

Cultural Stereotypes Die Hard: The Case of Transracial Adoption

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Transracial adoption (commonly understood as the adoption of black children by white families) has been the subject of a persistent debate among adoption specialists, legal advocates, mental health professionals, and even civil rights advocates in this country for a long time. This has been so despite cumulative research evidence indicating that transracial adoptees can thrive and develop into confident adults with strong senses of identity and self-esteem. We contend that the evidence undergirding transracial adoption has not been effectively persuasive because of the tenacious and ubiquitous cultural belief that children and their potential adoptive parents should be matched along racial lines. However, the cultural principle of racial matching has also been diluted by judicial decisions that have narrowly allowed the use of race as one factor rather than as the controlling factor in adoption decisions. This article focuses on the use of a third element—federal statutory attempts intended to remove race as a controlling factor in child placement decisions. We will show how as a matter of public policy, the statutory efforts were meant to promote race-neutral approaches to adoption and to support transracial adoptions. However, in practice, the statutory attempts may still leave the door open to continued race-matching, which suggests that the cultural preference for race-matching in the construction of families remains powerfully ingrained and difficult to eradicate. As a consequence, transracial adoption appears to maintain its status as a culturally suspect phenomenon.

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The adoption of black children by white families, commonly referred to as transracial adoption in the lay and professional literature, is the subject of a debate that has persisted in American society for a long time.¹ On one side of the divide are those who believe that black children are best raised by black families. On the other are the supporters of the idea that race-matching in adoption does not necessarily serve the best interests of the child and that it promotes racial discrimination.²

Coming as it does in the midst of myriad other discussions in this country about black-white interactions, transracial adoption has occupied an important place in any debate about adoption policy. But in addition, as can be seen in language utilized by the Fifth Circuit Court in a 1977 case,³ there is a long-held belief that since family members resemble one another, it follows that members of constructed families should also look like each other so as to facilitate successful adoption outcomes.

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[A]doption agencies quite frequently try to place a child where he can most easily become a normal family member. The duplication of his natural biological environment is part of that program. Such factors as age, hair color, eye color and facial features of parents and child are considered in reaching a decision. This flows from the belief that a child and adoptive parents can best adjust to a normal family relationship if the child is placed with adoptive parents who could have actually parented him. To permit consideration of physical characteristics necessarily carries with it permission to consider racial characteristics [Ref. 3, pp 1205–6].

In utilizing this language, the court acknowledged that transracial adoption ran counter to the cultural beliefs that many people held about the construction of families. Still, the court concluded that while the difficulties attending transracial adoption justified the consideration of race as a relevant factor in adoption proceedings, race could not be the sole factor considered. With a bow to both sides in the transracial adoption debate, the argument could only continue.

As the debate marches on, mental health professionals are being asked to provide expert opinions about whether it would be preferable for a particular black child to be raised by a black family or by a family or adult of a different ethnic or racial group. There are, of course, different scenarios that may lead

to the unfolding of these adoption disputes. For example, the question may arise when a black child is put up for adoption after having spent a number of months or years in an out-of-home placement. The lengthy wait of black children for an adoptive black family may understandably increase the likelihood of a transracial adoption. In another situation, the death of a biracial child's parents, one of whom was white and the other black, may lead to competition between the white and black grandparents for the right to raise the child. In a third possible context, the divorce of an interracial couple may result in a legal struggle for custody of the biracial child, with race trumpeted at least as an important factor if not the crucial factor to be considered in the decision about who should raise the child. Mental health professionals should therefore make an effort to stay abreast of the latest developments around this national debate if they intend to provide an informed opinion about the merits or problems of a potential transracial adoption.

We have already alluded to two significant factors that have played a role in the evolution of adoption policy concerning black children, particularly with respect to the question of whether race-neutral approaches make sense and whether transracial adoption is good practice. One factor has been judicial decision-making. In a relatively recent review, Hollinger⁴ reminded us that, in general, racial classifications are invalidated unless they can survive the "strict scrutiny" test, which requires meeting a compelling governmental interest. Hollinger suggested that the "best-interest-of-the-child" standard commonly used in adoption practice would serve a substantial governmental interest. Such argumentation would allow the consideration of race as one element in an adoption evaluation. Following this reasoning, while race-neutral adoption may be a lofty objective, the specific needs of a particular child could legally allow the consideration of race.

The second factor to influence the evolution of adoption policy in this arena has been the academic research on transracial adoption.⁵⁻⁹ This work has cumulatively demonstrated that black children can thrive and develop strong racial identities when nurtured in families with white parents. Transracially adopted children also do well on standard measures of self-esteem, cognitive development, and educational achievement. However, neither judicial deci-

sion-making nor scholarly research has settled the debate on transracial adoption policy.

