



A Family Perspective on Transracial Adoption

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Abstract:

This paper examines the Adoption and Safe Families Act (ASFA) and its family impact implications for transracial adoption. The Adoption and Safe Families Act was signed into law to expedite the process of legally removing children from their birth families and the foster care system, and placing them with adoptive families. A review of the Adoption and Safe Families Act using the family impact principles reveals the challenges and paradoxes of a child-centered policy. As with many individually-focused policies, ASFA impacts the rights and relationships of multiple families, who in turn make up a diverse array of communities and racial-ethnic groups. The Adoption and Safe Families Act supports the creation of transracial families through its provisions that race and ethnicity not be considered in adoption placements. This lack of support for racial matching in adoption could be interpreted as a lack of recognition for the importance of extended family with significant interests in the welfare of the child. Debates around issues related to transracial adoption cannot be truly fruitful unless the consequences of such a law, both positive and negative for different family forms, are clearly understood. A family impact analysis is a first step in revealing such consequences by touching on the multiple layers of invested players in several families involved in a transracial adoption.

Introduction:

The adoption of a child is not only the acceptance of a child into a new family, but the intersection of the lives of the child, the adoptive family, and the birth family. This intersection can be complicated at the best of times, bringing issues of family structure, fertility, financial stability, and social class to the surface. However, the adoption process can also raise more controversial issues, based in social/cultural beliefs, prejudices, stereotypes, or simply different priorities. For example, many of these issues may come to light when an adoption involves the exchange of a child of one race into a family with a different racial background, a process known as transracial adoption. This paper provides a brief history of transracial adoption in the United States, followed by an examination of the Adoption and Safe Families Act (ASFA) and the implications of such adoptions for families.

Historical Background

The history of transracial adoption in the United States is often traced back to World War II, when intercountry adoption was “a North American philanthropic response to the devastation of Europe in World War II that resulted in thousands of orphaned children” (Altstein and Simon, 1991). Europe was the main source of adopted children until the Korean War. The Korean War influenced the flow of children into the United States, greatly increasing the number of transracial adoptions. Adoptions from Korea ultimately rose to a level to which they accounted for over half of all inter-country adoptions by the 1970s.

In the United States, the vast majority of adopting parents are Euro-American and middle to upper middle class, typically with some history of infertility. They are also an average of eight years older than birth parents in the United States (Hoksbergen, 1999). In the last three decades, many of the “baby boomers” have reached an age where they are interested in parenting. Yet, with the increase in postponing marriage and childrearing to later ages due to educational and employment goals, infertility has become more common (Freundlich, 1998). At the same time, the number of babies available for adoption domestically has been greatly reduced (UNICEF, 1997) as a result of improved access to contraceptives, abortion, decreased stigmatization of single motherhood, and access to state support for single mothers (UNICEF, 1997).

Since the 1960s and the passage of mandatory child-abuse reporting laws, the number of children eligible for foster care placement has increased dramatically (Curtis, 1996). In March of 2000, over 588,000 children were involved with the child welfare system, more than double the number present in 1984 (U.S. Department of Health and Human Services, 2001c; cited in Barbell, 2002). Children of color are disproportionately represented in this area, making up almost two-thirds (64%) of the foster care population, with African American children representing more than four in 10 (42%) of the children in care (U.S. Census Bureau, 2001b; U.S. Department of Health and Human Services, 2000; cited in Barbell, 2002).

In part in response to the decline in the number of Euro-American babies available for adoption, as well as to the needs of children growing up in the child welfare system, adoption and social service agencies began focusing their resources on inroads made earlier in the century regarding transracial adoption. Children were increasingly placed with families of a different racial/ethnic background who were able and willing to care for them (Curtis, 1996; Future of Children, 1993). For example, in the late 1960s and early 1970s, the last decade for which such statistics were available, more than 10,000 African American children were adopted by Euro-American parents (Future of Children, 1993).

Laws governing such adoptions had various approaches to the issue of transracial adoption. The Indian Child Welfare Act of 1978 ensured that, if a child must be removed, he or she would be placed in a home that reflected his or her cultural and ethnic heritage in order to facilitate the preservation of the tribes (see summary of the Act in Appendix A). A Native American child cannot be adopted into a non-native family without the explicit permission of their tribal community. This law resulted in a significant drop in the number of transracial adoptions of Native American children (Future of Children, 1993).

