

Legal Solutions for APA Transracial Adoptees

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Rarely has the legal world considered how and where adult adoptees fit in the dialogue about transracial adoption. Researchers and adoptive parents have dominated the field with their own agendas about the children who are treated simultaneously as consumer goods and children. Often the question has been how to stop international adoption or how to continue it more ethically. As children grow up and have to wrestle with questions of belonging and race, racial identity becomes increasingly salient for transracial adoptees and can result in higher rates of depression, eating disorders, and low self-esteem. Despite studies showing the detrimental effects of poor racial identity development for Asian adoptees, there may be little possibility of a legal intervention for this critical developmental process. It is time for the legal world and the Asian American community to grapple with the question of racial identity development, whether we truly value racial identity as a possible source of healing for transracial adoptees, and how effective the legal tools available are in delivering resources for racial identity development. In imagining how a legal solution could be crafted to take into account the social and cultural nuances of racial identity development, I look to lesbian, gay, bisexual, and transgender (LGBT) youth raised by heterosexual parents and white LGBT families who adopt Asian children. Although race and orientation are not fungible, there are similarities in the groups' experiences that suggest the intersection of LGBT and Asian adoptees may be a model in building understanding of adoptees' desire for a valued racial identity.

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INTRODUCTION

Transracial adoption researchers¹ and therapists experienced in treating transracial adoptees with identity concerns suggest that immigrants and LGBT individuals face similar extrafamilial identity development issues.² Resources available to adoptive and LGBT families fit within a range of identity development programming, including camps, support groups, online communities, medical therapy, and religion-based therapy. Culture camps are private programs designed for transracially³ adopted children and their families.⁴ Some camps have culture-specific programming.⁵ For example, some programs arrange for Korean adoptees

1. See generally SARA K. DOROW, TRANSNATIONAL ADOPTION: A CULTURAL ECONOMY OF RACE, GENDER, AND KINSHIP 247 (2006) (observing that among families that adopted Chinese girls that the researcher worked with, it was white LGBT parents who tended to seek extrafamilial resources to help their children develop racial identity); Ramona Faith Oswald, *Resilience Within the Family Networks of Lesbians and Gay Men*, 64 J. MARRIAGE & FAM. 374, 374–83 (2002) (noting that LGBT individuals' understanding of familial relationships allows them to build complex families that increases resources available to members).

2. Sean Wright, *Counseling Transracial Adoptees* 11 (Feb. 1, 2009) (unpublished M.A. thesis, New York University), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2136212 (noting that LGBT clients often “take longer to integrate their sexual orientation with their personal identity”).

3. I use the term “transracial” adoption because adoptee communities and the Evan B. Donaldson Adoption Institute utilize this term rather than “interracial.” I acknowledge that there are parents of color who adopt across racial lines, but unless I specify otherwise, I use the term as the U.S. Department of Health and Human Services uses the term to apply mainly to children of color adopted by Caucasian adoptive parents. See Child Welfare Information Gateway, *Transracial and Transcultural Adoption*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., http://www.childwelfare.gov/pubs/f_trans.cfm (last visited Jan. 8, 2013) (“Transracial or transcultural adoption means placing a child who is of one race or ethnic group with adoptive parents of another race or ethnic group. In the United States these terms usually refer to the placement of children of color or children from another country with Caucasian adoptive parents.”).

4. SUMMER CULTURE CAMPS AND ADOPTION CAMPS FOR KIDS & FAMILIES, <http://camps.adoption.com> (last visited Oct. 26, 2012) [hereinafter SUMMER CULTURE CAMPS]. Adoption.com, a website for adoptive parents, provides a resource list of culture camps.

5. Heritage Camps for Adoptive Families offers eleven different camps reflective of the multiple transnational adoptees that attend. These include Chinese, Cambodian, African Caribbean,

to spend time with other Korean adoptees where they might eat *kimchi*, learn traditional dances, and learn about other cultural practices specific to Korea.⁶ Many camps last for one to two weeks and may include a residential component.⁷ Many adoptive parents have concerns about the adjustment and well-being of transracially adopted children, causing the proliferation of culture-specific programming and culture camps.⁸ Efforts to provide transracially adoptive parents with better resources have created an emerging market of camps, magazines, and culture-specific items that are designed to deliver culturally sensitive products.⁹ According to family testimonials on culture camp websites¹⁰ and data gathered about adoptive families, culture-specific programming is a positive, valued method for creating a network of transracial adoptive families.¹¹ However, culture-specific activities that build a support network based on the adoptive family's identity as a transracially adoptive family or around the child's identity as an adoptee are distinct from activities that support an adoptive child's ability to develop a positive racial identity.¹²

In contrast to culture camps that purport to positively assist in identity development, conversion therapy programs are designed to change or cut off identity development for LGBT youth.¹³ For those who believe that sexual

Vietnamese, Korean, and so forth. *The Camps*, HERITAGE CAMPS FOR ADOPTIVE FAMILIES, <http://www.heritagecamps.org/what-we-do/the-camps.html> (last visited Jan 8, 2013).

6. Sae Jong Camp is an example of a culture camp designed for Korean adoptees. On the website, the list of activities for child campers includes the following: Korean Culture, Korean Language, and Korean American Identity/Adoptee Identity. *Camp Activities*, SAE JONG CAMP, <http://www.saejongcamp.com/what-is-sjc-camp-guide/camp-activities> (last visited Oct. 26, 2012).

7. SUMMER CULTURE CAMPS, *supra* note 4.

8. HOLLEE MCGINNIS ET AL., EVAN B. DONALDSON ADOPTION INST., BEYOND CULTURE CAMP: PROMOTING HEALTHY IDENTITY FORMATION IN ADOPTION 4 (Alan Pertman ed., 2009) (“[P]arents adopting across race and culture, and the professionals who guide them, have developed strategies such as camps and festivals to introduce or strengthen children’s connection to their cultures and countries of origin.”).

9. Sara K. Dorow, *Producing Kinship Through the Marketplaces of Transnational Adoption*, in *BABY MARKETS: MONEY AND THE NEW POLITICS OF CREATING FAMILIES* 69, 76–78 (Michele Bratcher Goodwin ed., 2010) (critiquing how the commercial aspect of providing cultural products and services that risks reproducing the market exchange of children for resources).