In this article, we focus on a third factor that emerged as another mechanism meant to deal with transracial adoptions and the influential race-matching principle. These statutory efforts started with the Multiethnic Placement Act, which Hollinger stated "was enacted in 1994 amid spirited and sometimes contentious debate about transracial adoption and same-race placement policies."⁴ We will point out that even though the statutory attempts were meant to eliminate race as a controlling factor in the adoption process, their implementation has left room for ambiguity regarding the role that race should play in adoption proceedings. Consequently, even though the statutes were intended to eliminate adoption delays and denials because of race-matching, they may have allowed the continued existence of a cultural stereotype—that black children belong with black families—and may have facilitated its continued existence. This article is therefore principally about statutory attempts in the past decade to influence public policy concerning transracial adoption. Secondly, we shall comment on potential implications of these developments for the practice of adoption evaluations.

We emphasize once again that in referring to transracial adoption, we mean the adoption of black children by white parents. This is the focus of the statutes we consider. The adoption by Americans of children from other countries (international adoptions) and other transcultural adoptions (such as the adoption of Native American children by Anglos) are explicitly outside the parameters of this article. We also do not wish to suggest that although transracial adoption has been the subject of a significant national debate it is a numerically common phenomenon. Later in this article, we review the available data on transracial adoption.

Brief Review of Race-Matching in Adoption

Feelings about who should raise a black child have run high in the United States for a long time. These feelings come from different groups for different reasons. Kennedy¹ presented a number of historical cases to illustrate this. Among the cases he described, Kennedy told the early 1900s story of a white girl who was found residing with a black family (Ref. 1, p 368). The authorities concluded that the child had

been kidnapped and rescued her. They then placed her with a white family. When it was learned later that the child was black, she was returned to the black family because it was not proper for the black child to be living with a white family. This case, along with others described by Kennedy, is part of the fabric of American racism and racial separatist practices. Kennedy also pointed to the practice during slavery of considering “the human products of interracial sexual unions” as unambiguously black and the mandate that they be reared within the black slave community as an attempt to undermine any possibility of interracial parenting (Ref. 1, pp 367–8).

Whites have not been the only ones to support the stance of race-matching—the belief that black or white children belong with their own group. In 1972, the National Association of Black Social Workers (NABSW) stated unambiguously that white families should never be allowed to adopt black children.¹⁰ The NABSW opposed transracial adoption for two main reasons: the Association claimed that transracial adoption prevents black children from forming a strong racial identity, and it prevents them from developing survival skills necessary to deal with a racist society.

Since its 1972 statement, the NABSW has remained steadfast in its opposition to transracial adoption. In testimony before the Senate Committee on Labor and Human Resources in 1985, the President of the NABSW reiterated the Association’s position and stated that the NABSW viewed the placement of black children in white homes as a hostile act against the black community, considering it a blatant form of race and cultural genocide.¹¹

In 1991, the NABSW reaffirmed its position that black children should not be placed with white parents under any circumstances, stating that even the most loving and skilled white parent could not avoid doing irreparable harm to an African-American child.¹² In its 1994 position paper on the preservation of African-American families, the NABSW indicated that, in placement decisions regarding a black child, priority should be given to adoption by biological relatives and then to black families.¹³ Transracial adoption “should only be considered after documented evidence of unsuccessful same race placements has been reviewed and supported by appropriate representatives of the African American community” (Ref. 13, p 1).

The NABSW’s position was reflected in the 1981 New York case of *Farmer v. Farmer*.¹⁴ Mr. Farmer, a black man, sought custody of his six-year-old daughter after he and his white wife divorced. He argued that his daughter, who looked black, would do better being raised by him than by her white mother and that her best interests could be achieved only by awarding custody to him, the parent with whom she would be racially identified by a racially conscious society. Three experts testified on his behalf. Each addressed the importance of racial identity problems that the child would face and the importance of her identification with her black heritage, but none would state categorically that custody of the child should be determined by her dominant racial characteristic. The judge rejected Mr. Farmer’s race-based argument, finding that “between two natural parents of different races who have opted to have a child, neither gains priority for custody by reason of race alone. Nor can race disqualify a natural parent for custody” (Ref. 14, pp 589–90). He awarded custody to the mother based on the determination of the best interests of the child. In this determination race was not a dominant, controlling, or crucial factor, but was weighed along with all other material elements of the lives of the family.

