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TRANSRACIAL ADOPTION AND GENTRIFICATION: AN ESSAY ON RACE, POWER, FAMILY AND COMMUNITY

Twila L. Perry*

Abstract: In this article, Professor Perry finds common ground between the two seemingly disparate contexts of transracial adoption and gentrification. Professor Perry argues that both transracial adoption and gentrification represent contexts in which, in the future, there may be increasing competition for limited resources. In the former case, the limited resource is the healthy Black newborn. In the later, it is desirable, affordable housing in the centers of our cities. After explaining how a competition between Blacks and whites over Black newborns could arise, Professor Perry argues that in any such competition, Blacks will increasingly find themselves at a disadvantage stemming from the consequences of institutionalized racism. The article argues that there is a public discourse in both contexts that blames Blacks for the problems facing Black families and Black communities and valorizes whites who transracially adopt or move into inner-city neighborhoods undergoing gentrification. Professor Perry urges increased government involvement to preserve Black families and to protect Blacks against the displacement that often results from gentrification.

Introduction

Ordinarily, most people would not think of transracial adoption and gentrification as related: transracial adoption concerns people, while gentrification concerns property. This symposium honoring the vision and commitment of Professor Ruth Arlene Howe to the welfare of Black children and Black communities has afforded a fitting occasion to examine the ways in which transracial adoption and gentrification raise related issues affecting Black children and Black

*Professor of Law and Judge Alexander T. Waugh Sr. Scholar, Rutgers University School of Law—Newark. This paper was presented at a Symposium entitled Black Children and Their Families in the Twenty-First Century, at Boston College Law School on March 11, 2005. It was also presented at the Annual Meeting of the Law and Society Association in June 2005 in Las Vegas, Nevada, and at the 12th World Conference of the International Society of Family Law in July 2005 in Salt Lake City, Utah. This work was partially supported by the Dean’s Research Fund of Rutgers University School of Law-Newark.
communities. Professor Howe’s work and my own have shared an approach in which we have urged that transracial adoption be analyzed not simply as an issue involving one-on-one parent/child relationships across racial lines, but rather as an issue requiring a structural analysis that incorporates the significance of race and racism, poverty, political and economic power, and the continuing inequities in the child welfare system.¹

This Symposium is timely for another reason. The celebration of the fiftieth anniversary of Brown v. Board of Education² has stimulated many scholars to examine not only what the Black community has gained as a result of integration, but also what it may have lost.³ While Black people in America are no longer relegated to colored waiting rooms and water fountains, and there is a small but growing class of wealthy Blacks, some in the Black community also believe that integration has had the effect of weakening some Black economic, political and social structures. Transracial adoption and gentrification are two areas where changes some might view as progress toward a more racially integrated society warrant examination from a critical perspective.

Although transracial adoption involves the quest for children and gentrification involves the quest for property, both represent contexts in which, in the future, African-Americans may be increasingly competing with whites for scarce resources. In the former, the limited resource is the healthy newborn Black infant. In the latter, the resource is desirable, affordable housing in the centers of cities. In both of these areas, Blacks may increasingly find themselves at an economic disadvantage

¹ I have long admired and appreciated Professor Howe’s work, and I have welcomed her voice in the struggle to change the terms of the transracial adoption debate to reflect the racial, economic and other realities that must be confronted in a full analysis of the subject.

² Brown v. Bd. of Educ., 347 U.S. 483 (1954). In this article, the word “Black” will appear with a capital B. See Trina Jones, Shades of Black: The Law of Skin Color, 49 Duke L.J. 1487, 1490 n.9 (2000) (“To reflect my belief that Blacks continue to constitute a specific group with a shared (though not monolithic) history, . . . I shall capitalize the letter ‘B’ and use the word Black as a proper noun.”); Kimberle W. Crenshaw, Race, Reform, Retrenchment: Transformation and Legitimation in Anti-Discrimination Law, 101 Harv. L. Rev. 1331, 1332 n.2 (1988) (“Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.”).

stemming from the consequences of historical and continuing private and institutionalized racism. Moreover, in both contexts, there is already a public discourse in which increasingly, what in reality may already be becoming a competition over limited resources is often represented as a stage in the evolution toward a non-racist society. Thus, while access to non-biological parenthood is increasingly becoming a function of economic privilege, and children are increasingly treated like commodities that can be bought and sold, the white families who transracially adopt Black children are portrayed as humanitarian pioneers helping to forge the path to a non-racist society. Similarly, the dismantling of historical Black communities by gentrification is obscured by a discourse idealizing racial integration and urban revitalization. With respect to both transracial adoption and gentrification, the evolution of the law toward principles of race-neutrality facilitates the desires and interests of middle and upper-middle class whites at the expense of African-Americans.

Part I of this article will provide a brief review of the historical background of transracial adoption and gentrification. Part II will examine the role of commodification and the free market in both contexts. Part II will also argue that the wealth disparities between whites and Blacks has, does, and will continue to put Blacks at a disadvantage in what is likely to be an increasing competition for healthy infants and for housing in the central cities. Part III will explore the evolving discourse concerning transracial adoption and gentrification. It will examine the ways in which advocates of transracial adoption and gentrification have promoted a public discourse in which Blacks are blamed for the conditions of Black families and inner city communities. This discourse lays the foundation for what may be described as a rescue fantasy in the context of transracial adoption and a frontier metaphor in the context of gentrification that seek to lend legitimacy to white desires in both contexts. Part IV will explore the effect of the increasing move of the law toward race-neutrality in transracial adoption and gentrification. Part V will briefly recommend steps that might assist in the protection of the interests of Black children and Black communities from the free-market forces that undermine the interests of Blacks in both contexts.

4 See infra Part I.A.
I. THE HISTORY OF TRANSRACIAL ADOPTION AND GENTRIFICATION

A. The Legacy of Segregation in the Family and in Housing

1. From Anti-Miscegenation Laws to Transracial Adoption

Housing and family life are paradigms of the ways that Blacks have been historically separated and stigmatized in American society. With respect to family life, under de jure segregation, intimate personal relationships were strictly controlled. State laws routinely outlawed interracial marriage and many states also prohibited adoption across racial lines.5 Children of mixed race were often regarded as “tragic mullatos,” and the “one-drop rule” essentially rendered any Black ancestry a pollutant.6 It was not until Loving v. Virginia in 1967, that the United States Supreme Court overturned laws forbidding interracial marriage.7 Since that time, rates of interracial marriage between Blacks and whites in this country have remained low—likely a reflection of past and present de facto segregation.8

The number of transracial adoptions in this country, however, began to grow substantially during the 1960s and the early 1970s.9 Reasons for this included an increase in the number of children coming into the foster care system, a growing social consciousness about race that emerged from the civil rights movement, and a shortage of healthy white infants available for adoption. The shortage of adoptable white infants resulted from, among other factors, the increased


7 Loving v. Virginia, 388 U.S. 1, 2 (1967) (striking down miscegenation law as unconstitutional).

8 In 1998, for example, marriages in which there was one Black partner and one white partner comprised only 0.6% of the total marriages—330,000 couples out of 53,305,000 overall. Kennedy, supra note 5, at 127; see also Rachel A. Moran, Interracial Intimacy: The Regulation of Race & Romance 117 (2001) (noting that over 93% of whites and Blacks choose spouses of the same race).

9 See Bell, supra note 3, at 279.
availability of abortion and contraception and from a growing tendency of unmarried white mothers to keep their babies.\textsuperscript{10}

Transracial adoption quickly became a controversial issue. Many Blacks, most notably The National Association of Black Social Workers, have gone on record as either opposing transracial adoption or at least advocating a preference that Black children be placed with Black adoptive parents.\textsuperscript{11}

The argument that whites and Blacks are, or in the future are likely to be, in competition for healthy Black newborns certainly requires elaboration. After all, the conventional wisdom is that there are more Black children available for adoption than there are Black families willing to adopt them. If this is the case, how could there possibly be a competition between Black families and white families for the adoption of Black children?

First, it must be understood that for most white prospective adoptive parents, the healthy white newborn is the gold standard.\textsuperscript{12} It has been primarily a result of the “white baby famine” that white couples have begun to seek children of color for adoption.\textsuperscript{13} If these couples are unable to obtain a white infant, the preferred alternative has been the international adoption of children who are Asian or Hispanic.\textsuperscript{14} Black American children are the last choice for most whites, if they are acceptable at all. Second, it must be understood that there is no competition to adopt the vast majority of children, Black or white, that are in foster care.\textsuperscript{15} The vast majority of these children are older


\textsuperscript{11} Id. at 42.

\textsuperscript{12} Dorothy Roberts, Shattered Bonds: The Color of Child Welfare 172 (2000) (“Even when they adopt outside their race, whites generally prefer non-Black children of Asian or Latin American heritage.”); Tanya Katerí Hernández, Multiracial Discourse: Racial Classification in an Era of Colorblind Jurisprudence, 57 Md. L. Rev. 97, 118–19 (1998) (“This racial hierarchy, which denigrates all connections to blackness in order to maintain the White ideal, evidences itself perhaps most starkly in the selection of adoptive children. In the adoptions market, White babies are highly prized, followed by mixed-race babies, with Black babies the least preferred.”).

\textsuperscript{13} Roberts, supra note 12, at 167.