10. *E.g. Video: Camp Testimonials from the Families*, HERITAGE CAMPS FOR ADOPTIVE FAMILIES, <http://www.heritagecamps.org/what-we-do/video-camp-testimonials-from-the-families.html> (last visited Jan. 8, 2013); *Camp Photos and Testimonials*, AFRICAN CRADLE, INC., http://www.africancradle.org/camp_photos_testimonials.html (last visited Jan. 8, 2013).

11. MCGINNIS ET AL., *supra* note 8, at 4 (noting that cultural programming like camps and festivals “while important—are insufficient in helping children adopted across racial and national boundaries develop a healthy, positive sense of self”).

12. Sueyoung L. Song & Richard M. Lee, *The Past and Present Cultural Experiences of Adopted Korean American Adults*, 12 *ADOPTION Q.* 19, 31 (2009) (citing Patricia Hanigan Scroggs & Heather Heitfield, *International Adopters and Their Children: Birth Culture Ties*, 19 *GENDER ISSUES* 3, 14–18 (2001)) (suggesting that although adoptive parents prefer cultural activities that are a “surface exploration of one’s birth heritage,” a “more deeply rooted orientation towards one’s ethnic heritage” may be more psychologically satisfying).

13. Exodus International was a national organization that purported to cure homosexuality

identity is a choice and not an inherent trait, conversion therapy functions as a therapeutic intervention to return a child to his or her heterosexual identity. Opponents of conversion therapy view the process as an unscientifically supportable attempt to change an inherent trait.¹⁴ In California, a bill to prohibit conversion therapy for minor children has made its way through the legislature.¹⁵ The proposed law subjects licensed therapists to discipline from their licensing bodies if they attempt to convert LGBT minors to heterosexuality, but the law excludes ministers and lay people.¹⁶ Proponents of the bill argue that there is a lack of medical evidence that such therapy is effective, and that the therapy may result in higher rates of depression, substance abuse, and suicide.¹⁷ In contrast, opponents take the position that prohibiting a type of counseling infringes on parents' rights to raise their children as they see fit.¹⁸

From the outset it seems that conversion therapy and culture camps have different goals and disparate effects on their subjects, making a comparison between the two would seem inapt. One seeks to change identity and the other to enhance or create identity. The harm of conversion therapy seems more extreme than any potential harm resulting from culture-camp-like programming. The state intervened to curtail conversion therapy based on poor outcomes for LGBT

through a combination of religious practices and psychotherapy. Exodus had a program called, "Love Won Out," designed to "educate and equip Christians on how to respond to the issue of homosexuality in a biblical way." *About Love Won Out*, EXODUS INTERNATIONAL, <http://web.archive.org/web/20120926002216/http://exodusinternational.org/love-won-out/about-love-won-out> (last visited July 13, 2013). Although the president of Exodus International, Alan Chambers, disclaimed reparative therapy for Exodus, proponents of conversion therapy continue to defend the practice. Erik Eckholm, *Rift Forms in Movement as Belief in Gay 'Cure' Is Renounced*, N.Y. TIMES, July 7, 2012, at A9.

14. *Resolution on Appropriate Therapeutic Responses to Sexual Orientation*, AM. PSYCHOL. ASS'N COUNCIL REPRESENTATIVES (Aug. 14, 1997), http://psychology.ucdavis.edu/rainbow/html/resolution97_text.html [hereinafter *APA Resolution*]. The American Psychological Association Council of Representatives adopted this resolution, which "opposes portrayals of lesbian, gay, and bisexual youth and adults as mentally ill due to their sexual orientation and supports the dissemination of accurate information about sexual orientation, and mental health, and appropriate interventions in order to counteract bias that is based in ignorance or unfounded beliefs about sexual orientation." *Id.*; see also Joy S. Whitman et al., *Ethical Issues Related to Conversion or Reparative Therapy*, AM. COUNSELING ASS'N (May 22, 2006), <http://www.counseling.org/news/updates/2013/01/16/ethical-issues-related-to-conversion-or-reparative-therapy> ("We found that the majority of studies on this topic have been expository in nature. We found no scientific evidence published in psychological peer-reviewed journals that conversion therapy is effective in changing an individual's sexual orientation from same-sex attractions to opposite-sex attractions. . . . We did conclude that research published in peer-reviewed counseling journals indicates that conversion therapies may harm clients . . .").

15. Mary Slosson, *California Lawmakers Vote to Ban Gay "Conversion" Therapy for Minors*, REUTERS (Aug. 28, 2012, 10:43 PM), <http://www.reuters.com/article/2012/08/29/us-usa-california-gaytherapy-idUSBRE87S01G20120829>.

16. Becky Garrison, *Calif. Bans 'Praying Away the Gay' or Reparative Therapies for Minors*, WASH. POST (Oct. 3, 2012, 11:04 PM), http://www.washingtonpost.com/blogs/guest-voices/post/calif-bans-praying-away-the-gay-or-reparative-therapies-for-minors/2012/10/03/848058ee-0db3-11e2-bd1a-b868e65d57eb_blog.html.

17. *Id.*

18. *Id.*

individuals that included higher rates of depression, suicide, and substance abuse.¹⁹ It may be surprising to discover that transracial adoptees experience similar outcomes as LGBT youth, while undergoing identity development throughout youth and young adulthood, in terms of depression, suicidal ideation and other risks. Researchers discovered that Korean adoptees drew a negative association between identity development and their cultural programming experiences, which focused only on a superficial exploration of racial identity through “cultural encounter” activities²⁰ emphasizing cultural performance.²¹ In a study of international transracially adopted Asians, researchers found adoptees were “three to four times more likely than non-adopted . . . counterparts with similar socioeconomic status to have attempted suicide and have psychiatric admissions, and five times more likely to have a drug addiction,”²² and “[p]reliminary evidence seems to suggest that the transracial adoption paradox may impact body image for some transracial adoptees by intensifying pressures to conform to Western appearance standards.”²³ Assuming that culture camps were understood as operating to cut off a child’s identity development in the same way that conversion therapy does, the underlying issue is how racial identity and sexual identity development are valued.