Race-matching has been and remains an influential and controversial concept regarding how best to construct adoptive families. Matching, in general, has been a classic principle of adoption practice, governing non-relative adoptions for much of the 20th century. Its goal was to create families in which the adoptive parents looked as though they could be the adopted child’s biological parents. Matching potential adoptive parents and children on as many physical, emotional, and cultural characteristics as possible was seen as a way of insuring against adoptive failure.⁵ It was not uncommon for potential adoptive parents to be denied the possibility of adoption if their hair and eye color did not match those of a child in need of adoption.⁵ Differences among family members in constructed families were seen as threats to the integration of an adopted child and the child’s identification with the adoptive parents. Race, along with religion, was considered the most important characteristic to be matched, and it continued to be important even as the matching concept regarding other characteristics began to shift.⁵ For example, in 1959, in its *Standards for Adoption Service* (SAS), the

Child Welfare League of America (CWLA) recommended that

. . . similarities of background or characteristics should not be a major consideration in the selection of a family, except where integration of the child into the family and his identification with them may be facilitated by likeness, as in the case of some older children or some children with distinctive physical traits, such as race [Ref. 5, pp 3–4].

The CWLA reiterated its view in its discussion of the role of physical characteristics: “Physical resemblances should not be a determining factor in the selection of a home, with the possible exception of such racial characteristics as color” (Ref. 5, p 4). It was not until 1968 that the CWLA omitted any reference to color as a criterion for adoption: “Physical resemblances of the adoptive parents, the child or his natural parents should not be a determining factor in the selection of a home” (Ref. 5, p 6). By 1971, the CWLA considered characteristics that had been encompassed in the matching concept to be broad guidelines rather than specific criteria and the weight afforded them depended on the potential adoptive parents (i.e., their desire for a child similar to them in particular ways should be taken into consideration).⁵ While not identified as a strict criterion of adoption, matching continued to be a broad principle in adoption practices. For example, the CWLA’s 1988 *Standards for Adoption Service* and its 1993 statement of its children’s legislative agenda reflected its belief that the developmental needs of black adopted children could best be met by black adoptive parents.^{5,6}

Children in need of adoption have a right to be placed into a family that reflects their ethnicity or race. Children should not have their adoption denied or significantly delayed, however, when adoptive parents of other ethnic or racial groups are available. . . . In any adoption plan, however, the best interests of the child should be paramount. If aggressive, ongoing recruitment efforts are unsuccessful in finding families of the same ethnicity or culture, other families should be considered [Ref. 5, p 32].

Matching, of course, continued to influence child placement decisions outside of adoption agencies, as evidenced by the comments of the Drummond court. Following that court’s decision, the general rule has been that trial courts may consider race as a factor in adoption proceedings as long as race is not the sole determinant.^{15,16}

Statutory Attempts at Remedies

As we previously noted, in 1972 the National Association of Black Social Workers (NABSW) issued a

position paper in which the Association vehemently opposed the adoption of black children by white families.¹⁰ The Black Social Workers had a quick and striking effect on transracial adoption policy. Following the appearance of the paper, adoption agencies, both public and private, either implemented race-matching approaches or used the NABSW position to justify already existing race-matching policies. As a result, the number of transracial adoptions were estimated to drop significantly—39 percent within one year of the publication of the NABSW statement.¹⁷ Although robust data were lacking, it was thought that the number and length of stay of black children in out-of-home placements increased as social workers and other foster care and adoption professionals, believing that same-race placements were in the best interest of the child, searched for same-race foster and adoptive parents. Agencies and their workers had considerable discretion in deciding the role race played in placement decisions. States, while generally requiring that foster care and adoption decisions be made in the best interest of the child, varied in their directions regarding the extent to which race, culture, and ethnicity should be taken into account in making the best-interest determination.¹⁸

While race-matching policies were not the sole determinant of increasing numbers of black children in institutions and out-of-home placements, there was growing concern that such policies, with their focus on same-race placement and their exclusion of consideration of loving, permanent interracial homes, kept black children from being adopted.¹⁹ Because he was concerned that race had become the determining factor in adoption placements and that children were languishing in foster care homes and institutions, Senator Howard Metzenbaum introduced legislation to prohibit the use of race as the sole determinant of placement.¹⁹ Senator Metzenbaum believed that same-race adoption was the preferable option for a child, but he also believed that transracial placement was far preferable to a child’s remaining in foster care when an appropriate same-race placement was not available.¹⁹