\textsuperscript{14} Gloria Hochman of the National Adoption Center, has noted that if most whites “could have adopted a healthy white infant in this country, they would not have gone overseas.” Amanda Spake, Adoption Gridlock, U.S. NEWS & WORLD REP., June 22, 1998, at 32; see also Mary Jo McConahay, The Baby Trade: Where There Is Poverty in the Third World and a Baby Shortage in the First, Children Become a Commodity, L.A. TIMES MAG., Dec. 16, 1990, at 12; Roberts, supra note 12, at 172; Hernández, supra note 12, at 118–19.

and suffer physical and emotional handicaps.\textsuperscript{16} It is not easy to place such children with adoptive parents of any race because most adoptive parents prefer healthy newborns.\textsuperscript{17} Indeed, most of the Black children adopted from foster care are adopted not by whites, but by middle-aged, Black women who are often the children’s relatives or foster parents.\textsuperscript{18} There is no evidence that white families are pursuing those Black children most in need of adoption.

Thus, it must be understood that any possible future competition between white and Black prospective adoption parents would not be over the many Black children in foster care available for adoption, but instead it would be over a relatively small, specifically defined group of Black children—healthy Black newborns. At the present time, most healthy Black newborns find adoptive homes with Black families. Even Elizabeth Bartholet, one of the most visible advocates of transracial adoption, admits that most healthy Black babies find homes with Black families.\textsuperscript{19} Should more whites seek to adopt Black infants, however, a

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\textsuperscript{16} Somini Sengupta, \textit{Completing a Family with the Children Others Avoid}, N.Y. TIMES, Sept. 23, 2000, at B1. Only five percent of the children available for adoption through foster care are under the age of one, and a substantial percentage of those children have special needs or are at risk of developing a significant medical condition. See The AFCARS Report, supra note 15, at 1.


\textsuperscript{18} Sengupta, supra note 16, at B1.

\textsuperscript{19} See Elizabeth Bartholet, \textit{Where Do Black Children Belong? The Politics of Race Matching in Adoption}, 139 U. Pa. L. Rev. 1163, 1203 (1991); see also Sandra Patton-Imani, \textit{Redefining the Ethics of Adoption, Race, Gender and Class}, 36 Law & Soc’y Rev. 813, 843 (2002) (stating that “[h]ealthy infants of any race do not wait to be adopted”); Solangel Maldonado, \textit{Discouraging Racial Preferences in Adoption}, U.C. Davis L. Rev. (forthcoming 2006) (private agencies eventually find permanent homes for all of their healthy African-American infants, although these children are often placed four weeks later than white infants). Bartholet states that most Black newborns find homes with Black families because many agencies that race match also actively recruit Black families. See Bartholet, supra at 1203.

While there is often discussion of the need to find adoptive homes for Black children in foster care, there does not seem to be any assertion that it is difficult to find adoptive homes for Black infants. Although there is some evidence that the placement process is longer for Black infants and that there is an ongoing need to identify adoptive families for them, there does not appear to be any systematic research on questions relevant to the ease or difficulty of placement. Almost all of the healthy African-American infants available for adoption are placed through private agencies and not through the foster care system. Maldonado, supra.
competition could ensue between white families and Black families over these children.

What might a competition between white and Black families for healthy Black newborns look like? The question of the willingness of whites to adopt Black children warrants discussion at a deeper level that raises complex, troubling, and uncomfortable issues concerning the nature of racial prejudice in this country. This analysis suggests that in pursuing Black infants for adoption, whites are likely to exhibit preferences that are consistent with the racial preferences they already demonstrate in pursuing the adoption of children of color from overseas. This means that it is likely in adopting African-American infants, whites are likely to proceed in accordance with a racial hierarchy that places bi-racial and/or more Caucasian looking African-American infants at the top and darker African-American infants at the bottom.

A fact that is seldom discussed in connection with the controversy over transracial adoption is that many of the African-American children adopted by white parents in this country are bi-racial children—that is, children who are the offspring of one white parent and one Black parent. Historically, as a result of the “one-drop rule,” under which any person with known or discernable Black ancestry was designated as Black, these children would have simply been considered Black. Therefore, during the era when race-matching was virtually automatic in adoption, such children would have been placed with Black adoptive

It has been noted that in recent years, hundreds of Black newborns have been placed for adoption with white families in Canada and other countries. Id. The reasons for this are not yet clear. The fact that Black newborns are being placed for adoption outside of the United States does not prove that there is difficulty in placing them for adoption inside of this country. Before any conclusions can be drawn, many factors must be analyzed, including financial incentives, the wishes of birthmothers, and the intensity of solicitation and marketing of these infants by American adoption agencies.

20 See Hawley Fogg-Davis, The Ethics of Transracial Adoption (2002); Kennedy, supra note 5, at 449 n.* (“The prevalence of biracial children among ‘black’ children adopted by whites is a striking feature that has been largely ignored in the debate over interracial adoption.”); Moran, supra note 8, at 129; see also Julie C. Lythcott-Haims, Note, Where Do Mixed Babies Belong? Racial Classification in America and Its Implications for Transracial Adoption, 29 Harv. C.R.-C.L. Rev. 531, 531 (1994). As a general matter, when analyzing issues of race, I do not separate Black people into categories of “Black” and “bi-racial.” However, I recognize that in recent years, this is a distinction that some people, both Black and white, do make. In this article, I distinguish between “Black” and “bi-racial” only because I believe that many whites who might seek to adopt healthy Black infants in the future are likely to seek out those infants who, because of the racial background of their parents, more closely resemble whites.

21 Perlmann, supra note 6, at 528.
parents.\textsuperscript{22} Since transracial adoption has gained in popularity, however, these infants are often placed with white families.\textsuperscript{23} If the white baby famine continues, the demand for mixed race babies will continue, and Black families and white families may end up in competition.\textsuperscript{24}

Another category of Black newborns that may be the object of competition consists of Black infants who are the offspring of two Black parents, but who resemble the bi-racial Black baby. Many Blacks in America who would never describe themselves as mixed or bi-racial have substantial white ancestry and the appearance of their children reflects that reality. Even though such babies are considered Black rather than bi-racial, their physical appearance is also likely to make them desirable to white families.\textsuperscript{25}

A third category of Black newborns that may be available for adoption is comprised of those whose appearance is more phenotypically Black—those with darker skin and more African features and hair.\textsuperscript{26} The fact that most whites prefer to adopt Asian, Hispanic, or white

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\textsuperscript{22} The historical approach to the placement of bi-racial children is illustrated by one of the most discussed cases on the subject of transracial adoption, \textit{Drummond v. Fulton County Dept. of Family and Children's Servs.}, 563 F.2d 1200, 1204 (5th Cir. 1977). In \textit{Drummond}, the petition of white foster parents to adopt their bi-racial foster child was denied. The record in the case indicated that the “agency employees were aware that as the child grew older he would retain the characteristics of his black father.” \textit{Id.} The Court of Appeals upheld denial of the adoption, the use of race as a factor in adoption and found that the family had not been automatically rejected on racial grounds. \textit{Id.} at 1205.

\textsuperscript{23} \textit{Bartholet, supra note 19, at 1175 n.14 (“Most transracial adoptions have involved children who are in fact biracial or multiracial.”) (citing D. Pay, \textit{The Adoption of Black Children: Counteracting Institutional Discrimination} 94 (1979)); Moran, \textit{supra} note 8, at 129 (“When transracial adoptions take place, they typically involve children with some white ancestry.”).

\textsuperscript{24} \textit{Roberts, supra note 12, at 172. Indeed, some white advocates of transracial adoption have argued, essentially, that these children’s bi-racial heritage means that whites should have as much access to them as Blacks. See \textit{Bartholet, supra note 19}, at 1175 n.14. Thus, the racial definition of bi-racial children, who historically have been assigned a Black racial identity by society, is sought to be redefined as whites, pursuing their own self interest, have a stake in the redefinition.

\textsuperscript{25} Legal scholars are beginning to pay increasing attention to the troubling reality that not only does racism exist in American against all Blacks, but that in addition, Blacks of darker complexities are treated worse by whites than Blacks who are lighter and possess features that are closer to those possessed by whites. \textit{See, e.g., Taunya Lovell Banks, Colorism: A Darker Shade of Pale, 47 UCLA L. Rev. 1705, 1716–17 (2000); Leonard M. Baynes, If It’s Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow Than Lightness? An Investigation and Analysis of the Color Hierarchy, 75 Denv. U. L. Rev. 131, 133 (1977); Jones, \textit{supra} note 2, at 1497–98. In his classic 1944 study of race relations in America, the Swedish sociologist Gunnar Myrdal stated that “mixed bloods have always been preferred by the whites in practically all respects.” \textit{Gunnar Myrdal, An American Dilemma} 696 (20th anniversary ed. 1962).