However, later laws such as the Multi-Ethnic Family Placement Act of 1994 prohibited race, ethnicity or national origin from being the sole factors in placement decisions (see summary in Appendix B). This law was later amended to ban any consideration of such criteria. By 1997, the pendulum of transracial adoption policy had swung in the opposite direction from the Indian Child Welfare Act, with the passage of the Adoption and Safe Families Act, which is the focus of this family impact analysis.

Legislation-Adoption and Safe Families Act-1997

The Adoption and Safe Families Act was signed into law with the intent of expediting the process of legally removing children from their birth families and the foster care system, and placing them with adoptive families. The law was developed in order to ease previous standards requiring state agencies to make “reasonable efforts” to either avoid removing children from their birth parents or to aid in family reunification before terminating the rights of the biological parents (Hollingsworth, 2000). This requirement was perceived as hampering efforts to remove legal ties between children and families who not only could not care for them, but were in fact harmful. The law also allows for the requirement to be waived if a child’s parents have previously lost rights to a sibling.

In order to speed up the placement process, the act creates room for child welfare professionals to seek permanent placement for a child through adoption or guardianship, while at the same time preventing the child’s removal from a family or assisting in his or her return (Barbell, 2002). The legislation also stipulates that relatives or foster parents currently caring for the child be notified and given an opportunity to be heard at any review of the child’s welfare and placement. However, relatives or foster parents are not guaranteed rights to provide permanent, non-adoptive care (Hollingsworth, 2000). Relatives who are not currently providing care are not required to be notified of the proceedings or heard at them. As a result of the law, states have one year to develop a permanent plan for the child. Except in certain circumstances, such as when a child has been living in kinship foster care, the state can file a legal petition to terminate biological parents’ rights, freeing the child for adoption when she or he has been in foster care for 15 out of the prior 22 months. As of October 1, 1997, the median length of time a child spent in foster care was 21 months, with significant variation in particular states (U.S. Department of Health and Human Services, 2000).

This law had immense bipartisan support, passing the House with the measure of 406-7 and the Senate without opposition. However, significant divisions existed between the two bodies regarding whether new spending was needed to assist difficult-to-place children or to assist biological parents attempting family reunification. The House, which supported adoption assistance, ultimately persuaded the Senate, with a final measure providing \$53 million over a five-year period (Hollingsworth, 2000; Associated Press, 1997). The funds create financial incentives to states to increase the number of adoptions as well as to cover the cost of a variety of forms of technical assistance. The goal of the technical assistance is to develop measures that facilitate termination of biological parents’ rights, such as developing a best practices guide for expediting termination, and a risk assessment tool to assist in early identification of children at risk of harm if returned home. Technical assistance is also intended to develop models that encourage “fast tracking” children under the age of one year into pre-adoptive placements (Hollingsworth, 2000).

Nothing in the law provides for privileging or consideration of permanent plans that maintain the child's ties to their racial/ethnic community of birth.

Since the passing of the act, the number children adopted from foster care has dramatically increased. According to the U.S. Department of Health and Human Services, between 1998 and 1999, the number of finalized adoptions increased 28% (U.S. Department of Health and Human Services, 2000a). At the same time, this has also resulted in a large and growing number of children who are in a state of limbo. As of March 31, 2000, 134,000 children in foster care were waiting to be adopted, of which approximately 64,000 were in immediate need of adoption because their ties to their birth families had already been severed (U.S. Department of Health and Human Service, 2001c). Because this law is intended to serve both children and families at a crucial transition point in the life cycle, it is worth examining more closely how the ASFA may impact family strength and well being.

Family Impact Analysis

Principle #1-Family Support and Responsibilities:

- Does the policy or program provide incentives for other persons or institutions to take over family functioning when doing so may not be necessary? Does the policy or program build on or ignore informal support networks and mediating structures (such as community/neighborhood organizations, churches) that are so essential to families' daily lives?

The act provides incentives for decreased dependence on services that substitute for family functions by promoting the formation of adoptive families. The intention of the law is to connect children with permanent families and remove risks associated with growing up in the foster care system. Through the use of cash incentives to increase the number of adoptions, states are encouraged to facilitate opportunities for adoptive parents to add a new member to their family. Technical assistance funds are available to each state to develop guidelines for expediting termination of biological parental rights, encourage the use of fast tracking for children under the age of one into pre-adoptive placements, and provide assistances to the courts. As an incentive for the adoption of children with special needs, states are required to provide health insurance for any child requiring medical, mental health, or rehabilitative care.