19. See *Ca. Bans Therapy Meant to Turn Gay Kids Straight*, NAT’L PUB. RADIO, <http://www.npr.org/2012/10/04/162294049/ca-bans-therapy-meant-to-turn-gay-kids-straight>. In this interview, California state senator Ted Lieu discusses the motivation for writing the legislation: “Patients don’t go to psychiatrists and psychologists for viewpoints. They go to them for treatment. The entire house of medicine has said that gay conversion therapy not only does not work, it harms patients. And so this law will be upheld because we’re talking about treating patients—and every medical organization [that] has looked at this has told their own practitioners, do not try to change someone from gay to straight because you can’t do it and, if you try to, they’ll have feelings of guilt, self-hatred, shame and some of them will commit suicide.” *Id.*

20. Song & Lee, *supra* note 12, at 26. Song and Lee designated various ethnic identity formation activities into categories. The purpose of their study was to examine the link between cultural experiences and ethnic identity formation. *Id.* at 28. “Cultural encounter” activities include eating Korean food, learning Korean history, and learning a Korean martial art. The study showed that cultural encounter activities were “negatively related to ethnic identity.” *Id.* at 26.

21. *Id.* at 31 (“Superficial cultural activities . . . may be a developmentally appropriate way of exposing a child to certain aspects of ethnic culture, but they may be too distal to ethnic identity formation It is likely that a more deeply rooted orientation towards one’s ethnic heritage may provide more psychological rewards than a surface exploration of one’s birth heritage, despite the latter being the form of cultural activity that is preferred by many adoptive parents.”); see also MCGINNIS ET AL., *supra* note 8, at 8 (“[R]esearch points to a need to move beyond strategies that promote cultural socialization to experiences that promote racial and cultural identification and comfort.”). The *Beyond Culture Camp* study also recommends expanding currently available programs that are organized by adoptive parents and limited to people like themselves to provide more racial diversity to their adopted children. *Id.* at 48.

22. Sueyoung L. Song, *The Relationship Among Culture-Specific Factors, Pubertal Timing, and Body Image and Eating Disordered Symptoms Among Adopted Korean Adolescent Girls 8* (Aug. 2009) (unpublished Ph.D. dissertation, University of Minnesota) (on file with author) (citing Hjern et al., *Suicide, Psychiatric Illness, and Social Maladjustment in Intercountry Adoptees in Sweden: A Cohort Study*, 360 LANCET 443, 446 (2002)).

23. *Id.* at 6.

I am not making a comparison between conversion therapy and culture camps to demonize culture camps or to argue that the same intervention is required for transracial adoptees as it has been for LGBT youth. Rather, I use the juxtaposition to better understand how children's various identities and their development are treated by the law. In other words, examining when the state is willing to intervene in identity development programming and how it does so reveals a difference in how race and orientation are conceptualized. For example, even if the harm of culture camps to adoptees were understood to produce similarly poor outcomes for Asian adoptees as conversion therapy has for LGBT youth, I posit that the likelihood of state intervention to curtail the activity would be slight. With conversion therapy, there is a belief that children are either straight or gay, as though there is an inherent, fixed, and stable orientation and thus, any therapeutic intervention damages natural identity development processes.

In contrast, when considering transracial adoptees, there is confusion about what the child's inherent racial identity is and how to help the child develop that identity, particularly when culture and race are intertwined.²⁴ White adoptive parents might believe that raising their child just as they would their own biological²⁵ child will be enough to provide a racial identity for the child. Because of this strong belief, sometimes expressed as, "love is as strong as blood ties," "this is my child, regardless of our different appearances," or "I do not see color," the parents might believe that other people in society will also view their child in the same way and view cultural identity as more salient than phenotypic racial appearance.²⁶ Attempts to acculturate a child to a racial identity that aligns with the child's phenotypic appearance may seem contrived to the adoptive parents, particularly where the parents may have little to no exposure to people of color,

24. Cindi Kim, *A Phenomenological Study of Racialized Experiences of Asian Adult Adoptees* 53–54 (2010) (unpublished dissertation, University of Denver) (on file with author). This study, performed after the *Beyond Culture Camp* study, offers a smaller, qualitative study into the experiences of adult transracial adoptees as a counterpoint to studies that rely on the Multigroup Ethnic Identity Measure (MEIM), which is designed for "measuring general racial and ethnic populations" when discussing transracial adoptees' experiences of developing racial and ethnic identities when they have had little experience and exposure to racial and ethnic populations during childhood. The fact that there are multiple methods for researching and measuring the racialization and identity development process illustrates the developmental stage and various viewpoints available, making it difficult to create a universal solution for transracial adoptees engaged in racial identity development. Kim, *supra* at 53–54.

25. DOROW, *supra* note 1, at 51 (providing historical analysis about adoptive parents' use of the popular narrative of raising adopted children just like they would their own biological children).

26. Nam Soon Huh & William J. Reid, *Intercountry, Transracial Adoption and Ethnic Identity: A Korean Example*, 43 INT'L SOC. WORK 75, 76 (2000); Kim, *supra* note 24, at 92. The authors note how a respondent illustrated adoptive parents' mindsets about seeing their child and the expectation that society would see their child similarly: "In those days, I don't think people talked about [racial issues]—to [their parents], I was their daughter, to them I didn't look any different. They knew I looked different. . . . [But] no, they were not aware at all [of racial issues] [T]hey just see you as their child—it doesn't occur to them. In those days, they didn't think about what that kid has to deal with." Kim, *supra* note 24, at 92.

have not experienced racial bias, or are not informed by their children that they are experiencing racial teasing and bullying.²⁷ So, when those parents take their children to culture-camp-like programs because they want to encourage a positive racial identity, the question of which inherent racial identity is the “real” identity is raised. What is the inherent racial identity? Is it the cultural experiences, the phenotypic experience, or a complex combination that makes it difficult for the state or professionals to intervene? This complexity in racial identity development is part of the reason that legal and social interventions become so challenging to conceptualize in ways that are perhaps less difficult when challenging interventions for sexual identity development disruption.