\textsuperscript{26} Here, I am less certain of the demand by whites.
children certainly suggests that there may not be a demand for more phenotypically Black infants. Nevertheless, if such a newborn is healthy, and whites have difficulty adopting a white, Hispanic, Asian or Black/white biracial baby, a darker Black newborn with more African features may still be in demand, even if as a last resort, and there could still be a competition between whites and Blacks for the children.27

Thus, as more whites and Blacks seek to adopt healthy infants and choose not to adopt the older and physically or emotionally handicapped children of all races who languish in foster care it is not difficult to foresee the likelihood of a struggle between Black families

27 I realize that the argument I am presenting here is controversial because statistics on adoption were not kept by the federal government between 1975 and 1991. Rita J. Simon & Howard Altstein, Adoption, Race and Identity: From Infancy Through Adolescence 12–13 (1992). As a result, much of what I assert here, and indeed much of what anyone asserts about the number of adoptions in this country, transracial or otherwise, cannot be fully documented. Moreover, I believe that the argument I am making and the observation I am offering pertain to matters that many people—certainly many whites, and even some Blacks do not feel comfortable discussing. Thus, the number of bi-racial infants placed with Black families, the number of bi-racial infants placed with white families, or the racial placements of children considered Black across a spectrum of characteristics of skin, hair and features are not matters for which conclusive objective proof is available. Still, I believe that certain inferences can be drawn based on what we do know about the preferences of white prospective adopters as well as certain easily observable racial patterns in the larger society. For example, the preference of whites for children of color who are not Black supports an inference that most whites would prefer bi-racial black children to those black children who are not bi-racial. Indeed, there is specific research supporting such a finding. See id. at 81 (noting that of the 204 white couples in the early 1970s study on tranracial adoption, “most of the families wanted a racially mixed child”). The authors of another study concluded that some of the white parents adopted light skinned children who they then “passed off as white.” Jacqueline Macauley & Steward Macauley, Adoption of Black Children: A Case Study of Expert Discretion, Res. in L. & Soc., 1, 265, 279 (1978). It is not a significant leap from that conclusion to assume that most whites would, then, prefer a lighter skinned infant with two African-American parents to a darker one with two African-American parents. What I am describing may simply be an esthetic preference, and/or it may be based on the belief that the closer to Caucasian the adopted African-American infant appears, the fewer problems in incorporating the child into the family and the community. This analysis can certainly be challenged, but I firmly believe that not everything that is in fact true about race has been—or even can be—documented in an empirical study. Many people are uncomfortable with an analysis that draws distinctions between Black people who are bi-racial, those who are lighter skinned with more Caucasian features, and those Blacks who represent more of an African phenotype. Whites are often uncomfortable addressing any issues that go to the core of racism that exists at deep psychological and emotional levels. For some Blacks, the kinds of distinctions I am drawing meet resistance because of the concern that they reinforce troubling historical relationships between Blacks with different skin colors, features and degrees of white ancestry, that go back to slavery. I have set forth this analysis in the hope that it will support my thesis that there is and/or in the future there may be a competition between white and Black prospective adoptive parents for healthy Black and bi-racial newborns.
and white families for healthy biracial and other newborn Black infants. In essence, the healthy Black newborn, like the white newborn, may become a scarce resource.\textsuperscript{28} As in other situations in life and commerce, scarce resources can lead to competition.

2. From Segregation to Gentrification

In housing, as in family life, the history in this country is one of racial segregation and stigmatization. Acts of private racism and discrimination have long kept Blacks out of white neighborhoods, with many whites believing that having Black neighbors would undermine property values, reduce neighborhood safety and threaten white social status.\textsuperscript{29} Racial segregation in housing, however, has also been a direct consequence of public policy.\textsuperscript{30} As Judge Guido Calebresi noted during the time he was Dean of Yale Law School, “[t]he government of this country, on the national as well as the local level, for many years and until very recently pursued a policy of encouraging segregated housing.”\textsuperscript{31} Scholars have described in detail the official policies of the federal government such as “redlining,” which had the effect of increasing the racial and economic isolation and economic powerlessness of Blacks in the inner city while it encouraged the suburbanization of the white middle-class.\textsuperscript{32} In essence, a combination of

\textsuperscript{28} Brooks, \textit{supra} note 17, at 584–86; Courtney, \textit{supra} note 17, at 755–56.


\textsuperscript{31} Calabresi, \textit{supra} note 30, at 7; \textit{see also} Solomon, \textit{supra} note 30, at 265.

\textsuperscript{32} Massey and Denton have described in detail the way in which after World War II, the federal government was actively involved in “perpetuating racial segregation.” Massey \& Denton, \textit{supra} note 29, at 51. Indeed, it was the federal government, through an agency known as The Home Owners Loan Corporation (HOLC) that initiated and institutionalized the practice of “redlining,” where under a color-coded system, neighborhoods with different racial compositions were designated as blue, yellow, green or red, in order of desirability. \textit{Id.} Black neighborhoods were always coded red and mortgage funds were directed away from these neighborhoods. \textit{Id.} at 51–52. This served as a model for other credit institutions, public institutions, private banks and other institutions that relied on the model of the color coded federal system in developing their own models and practices. \textit{Id.} at 52. The system of redlining also influenced the underwriting practices of the Federal Housing Administration (FHA) and Veterans’ Administration (VA), whose loan practices were also major factors in the growth of suburbanization and the expansion and solidification of racial ghettoes. \textit{Id.} at 52–54. “The vast majority of FHA and VA mortgages went to white middle-class suburbs, and very few were awarded to black neighborhoods in central cities.” \textit{Id.} at 54; \textit{see also} Jon C. Dubin, \textit{From Junkyards to Gentrification: Explicating a
private racial prejudice and the institutionalization of discrimination by the federal government and private financial institutions made it inevitable that many inner cities would become ghettos.

In an attempt to address the problem of racism and segregation in housing, the federal government passed Title VIII of the Civil Rights Act of 1968, generally known as The Fair Housing Act.\(^{33}\) Although some progress has been made in decreasing acts of overt racial discrimination, patterns of housing segregation in this country have, for the most part, continued.\(^{34}\) Indeed, according to scholars such as Professor Charles Ogletree and John Calmore, in many areas, segregation has actually increased.\(^{35}\) Private discrimination remains a problem, and patterns such as “white flight” from the cities, have increased racial segregation in many central cities.\(^{36}\)

In recent years, however, rather than continuing to flee to the suburbs, middle and especially upper-middle class whites are returning to the cities.\(^{37}\) This is a national, and, indeed, an international phenomenon often referred to as “gentrification.”\(^{38}\) The images that are

\[^{33}\text{42 U.S.C. §§ 3601–19 (1968). The Fair Housing Act prohibited within private markets several kinds of discrimination, including refusing to sell or rent to a person because of his or her race, discriminating in the terms of sales and rental, and discriminatory advertising. Massey & Denton, supra note 29, at 195.}\]

\[^{34}\text{Calabresi, supra note 30, at 7.}\]

\[^{35}\text{Ogletree, supra note 3, at 263 (describing the increase in racial segregation in Boston neighborhoods and suburbs); see also John O. Calmore, Race/ism Lost and Found: The Fair Housing Act at Thirty, 52 U. Miami L. Rev. 1067, 1071 (1998) (noting that since passage of the Fair Housing Act in 1968, “[t]he segregation . . . has now become ‘hypersegregation.’”); Massey & Denton, supra note 29, at 195–212, 223–29.}\]

\[^{36}\text{Massey & Denton, supra note 29, at 45.}\]

\[^{37}\text{See John J. Betancur, Can Gentrification Save Detroit? Definitions and Experiences from Chicago, 4 J.L. Soc’y 1, 2 (2002–03) (noting the return of the middle classes to the central cities); John A Powell & Marguerite L. Spencer, Giving Them the Old “One-Two”: Gentrification and the K.O. of Impoverished Urban Dwellers of Color, 46 How. L.J. 433, 436–37 (2003) (“Commonly, higher-income white households replace lower-income minority ones, often in the very same neighborhoods that experienced ‘white flight’ and urban renewal in the 50s and 60s.”).}\]

\[^{38}\text{It is widely believed that the term “gentrification” was coined in 1964 by the renowned sociologist Ruth Glass in London, in what has become a classic definition and description:}\]

One by one, many of the working-class quarters of London have been invaded by the middle classes—upper and lower. Shabby, modest mews and cottages—two rooms up and two down—have been taken over, when their leases have expired, and have become elegant, expensive residences. Larger Victorian houses, downgraded in an earlier or recent period—which were used as lodging houses or were otherwise in multiple occupation—have been upgraded
now frequently in the media are of young, white, middle and upper-middle class couples moving into “formerly blighted” areas in the inner-city, restoring brownstones, or purchasing or renting apartments in pre-war or newly constructed buildings. The Harlems, Bedford Stuyvesants, and inner city Baltimores, neighborhoods long feared and scorned by many whites, are now touted as new frontiers where beautiful and spacious housing can be purchased for a fraction of what it would cost elsewhere.

In his seminal and widely noted book on gentriﬁcation, Professor Neil Smith has described gentriﬁcation as a process during which “poor and working-class neighborhoods in the inner city are refurbished via an inﬂux of private capital and middle-class homebuyers and renters.” Smith notes that neighborhoods that undergo gentriﬁcation are those that had previously experienced disinvestment and a middle-class exodus.

According to Smith, gentriﬁcation occurs when the rates of return on a rental property decrease as a result of a less than desirable relationship between the cost of maintaining property and the level of rent that can be commanded to secure what a landlord would consider to be an adequate proﬁt. When a landlord is not making a sufﬁcient proﬁt, he often begins to lag in the maintenance of the property. Further deterioration of the property leads to active disinvestment by landlords and later disinvestment in the neighborhood by ﬁnancial institutions, such as banks and insurance companies. When landlords can no longer collect enough money to cover taxes, repairs and utilities, property is abandoned. At the point where there is a large enough disparity between the value of the property in its current state and the value it could have if redeveloped, gentriﬁcation occurs. Developers can purchase property cheaply, develop it and sell it for a proﬁt. Middle class families can access the kind of gracious and spacious housing they would not have been able to afford in a different neighborhood. As Smith notes, ultimately the devaluation of property “produces the ob-

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39 Id. at 32.
40 Id.
41 Id. at 64–65.
42 Id. at 66.
43 SMITH, supra note 38, at 66–69.
jective economic conditions that make capital revaluation (gentrification) a rational market response.”

B. Critiques of Transracial Adoption and Gentrification

It would not be surprising if many people viewed both transracial adoption and gentrification as positive societal developments. Is it not true that transracial adoption is a sign that we are moving toward a society in which racial differences have fewer negative meanings? After all, if whites are willing to accept, and even seek out Black children to become a part of their families, surely we must be heading toward a better, more just society. Does gentrification not represent a process of improvement in inner city communities? Such views represent positive spins on transracial adoption and gentrification, but some question these sunny outlooks. Critics argue that transracial adoption and gentrification do not necessarily improve the lives of the people in the groups affected by them. Indeed, it can be argued that each of these processes has significant negative consequences for both individuals and communities.

