudes will affect the child. Ignoring race in placement decision would create the possibility of adoption by racist parents who are desperate for a child. Each child has different needs concerning race and racial identity. Potential parents have different experiences and a different understanding of race and racial identity. Therefore, race must be considered for each individual placement decision.

Efforts to recruit white potential-adoptive parents for non-white children waiting in foster care must be defined differently than efforts to recruit Black potential-adoptive parents.<sup>138</sup> Because the system is one that was created and operates for the benefit of mainstream white culture, recruitment of white parents for Black children, using media efforts and community organizations, is not needed in the same way that recruitment of Black parents is needed. However, transracial adoption should be presented as an option to white parents seeking to adopt. In this case, attitudes towards race must be considered to determine the ability of the potential parents to meet the needs of the individual child, as in any other adoption placement. The manner in which recruitment of white parents is defined in comparison to the manner in which recruitment for Black parents should reflect the needs created by the established system.

Even though the definition of recruitment of white and Black parents should be different, an extended waiting period before adoption for

135. Penny R. Johnson, et al., *Transracial Adoption and the Development of Black Identity at Age Eight*, 66 *CHILD WELFARE* 45, 54 (Jan.-Feb. 1987).

136. See Bartholet, *supra* note 73, at 1203.

137. See discussion *supra* parts II, III.

138. *But see*, Bartholet, *supra* note 73, at 1204.

Black children<sup>139</sup> is not advantageous. If a particular agency has instituted sincere and serious recruitment efforts directed at the Black community for the adoption of the waiting Black children, then it is likely that suitable Black families will be available.<sup>140</sup> If an agency does not make serious efforts to find Black parents, then an extended waiting period serves only to hurt the child. The length of time that Black children wait for adoption is not an argument to stop seeking Black adoptive families; nor is the on-going search for Black parents a reason to make a child wait longer than necessary in foster care. The question should not be "how long should a child wait," but "what needs to be done and how much effort should be put into finding suitable parents for Black children." An answer to the latter question will take care of the former.

Where there are undeniably issues without easy answers, support from the Black community for the families of transracially adopted children is one option.<sup>141</sup> This would enable Black children to be placed in a loving family without delay while still providing for the cultural needs of the child and establish a means with which problems associated with race and racial attitudes may be dealt. This is not something that will just happen. This is an option that will be accomplished when policies become more focused on the specific needs of Black children and more inclusive of the Black community through recruitment efforts. Recruitment efforts can identify more potential adoptive Black parents for the waiting Black children. These efforts can also serve to make transracial adoptions more successful by providing support networks for families of transracially adopted children.

#### B. The Extended Black Family—The Untapped Resource

The extended Black family provides for adoption agencies additional options that have not been fully explored. Alternatives that include use of the extended family would require early planning and procedures designed to utilize family resources when a child is originally taken from his or her home.<sup>142</sup> Even a minimal inquiry or search for potentially willing, care-providing relatives should be made, including both parents, maternal and paternal grandparents, and aunts and uncles. The extended Black family need not be limited to the narrow concepts of blood relations in traditional family units. Options derived from the broader concepts of the extended family should encompass single parents of both genders, grandparents and older people, fictive kin derived from community networks and friends, and larger community organizations. As society has evolved, so too has the form and function of the extended Black family in order to conform with modern realities. Not only should

139. See Perry, *supra* note 104, at 124–25.

140. See discussion *infra* part IV.B.

141. See generally Neal & Strumph, *supra* note 84. When presented with the problems traditionally presented as reasons for avoiding transracial adoption, including identity, cultural and coping skills arguments, solutions may be found by the efforts of both the white adoptive parents to be sensitive of the unique needs of the child and the Black community in reaching out to these families to provide understanding and community.

142. See *id.* at 46.



there be better use of existing extended families, but also derivative applications of the extended family as it has been used in history.<sup>143</sup>

Alternatives to "traditional" adoption such as single parent adoption, adoption by grandparents, kinship foster homes, guardianships, open adoptions, should be more utilized. Children can accept parenting from several sources outside the "traditional" concept of family. Especially with the currently high divorce rate, children have been successfully reared by two or more sets of parents and step-parents, by single parents, by grandparents, and other arrangements.<sup>144</sup> These options are consistent with the history and culture of Black families in adoption.