Placements with biological extended family members in adoption or guardianship are discussed, but they are not given special weight. The act does not in any way discuss working with or maintaining ties to support networks involved in the child's life prior to separation from the birth family, such as friendship networks, religious affiliations, or cultural ties. It also does not stipulate that such groups be consulted regarding the child's future placement. Birth parents' preferences that the child be placed with members of such groups are also given no special consideration. Similarly, the act does not discuss formal or informal networks of support that provide a context for either the adoptive family or the foster family. For adoptive and foster parents, support groups for families in similar situations can provide a rich opportunity to share experiences with others (Bronfenbrenner-Weiss, 1983).

Principle #2-Family Membership and Stability

- Does the policy or program strengthen marital commitment or parental obligations? Does it recognize that major changes in family relationships such as divorce or adoption are processes that extend over time and require continuing support and attention?

The focus of the Adoption and Safe Families Act is to support permanent placement of children living in the foster care system. The law includes a timeline for a petition to terminate parental rights for children in foster care for 15 of the past 22 months and to seek permanent placement in adoption. The act strengthens parental commitment by requiring states to make “reasonable efforts” to reunify and preserve birth families. However, such efforts are not required if the child has been subjected to “aggravated circumstances” such as sexual abuse, torture, or abandonment. Nor is reunification required if the parent was involved in the committed or attempted murder of the other parent, the parent has committed a felony assault towards the child or other children, or if the parent’s rights have been involuntarily terminated for a sibling. As such, the law weakens parental commitment.

Although extended family members may participate in the adoption process, they are not given specific preference, which may compromise family commitment. Once a child has been placed in adoption outside of the family, there are no provisions or incentives to promote an open adoption. An open adoption is one in which the child has on-going contact with birth parents or extended family, including siblings not placed in the same adoption setting.

The Adoption and Safe Families Act does make provisions for strengthening families through its emphasis on family reunification, in that the Promoting Safe and Stable Families Program provides additional funds to prevent child abuse and neglect. This program also assists families in crisis by providing time-limited services such as counseling, substance abuse treatment services, crisis nurseries, and transportation.

Principle #3: Family Involvement and Interdependence

- To what extent does the policy recognize the reciprocal influence of family needs on individual needs, and the influence of individual needs on family needs? To what extent does it assess and balance the competing needs, rights, and interests of various family members?

The law’s focus is on the best interests of the child, making placement of the child in a permanent, safe, and nurturing household top priority. The presumption within this law is that once the child has been transferred in adoption, there are no remaining ties to the birth family. The act does not consider the child’s membership to a cultural or racial-ethnic group. It also does not consider the impact of removing the child from either their extended

birth family, their racial-ethnic community of birth¹, or both. In this way, the rights of the individual are privileged over considerations of the family unit as a whole.

Principle #4: Family Partnership and Empowerment

- In what specific ways does the policy encourage professionals to work in collaboration with the families of their clients, patients, or students? In what ways does it respect family autonomy and allow families to make their own decisions? On what principles is family autonomy breached and program staff allowed to intervene and make decisions?

The act requires that any foster parent, birth parent, or relative currently caring for the child be given notice of reviews or hearings regarding the child's future placement, and an opportunity to have their concerns and wishes heard. It does not require that birth relatives not currently caring for the child be notified or allowed to participate. There is no requirement or incentive for developing future placement for the child in collaboration with the birth family or foster family. As such, the birth family and foster family's involvement is marginalized, particularly if they are not currently caring for the child. The marginalization of former foster parents is particularly important, particularly since as of 1999, 64% of children in foster care were adopted by the child's former foster parents (U.S. Department of Health and Human Services, 2000).

Principle #5-Family Diversity

- How does the policy or program identify and respect the different values, attitudes, and behavior of families from various racial, ethnic, religious, cultural, and geographic backgrounds that are relevant to program effectiveness?

This act does not specify a preference for a specific type of adoptive families in so far as they may have single parents, same-sex parents, or an opposite-sex married couple. Rather, the decision to establish such priorities is left up to individual states and adoption agencies, such as in the case of Florida, which bans same-sex couples from adopting children from foster care. This act does, however, lean heavily towards a particular form of family: namely, a stable family with a long-term investment in the child, and the ability to care for the child's daily needs without significant reliance on state aid. This preference does not leave specific room for links to other family members, such as grandparents and siblings, or representatives of the child's culture and racial heritage of birth, who may not be in a position to provide full-time, long-term care for the child.