Multiethnic Placement Act

Congress passed the Howard Metzenbaum Multiethnic Placement Act (MEPA) and President Clinton signed it into law on October 20, 1994.²⁰ MEPA’s main goals were to decrease the length of time children had to wait to be adopted; to prevent discrimi-

nation based on race in the placement of children into adoptive or foster homes; and to recruit culturally diverse and minority adoptive and foster families who could meet the needs of children needing placement.¹⁸ In passing MEPA, Congress was concerned that many children, especially those from minority groups, were spending lengthy periods in foster care awaiting adoption placements.¹⁹ Congress found, within the parameters of available data, that nearly 500,000 children were in foster care in the United States; tens of thousands of these children were waiting for adoption; two years and eight months was the median length of time children waited to be adopted; and minority children often waited twice as long as other children to be adopted.²¹

Under MEPA, an agency or entity receiving federal funds could not use race as the sole factor in denying any person the opportunity to become an adoptive or foster parent. Furthermore, an agency could not use race as a single factor to delay or deny the placement of a child in an adoptive or foster care family or to otherwise discriminate in making a placement decision. However, an agency could consider a child's racial, cultural, and ethnic background as one of several factors—not the sole factor—used to determine the best interests of the child.²² MEPA stated:

An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not—(A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color or national origin of the adoptive or foster parent, or the child involved; or (B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved.²³

However, MEPA also contained the following permissible consideration:

An agency or entity. . . may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.²⁴

So, under MEPA, agencies could consider a child's race, ethnicity, or culture as one of a number of factors used to determine the best interests of the child, as long as it was not the sole factor considered, and they could consider the ability of prospective parents to meet the needs of a child of a given race, ethnicity, or culture.²²

Following the passage of MEPA, the Department of Health and Human Services (DHHS), Office of Civil Rights, provided policy guidance to assist agencies receiving federal financial assistance in complying with MEPA.²⁵ The guidance permitted agencies receiving federal assistance to consider race, culture, or ethnicity as factors in making placement decisions to the extent allowed by MEPA, the U.S. Constitution and Title VI of the Civil Rights Act of 1964.²⁵

Under the Equal Protection Clause of the Fourteenth Amendment, laws or practices drawing distinctions on the basis of race are inherently suspect and subject to strict scrutiny analysis.²⁶ To pass such analysis, classifications or practices based on race have to be narrowly tailored to meet a compelling state interest.²⁶ The Supreme Court has not specifically addressed the question of transracial adoption. It has considered race as a factor in a child placement decision in the context of a custody dispute between two white biological parents when the mother, who had custody of the child, began living with a black man, whom she later married. The Court found the goal of granting custody on the basis of the best interests of the child to be "indisputably a substantial government interest for purposes of the Equal Protection Clause" (Ref. 27, p 433). The DHHS guidance on the use of race, color or national origin as factors in adoption and foster care placements addressed the relevant constitutional issues and indicated that the only compelling state interest in the context of child placement decisions is protecting the best interests of the child who is to be placed.²⁵ So, under MEPA, consideration of race or ethnicity was permitted as long as it was narrowly tailored to advance a specific child's best interests.²⁵ Agencies receiving federal funds could consider race and ethnicity when making placement decisions only if the agency made a narrowly tailored, individualized determination that the facts and circumstances of a particular case required the contemplation of race or ethnicity to advance the best interests of the child in need of placement.^{18,25} Agencies could not assume that race, ethnicity, or culture was at issue in every case and make general policies that applied to all children.¹⁸ The guidance also specifically prohibited policies that established periods during which same-race searches were conducted, created placement preference hierarchies based on race, ethnicity, or culture, required social workers to justify transracial placement decisions or resulted in delayed place-

ments to find a family of a particular race, ethnicity, or culture.¹⁸

The DHHS policy guidance did address MEPA's permissible consideration of the racial, cultural, or ethnic background of a child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors in the best-interest-of-the-child determination. The guidance allowed agencies to assess the ability of a specific potential adoptive family to meet a specific child's needs related to his or her racial, ethnic, or cultural background, as long as the assessment was done in the context of an individualized assessment^{18,25}:

As part of this assessment, the agency may examine the attitudes of the prospective family that affect their ability to nurture a child of a particular background and consider the family's ability to promote development of the child's positive sense of self. The agency may assess the family's ability to nurture, support, and reinforce the racial, ethnic, or cultural identity of the child, the family's capacity to cope with the particular consequences of the child's developmental history, and the family's ability to help the child deal with any forms of discrimination the child may encounter [Ref. 18, pp 9–10].