In my earlier work, I explored how society values children’s identity development, particularly in the context of parent-child identity transmission.²⁸ Families are construed as the site for cultural and sociological identity transmission.²⁹ Often when parents have custody disputes, the stakes are high because more time with the child brings not just the opportunity to develop relationship bonds, but also the opportunity to transmit cultural and racial identity to the child, which is foreclosed upon the loss of physical custody.³⁰ I have also considered how orientation and race are valued differently in custody and adoption settings when white gay men adopt African American children.³¹ There appears to be a competition between identity groups for the right to parent African American children.³² Interwoven in rhetoric about LGBT transracial adoption is concern about what kind of identity is likely to be transmitted to the children.³³

This Article continues in the same vein by interrogating the treatment in identity development issues for LGBT youth and Asian adoptees. Despite similar characteristics in the groups’ identity development patterns, sexual and racial identity development are treated dissimilarly, particularly when legal interventions are considered. The contrast in legal interventions reflects legal and social origins

27. Kim, *supra* note 24, at 86–89 (discussing respondents’ recounted experiences of racial teasing—one told her parents and the teasing was stopped, but others either avoided telling parents or discovered the parents had no experience relating to racism and could not relate to the child’s experience); *id.* at 91–95 (noting how parents became defensive when children tried to discuss race at home “because they took it as questioning their parenting practices, or they simply did not know how to have [a] conversation with their children regarding these issues”).

28. Kim H. Pearson, *Mimetic Reproduction of Sexuality in Child Custody Decisions*, 22 YALE J.L. & FEMINISM 53, 57 (2010).

29. *Id.* at 68–69.

30. *Id.* at 72.

31. Kim H. Pearson, *Displaced Mothers, Absent and Unnatural Fathers: LGBT Transracial Adoption*, 19 MICH. J. GENDER & L. 150, 204–07 (2012).

32. *Id.* at 151–52.

33. *Id.* at 152–53.

of sexuality and transracial adoption.³⁴ I argue that race and sexual identity should not be treated as though they are fungible, but instead as a rich source for cross-pollination when crafting interventions. LGBT youth with heterosexual parents and Asian adoptees with white parents have inherent identity traits that are different from their parents' identity traits. LGBT youth and Asian adoptees tend to have delayed identity development³⁵ and must seek identity development resources outside their immediate families.³⁶ While many families have positive adoptive experiences, the purpose of this Article is to consider legal solutions to adoptees' concerns without engaging in debate about the morality or ethics of transracial adoption as a practice. I adopt the stance that Sara K. Dorow describes in her work on transracial adoption. Rather than picking a side, she discusses being "'for' transnational and transracial adoption and 'against' the inequities it might practice and conjure."³⁷ In a similar fashion, I argue for positive racial identity with the understanding that transracially adopted children develop identity in a variety of stages over time, and one stable, monolithic developmental model or process does not exist. The question that transracial adoptive families might ask is why consider legal interventions for identity development rather than turning to private, social remedies. Parents of LGBT youth may ask the same question about legal interventions in the choice to pursue conversion therapy. Generally, there is no legal intervention for parents of an LGBT child in an intact family against the assimilation demands that society or the parents themselves create during the child's sexual identity development, unless there is evidence of abuse or neglect.³⁸

34. *Id.* at 161–73 (comparing race- and orientation-based claims in child custody and adoption settings to illustrate the disparate conceptualizations that informed legal interventions).

35. MCGINNIS ET AL., *supra* note 8 at 4 (“Adoption grew in significance to respondents in this study from early childhood through adolescence, continued to increase during young adulthood, and remained important to the vast majority through adulthood.”); Wright, *supra* note 2, at 11; Caitlin Ryan, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children*, FAMILY ACCEPTANCE PROJECT 1, available at http://familyproject.sfsu.edu/files/English_Final_Print_Version_Last.pdf (last visited July 13, 2013). The website presents studies showing that even though children as young as seven or eight years of age know that they are gay or transgender, children learn that being gay is “shameful and wrong from family, friends and other people in their community. . . . So from an early age, many gay children and adolescents learn how to hide their deepest feelings from people they love.” *Id.*

36. MCGINNIS ET AL., *supra* note 8, at 6 (finding that positive racial identity development was effective where transracial adoptees lived in racially diverse settings and had role models of their birth race); Deborah E.S. Frable et al., *Predicting Self-Esteem, Well-Being, and Distress in a Cohort of Gay Men: The Importance of Cultural Stigma, Personal Visibility, Community Networks, and Positive Identity*, 65 J. PERSONALITY 599, 604 (1997) (providing research showing a link between gay networks and personal positive identity for gay men); Ryan, *supra* note 35, at 9–10 (listing behaviors that parents of LGBT youth can do to express acceptance and support of their children, including facilitating relationships with LGBT role models, friends, and partners).

37. DOROW, *supra* note 1, at 280–81.

38. Orly Rachmilovitz, *Masters of Their Own Destiny: Children's Identities, Parents' Assimilation Demands and State Intervention* 79, 137–40, 154–58 (2012) (unpublished S.J.D. dissertation, University of Virginia) (on file with author).

In family law, the principle underlying much of the protection for intact families derives from the privacy right to raise children autonomously³⁹ in what the parents believe is in the best interests of their children.⁴⁰ Sometimes, parents do not act in their children's best interests, but the court can intervene only if there is harm to the child.⁴¹ In the case of conversion therapy, evidence of harm to minor children combined with a lack of evidence that the process was effective provided a basis for state intervention. Even if the harms that merit state intervention in families were conceived broadly enough to encompass the outcomes for transracial adoptees, the feasibility of defining and finding protections for those harms returns to the kernel of the problem—how should a court define racial identity development needs and solutions, particularly where the harm inherent in not providing a certain kind of racial identity resource is not as specific as the harm defined in conversion therapy.