Single parent adoptions should be an option used more often. More and more, families in the Black and white communities are headed by single parents. This has been a tradition in the Black community. In contrast, single parent families have been a more recent phenomenon in the white community<sup>145</sup> as a by-product of divorce. "Single-parent families are more common among Blacks than among whites, and, contrary to popular stereotypes, many do very well. Thus it is quite appropriate and in keeping with a part of Black experience for single persons to adopt."<sup>146</sup>

Even though single-parent adopters tend to have incomes lower than two-parent homes,<sup>147</sup> single parents are meeting the needs of an increasing number of special needs placements. Single parents, the majority of whom are women,<sup>148</sup> are more likely than a couple to adopt older children and are more likely to adopt boys.<sup>149</sup> Studies done on single-parent adoption, including Black children placed in single-parent homes,<sup>150</sup> have concluded that "single-parent families were . . . as nurturing and viable as dual-parent families."<sup>151</sup>

Parenting by grandparents and great-grandparents is an option that historically has been utilized in the Black community as a means of child care. Adoption agencies have often discouraged the elderly from adopting children because such families are inconsistent with the "traditional" concept of family.<sup>152</sup> Barring other prohibitive factors, age alone, just like race alone, is not an adequate basis for denying adoption.<sup>153</sup>

Kinship foster care is another example of the extended family relationship that should be promoted. Kinship foster homes have had success in an experiment in New York City.<sup>154</sup> This option is very similar

143. See generally THE EXTENDED FAMILY, *supra* note 73, 1-37.

144. See Hartman, *supra* note 49, at 73-74.

145. See *id.* at 196.

146. See DAY, *supra* note 18, at 64. See also HILL ET AL., *supra* note 32, at 13.

147. See generally Vic Groze, *Adoption and Single Parents: A Review*, 70 CHILD WELFARE 321 (May-June 1991).

148. See *id.*

149. See *id.* at 324.

150. See *id.* at 328.

151. *Id.* at 329.

152. See generally Myra G. Sencer, *Adoption in the Non-Traditional Family—A look at Some Alternatives*, 16 HOFSTRA L. REV. 191, 198-201 (1987).

153. See *id.*

154. See N.Y. SOC. SERV. LAW § 384(a) (McKinney's 1992). See generally Jesse L. Thornton, *Permanency Planning for Children in Kinship Foster Homes*, 70 CHILD WELFARE 593 (1991); Joseph R. Carrieri, *Foster Care—Placement With Relatives*, 205 N.Y. L.J. 1 (June 20, 1991).

to informal adoption in the Black community. In this program, adult extended relatives within the third degree become the foster family of a minor dependent child whenever possible.<sup>155</sup> These kin foster homes receive the same foster care board rate and options as an unrelated foster family would receive.<sup>156</sup> The kin foster parents who take in the child view that child as already being a part of their family.<sup>157</sup> The relatives consider this placement as permanent, as long as the child will not be returned to the biological parents.<sup>158</sup> They also view formal adoption of the child as unnecessary and as depriving the biological parents of parental rights.

Practitioners have criticized kinship foster homes for various reasons. One criticism of the kinship approach is that permanency is undermined when discharge to independent living, not adoption, is not the ultimate goal.<sup>159</sup> In fact, kinship foster families typically do not want to terminate the rights of the natural parents, nor do they want the continued foster care stipends and support from social workers to end.<sup>160</sup> For these reasons, relatives often choose to remain foster families.<sup>161</sup> In the case of kinship foster care, both foster care stipends and administrative costs tend to continue until the child is independent.<sup>162</sup> Another criticism is that with foster care, the state must pay these costs for a longer period of time than if the child were adopted.<sup>163</sup>

The idea of kinship foster care is still relatively new and needs to be developed further and refined.<sup>164</sup> It should be noted that many of the problems associated with this program are no different than those facing thousands of other foster children and families.<sup>165</sup> Most social workers agree that kinship foster care is a psychologically and emotionally permanent placement for both the child and foster family.<sup>166</sup> The concept of kin foster homes is beneficial to the child and should be encouraged.<sup>167</sup>

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155. See Thornton, *supra* note 154, at 593; Carrieri, *supra* note 154, at 1 (discussing operation of 384(a) of the Social Services Law in New York).

156. See Thornton, *supra* note 154, at 593.

157. See *id.* at 597.

158. See *id.* at 597-98.

159. See *id.* at 597-9.

160. See *id.* at 600.

161. See Carrieri, *supra* note 154, at 4.

162. See Thornton, *supra* note 154, at 600.

163. See Carrieri, *supra* note 154, at 4.

164. See *id.*

165. See *id.*

166. See Thornton, *supra* note 154, at 598; Carrieri, *supra* note 154, at 4 (indicating that it is more traumatic for a child to be placed with strangers).

167. See Carrieri, *supra* note 154, at 4. Carrieri points out several benefits of relative foster care that usually occur:

1. The child is placed with a trusting, loving person.
2. The child usually is placed in the same neighborhood and therefore will have the same friends and will attend the same school.
3. By being placed with a grandparent or an aunt, the child will be in the same culture, the same language, the same heritage, and will maintain his identity and hopefully his self-esteem.
4. Assuming the parent is not incorrigible and is subject to rehabilitation, the child will benefit from contact with his parent or parents.