However, agencies were not allowed to make decisions based on general assumptions regarding the needs of children of a specific race, ethnicity, or culture or about the ability of prospective parents of a specific race, ethnicity, or culture to care or nurture the identity of a child of a different race, ethnicity, or culture.¹⁸

To increase the pool of potential foster or adoptive parents, MEPA also required states to develop plans for the recruitment of potential foster and adoptive families that reflected the ethnic and racial diversity of the children needing placement.²⁸ The recruitment efforts had to be focused on providing all eligible children with the opportunity for placement and on providing all qualified members of the community with an opportunity to become an adoptive or foster parent.¹⁸ As a result, while MEPA sought in a reasonable way to recruit a broad racial and cultural spectrum of adoptive families, the law was at the same time underlining the idea that there was something special about a black child's being raised by a black family.

Those who objected to the permissive consideration of race in MEPA asserted that it allowed agencies to continue to delay adoptions of minority children based on race concerns.²¹ They also argued that race-matching policies could and did continue under

MEPA. Social workers could, for example, use race as a factor to support a finding that a transracial adoption was not in a given child's best interest. Supporters of MEPA reached their own conclusion that it did not accomplish its goal of speeding up the adoption process and moving greater numbers of minority children into foster care or adoption placements and that the permissive consideration of race allowed agencies legitimately to continue race-matching to deny or delay the placement of minority children with white adoptive parents.²² Senator Metzenbaum himself agreed with this conclusion about MEPA and worked for its repeal.²⁹ As we shall see later, the arguments and counterarguments about the effectiveness of MEPA were being made in the absence of robust data.

The Interethnic Adoption Provisions

MEPA was repealed when on August 20, 1996, President Clinton signed the Small Business Job Protection Act of 1996. Section 1808 of the Act was entitled "Removal of Barriers to Interethnic Adoption" (The Interethnic Adoption Provisions; IEP).³⁰ MEPA's permissible consideration provision was removed and its language changed. (The words in brackets were part of MEPA and do not appear in the IEP.)

A person or government that is involved in adoption or foster care placements may not—(a) [categorically] deny to any individual the opportunity to become an adoptive or a foster parent, [solely] on the basis of race, color, or national origin of the individual, or the child involved; or (b) delay or deny the placement of a child for adoption or into foster care [or otherwise discriminate in making a placement decision, solely] on the basis of race, color, or national origin of the adoptive or foster parent, or the child, involved [Ref. 22, pp 1616–17].

Under the IEP, states were still required to "provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."²⁸

Failure to comply with MEPA was a violation of Title VI of the Civil Rights Act of 1964¹⁷; failure to comply with the IEP is also a violation of Title VI.³¹ Under MEPA, an agency receiving federal assistance that discriminated in its child placement decisions on the basis of race and failed to comply with the Act could forfeit its federal assistance¹⁷ and an aggrieved individual had the right to bring an action seeking equitable relief in federal court³² or could file a complaint with the Office of Civil Rights. The IEP added

enforcement provisions that specified graduated fiscal sanctions to be imposed by DHHS against states found to be in violation of the law and gave any individual aggrieved by a violation the right to bring an action against the state or other entity in federal court.³³

The Department of Health and Human Services issued two documents to provide practical guidance for complying with the IEP: a memorandum³⁴ and a document in question-and-answer format.³⁵ According to the guidance, Congress, in passing the IEP, clarified its intent to eliminate delays in adoption or foster care placements when they were in any way avoidable. Race and ethnicity could not be used as the basis for any denial of placement nor used as a reason to delay a foster care or adoptive placement.³⁴ The repeal of MEPA's "permissible consideration" provision was seen as confirming that strict scrutiny was the appropriate standard for consideration of race or ethnicity in adoption and foster care placements.³⁴ DHHS argued that it had never taken the position that MEPA's permissible consideration language allowed agencies to take race into account routinely in making placement decisions because such a view would be inconsistent with a strict scrutiny standard.³⁴ It reaffirmed that any decision to consider race as a necessary element in a placement decision has to be based on concerns arising out of the circumstances of the particular situation:

The primary message of the strict scrutiny standard in this context is that only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision. Such reasons are likely to emerge only in unique and individual circumstances. Accordingly, occasions where race or ethnicity lawfully may be considered in a placement decision will be correspondingly rare [Ref. 34, p 4].

The guidance again made clear that the best interest of the child is the standard to be used in making placement decisions. So, according to the guidance, the IEP prohibits the routine practice of taking race and ethnicity into consideration ("Public agencies may not routinely consider race, national origin, and ethnicity in making placement decisions" (Ref. 35, p 2)), but it allows for the consideration of race, national origin, and ethnicity in certain specific situations ("Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted" (Ref. 35, p 2)). Once again, such language seems to suggest that, in certain contexts, the adop-

Table 1 Children Waiting to be Adopted From the Public Foster Care System, by Race, by Fiscal Year

	On Sept. 30, 2002*		On Sept. 30, 2003†	
	Number	%	Number	%
Black/non-Hispanic	54,832	43	47,630	40
White/non-Hispanic	58,975	46	43,820	37
Total	127,942	100	119,000	100

*Reference 37.