1. Gentrification

A negative consequence of gentrification is that all too often, as the middle class and upper-middle class move into the neighborhood, the poorer people who have historically lived in the neighborhood can no longer afford to live there. Gentrification also has clear racial implications. The predecessor to gentrification, “urban renewal,” was a federal government program during the 1960s in which certain areas in various cities were targeted for residential and commercial development. Urban renewal was derisively described by its critics as “Negro Removal” because it often resulted in the displacement of

44 Id. at 67.
45 See Perry, supra note 10, at 53. With respect to the gentrification of the Society Hill neighborhood in Philadelphia, Smith noted that, “Society Hill was successful, it is true, for its new residents . . . but, as the Redevelopment Authority files reveal, some 6,000 residents of Society Hill were displaced from 1959 onwards to facilitate the gentrification.” Smith, supra note 38, at 137.
46 See Audrey G. McFarlane, Race, Space, and Place: The Geography of Economic Development, 36 SAN DIEGO L. REV. 295, 332–33 (1999); see also Smith, supra note 38, at 162–63 (discussing the gentrification of Harlem and expressing a concern that large numbers of community residents will ultimately face displacement).
47 For a description of urban renewal programs, see Massey & Denton, supra note 29, at 55–57.
Blacks. Gentrification, a successor to urban renewal, involves a mix of private market forces and governmental policies. Gentrification also often results in the displacement of Blacks from the neighborhoods where they have resided.

When neighborhoods are gentrified, the lives of those who move into these neighborhoods may be significantly improved as they purchase spacious housing and increase their asset base. However, as Professor David Troutt has noted, the reality is that gentrification does little to improve the circumstances of the residents of the inner city, especially those whose “lives and livelihoods . . . revolve around public law bureaucracies (e.g., public assistance agencies, public hospitals, and schools) and court-ordered outcomes (e.g., family and housing court decrees and criminal justice sentences).” For this vulnerable group of people, gentrification may threaten their ability to simply keep a roof over their heads. Neil Smith has criticized gentrification as a “back to the city movement by capital rather than people.” Gentrification has also been described as reflecting “a struggle between community and accumulation,” and it has been criticized for its “destruction of the elaborate and complex community fabric that is crucial for low-income, immigrant, and minority communities.”

2. Transracial Adoption

The question of whether transracial adoption harms the Black community is complicated and must be approached at a variety of levels. At the micro level, there is a continuing debate as to whether Black children thrive emotionally and psychologically when raised by white

48 See id; Smith, supra note 38, at 137–38; see also McFarlane, supra note 46, at 317–18 (describing urban renewal and its effect on Blacks).

49 In addition to private market forces, gentrification is also promoted by governmental policies that include the demolition of existing low-income and public housing, “tax incentives offered for middle-class homebuyers, and exclusionary zoning that limits the quantity and location of affordable housing in an area.” Powell & Spencer, supra note 37, at 442.

50 See id. at 472.

51 See Smith, supra note 38, at 70.


53 Powell & Spencer, supra note 37, at 436 (quoting Betancur, supra note 53, at 807).
parents.\textsuperscript{55} Many who have studied children who have been transracially adopted have concluded that they can grow up to be happy, emotionally healthy adults.\textsuperscript{56} However, others argue that the picture is a more complex one and the conclusions and methodologies of the relevant sociological studies, as well as the normative issues, continue to be disputed.\textsuperscript{57} At a broader level, it has been argued that pro-transracial adoption discourse often disparages Black communities, Black families and Black mothers.\textsuperscript{58} It has also been argued that, should transracial adoption become widespread, it could have the effect of draining Black communities of their most valuable human resource—their children.\textsuperscript{59} Finally, some critics argue that transracial adoption constitutes cultural genocide.\textsuperscript{60}

The critical question for this paper is whether transracial adoption poses a threat to the opportunity of Black adults to adopt Black children. First, it should be noted that most Black parents, like most white parents, have produced and are raising their own biological children—adoption is simply not an issue in the lives of most Americans. Second, transracial adoption does not pose a threat to the ability of Blacks to adopt the vast majority of Black children available for adoption—Black children who are in foster care.

The focus of this article is on the competition, or potential competition between whites and Blacks not for older Black children in foster care, but for healthy Black newborns. If as a result of the increased pursuit of Black or bi-racial children by white families, Black families are shut out of the opportunity to adopt healthy Black and bi-racial newborns, it should be a matter of concern, at minimum, as a moral issue. It is particularly troubling because a Black family would

\textsuperscript{55} See Perry, supra note 10, at 61–65.
\textsuperscript{56} Id. at 57–59.
\textsuperscript{58} See Perry, supra note 10 at 65–72, 77–81, 89–99. Here it is argued that some transracial adoption advocacy portrays Blacks as unwilling to adopt Black children, and as inferior parents as compared to whites. Black mothers are portrayed as inadequate parents who pass on bad values and the objections of Blacks to transracial adoption are dismissed as the promotion of racial politics at the expense of the interests of Black children.
\textsuperscript{59} Id. at 65–72.
\textsuperscript{60} See id. at 72–77. “Cultural genocide has two connotations. First, a particular practice may constitute a threat to the existence of a group or that group’s culture. . . . But cultural genocide may also refer to the effect of depriving individuals of the experience of their own culture.” Id. at 72–73.
be unlikely to be given a healthy, white newborn to adopt even if they wanted one. Healthy white newborns are in high demand, and the idea of Black parents raising white children as their own, and not as nannies, is virtually inconceivable to most white Americans.

II. Wealth and the Free Market: Gentrification, Transracial Adoption and Choice

A. Commodification and the Free Market in Housing and Children

Commodification, a term increasingly popular in legal discourse, is subject to many definitions. Margaret Radin, a noted legal scholar on the subject, has observed that commodification can be narrowly defined as the “actual buying and selling . . . of something.”\(^{61}\) Radin also notes that, broadly construed, the idea of commodification “includes not only actual buying and selling, but also market rhetoric, the practice of thinking about interactions as if they were sale transactions, and market methodology, the use of monetary cost-benefit analysis to judge these interactions.”\(^{62}\) Radin notes that some types of commodification analyses are rooted in the idea of the laissez-faire market, which supports placing a high value on free choice.\(^{63}\)

The concept of commodification is helpful in examining the similarities between transracial adoption and gentrification. In both contexts, an approach that legitimizes the purchasing and selling of coveted items in a free market will clearly have the effect of undermining the interests of Black communities in their children and in their housing.

1. Commodification, the Free Market and Housing

It is not difficult to think of housing as a commodity—housing is something that is bought and sold with regularity. Although for most people a home is a place in which to live and make oneself comfortable, today housing is increasingly viewed as an investment, even as a vehicle for vaulting from the middle or upper-middle class into true

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\(^{62}\) Id.

\(^{63}\) Id. at 1859 n.44.
wealth. The type of house or apartment one lives in has become the “yuppie” status symbol, a marker of social status, wealth and success.\textsuperscript{64}

In this country, as a general matter, the search for housing operates within a free market. Landlords and tenants enter leases with respect to rent; buyers and sellers enter into agreements for the sale of property. Fortunately, there have been and still are some government sponsored programs that mitigate the harsh effects of the free market. Thus, the federal government’s Section 8 and New York’s Mitchell-Lama program were designed to provide assistance for low and middle-income people in meeting their housing needs. Further, in cities like New York, rent control and rent stabilization programs place certain limits on what landlords can charge.\textsuperscript{65} Finally, in many jurisdictions, housing codes force owners to incur some costs to meet minimum safety standards.\textsuperscript{66} Nonetheless, the vast majority of the housing market operates under a free-market principle.

As the price of shelter steadily increases in a free market, poor families have few choices. In bad economic times, the free market can reduce a poor family to homelessness. On the other hand, for individuals of means, the free market provides a wealth of choices.

Those with the choices that money provides have the power to choose to live in the suburbs, the city, or even seek peace in rural areas. In recent years, however, an increasing number of higher income individuals and families are moving from the suburbs into the inner-

\textsuperscript{64} I have heard from acquaintances that “rent or own?” has become the opening gambit to many a social encounter—give the wrong answer and interest in the conversation may quickly fade.

\textsuperscript{65} Richard Plunz, \textit{A History of Housing in New York City} 281–82, 313 (1990). Mitchell Lama was a government program begun in 1955 designed to promote construction of urban middle-class housing. Section 8 is a program based on a policy of rent subsidy as opposed to direct subsidies for development. Rent control provisions, which exist in a variety of forms in different cities, place limits on the amount of rent increases landlords can impose as long as a tenant resides in the same apartment. Rent stabilization provisions also provide protection although the protection is weaker than under rent control. See generally Stephen Dobkin, \textit{Confiscating Reality: The Illusion of Rent Controls in the Big Apple}, 54 \textit{Brook. L. Rev.} 1249 (1989); Edgar Olsen, \textit{Is Rent Control Good Social Policy?}, 67 \textit{Chi.-Kent L. Rev.} 931 (1991); Margaret J. Radin, \textit{Residential Rent Control}, 15 \textit{Phil. & Pub. Aff.} 350 (1986); Note, \textit{Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market}, 101 \textit{Harv. L. Rev.} 1835 (1988).