This notable absence of recognition for family ties beyond those with the primary caregiver is important when examining the ways in which this act could impact the transmission of family values and traditions. The act does not address the debate regarding a child's right to knowledge about his or her cultural and ethnic background of birth. On the flip side, it should be noted that adoptive families are in no way prevented from freely sharing their own values and traditions with the child.

¹ The exception to this would be children of Native American heritage, covered under the Indian Adoption Act.

Alternative family systems outside of the permanent adoptive home are not completely ignored. Other options are being increasingly considered in an effort to stabilize the lives of children as quickly as possible. Such options include guardianship, which allows the child to grow up among kin who might otherwise shy away from adoption due to concerns about betraying pre-existing family relationships. Guardianship also provides an option for those with a culturally-based distrust of the termination of a parent's rights. Lastly, this alternative can include the child's own preferences (Barbell, 2002).

Principle #6-Targeting Vulnerable Families:

- Does the policy or program identify and publicly support services for families in the most extreme economic or social need? Does it give support to families who are most vulnerable to breakdown and have the fewest resources?

Although foster care may not be directly aimed at children living in poverty, it is true that children living in poverty have a far greater likelihood of being reported to child welfare services (Duncan and Brooks, 1998). Poverty and related stressors may undermine a family's ability to give their children the basic necessities of life, and may also result in child maltreatment (Sedlak & Broadhurst, 1996). In fact, some studies have indicated "the major determinant of children's removal from their parents' custody was not the severity of child maltreatment but unstable sources of parental income" (Lindsey, 1994; Pelton, 1989; cited in Barbell & Freundlich, 2002). Poverty disproportionately impacts children of single mothers, as well as children of color. Almost six out of 10 (58%) children living with single mothers are estimated to be living in a low-income family (U.S. Census Bureau, 1993). According to data from the 2000 census, more than half (58%) of all African American children and almost one third of Latino children (29%) lived in one-parent homes compared to only 20% of white children in single-parent homes (Annie E. Casey Foundation, 2002).

Poverty and racial disparities are often related to systemic issues. Foster care, family reunification, or adoption can serve as a safety net responding to such challenges. Some argue that the foster care system is a symptom of the number of people living in poverty. The vast majority of children the Adoption and Safe Families Act seeks to place in adoption are from minority families living below the poverty line. Issues have been raised regarding the cultural competence of the foster care system. These concerns are based in research that indicates that children of color, particularly African American children, "remain in foster care longer, receive fewer services, are less likely to have service plans, and visit with their parents less often" (Barbell, 2002). The degree to which socio-economic status should be considered is not dealt with in the ASFA in regard to the child's permanent placement. Since the passage of this act, a debate has arisen around the degree to which socio-economic status should be considered when culture and race are not. Some have argued that extended family not able to meet a certain socio-economic criteria should not even be considered for placement (Theriot, 2000). Views such as this raise concerns that children will be reallocated from their communities of birth to those which hold greater wealth and, the often corresponding racial, social, and political privilege.

Analysis and Conclusions:

A review of the Adoption and Safe Families Act using the family impact principles reveals the challenges and paradoxes of a child-centered policy. As with many individually-focused policies, ASFA impacts the rights and relationships of multiple families, who in turn make up a diverse array of communities and racial-ethnic groups. Although this policy is heavily child centered, in some respects the act supports families. It explicitly creates incentives for children to become a permanent part of supportive families and removes the difficult challenges associated with the foster care system. However, reviewing the policy through the lens of transracial adoption also reveals that the act supports some types of families and provides disincentives for others. Family forms that are particularly encouraged are stable families that are economically secure. Families that are explicitly discouraged are those that do not provide permanent, primary care and support for a child that they may know and care about. In many cases, this includes extended families, birth families, and to some extent, foster families. In addition, families that are understood to be harmful to children through abuse, neglect, or other connected circumstances are not supported, with few or no resources and little time allowed for rehabilitation.

The Adoption and Safe Families Act supports the creation of transracial families through its position that race and ethnicity not be considered in adoption placements. This clearly sends a message that families of color are not preferred and that neither the child, nor the child's family or community of birth have a right to any such family form. In fact, a lack of support for racial matching in adoption could be interpreted as a sign that American society is more accepting of diverse cultures and ethnicities, or it could be interpreted as a lack of recognition for the importance of extended family with significant interests in the welfare of the child. These undertones are what lie at the heart of the heated transracial adoption debate. For those concerned with maintaining children's connections to their extended family and community of origin, this law is not only unsupportive, but harmful. From this perspective, the act may erode family forms, identities, and solidarity in favor of families and communities with greater power and privilege. On the other hand, for those concerned primarily with child well-being, this law is supportive and helpful because it results in more rapid placement of children in stable settings.