†Reference 38.

tive child may well benefit from placement in a same-race family.

The DHHS guidance seemed to frame the possibility for adoption agencies to continue the practice of race-matching.²² For example, while warning that assessment of a prospective parent's ability to serve as a foster or adoptive parent must not act as a racial or ethnic screen and indicating that considerations of race must not be routine in the assessment function, the guidance conceded that an important aspect of good social work is an individualized assessment of a prospective parent's ability to be an adoptive or foster parent. Thus, it allows for discussions with prospective adoptive or foster care parents about their feelings, preferences, and capacities regarding caring for a child of a particular race or ethnicity.^{22,35}

Data Collection

Hansen and Simon³⁶ have pointed out that the Adoption and Safe Families Act (ASFA) of 1995 created an adoption incentive program that paid bonuses to states that increased the number of adoptions of children from foster care. The incentive program also provided an incentive for data collection, using a system known as the Adoption and Foster Care Analysis and Reporting System (AFCARS). States must submit data to AFCARS on each adoption in which a public child welfare agency was involved in any fashion. AFCARS issues periodic reports, and others (such as the Child Welfare League of America) use the AFCARS data to publish analytic reports from time to time. AFCARS reports may be preliminary, interim, or final as data continue to be submitted by states over many months.

Tables 1 and 2 show that in fiscal year (FY) 2002 and in FY 2003, more whites were adopted than blacks in the public foster care system. The two fiscal years show some difference between whites and blacks in terms of the comparative number of whites

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Table 2 Children Adopted From the Public Foster Care System, by Race, by Fiscal Year

	Fiscal Year 2002*		Fiscal Year 2003†	
	Number	%	Number	%
Black/non-Hispanic	18,957	36	16,570	33
White/non-Hispanic	27,272	52	20,940	42
Total	52,138	100	50,000	100

*Reference 37.

†Reference 38.

and blacks waiting for adoption. The data for FY 2003 show that more whites than blacks were in the foster care system. Of course, these numbers of children in the foster care system must be viewed in light of their representation in the general population. Data from the 2000 U.S. Census (available at <http://www.aecf.org>) show that of the total population under age 18 years, 68.6 percent (49,598,289) are white and 15.1 percent (10,885,696) are black. Consequently, a substantially greater proportion of blacks (.4%), in comparison to whites (.09%), were awaiting adoption in September 2003. Still, of the children awaiting adoption in September 2002, 30 percent of black children were adopted in FY 2003 in comparison to 36 percent of white children.

The AFCARS data from FY 2001 have been the subject of greater analysis, which has led to the following conclusions.^{36,39} In FY 2001, mean time for adoption of black children was 18 months compared with 15 months for white children. It was also estimated that about 17 percent of black children adopted in FY 2001 were adopted transracially by white, non-Hispanic parents. This figure of transracial adoptions (about 2,500) provided for the public foster care system is not significantly above estimates given for earlier years—about 2,574 in 1971. However, the FY 2001 data do not include private sector adoptions. This has led Hansen and Simon³⁶ to conclude that there has been no clear increase in transracial adoptions, at least in the arena of public child welfare agency adoptions. In 2003, McFarland⁴⁰ published a report pointing out that while AFCARS is now producing robust data about public sector adoptions, information about private sector adoptions is scant.

Nevertheless, it has been estimated that in 2001, about 127,000 children were adopted in the United States,⁴¹ including public, private, and intercountry adoptions. These adoptions arise out of the estimated

500,000 children in out-of-home placements in the United States.

Discussion

The IEP addresses individual cultural elements such as race, color, or national origin and does not address the broad role of culture in placement decisions. The DHHS guidance notes:

There are situations where cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture would raise Section 1808 [IEP] issues if the agency used culture as a proxy for race, color or national origin. Thus, while nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color, or national origin [Ref. 35, p 2].

This raises questions about the role of cultural capacity or cultural competence of parents in adoption and foster care decisions. In response to a question regarding whether public agencies may assess the cultural capacity of all foster parents, the DHHS responded in the negative, but seemed to open the door to such assessment, at least of particular parents:

Race, color and national origin may not routinely be considered in assessing the capacity of particular prospective foster parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster parents for specific children is the heart of the placement process, and essential to determining what would be in the best interests of a particular child [Ref. 35, p 2].

The DHHS guidance makes a similar statement regarding cultural competency:

The term "cultural competency," as we understand it, is not one that would fit in a discussion of adoption and foster placement. However, agencies should, as a matter of good social work practice, examine all the factors that may bear on determining whether a particular placement is in the best interest of a particular child. That may in rare instances involve the consideration of the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity [Ref. 35, p 5].