The studies about conversion therapy⁴² and culture-camp-like programs⁴³ suggest that there are detrimental effects correlated to cutting children off from positive identity development, including role models and resources that are not focused on cultural performance alone. Nonetheless, a legal intervention aimed at conversion therapy can be accomplished through licensing boards for medical professionals. That is not to say that the passage of a law will be without opponents or pass easily in several states, but that the legal intervention is framed as balancing the prevention of a poor medical practice with negative outcomes for children versus parents' rights to access medical care that aligns with their religious or social practices.⁴⁴ In contrast, the framing for culture camps or any measure

39. D. KELLY WEISBERG & SUSAN FELICH APPLETON, MODERN FAMILY LAW: CASES AND MATERIALS 19–20 n.3 (5th ed. 2013) (citing Peggy Cooper Harris, *Contested Images of Family Values: The Role of the State*, 107 HARV. L. REV. 1348 (1994)) (discussing the evolution of the privacy right attached to family life as a byproduct of antislavery and pluralist thought and a reaction to slavery preventing the passing on of moral values in family).

40. *Id.* at 689. The Uniform Marriage and Divorce Act § 402 Best Interest of Child, Unif. Marriage & Divorce Act § 402, (1973), is the standard used by many jurisdictions in making child custody determinations as the parent(s) who most closely aligns with the standard is fit for sole or joint custody. Julie E. Artis, *Judging the Best Interests of the Child: Judges' Accounts of the Tender Years Doctrine*, 38 LAW & SOC'Y REV. 769, 774–75 (2004).

41. WEISBERG & APPLETON, *supra* note 39, at 680 (discussing the type of test courts use when determining the nexus between a parent's religion or religious practices on a child and harm to the child; if there is a connection, courts may intervene).

42. *See generally* APA Resolution, *supra* note 14 (recognizing that some LGBT individuals are at risk for conversion therapy due to societal ignorance and prejudice about same-gender sexual orientation and providing guidelines for psychologists to follow to help counteract this bias).

43. *See* Song & Lee, *supra* note 12, at 22.

44. Slosson, *supra* note 15 (“Republican opponents of the measure said politicians should not step in and regulate what they consider to be a matter for medical boards to decide. They also said the bill encroaches on the rights of parents to make choices for their children.”); *Ca. Bans Therapy Meant to Turn Gay Kids Straight*, *supra* note 19 (discussing how Liberty Counsel Chairman Matt Staver opposes therapy bans because of the threat to parents' and mental health professionals' “right to self-determination”).

taken by white adoptive parents is purely as a choice, and not at risk of infringing on their right to raise their child as adoptive parents who have the privacy right to raise a child without state intervention.⁴⁵

The first section of this Article outlines in greater detail the similarities between LGBT youth and Asian adoptee identity development needs, positing that racial identity development should not be devalued. The first section also considers the possibility that culture-camp-like programming may be producing similar outcomes because it forecloses racial identity development that reflects a “deeper orientation” towards the lived reality that people of color experience. In other words, for a Korean transracial adoptee, a lesson on Korean dance or folklore may be a good start in building cultural pride, but ultimately of less use in developing racial identity than relationships with Korean American role models and friends and more informed parents, teachers, and communities who can better prepare transracial adoptees to handle racial bias and discrimination.⁴⁶

The second section builds on the premise that if the harm of culture camps were comparable to the harm of conversion therapy, the legal response may be radically different from the one available to LGBT advocates. The legal interventions available for transracial adoptees seeking awareness and intervention are animated by a larger conversation about adoptive children, race, national belonging, and income. The second section outlines the history and social forces that create the complex role of race and consumerism that informs international and domestic adoption.

The third section proposes that, like national LGBT advocacy organizations that are made up of diffuse and multilayered groups of individuals aligning along one identity trait, the Asian Pacific American (APA) community could similarly coalesce to value racial identity to answer the desire expressed by Asian adoptees for inclusion in the community.

Finally, the last section returns to the intersection of LGBT and APA to consider white LGBT parents of Asian adoptees. Although there is anecdotal evidence that LGBT parents seek racial identity resources for their children outside of their immediate family, this model of extrafamilial identity development performed without fear of disruption to the parent-child relationship could be a basis for conceptualizing a principled legal intervention.

45. Song & Lee, *supra* note 12, at 22; Kim Ja Park Nelson, Korean Looks, American Eyes: Korean American Adoptees, Race, Culture and Nation 169 (Dec. 2009) (unpublished Ph.D. dissertation, University of Minnesota) (on file with author) (“Interference in parenting is often perceived as a most unwelcome and presumptuous disruption of the right to individuality. In this way, parenting of transracial adoptees is protected in a way that few other institutions are.”).

46. DOROW, *supra* note 1, at 230–31 (referencing researcher Andrea Louie’s charge to adoptive parents to not mistake cultural performances or activities for “‘authentic’ Chinese identity,” but “to draw on Chinese American and Asian American resources that ‘reflect the experiences of living as a racial minority in the U.S.’”).

I. LGBT YOUTH AND ASIAN ADOPTEES

LGBT youth raised by heterosexual parents and Asian adoptees raised by white parents share identity issues that resonate with each other because children in both groups have a salient identity feature that is different from their parents. They may experience delayed identity development⁴⁷ and seek identity development resources outside of their immediate families.⁴⁸ Although sexual identity development is not the same as racial identity development, the experiences and data about LGBT youth can provide a framework for understanding the balancing of family integrity interests with the child's individual identity needs.

Heterosexual parents with LGBT youth are often faced with the challenge of trying to understand the experiences and viewpoints of their children without the benefit of working through their own sexual orientation identity. LGBT youth who experience family rejection are at greater risk for physical and mental health problems.⁴⁹ The Family Acceptance Project at San Francisco University provides research about the effects of family acceptance and rejection on LGBT youth.⁵⁰ Their studies and practice briefs show a correlation between poor communication in families with risk to family intactness and LGBT youth being removed or forced from the home.⁵¹ The data gathered by the Family Acceptance Project not only focuses on LGBT youth who are rejected by their families,⁵² but also focuses on positive outcomes for LGBT youth who experience family acceptance.⁵³ Helping children to feel positive and to be able to imagine becoming happy LGBT adults is one of the objectives of projects like the Family Acceptance Project,⁵⁴ much as the research performed by transracial adoption researchers suggests positive identity outcomes are related to behaviors like seeking extrafamilial support systems.