\textsuperscript{66} See Samuel Bassett Abbott, \textit{Housing Policy, Housing Codes and Tenant Remedies: An Integration}, 56 \textit{B.U. L. Rev.} 1, 40 (1976) (stating that housing codes establish minimum standards for structural elements such as ceilings, floors and staircases, for facilities such as bathtubs and sinks, and for services such as heat, hot water, and garbage disposal). In addition, the law embodies the principle of the implied warranty of habitability, an implied promise by the landlord that the premises is fit for human occupation. \textit{Id.} at 12–13.
In addition, a growing number of whites are moving from more expensive areas in the cities to traditional minority neighborhoods, such as Harlem. Because the housing in those communities has been devalued for so long, prices are much lower than in many predominately white city neighborhoods. In an era where prices are rising, real estate in the inner-city is seen as the last remaining bargain. Thus, many people who, not even a decade ago, would not have considered property in a neighborhood like Harlem or Bedford Stuyvesant, are now lining up to purchase real estate in these communities for homes or as an investment.

Thus, whites of economic means can choose de facto segregation or choose integration—the choice is on their terms. Meanwhile, the same choices are not available for those who have historically lived in areas now undergoing gentrification. These individuals often do not have the economic means to move into white areas, and in the absence of more directed and committed action by the government, they may not be able to continue living in the neighborhoods in which they have resided for decades.

2. Commodification and the “Free-Market” in Adoption

In 1978, Elisabeth M. Landes and Richard A. Posner, one of the leading proponents of the law and economics movement, published an article entitled, *The Economics of the Baby Shortage*. In this article, Landes and Posner argued that the shortage of healthy white newborns for adoption was an artificial shortage—one created by the failure of the law to permit a free market in babies. They argued that the white baby shortage is the result of legal restrictions that prevent

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68 J. Peter Byrne, *Two Cheers for Gentrification*, 46 How. L.J. 405, 407 (2003). Byrne states, economic changes have increased demand for housing in some cities beyond what the market can supply outside of formerly marginal neighborhoods. Thus, the young professionals in the Bay Area or Boston who took jobs in the technology sector during the boom, may have moved to the Mission District or Charlestown because of the lack of attractive affordable alternatives.

69 *Id.*
71 *Id.* at 339.
the market from operating as freely in the sale of babies as it does with respect to other goods.\textsuperscript{72}

Not surprisingly, Landes and Posner’s article produced much impassioned outrage and commentary.\textsuperscript{73} Nonetheless, it can be argued that in today’s society, children are increasingly viewed as commodities, which can, in essence, be bought and sold.\textsuperscript{74} How did society arrive at such a place and what are the implications for the analysis of transracial adoption? First, it must be recognized that while, for most people, raising children is one of the most emotionally satisfying life experiences they could ever have, children are also increasingly a status symbol—an announcement to the world that a couple now “has it all”—successful careers, the house or apartment and now the picture-perfect traditional family.\textsuperscript{75} Children have become an accessory, an accoutrement of the upper middle-class success story.\textsuperscript{76}

The argument that children have become commodities for sale and purchase is increasingly reflected in both surrogacy and adoption. In surrogacy, for example, the price of a genetic surrogate and/or the price for donated eggs depend on the provider’s capacity to produce children who would be most desired in terms of characteristics such as eye color, hair color, and height.\textsuperscript{77} With respect to adoption, it has been reported that white couples using private adoption agencies have been willing to pay $10,000, $30,000 and even $100,000 in fees to adopt a white baby.\textsuperscript{78}


\textsuperscript{74} See Fogg-Davis, supra note 20, at 43.

\textsuperscript{75} David Ray Papke, \textit{Pondering Past Purposes: A Critical History of American Adoption Law}, 102 W. Va. L. Rev., 459, 460 (1999) (“In addition to purchasing their share of conventional consumer goods, many also seek to obtain the child held out by advertising and general cultural imagery as central to a good, successful life.”).

\textsuperscript{76} There is much evidence to support this: expensive specialty shops for children’s clothing and furniture, $5000 birthday parties, competition for “feeder” pre-schools, and inappropriate, even criminal, behavior by parents at children’s sports events.

\textsuperscript{77} See Dorothy E. Roberts, \textit{The Genetic Tie}, 62 U. Chi. L. Rev. 209, 248–49 (1995). It is ironic that the terminology is “donated” eggs when these eggs are sold and not given away for free.

These kinds of developments support the argument that white children are increasingly being commodified. A commodification analysis can be applied to Black children as well, although there are differences. Certainly, during slavery Black children were treated like commodities—they were literally bought and sold. In today’s adoption market, Black children are still commodities for which prices can be paid, but it should not be overlooked that in the adoption market, Black children are treated as commodities of lesser value than white children. This is reflected in several ways. First, as discussed earlier, some whites who adopt Black children do so only as their last resort. In addition, the reality is that given the devaluation of Black children in American society, the white family who adopts a Black child is likely to be perceived as having received a commodity of lesser value than if they had adopted a white child.  

The fact that Black children in this society are accorded a lesser value than white children is illustrated by the fact that some agencies have a fee schedule for children of different races that reflects a clear hierarchy in the value of children by race. One agency’s fee schedule revealed the following prices: white infants, $7500; bi-racial infants, $3800; and Black infants, $2200. Hawley Fogg-Davis has noted that “[a]lthough today’s adoption system is not an explicit economic market, the ability of adopters to choose children according to racial classification and other attributes does encourage a consumer-like mindset that few question.”

B. The Consequences of Wealth Disparities

1. Race and Wealth Disparities

In both transracial adoption and gentrification, the fact that serious economic disparities exist between Blacks and whites means that Blacks are unable to compete with whites for housing and would be

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79 Research has demonstrated that white families who have transracially adopted often encounter pressures, hostility and teasing that they would not have encountered had they adopted a white child. See Rita J. Simon & Howard Altstein, The Case for Transracial Adoption 76 (1994) (discussing the varying, sometimes negative reactions of relatives, friends, and neighbors to the family’s decision to transracially adopt). Further, the social status of such a family might even be thought of as having fallen. Christopher Bagley et al., International and Transracial Adoptions: A Mental Health Perspective 78 (1993).

80 See Fogg-Davis, supra note 20, at 43.

81 Id. at 82.
unable to compete with whites, should a competition develop for the adoption of healthy Black and biracial newborns. The inability of Blacks to compete in these contexts is a reflection of the troubling economic disparities that exist between whites and Blacks in this country—disparities that have been described and analyzed by many scholars. A recent study revealed that in 2002, white households had a median net worth that was more than fourteen times that of Black households. Research by Melvin Oliver and Thomas Shapiro has revealed the dramatic disparity in wealth between whites and Blacks, and they have noted the superior importance of wealth over income as a measure of a family’s economic well-being:

Wealth signifies the command over financial resources that a family has accumulated over its lifetime along with those resources that have been inherited across generations . . . . In this sense the command over resources that wealth entails is more encompassing than is income or education, and closer in meaning and theoretical significance to our traditional notions of economic well-being and access to life chances.

There is little indication that the problem of wealth disparities between Blacks and whites is dissipating over time. Indeed, research has revealed that, after accounting for inflation, net worth increased seventeen percent for white households from 1996 to 2002 and fell for Black households by sixteen percent during the same period. This economic inequality between whites and Blacks has profound implications for gentrification and transracial adoption.

84 Melvin L. Oliver & Thomas M. Shapiro, Black Wealth/White Wealth: A New Perspective on Racial Inequality 2 (1995). Explaining the difference between income and wealth, Oliver and Shapiro state that “[i]ncome refers to a flow of money over time, like a rate per hour, week or year; wealth is a stock of assets owned at a particular time. Wealth is what people own, while income is what people receive for work, retirement, or social welfare.” Id.
85 Id.
2. Race Disparities and Gentrification

In a free market the role of economic power is clear—those who can pay more have access to the most desirable housing. Today, when many formerly shunned communities have suddenly become desirable, whites unable to purchase in the white communities that have traditionally been their first choice can still outbid Blacks for the desirable housing in inner-city neighborhoods.  

A number of factors are at play here. First, those who have higher incomes are in a better position to obtain the larger mortgages required for more desirable housing. Nonetheless, it is assets rather than income that may make the crucial difference between Blacks and whites on the question of home ownership. The purchase of real estate requires a down payment, and the higher the price of the property, the higher the down payment will be. Access to intergenerational wealth may permit whites, even of modest income, to offer a sufficiently large down payment to enable them to purchase property they otherwise would not be able to afford. Equally, a significant asset cushion increases the likelihood that a family owning its own home will be able to continue making mortgage payments in the event of a personal crisis such as illness or unemployment. Thus, the often stronger economic position of white families as compared to Black families puts them in a better position to absorb an adverse event and still be able to hold onto their homes.

As already noted, the result of Black/white wealth disparities in gentrifying areas is that Blacks of lower economic status are likely to be displaced. Nonetheless, there is also a less-noted, but still significant potential cost of gentrification to the Black middle and upper-middle

87 See Note, supra note 65, at 1838 (“In gentrifying neighborhoods, the higher-income newcomers have more money to spend on housing, allowing them to outbid the current residents.”); see also George C. Galster, Gentrification as Diversification: Why Detroit Needs It and How It Can Get It, 4 J.L. Soc’y 29, 30 (noting that with respect to gentrification “[t]he key to the process is . . . the relative willingness of the better-off group to bid for property . . . currently occupied by the worse-off group”).

88 Oliver & Shapiro, supra note 84, at 2.

89 Oliver and Shapiro note that “[o]ther than death, a first home purchase is the event that triggers the largest asset transfer between generations.” Id. at 154. While they note that further systematic research is needed concerning the various means of transmitting wealth inequality from generation to generation, in their research, “many bankers suggested that young white couples are more likely than blacks to receive parental help in buying a first house.” Id. at 145, 156. The authors concluded that “[g]iven the superior financial position of middle-aged and older whites, it is not surprising that the parents of young white couples are more apt to be in a position to help.” Id. at 145.