Such language is obviously far from being lucid and specific. It grants the potential importance of considering race and cultural competence, but cautions against general and routine use of these factors, while contemplating their utility in particular situations.

In considering the best interests of a child who is being placed for adoption, DHHS is suggesting that there could be special circumstances uniquely individualized to the child that require consideration of ethnicity and race of the potential adoptive parents. Presumably this should not be done routinely and should not be seen as serving as a proxy for a consistent and mundane contemplation of ethnicity or race in the adoption context. Undoubtedly, what constitutes special circumstances in the practices of any given adoption agency is likely to be a matter of interpretation. While agencies can readily assert what their routine practices are, much may turn on how vigorously supervised are the claims that special circumstances exist with respect to a particular black child that dictate consideration of ethnicity and race in that child's case. As a practical result, while it appears no one is now allowed to claim that every black child needs a black family, it may still be reasonable and practicable to claim that a black child requires adoption by a black family, as dictated by consideration of the best interests of that child. For example, Kennedy (Ref. 1, p 416) has raised the possibility that an older child might say he or she wanted to be adopted only by a black family. Such a context could indeed make it difficult for the child's wish to be refused outright, without any consideration whatsoever.

Such reasoning is articulated starting from the point of view of the child. Giving consideration to the interests of the potential adoptive parent is another matter. In other words, what should we consider about the adoptive parent's interest in raising black children and the parent's ability to do so? The opinions about this matter remain divided. Kennedy (Ref. 1, pp 416, 434) and Bartholet⁴² have proposed that prospective adoptive parents be allowed to state a preference for adopting a child from a particular ethnic group. This is, in their view, permissible race-matching that ultimately serves the best interests of the child. After all, what would be the use of forcing a family to adopt a child they really did not want? In addition, both authors also have argued that state intervention in such racial selectivity in the formation of families would be akin to imposing race-based rules on the creation of married couples. However, Banks⁴³ has opposed this accommodationist stance, where in practice adoption agencies would simply show prospective adoptive parents only the class of ethnic children the adoptive parent was interested in

adopting. Banks thought this merely perpetuated the status quo, as white adoptive parents had little interest in black children. This would result in black children's continuing to languish in out-of-home placements, and their time spent awaiting adoption would remain prolonged.

Kennedy and Bartholet were permissive in their attitude toward the racial selectivity of prospective adoptive parents, respecting parents' choice to construct families as they wish.

There has been and continues to be strong support for the belief that black children belong with black adoptive parents. It is not only the NABSW, which has called for the repeal of the IEP,¹³ that has taken this position. For example, in a 1998 letter to the Secretary of the Department of Health and Human Services, a former executive director of the Child Welfare League of America strongly disagreed with the DHHS's interpretation of MEPA/IEP, stating that prohibiting any consideration of race in adoptive and foster care placement decisions contradicts best-practice standards in child welfare:

CWLA standards for adoption and foster care services clearly state that the best practice requires consideration of race. . . . Children in need of adoption have a right to be placed into a family that reflects their ethnicity or race. . . . These standards—calling for the explicit consideration of race in adoption and foster care placement decisions—reflect the best thinking of child welfare experts from across the country [Ref. 44, p 2].

The CWLA, in its most recent *Standards of Excellence for Adoption Services* (2000), reiterated its belief that race is to be considered in all adoptions and that placement with parents of the same race is the first choice for any child. Other placements should be considered only after a vigorous search for parents of the same race has failed:

All children deserve to be raised in a family that respects their cultural heritage. . . . If aggressive, ongoing recruitment efforts are unsuccessful in finding families of the same race or culture as the child, other families should be considered to ensure that the child's adoptive placement is not delayed [Ref. 45, p 68].

In its most recent policy statement on foster care and adoption (2003), the National Association of Social Workers also reiterated its position that consideration of race should play a central role in placement decisions:

Placement decisions should reflect a child's need for continuity, safeguarding the child's right to consistent care and to service arrangements. Agencies must recognize each child's need to retain a significant engagement with his or her parents and

extended family and respect the integrity of each child's ethnicity and cultural heritage [Ref. 46, p 147].

The social work profession stresses the importance of ethnic and cultural sensitivity. An effort to maintain a child's identity and his or her ethnic heritage should prevail in all services and placement actions that involve children in foster care and adoption programs [Ref. 46, p 148].