There is growing support for LGBT youth because of the heightened media coverage of LGBT bullying, hate crimes, and suicide.⁵⁵ With the heightened focus

47. Wright, *supra* note 2, at 11 (“[T]he extended identity exploration in adolescence [of transracial adoptees] may be similar to the experience of LGBT clients who also commonly take longer to integrate their sexual orientation with their personal identity.”).

48. Oswald, *supra* note 1, at 375–76.

49. See Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

50. Ryan, *supra* note 35.

51. *Id.*

52. LGBT children who experience family rejection are “[m]ore than 8 times as likely to have attempted suicide[;] [n]early 6 times as likely to report high levels of depression[;] [m]ore than 3 times as likely to use illegal drugs[;] [and] [m]ore than 3 times as likely to be at high risk for HIV and sexually transmitted diseases.” Ryan, *supra* note 35, at 5.

53. Caitlin Ryan et al., *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 J. CHILD & ADOLESCENT PSYCHIATRIC NURSING 205, 210 (2010).

54. Ryan, *supra* note 35, at 3.

55. The “It Gets Better Project” founded by Dan Savage and Terry Miller caught the public

on homophobic violence and bullying, this can lead parents of LGBT youth to fear for their children's safety. Sometimes, parents of LGBT children who are afraid of bias and antigay discrimination keep their children away from gay friends and LGBT events, or ask their children to downplay their gender nonconforming behavior.⁵⁶ Parents who accept their children and support their LGBT identity development provide protection against "negative health outcomes (depression, substance abuse, and suicidal ideation and attempts)."⁵⁷ Trying to fit in or mask behavior that does not seem heterosexual creates pressure for the child to assimilate.⁵⁸ This pressure to assimilate tracks with insights provided by transracial adoptees who experienced pressure from their parents and peers to conform to white cultural norms.⁵⁹

Transracial adoption in America usually evokes images of white parents with children of color because that is the typical family formation for transracial adoptees.⁶⁰ Whether it is a glib reference to adoption trends in an electronic

imagination and sparked national responses from the LGBT community and its allies. *See* Brian Stelter, *Campaign Offers Help to Gay Youths*, N.Y. TIMES, Oct. 19, 2010, at A16.

56. Ryan, *supra* note 35, at 13 (cautioning parents of LGBT youth against barring children from gay friends or preventing them from acquiring accurate information about their sexual identity).

57. Ryan et al., *supra* note 53, at 210.

58. KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS, at ix (2006) (describing "covering" as downplaying minority status attributes to comply with assimilation demands to conform to mainstream norms).

59. Early adoptive parents who made assimilation demands on their adoptive children are to some extent excused because of the time period and the belief that they did not know better. Now, adoptees' perception is that adoptive parents, even progressive parents who proactively expose their children to cultural activities, are defensive because of white privilege and still fail to recognize that their children "will fit into the nation differently than they do." ELEANA J. KIM, ADOPTED TERRITORY: TRANSNATIONAL KOREAN ADOPTEES AND THE POLITICS OF BELONGING 117 (2010); *see also* Kim, *supra* note 24, at 86–89 (finding that all respondents, as children, experienced racial teasing that highlighted difference, which caused them to try to assimilate into American culture as much as possible to downplay that difference).

60. *See* SHARON VANDIVER ET AL., ADOPTION USA: A CHARTBOOK BASED ON THE 2007 NATIONAL SURVEY OF ADOPTIVE PARENTS 14 (2009), available at <http://aspe.hhs.gov/hsp/09/NSAP/chartbook/index.pdf> (reporting that forty percent of international and domestic adoptions were transracial, meaning the children were of a different race than the adoptive parents, and seventy-three percent of all adoptions, including public and private adoptions, were by white parents); U.S. DEPT OF HEALTH AND HUMAN SERVS., TRANSRACIAL AND TRANSCULTURAL ADOPTION, available at http://www.childwelfare.gov/pubs/f_trans.pdf (reporting that in 1990 one to two thousand African American children were adopted by Caucasian families and that roughly fourteen percent of all adoptions that year were of foreign children). On the other hand, there are a small number of African American families who adopt Caucasian children, usually from the foster care system. Their experiences highlight how difficult it is for society to imagine transracial adoptions where the parents are not white. Tony Dokoupil, *Raising Katie: What Adopting a White Girl Taught a Black Family About Race in the Obama Era*, THE DAILY BEAST (Apr. 22, 2009), <http://www.thedailybeast.com/newsweek/2009/04/22/raising-katie.html>; Jessica Ravitz, *Transracial Adoptions: A "Feel Good" Act or No "Big Deal"?*, CNN (May 6, 2010), http://articles.cnn.com/2010-05-06/living/transracial.adoption_1_transracial-adoptions-adoptive-parents-black-child?_s=PM:LIVING; Grant Segall, *New Face of Adoption: Black Parents, White Children*, SEATTLE TIMES (Dec. 25, 2007), http://seattletimes.nwsourc.com/html/living/2004090402_raceadopt25.html.

postcard⁶¹ or a white gay couple in *Modern Family* who adopt a daughter from Vietnam, popular culture reflects how transracial adoption has become a familiar part of American life.⁶² The story, however, is more complex than the general perception.

The number of Korean adoptees is estimated to be as many as two hundred thousand.⁶³ The most recent study of Korean adoptees revealed that a high percentage experienced racial discrimination from both strangers and classmates.⁶⁴ Seventy-eight percent of the respondents wished they were or considered themselves white when they were children.⁶⁵ Qualitative research gathered from American and European adult adoptees revealed that Asian transracial adoptees feel insecure about their racial appearance⁶⁶ and some reported experiencing racism within their families.⁶⁷ Evidence about the impact of assimilation practices reveals that transracial adoptees have higher rates of negative feelings about racial identity, lower self-esteem, suicide, drug addiction,⁶⁸ eating disorders,⁶⁹ and significant mental health concerns.⁷⁰ Qualitative data about transracial adoptees shows that “some transracial adoptees are ill-equipped to face the structural realities of racism and discrimination” because their white adoptive parents downplay racial differences.⁷¹ Again, these outcomes are similar to LGBT youth

61. SOMEECARDS, <http://www.someecards.com> (last visited Oct. 27, 2012). The website, which contains humorous electronic postcards and other media items, features a “thinking of you” card that has a picture of a young white couple. It reads, “Someday I want to adopt an Asian baby with you.”