90 McFarlane, supra note 46, at 332–33.
class. For middle and upper-middle class Blacks, the desire to move back into the inner-city may represent more than just an opportunity to avail themselves of the last available bargain. It is increasingly clear that upper-middle class Blacks, whom John Calmore has described as “integration warriors,” are suffering from integration fatigue. Calmore notes that while many Blacks who do not reside in the inner-city “have improved their lives materially, a significant number have not been successful in securing those intangible benefits of dignity, respect and acceptance.” These Blacks may view the possibility of returning to and rebuilding Black neighborhoods in the inner-city as not simply an attractive housing proposition, but also as the only option they have of finding a refuge for psychological and emotional survival for themselves and their children. Because Black middle and upper-middle class families have less economic wealth than white families of the same income level, however, they cannot compete with white families for the same housing, even in Black neighborhoods. When this is the case, these families have lost, not simply an economic opportunity or an opportunity for physically comfortable living quarters, but also perhaps their only chance for emotional peace.

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93 As Calmore explains:

Regardless of class, there is the experience and the perception of white resentment toward blacks. In the suburbs, blacks perceive that they would be unwelcome, isolated, and, perhaps, at risk of physical violence. This discomfort extends from experiences in various mixed settings, from college campus to work site to public space. Black reaction impairs strong motives to integrate residentially. This reaction is explained by three factors. First, there is a desire to link residence with a sense of community that is missing within the context of predominately white places, particularly white suburban neighborhoods. Second, there is a profound integration fatigue that is compounded by the alienation and distrust of whites that is associated with the black experience of having “integrated” dominant institutions and parts of society. Finally, the heavy burden of having to personify “the acceptable Negro” and assimilated token in order to succeed on mainstream terms is taking its toll, a sociological burden I have likened to that of “passing” biologically as white. In short, the quest for material benefits through integration is in acute tension with being able to find within integration a sense of belonging that is enhanced by the accoutrements of dignity, respect and acceptance.

Id. at 1107–08.
3. Wealth Disparities and Transracial Adoption

Wealth disparities between Blacks and whites are also relevant in transracial adoption. First, poverty is the primary reason that a disproportionate number of Black children end up in foster care and may eventually need adoptive homes.94 Second, while economic status is not determinative, it is relevant in the decision by agencies as to who is selected and approved as an adoptive parent when children are being placed by adoption agencies.95 Moreover, if some advocates of transracial adoption succeed in their quest to completely remove race as a permissible factor in an agency’s choice of adoptive parents for Black children,96 economic status is likely to increase in importance. In any process in which economic status increases in importance, most Black families will not be able to compete with most white families for the adoption of Black children.


95 Homer H. Clark, The Law of Domestic Relations in The United States § 20.7 (2d ed. 1988). I do not claim that income is the predominate factor agencies consider when deciding whether to approve people as adoptive parents. Historically, however, this factor has had a negative effect on the opportunity of Blacks to adopt. As Carole Williams explains:

[T]he criteria and procedures used to select families for white infants were neither appropriate for African American families nor responsive to their cultural and economic experience, and they therefore resulted in the screening out of potential families. The traditional approach to adoption assumed there were more families wanting to adopt than there were adoptive children. This approach was based on an elitist strategy in which the very best families were sought from a large pool of applicants. The criteria used were both psychosocial and economic. Adoption agencies were able to choose the most affluent and well-functioning families for their white infants. The threshold for acceptance was high. When adoption services were extended to African American families and the criteria remained the same, many families did not get through the process.

Carol C. Williams, Expanding the Options in the Quest for Permanence, in Child Welfare: An Africentric Perspective 266, 271 (Joyce E. Everett et al. eds., 1991).

While the use of economic criteria is not the dominant factor today, there is reason for continued concern with respect to its use and impact. The National Association of Black Social Workers continues to argue that adoption standards “discriminate against low-income families who want to adopt.” Darlene Addie Kennedy, Question: Should Congress Facilitate Transracial Adoptions?: Yes: End the Foster Care Ordeal for Black Children, WASHINGTON TIMES, June 5, 1995, at 18; see Adoption of B.L.S., 901 S.W.2d 38, 39–40 (Ark. Ct. App. 1995) (holding, by trial court, that adoption by aunt, who had cared for the child since she was a newborn was not in the child’s best interest, in large part, because the aunt was receiving benefits from disability and AFDC; the appellate court reversed, holding that although the aunt’s income was low it was sufficient to meet her needs).

96 See infra Part IV.
III. The Integrationist Ideal: Blame, Rescue and Valorization

In both transracial adoption and gentrification, there is a public discourse that seeks to supply rationales for supporting the access of upper-middle class whites to Black children for adoption and to housing in historically Black communities. Blacks are blamed for creating the breakdown in the Black family and community. Blaming Blacks for their own condition then lays the groundwork for whites who transracially adopt or who gentrify Black communities to be portrayed as rescuers whose actions promote positive social purposes and consequences. In what can be described as a “blame and rescue scenario,” these individual whites are valorized as pioneers helping to move this country along on the road to a more racially integrated society. While this discourse assists whites to achieve their personal and/or economic goals through transracial adoption or gentrification, the costs to Blacks are minimized or dismissed.

A. Critiquing the Integrationist Ideal in Transracial Adoption and Gentrification

Both transracial adoption and gentrification lend themselves to a discourse in which they are promoted as steps toward an integrationist ideal. With respect to gentrification, it is not difficult for many people to believe that if cities have become centers of urban blight and segregation, the return of upper-middle class whites to the city must surely be a good thing. Whites voluntarily moving next door to Blacks rather than fleeing when the first Black family moves into the neighborhood! Integration—with no busing, no angry white crowds in “Southie,” no police dogs and no Bull Connor! And who would

97 See McFarlane, supra note 46, at 339. McFarlane argues that space serves as the physical manifestation of relationships, and that places where poor Blacks live provide whites “an identifiable and contained site where the ‘Other’ is located.” Id. McFarlane argues that “Black racialized space is regarded as extremely poor, overcrowded, dangerous, dilapidated and threatening to property values” and that “[t]he role of these places in the popular imagination justifies their subordination and oppression.” Id. at 339, 340. For a discussion of views held by some whites of the Black families, see infra note 80 and accompanying text.

98 See, e.g., Byrne, supra note 68, at 405–06 (arguing that because gentrification increases the number of affluent and well educated residents, it is good for cities; gentrification is also good for the poor ethnic minorities that remain, even if it does produce some negative outcomes); see also Caroline Hsu, Two Cheers for the Urban Pioneers, U.S. News & WORLD REP., Jan. 19, 2004, at 69 (citing studies that conclude that displacement of neighborhood residents is not widespread and not disruptive and that the residents benefit from an improved quality of life and new jobs created by gentrification).
dispute that “urban revitalization” is a desirable goal? Still, as Blacks watch whites move into, and in effect, take over Black neighborhoods whites have formerly scorned, it is not lost on Black people that whites have long had the option of moving into these neighborhoods but chose not to. Now, having been priced out of downtown, integration has a new-found popularity. In the case of housing, as is the case in transracial adoption, the costs to Blacks are ignored or minimized.

The willingness of white families to transracially adopt Black children has been portrayed as a desirable step toward a more integrated society.99 In this analysis, transracial adoption is seen as a significant and desirable breach in the barrier to the most intimate connection that could occur between the races.100 Those whites willing to transracially adopt are valorized as pioneers in the creation of a more just society. This vision ignores that, in transracial adoption, the burden of creating this more integrated society is placed on Black children but not on white children.101 It has yet to be argued by those who advocate transracial adoption as a step to a more integrated society that white children should be dispersed and isolated in Black families, schools or other institutions in Black communities in furtherance of the goal of integration. It is only when integration becomes a two-way street, with the benefits and burdens borne by everyone, that society will be more fair and just.

B. The Discourse of Blame and Rescue

As noted above, the discourse surrounding transracial adoption and gentrification is a discourse of blame and rescue. In both contexts, in an amalgam of approaches, Blacks families and Black communities are blamed, pitied, or both, and are often portrayed as in need of rescue by whites.102 The discourse is rounded out by the promotion of a “missionary rationale” in which the intervention of whites is seen as a humanitarian act.103 The goal is for this discourse to be-

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99 See Kennedy, supra note 5, at 478–79 (“The emergence of ‘rainbow families’ formed by adoptions is a fascinating, poignant, encouraging landmark in the maturation of American race relations . . . . It is the story of progressive reform.”); see also Bartholet, supra note 19, at 1218.

100 See Kennedy, supra note 5, at 478–79.

101 See Perry, supra note 10, at 106.

102 See Roberts, supra note 12, at 254–57; Perry, supra note 10, at 92–94.

103 A kind of humanitarian or missionary rationale often underlies discourse promoting both international and transracial adoption. See Intercountry Adoption: Developments, Trends, and Perspectives 2 (Peter Selman ed., 2000) (indicating that some Americans believe that “nothing could be more humane . . . than to remove seemingly
come the “official story” of transracial adoption and gentrification. The story provides a comforting rationale for whites to meet their own need and fulfill their own goals, regardless of the interests or desires of Blacks.