The placement of choice should be within the child's family of origin, among relatives (kinship placement) who can provide a more stable environment for the child during the period of family crisis. If no such relatives are available, every effort should be made to place a child in the home of foster parents who are similar in racial and ethnic background to the child's own family. The recruitment of foster parents from each relevant racial and ethnic group should be pursued vigorously to meet the needs of children who require placement [Ref. 46, p 150].

Others⁴⁷⁻⁴⁹ have espoused the view that inracial adoption is the preferred option for a black child because black families inherently possess the competence to raise children with strong black identities and the ability to cope with racism. While questions of cultural competence to raise a black child often arise about prospective white adoptive parents, no such questions are posed about prospective black adoptive parents.¹ The competence of black families to raise black children is regularly referred to as though black families are culturally identical or homogeneous and all are equally competent to raise black children and equip them to live in our society.^{1,50} We may all think about black cultural competence as though it is a one-dimensional concept. Indeed, we may all be referring simply to stereotypical indicators of what we think it means to be black. We may be referring to our own personal preferences for the stereotypic activities of black people: involvement in a black church; participation in a community center where black-focused programs are operating; viewing movies with a clearly black theme; reading literature authored by blacks. What is rarely considered is that some black families are drawn to rap music, others to jazz greats, and still others to traditional classical music. Indeed, some families obviously manage to exhibit an interest in all these genres of music. With respect, therefore, to even these stereotyped indicators of what it means to be black, black families vary in the degree of their attachment to the indicators. This is to say that blacks differ in their level of commitment to the salience of black-oriented culture in their individual and family lives. As a result, there is considerable cultural heterogeneity among black families. Such variability may

well lead to differences in black families' ways of coping with racism.⁵⁰

To date, the statutory attempts to deal with transracial adoptions have not been considered as spectacularly successful, especially in the case of MEPA. Nevertheless, efforts have been made to limit the routine consideration of race and ethnicity in adoption, with the result that black children may be remaining for shorter periods in undesirable out-of-home placements. (National data are not yet able to demonstrate clear trends.^{36,40}) However, DHHS guidance still permits consideration of race and ethnicity in specific cases, with the apparent concession that some black children may need a black family for the realization of the child's best interests.

The burden is on forensic psychiatrists and other mental health professionals who perform adoption evaluations to point out cogently and logically two points: first, whether race is a factor that is relevant in the adoption evaluation; and second, whether there is something unique or particular about that adoption context that requires race to be considered. It will require special argumentation for the evaluator to claim that a particular black child could benefit more from placement with a black family than with a non-black family. As stated earlier, the evidence is clear that black children can do well in transracial placements. The pointed objective, therefore, in future evaluations will be to show that a particular black child has such unique and special needs that he or she deserves particular consideration for placement in a black family. It will be interesting to see whether our forensic colleagues, in striving for objectivity, will consider the factor of race in their evaluations only when something unique about that particular adoption context cries out for race to be considered so that the best-interest-of-the-child standard can be met. It seems clear that forensic professionals must be careful not to state that they routinely consider race in their adoption evaluations unless they intend to argue clinically that race is always relevant. And even then, they should be cautious about not articulating a general preference for inracial over transracial adoptions.

Despite federal statutory attempts to remove race as a controlling factor in adoption and foster care placement decisions, the debate over transracial adoption is not over. Indeed, strains of the debate are evidenced in the statutes and their implementation guidelines and the argument continues among our

mental health colleagues. For example, following passage of MEPA and the IEP, a group of adoption experts from different disciplines was assembled by the Stuart Foundation to reconsider the controversies surrounding racial matching and transracial adoption. The Adoption and Race Work Group concluded that “race should not be ignored when making placement decisions and that children’s best interests are served—all else being equal—when they are placed with families of the same racial, ethnic, and cultural background as their own” (Ref. 51, p 169). The Work Group decided that the research to date was insufficient, even though research has supported transracial adoption.

The ultimate outcome of the group’s deliberations is perhaps the clearest indication of how difficult it is in this debate to meld passion and scholarship. The ongoing debate exemplifies Courtney’s conclusion that “those with strongly held views are likely to maintain their convictions: advocates of TRA will continue to believe that the research supports their beliefs, while opponents will contend that TRA is harmful, or that the jury is still out” (Ref. 52, p 753). After two years of work analyzing racial matching and transracial adoption, the Stuart work group acknowledged that thinking about the debate in terms of those who oppose or support transracial or inracial adoptions may get us nowhere. “It may be more productive to regard the issue in terms of assessing, deciding, and documenting when the law allows us to place more or less emphasis on race and racial matching and when good social work practice calls for it” (Ref. 52, p 177). This may be a concession to the notion that, with respect to transracial adoption, cultural stereotypes die hard.

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