62. *Modern Family* (ABC television network) (featuring a gay white couple that adopts a girl from Vietnam).

63. Nelson, *supra* note 45, at 80.

64. MCGINNIS ET AL., *supra* note 8, at 4 (studying nearly 500 adoptees in which inracial and transracial adoptee groups were compared to each other); *see also* Nelson, *supra* note 45, at 202–06 (reporting on adoptees’ desires to be white and to reject Korean identity).

65. MCGINNIS ET AL., *supra* note 8, at 4.

66. Song & Lee, *supra* note 12, at 19–36.

67. Nelson, *supra* note 45, at 200–02.

68. Song, *supra* note 22, at 8 (citing Hjert et al., *supra* note 22) (discussing international transracially adopted Asians who were “three to four times more likely than non-adopted . . . counterparts with similar socioeconomic status to have attempted suicide and have psychiatric admissions, and five times more likely to have a drug addiction”).

69. *Id.* at 6 (“Preliminary evidence seems to suggest that the transracial adoption paradox may impact body image for some transracial adoptees by intensifying pressures to conform to Western appearance standards.”); *id.* at 156 (“[L]ow levels of ethnic identity and adoptive identity may serve a parallel function to the etiological role that problems with personal identity formation are posited to have in the development of [eating disorder]-related problems.”).

70. *Id.* at 9 (citing two studies performed in 1999 and 2003 that linked experiences of racism and discrimination to “serious mental health consequences”).

71. Rose M. Kreider & Elizabeth Raleigh, *Contexts of Racial Socialization: Are Transracial Adoptive Families More Like Multiracial or White Monoracial Families?* 7 (U.S. Census Bureau Soc., Econ., and Housing Statistics Div. Working Paper 2011–10, 2011), available at <http://www.census.gov/population/www/socdemo/KreiderRaleighPAA2011.pdf>.

who do not have the protective effects of family acceptance to help buffer assimilation demands and homophobia.⁷²

Some transracial adoptees are estranged from their adoptive families and continue to experience grief and loss because of racial discord within the families and/or communities in which they were raised. This story of broad racial discord is downplayed or left untold,⁷³ so that a family's pain and sometimes estrangement from an adopted child⁷⁴ is framed as a failure on the part of the parents or the character flaw of a troubled, ungrateful child.⁷⁵ One researcher of adult adoptee communities notes that their identity is based on "shared histories of displacement rather than on naturalized solidarities of blood, ethnicity, or territorial belonging."⁷⁶ Experts⁷⁷ consider the lack of "deeper orientation" towards racial identity development for adoptees to be a widespread problem.⁷⁸

Concern about transracially adopted children's adjustment has generated several studies.⁷⁹ However, many of the early studies were pro-adoption with a

72. Ryan, *supra* note 35, at 5.

73. See Jennifer Ludden & Marisa Peñaloza, *Would-be Parents Wait as Foreign Adoptions Plunge*, NAT'L PUB. RADIO (Aug. 7, 2012, 4:27 PM), <http://www.npr.org/2012/08/07/157844554/would-be-parents-wait-as-foreign-adoptions-plunge> (expressing concern that the Hague Adoption Convention helps fight trafficking and other abuses, but makes it more difficult for U.S. parents to adopt internationally); *International Adoptions Down in Minn. Amid Tight Regulations*, MINN. PUB. RADIO NEWS (July 9, 2012, 11:20 AM), <http://minnesota.publicradio.org/display/web/2012/07/09/daily-circuit-international-adoption> [hereinafter *International Adoptions Down*] (relating an adoptive parent-centric story concerned about the shortage of available children).

74. Kim, *supra* note 24, at 156 (summarizing the majority of respondents' choices to physically distance themselves from their adoptive families and communities as adults to seek more culturally and racially diverse areas in which to live and, as a result of the geographic distance, their relationships with family members also became distant).

75. KIM, *supra* note 59, at 3 ("The voices of some of these adoptees have been considered to be excessively unruly (and, it seems, quite threatening) by advocates of adoption, including agency social workers and adoptive parents."); see also Nelson, *supra* note 45, at 131 (citing a study where "problem families" or families where the children had problems were framed as a minority of families so as not to detract from the overarching hypothesis that transracial adoptees were predominantly well-adjusted); Marley Greiner, *Some Thoughts on the "Angry Adoptee."* *Gazillion Adoptees v. JCICS*, THE DAILY BASTARDETTE (May 2, 2012), <http://bastardette.blogspot.com/2012/05/some-thoughts-on-angry-adoptee.html> (discussing the advocacy efforts made by adult adoptees and the deployment of the "angry adoptee" title); Linda Hoyer, *No Angry Adoptees Here*, ADOPTION VOICES MAG., (June 22, 2012), <http://adoptionvoicesmagazine.com/collections/no-angry-adoptees-here> (displaying comments responding to the blog post and illustrating how divisive the title "angry adoptee" is for the adoptee community).

76. KIM, *supra* note 59, at 86.

77. MCGINNIS ET AL., *supra* note 8, at 3, 7 (basing recommendations on experiences of adult adoptees, whom the Evan B. Donaldson Institute consider to be experts of identity development of adopted adults).

78. *Id.* at 7 (referring to the psychological distress, low self-esteem, and discomfort with racial appearance that transracial adoptees face, and recommending that parents, teachers, practitioners, and others arm transracial adoptees to face racial bias and discrimination and provide those children with more resources for positive identity development); Huh & Reid, *supra* note 26, at 75 ("If children are uprooted from their own culture, their sense of ethnic identity may become confused or conflicted.").