*Id.*

"Relative guardianship,"<sup>168</sup> another type of extended family relationship, is an option that would reduce administrative costs, while allowing stipends to continue.<sup>169</sup> Where finances are not a primary consideration, forms of open adoption where the child has at least some knowledge of or contact with the biological parents, should be considered. Open adoptions are becoming more acceptable in mainstream society, with varying degrees of openness considered healthy in an adoption.<sup>170</sup> These options are consistent with the history of informal adoption in the Black community where knowledge of biological parents is emphasized.<sup>171</sup> By these methods, permanency and stability for the child could be accomplished readily and ties to the parents would not have to be severed completely.

The use of community organizations and programs to recruit adoptive homes represents a form of the "surrogate extended family."<sup>172</sup> Given the limitations of the system, particularly in how it is applied to the Black community, community organizations can be a healthy solution. Neighborhood-based organizations help the traditional adoption agency practices with the cultural norms of the community towards which recruitment efforts are made. This process may entail utilizing the resources of organizations already established, such as the NAACP, the Urban League, churches and fraternal organizations,<sup>173</sup> and establishing organizations specifically devoted to the placement of Black children, such as Homes for Black Children or One Church, One Child.<sup>174</sup> There is also an existing network of Black professionals that can be effectively accessed to provide assistance in finding adoptive parents for Black children.<sup>175</sup>

One suggested model for utilizing community resources is the "Friends of Black Children" model.<sup>176</sup> The aim of this model is to institutionalize community resources and establish a continuous relationships between agencies and the Black community.<sup>177</sup> One of the objectives is to address the barriers to adoption by Black families,<sup>178</sup> including selection of Black staff members for administration as well as implementation and re-examination of agency policies and practices for

168. *See id.*

169. *See* Thornton, *supra* note 154, at 600.

170. REPORT OF THE CHILD WELFARE LEAGUE OF AMERICA, NATIONAL ADOPTION TASK FORCE (1987) (sanctioning open adoption practices).

171. *See* LADNER, *supra* note 5, at 65.

172. *See* EXTENDED FAMILY, *supra* note 73, at 16. The extended Black family includes fictive kin, friends, and relatives.

173. *See* HILL ET AL., *supra* note 32, at 64-76.

174. *See supra* text accompanying note 58. Also notable are minority parent groups such as Black Adoptive Parents Support and Information Group (BAP-SIG) in Washington, D.C.; Black Adoption Committee for Kids (BACK) in St. Louis; RESPOND in St. Louis; Ministers for Adoption Support Group in Jackson, Mississippi; Group of Black Adoptive Parents (GAP) in Cincinnati; Dayton Area Minority Adoptive Parents; Jamaa Pamoja ("Families Together") in Chicago; the Dallas Minority Council; One Church, One Child in Washington State; and Friends of Black Children in North Carolina. *See generally* North American Council on Adoptable Children, *Minority Parent Group Development*, ADOPTALK 8-9 (Winter 1993).

175. *See* Washington, *supra* note 43, at 65.

176. *See id.* at 58.

177. *See id.*

178. *See* discussion *supra* part III.

how they affect Black adoptive families.<sup>179</sup> Local volunteers are recruited to use their knowledge and experience in the community to advocate adoption for waiting Black children.<sup>180</sup> These volunteers are trained to serve as liaisons between agencies and Black communities in recruitment and public education efforts.<sup>181</sup> Local media efforts, including information booths, newspapers, radio and television are also targeted at the Black community successfully.

The "Friends of Black Children" model demonstrated considerable progress and success. In the first year of the program, more Black families were approved for adoption, more Black families actually adopted, and more Black families became licensed for foster care than without the program.<sup>182</sup> This project expanded cross-cultural knowledge among the participants.<sup>183</sup> Although this is not a quick and easy solution, "the model does heighten community and agency awareness of the problems, offers constructive alternatives, mobilizes community action, and establishes a direction for long-term, institutional advancement."<sup>184</sup> Effective use of all the resources and all the options available can alleviate the problems facing Black children waiting for adoption.

## V. CONCLUSION

Children are our future: socially, economically, and morally. What affects them essentially affects the whole country. Adoption can no longer be the means for infertile mainstream, middle-class white couples to "create a family." We must find cooperative ways as a society to ensure the future of our children. All the options available should be pursued in a realistic manner. This should include defining "family values" so that they encompass the cultural values and needs of the entire society. We must ensure that we replicate the beneficial attributes of our social history, and eradicate those that oppress and impede the future of our children.

Even though the history of the system for adoption is not one created for the benefit of Black children, it can be used to their advantage. If we can move beyond the traditional concepts and attitudes that have affected their placement prospects, our children's situation can improve, as will our society as a whole.

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179. See Washington, *supra* note 43 at 59.

180. See *id.* at 60.

181. See *id.*

182. See *id.* at 61, 65.

183. See *id.* at 64.

184. *Id.* at 68.