A family impact analysis of the Adoption and Safe Families Act does not decisively reveal only beneficial effects of the act, or only negative outcomes. This is due, in part, to the fact that states' interpretation of the act's effects and underlying messages will necessarily vary. This analysis cannot determine whether or not transracial adoption is beneficial, if race itself is a legitimate consideration, if closed adoption is the preferred form of adoption, or if extended families and communities have rights of lesser, greater or equal weight to those of an individual child. These decisions are left for policymakers to decide. Debating such questions is extremely important as it can influence public opinion and shape the context in which policy such as this are developed.

Debates around issues related to transracial adoption cannot be truly fruitful unless the consequences of such a law, both positive and negative for different family forms, are clearly understood. A family impact analysis is a first step in revealing such consequences by touching on the multiple layers of invested players in several families involved in a

transracial adoption. This type of analysis provides an avenue for examining not only family and child issues, but community and social issues as well. In addition, asking questions about family supportiveness provides a neutral ground for the debate, as both sides in the transracial adoption debate agree that family is important in the lives of children. This is not a straightforward process with easy answers. There are multiple family forms, and definitions of the family to be taken into account. However, by taking the time to examine the family pieces of the transracial adoption puzzle, one is better able to examine the facets of this complicated process, which may guide future policy decisions.

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Appendix A

The Indian Child Welfare Act-1978:

This act stems from programs founded in the late 1800s in which the U.S. federal government and the Bureau of Indian Affairs developed residential schools to assimilate Native American youth into American culture. Thousands of children were sent or forcibly removed to these schools and often had little or no contact with either their families or their native culture (Kreisher, 2002). From the early 1950s through the 1970s, thousands of children were removed by social workers and missionaries and placed in foster homes or adopted by non-Indian adoptive parents. It was extremely rare for tribal officials, family members, or the child's birth community to be involved in these decisions and typically the children lost all ties to both their birth families as well as their cultural and ethnic heritage.

In 1978, the work of Native American activists and their allies resulted in a significant change in these types of practices. With the passage of the Indian Child Welfare Act, it became law to cease this policy of enculturation and implement steps to prevent the unnecessary removal of children from First Nation peoples (Hollingsworth, 1998). Services and procedures to preserve Native American families became mandated (Future of Children, 1993). The 1978 act also ensured that if the child must be removed, he or she would be placed in a home that reflected his or her cultural and ethnic heritage in order to facilitate the preservation of the tribes. A Native American child cannot be adopted into a non-native family without the explicit permission of their tribal community. This has resulted in a significant drop in the number transracial adoptions of Native American children (Future of Children, 1993).

Appendix B

Multi-Ethnic Placement Act-1994:

This act arose out of a series of law suits, as well as concerns surrounding the number of children awaiting permanent homes, when adoption agencies engaged in practices privileging same-race matching over time spent waiting for a family. The law prohibits “denying to any person the opportunity to become an adoptive or foster parent, *solely* on the basis of race, color, or national origin of the adoptive or foster parent, or the child” and from “delaying or denying the placement of a child *solely* on the basis of race, color, or national origin of the adoptive or foster parents involved” (Multiethnic Placement Act, p. 4056 via Hollingsworth, 1998; italics mine.). However, this law still allows the agency or body processing the adoption to consider, the cultural, ethnic and racial background of the child and the “capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of the child” (Multiethnic Placement Act, p. 4056 via Hollingsworth, 1998). In response to opponents of same-race protective policies and concerns around the absence of penalties associated with lack of conformity with the law, in August 1996 legislation was signed that modified this act. Enacted as part of the Small Business Protection Act of 1996, tax credits were developed for adoptive families with incomes under \$75,000 of up to \$5,000 (\$6,000 if the child had a disability) for adoption related expenses (Hollingsworth, 1998). In addition, the qualification in the prior act which allowed race to be considered as one of multiple factors was removed, stipulating instead that any entity receiving federal funds could not deny a person the opportunity to adopt or provide foster care or delaying or refusing the placement of a child, on the basis of race, color or national origin (Hollingsworth, 1998).

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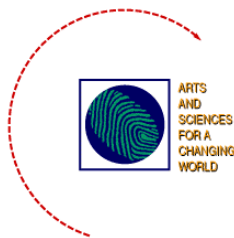
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