1. The Blame and Rescue Discourse of Gentrification

In describing the beginning of gentrification in some American cities after the end of World War II, Neil Smith has noted:

During the latter part of the twentieth century the imagery of wilderness and frontier has been applied less to the plains, mountains and forests of the West—now handsomely civilized—and more to US cities back East. As part of the experience of postwar suburbanization, the US city came to be seen as an “urban wilderness”; it was, and for many still is, the habitat of disease and disorder, crime and corruption, drugs and danger. Indeed these were the central fears expressed throughout the 1950s and 1960s by urban theorists who focused on “blight” and “decline,” “social malaise” in the inner city, the “pathology” of urban life . . . . The city was rendered a wilderness, or worse, a “jungle.” More vividly even than in the news media or social science narratives, this became the theme of a whole genre of Hollywood “urban jungle” movies, from *King Kong* and *West Side Story* to *The Warriors* and *Fort Apache, the Bronx*. This “discourse of decline” . . . dominated the treatment of the city.\(^{104}\)

This discourse of decline has continued into the present, with race becoming a dominant factor in the analysis. Inner-city Black communities have long been portrayed as disasters. Minority neighborhoods are generally associated with everything that is negative: crime, unemployment, low-performing schools, and fatherless families.\(^{105}\) The

\(^{104}\) Smith, supra note 38, at xiii–xiv (citations omitted).

\(^{105}\) See *id.*
message is clear: city life is dangerous and, for the most part, Blacks are to blame.106

As neighborhoods gentrify and gentrification becomes more controversial, such a perception can be easily used to justify a belief that the people who live in these neighborhoods, who for the most part are renters, deserve to lose the housing they have occupied. For example, during the urban renewal process for Philadelphia’s Society Hill, Blacks formed a group that proposed that some vacant land near the edge of Society Hill be set aside to build housing for people with roots in the neighborhood.107 One new resident to the neighborhood reportedly responded, “[w]hat I want to know is by what authority do these people have roots? If you don’t own, you don’t have roots. What have they planted, their feet in the ground? I’ll tell you this, we’re going to fight this thing to the end.”108 When whites make the decision to move into poor inner city neighborhoods, the discourse becomes one of “urban revitalization.” The assumption is that when more well-to-do persons, who generally are white, move into inner city communities and “rub shoulders” with the local residents, the communities are certain to become better.109

The discourse developed to justify gentrification is fraudulent, and the language used to justify, valorize and romanticize the whites who gentrify is inaccurate and offensive. Neil Smith stated it well when he said that, “the term ‘urban pioneer’ is, therefore, as arrogant as the original notion of ‘pioneers’ in that it suggests a city not yet socially inhabited; like Native Americans, the urban working class is seen as less than social, a part of the physical environment.”110 Smith, play-

106 See id.
107 Id. at 138.
108 Id.
109 For example, Peter Byrne argues that:

Gentrification can ameliorate the social isolation of the poor. New more affluent residents will rub shoulders with poorer existing residents on the streets, in shops, and within local institutions, such as public schools. Such newcomers may exhibit possibilities of social mobility and a determination to secure adequate public services that provide existing resident with . . . role models and contacts . . . .

Byrne, supra note 68, at 422.
110 SMITH, supra note 38, at xiv. As Smith also notes:

The frontier imagery is neither merely decorative nor innocent, therefore, but carries considerable ideological weight. Insofar as gentrification infects working-class communities, displaces poor households, and converts whole neighborhoods into bourgeois enclaves, the frontier ideology rationalizes so-
ing on the language of the popular “Star Trek” television series, richly articulates the fraudulent portrayal of the actions of whites moving into Black neighborhoods as courageous, when he states that,

[m]uch like a real frontier, the gentrification frontier is advanced not so much through the actions of intrepid pioneers as through the actions of collective owners of capital. Where such urban pioneers go bravely forth, banks, real estate developers, small-scale and large-scale lenders, retail corporations, the state, have generally gone before.\textsuperscript{111}

2. The Blame and Rescue Discourse in Transracial Adoption

The defamatory treatment received by Black families in the public discourse promoting transracial adoption has been detailed elsewhere.\textsuperscript{112} All too often, Black families are portrayed as defective, chaotic entities unable to provide for their own children economically and culturally. Black parents are portrayed as passing on a culture of crime, low academic achievement, and a poor work ethic.\textsuperscript{113} The belief is that problems of poor education, ill health, and involvement with the criminal justice system are the result of poor parenting rather than the consequences of poverty and racism. Black mothers are stereotyped as crude, lazy, and emasculating while Black fathers are stereotyped as unemployed, powerless and irresponsible.\textsuperscript{114} This negative portrayal of

\textsuperscript{111} Id. at 17–18.
\textsuperscript{112} Id. at xvi–xvii.
\textsuperscript{113} See Perry, supra note 10, at 89.
\textsuperscript{114} See Perry, supra note 10, at 89. Negative portrayals of Black families have a long history in books addressing public policy. \textit{See Office of Public Planning & Research, U.S. Dep’t of Labor, The Negro Family: The Case for National Action} 29 (1965) (commonly referred to as the Moynihan Report). The report described Black families as a “tangle of pathology.” \textit{Id.} at 29. There is recent discourse that explains Black subordination and inequality as the fault of Blacks themselves. \textit{See Stephan Thernstrom & Abigail Thernstrom, America in Black and White: One Nation, Indivisible} 534 (1997) (“The serious inequality that remains is less a function of white racism than of the racial gap in levels of educational attainment, the structure of the black family and the rise in black crime.”).
Black families forms the basis for the argument by some advocates of transracial adoption, not simply that Black families are not needed to teach Black children the skills for surviving in a racist society, but that Black children are actually better off in white families.  

One tactic to valorize whites and disparage Blacks in the blame and rescue discourse in transracial adoption is to use cases involving white foster parents threatened with the loss of their Black foster children to argue that race should not be a factor in adoption at all. In these cases, white foster families have taken in a Black foster child who is allegedly in bad condition as a result of abuse by his or her Black birthmother. After the white family has loved and nurtured the child, the child’s birthmother, whose life has by then become more stable, seeks to reclaim the child. Admittedly, cases in which foster parents seek to adopt a child already in their care present difficult issues because close relationships may have been formed between the child and the foster parents. Nonetheless, they have absolutely no bearing on the question of whether race should be a factor in cases where there is no prior relationship between the adoptive parents and the child they seek to adopt. When these types of foster care cases are used in transracial adoption advocacy, the Black birthmother is often demonized and the foster families seeking to adopt are presented as idealized and valorized humanitarians.

IV. Transracial Adoption, Gentrification and the Effect of Race-Neutrality in the Law

Colorblindness has long been an ideal in American life and law. The colorblind ideal posits that each individual should be judged and treated according to his or her own individual merit, rather than on the basis of assumptions based on race or color. This ideal has never been achieved in American society. Historically, the law has moved from affirming legal segregation, to striking down legal segregation, to supporting race-conscious remedies, an approach that

115 See Bartholet, supra note 19, at 1221–23.
116 Perry, supra note 10, at 92–93.
117 Id.
explicitly recognizes that neither colorblindness nor a just multicultural society has been achieved.\textsuperscript{120}

In recent years, there have been indications that the pendulum is swinging back toward a colorblind approach that is grounded in conservative rather than liberal policies.\textsuperscript{121} This approach rejects the need for remedies such as affirmative action that are designed to compensate for past and present institutionalized racism.\textsuperscript{122} With respect to gentrification, the complex reality is that the non-discrimination laws that were and still are necessary to combat racism against Blacks provide no protection against the gentrification that displaces Blacks from historically Black communities. With respect to transracial adoption, race-neutrality supports outcomes that enable upper-middle class whites to have unfettered access to the adoption of Black children.

\textbf{A. Race-Neutrality and Transracial Adoption}

The sole United States Supreme Court case to address the issue of race in the context of child placement is \textit{Palmore v. Sidoti}, decided in 1984.\textsuperscript{123} In \textit{Palmore}, the court held that race could not be used as the sole criteria in resolving a custody dispute between natural parents. There is no consensus as to the application of \textit{Palmore} to the context of transracial adoption, but since \textit{Palmore}, some courts have upheld a

\begin{footnotesize}
\begin{enumerate}
\item See Aleinikoff, supra note 118, at 1060–61, 1062.
\item See, e.g., City of Richmond v. J.A. Croson Co., 488 U.S. 469, 511 (1989) (striking down an affirmative action program that favored minority owned businesses for city-government contracts); see also Gratz v. Bollinger, 539 U.S. 244, 270 (2003) (holding, by a vote of five to four, that the University of Michigan’s affirmative action program for undergraduate admissions was essentially a quota system and was therefore unconstitutional). But see Grutter v. Bollinger, 539 U.S. 306, 343 (2003) (upholding the affirmative action program for the University of Michigan Law School).
\item See generally Ogletree, supra note 3. For example, Justice Scalia’s opposition to race-conscious remedies extends to all government treatment on the basis of race, even measures aimed at remedying past discrimination. \textit{Id.} at 325. In his concurrence in \textit{City of Richmond v. J.A. Croson Co.}, Justice Scalia quoted the well-known dissent of Justice Harlan in \textit{Plessy v. Ferguson}, which stated, “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens.” 488 U.S. at 521 (Scalia, J., dissenting) (quoting Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)). In \textit{Plessy}, the Supreme Court upheld the doctrine of “separate but equal.” 163 U.S. at 548.
\item \textit{Palmore v. Sidoti}, 466 U.S. 429, 433–34 (1984) (finding that the lower court’s ground for awarding custody to the father did not survive the equal protection strict scrutiny standard in a child custody case where a white couple divorced, and the father sued for custody on the grounds that the child would suffer stigma as a result of living in an interracial home when the mother, who was previously awarded custody, married a Black man).
\end{enumerate}
\end{footnotesize}
moderate use of race in adoption. In 1996, however, Congress passed the Interethnic Amendments to the Multiethnic Placement Act, prohibiting the use of race to delay or deny the placement of children for adoption by agencies receiving public funds. There is controversy as to whether the amendments and the guidelines issued completely bar the use of race and, if so, whether they are being enforced. What is clear from these recent developments is that the law is moving in a direction that will support and encourage transracial adoption. This move toward race neutrality supports the access of economically advantaged white prospective adoptive parents to the children of their choice regardless of race.

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125 42 U.S.C.A. § 1996(b) (West 2003). The version of the Multiethnic Placement Act that was originally enacted prohibited delay in the placement of a child for the purpose of seeking a same-race match, but explicitly contemplated the consideration of race if it did not result in a delay. See 42 U.S.C.A. § 5115(a) (West 1995 & Supp. 1993) (repealed 1996). The current Act states:

A person or government that is involved in adoption or foster care placements may not—

(A) deny to any individual the opportunity to become an adoptive or foster parent, on the basis of race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.


127 In the past, some supporters of transracial adoption have argued that the use of race in adoption should be analyzed under the legal principles applicable to affirmative action in cases such as City of Richmond v. J.A. Croson Co., which applying strict scrutiny, struck down an affirmative action program for minority contractors. 488 U.S. 469, 505 (1989); see Bartholet, supra note 19, at 1228–37, 1243–45. Clearly any argument that the use of race in adoption is subject to strict scrutiny will need to be considered in light of Grutter v. Bollinger and Gratz v. Bollinger. Grutter v. Bollinger, 539 U.S. 306, 328 (2003) (upholding the affirmative action program at the University of Michigan law school on the grounds that the educational freedom embodied in the First Amendment justified deference to the law school’s conclusion that diversity was essential to its educational mission); Gratz v. Bollinger, 539 U.S. 244, 270 (2003) (holding that the University of Michigan’s undergraduate affirmative action admissions policy was not narrowly tailored because the advantage given to minority applicants made race the deciding factor in admissions). The evolution of the law with respect to affirmative action is uncertain, and it is not clear how evolving principles will be applied to the transracial adoption context. A race-neutral approach to transracial adoption will serve the interests of whites seeking to adopt Black
B. Race Neutrality and Gentrification

The Fair Housing Act was a critical and necessary step in the fight to eliminate discrimination in housing on the basis of race. In the context of gentrification, however, race-neutrality, in combination with a lack of commitment to providing housing for those of low and moderate income, will inevitably result in the displacement of inner-city residents from their communities.

The poor are not a protected class under the law; poor people are, for the most part, at the mercy of market forces and private biases. While laws based on race neutrality, like the Fair Housing Act, have been tools for the advancement of the rights of Blacks in housing, a policy of race neutrality in the face of economic inequality and the free market in housing will be costly for Blacks as central cities in this country continue to gentrify. Some traditionally Black communities, such as Harlem, may lose much of their Black populations and, as a result, lose their unique cultural and historical identities. At the same time, it is indisputable that Blacks seeking homes in white neighborhoods may have little chance of success as a result of the combination of economic disadvantage and racial discrimination that often does not leave a paper trail. Thus, in seeking housing opportunities in metropolitan areas, Blacks face the dual burdens of race and economic disadvantage while ignoring the interests of those children, the interests of Black prospective adoptive parents, and the interests of Black communities.

128 San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 24 (1973) (“[A]t least where wealth is involved, the Equal Protection Clause does not require absolute equality or precise equal advantages.”).

129 Thus, for example, race neutrality in the law will result in the loss of those few private housing cooperatives that have been established and run by Blacks for many years. Examples of this include a small number of private, market-rate housing cooperatives established in New York City by Blacks in Harlem in the 1920s. As the gentrification of Harlem continues, Blacks may not continue to constitute the majority of shareholders in such buildings. See generally Lloyd Chrein, A New World, One of New York’s Oldest Cooperatives Confronts Changing Times, HABITAT MAG., Apr. 1989, at 62. The critique of gentrification that I offer in this article is not an argument opposing racial integration in general. However, I believe that meaningful racial integration in this country has to be integration between equals. As long as integration takes place under circumstances in which whites have most or all of the choices with respect to where they wish to live and Blacks have few or none, integration is unlikely to be meaningful or successful. Gentrification, unfortunately, does not represent integration on a basis of racial equality, rather it is a manifestation of the sharp disparity between the political and economic power of Blacks and whites. Similarly, I do not categorically oppose transracial adoption, although I do support a preference for placing Black children with Black adoptive families. In a system of true racial equality that supports all families, the issue of transracial adoption would not receive the attention or engender the controversy that it does today.
economic status, while most whites face neither of these challenges when they seek to move into Black communities. Race neutrality in the law masks complexities that continue to place Blacks at a serious disadvantage as they seek to continue to reside in Black communities that have now become desirable to whites.\textsuperscript{130}

**Conclusion: Towards the Future—What Needs to Be Done?**

The issue of power is central to the analysis of both transracial adoption and gentrification. The reality in this country is that whites have the power to determine the degree of association and intimacy they wish to have with Blacks. Many whites, particularly because of their economic status, have the power to determine whether or not they wish to live in an integrated world. This is evident from the one-way structure that is at the core of both transracial adoption and gentrification. Whites have the power to determine whether or not they wish to adopt a Black child—but in an era of a shortage of healthy white newborns, it is almost inconceivable that a Black family would be permitted to adopt a white child as long as a white family wanted him or her. While the gentrification movement makes it clear that whites face few barriers if they desire to move into a Black inner-city neighborhood, the *raison-d’etre* for housing discrimination law in this country is the fact that race, and not simply economics, has been a formidable barrier for Blacks who wish to move into a building or a neighborhood occupied predominately by whites. The barrier for Black people, therefore, is two-fold: the historic discrimination they have suffered makes it less likely that they will have the economic

\textsuperscript{130} My observation that the law does not prevent the dismantling of a historic Black neighborhood is not an argument that African-Americans should now be permitted to discriminate against whites seeking housing in historic and formerly segregated Black communities. Racial discrimination is an evil and the remedy is not for those who have been the victims of it to be placed in the position of becoming the perpetrators of it. Still, there are contexts in which the law has evolved to take into account the unique histories and heritages of certain minority groups, such as the Native Americans. If nothing more, the use of government subsidies and other methods of making housing more affordable to groups that have historically lived in certain neighborhoods would be an important step in the direction of protecting the history and culture of those neighborhoods. A recent article has urged, more generally, that further thought must be given to the impact of facially neutral laws and policies on vulnerable populations. Rob Imrie & Huw Thomas, *Law, Legal Struggles and Urban Regeneration: Rethinking the Relationships*, 34 Urb. Stud. 1401, 1402 (1997). The extent that legal tools or doctrines support and are supported by the economic development discourse as a method of legitimizing development processes that may or may not be favorable to particular types of social groups or geographic areas seems a relevant course of inquiry.
means required to move into such housing, and racial discrimination may operate to keep them out if they do.

Thus, it is clear that transracial adoption and gentrification are similar in the ways they affect the interests of Black people. In both areas, issues of race, power, family and community are intertwined. No family can be more stable than the stability of its housing. As long as Black families have difficulty achieving the economic status required for stability in housing, Black children will continue to enter the foster care system in tragic numbers and Blacks will continue to be vulnerable to displacement by gentrification. As long as wealth disparities exist between Blacks and whites, even at middle class levels, Black prospective adoptive parents will not be able to compete with white prospective adoptive parents for healthy Black and biracial newborns. This will continue and, indeed, Blacks will lose ground in their quest for both adoption and housing.

It is clear that the free-market approach and race-neutrality do not protect the interests of Black people within the contexts of either transracial adoption or gentrification. What will be required in order to protect Black interests is government intervention. I will briefly suggest a few steps the government should take in order to protect Black interests in the contexts of adoption and housing. I cannot assert that my suggestions are novel ones. However, I hope that by affirming the need for action, it will encourage still others interested in these issues to expand the analysis of these possibilities as they work to develop new solutions.

First, any program aimed at addressing the disadvantages Blacks suffer with respect to transracial adoption and gentrification must be rooted in a societal commitment to the preservation of Black families and to insuring that those Blacks who have long lived in historically Black communities are able to choose to continue to live in those communities, even as those areas undergo gentrification. In this effort, the government must undertake a critical role.

With respect to adoption, the focus must start with a commitment to family preservation. The fragility of the Black family is largely a result of economic forces, and therefore any realistic solution will also involve economics. Money must be committed for financial support and social services and the law must recommitt to family preservation over adoption as a goal.

In implementing such a goal, transracial adoption should be a last resort—the law should support a preference for Black children to be placed with Black adoptive families. Indeed, I support the suggestion of some other scholars that legislation similar to the Indian Child
Welfare Act’s adoption provisions be enacted to protect the interest of Black children and their heritage.\textsuperscript{131}

An improvement in the overall economic status of Blacks is needed for Blacks to be competitive in the housing market in every environment—urban, suburban or rural. It is becoming increasingly clear that in order for the core of major cities to remain diverse, programs to create affordable housing must be expanded. If this does not happen, I can envision the day when Blacks who formerly occupied central areas in the city will essentially be forced to live in something akin to the former South African “Bantustans,” areas far from the city from which Blacks commute to work—a city that has become a place where they are unwelcome and can no longer afford to live.

Enabling Blacks to continue to live in the inner-city will require, among other measures, an expansion of existing housing subsidy programs as well as the renovation and construction of new housing units that place both income and asset ceilings for purchasers. Developers must be given more subsidies to encourage them to construct more affordable housing.

The day may come when we achieve a society at a level of racial and economic justice and equality that adoptions across racial lines no longer raise eyebrows and there is no need for a word such as “gentrification” to even exist. Until then, however, it is crucial that those committed to a just society continue to interrogate developments such as transracial adoption and gentrification that are often touted as societal progress, but which may simply mask, and even increase, Black people’s vulnerability and disadvantage.