79. Nelson, *supra* note 45, at 122–23 (documenting growth in research about transracial and

bias for the parents' view of the children's adjustment,⁸⁰ producing results that reaffirmed the belief that transracially adopted children adjusted and assimilated nearly as well as biological children. One early standout study in 1978 noted that the positive outcomes reported in studies about children's adjustment was at the expense of hiding the cost of their cultural loss and inability to assimilate into American culture because of racism.⁸¹ As more transracial adoptees reach adulthood, they can speak for themselves and offer important insight into the process of adoption.⁸² The body of research shows one of the main challenges for Asian transracial adoptees raised in predominantly white communities is the difficulty they have in developing a positive Asian racial identity.⁸³ Contrary to the popular belief in a colorblind society,⁸⁴ adoptees continue to experience racism.⁸⁵

transnational adoptees leading to behavioral science studies followed by work by child advocates and social workers interested in best practices for adoptees, such as documenting adoptees' medical and psychological conditions, development, identity, and so forth).

80. KIM, *supra* note 59, at 9 (“Most of the studies conducted throughout in [sic] the 1970s and 1980s . . . were based on reports about the children by their adoptive parents and focused on ‘adjustment’ and ‘self-esteem’ while studiously avoiding issues of racialization.”); Nelson, *supra* note 45, at 129–31 (noting that researchers who positioned themselves as pro-transracial adoption often used parental assessments for measuring children’s outcomes); *id.* at 144 (noting that early researchers focused on younger children and their adoptive parents’ assessment, but that failing to revisit the families for further research when the children became adults “complicates the research” because the researchers and parents align in their beliefs that transracial adoption is “a moral, honorable practice” and “the adoptive experience . . . [is] beneficial for parents”).

81. Dong Soo Kim, *Issues in Transracial and Transcultural Adoption*, 59 SOC. CASEWORK 482, 482–85 (1978) (reporting that transracial adoptees were uncomfortable with their racial appearance, but adoptive parents did not acknowledge race, calling into question the value of studies purported to show positive outcomes for transracially adopted children when there was no acknowledgment of dissonance between their parents’ refusal to see race and society’s refusal to not see the child’s race).

82. Kim Jae Ran, Jane Jeong Trenka, Tobias Hubinette, and several other Asian adoptees are activists, writers, therapists, and researchers whose work focuses on raising awareness through memoirs, sociological research to measure adjustment outcomes (dissertations and ongoing studies performed at the University of Minnesota), activism to stop or make transracial adoption more ethical (blogs and groups that advocate for stronger restrictions or more adoptee rights), and artistic performances that critically examine identity formation across loss and transnational movement. *See* Nelson, *supra* note 45, at 122 (“There are anthologies of creative writing by adoptees focusing on the adoptee experience.”). *See generally* JO RANKIN, SEEDS FROM A SILENT TREE: AN ANTHOLOGY BY KOREAN ADOPTEES (Tonya Bishoff ed., 1997); OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION (Jane Jeong Trenka et al. eds., 2006); LINDA GOLDSTEIN KNOWLTON, SOMEWHERE BETWEEN (Lady Like Films 2011); DEANN BORSHAY LIEM, FIRST PERSON PLURAL (Mu Films 2000).

83. MCGINNIS ET AL., *supra* note 8, at 45 (describing the complexity transracial adoptees face in integrating a positive racial/ethnic identity as a “[member] of a racial minority; growing up in families with parents who were of a different race and in communities with few if any people of their race/ethnicity; and being separated from their birth country and culture”); Huh & Reid, *supra* note 26, at 75–77 (surveying studies about ethnic identity development for Asian transracial adoptees showing that some were “apathetic, embarrassed, or confused about their racial background,” uninterested in exploring their “own cultural heritage,” or had a desire to “identify themselves with the dominant culture”).

84. Nelson, *supra* note 45, at 160–61 (discussing adoptive parents’ de-emphasizing of transracial adoptee’s race by taking colorblind or American identity approach).

They consistently report experiencing dissonance between the way they have been raised and the way they are treated by others because of their racial appearance.⁸⁶ Particularly in geographic areas where there is little racial diversity, adoptees experience little or no exposure to people of color who can act as role models and friends.⁸⁷ As a result, adoptees often struggle to develop a positive self-identity as a person of color.⁸⁸

Defining the delivery of racial identity is difficult because there is little consensus on all the factors that contribute to identity formation. I use the term “racial identity” to include “ethnic identity.” As used by scholars in sociology, “ethnic identity” is “an individual’s self-concept that is comprised of identification with one’s ethnic group, a sense of belonging to one’s ethnic group, and positive feelings and attitudes about one’s ethnic group.”⁸⁹ I do not use “ethnic” and “racial” as interchangeable terms, but consider “racial” an umbrella term because it includes the phenotypic aspects of identity formation in a way that is sometimes masked or conflated with culture when the term “ethnic” is used. For transracial adoptees, physical features are often as, if not more, salient than cultural traits because phenotypic appearance, and not cultural practices or ethnic group identity, set adoptees apart from their families despite a strong drive towards racial and cultural assimilation into white families.⁹⁰

Early studies that focused on racial identity development of transracially adopted children examined African American children in white homes. A study conducted in 1982 showed that while adoptees had strong self-esteem and confidence, those qualities coexisted with behavioral problems.⁹¹ A later study

85. *Id.* at 206–08 (sampling adoptee experiences of discrimination and racism where adoptees who identified as white were confronted with the realization that others did not view them as white); *id.* at 154 (citing RUTH G. MCROY & LOUIS A. ZURCHER, *TRANSRACIAL AND INRACIAL ADOPTEES: THE ADOLESCENT YEARS* (1983)) (suggesting that although white parents of African American transracial adoptees love their adopted children, they “cannot fully escape the racist nature of American society”).

86. Kim, *supra* note 81, at 483; Nelson, *supra* note 45, at 206–07.

87. MCGINNIS ET AL., *supra* note 8, at 45 (“[M]ost [Korean adoptees in the study] grew up in communities with very little diversity, and only 28 percent had a close friend of their own race during childhood. Some reported feeling isolated from other Asian people, or even from other minorities.”); Kreider & Raleigh, *supra* note 71, at 9 (“Findings from qualitative studies suggest that during the pre-adoption process, some homestudy social workers suggest that adoptive parents consider moving to a more diverse area so that the child has greater access to positive role models of the same racial and ethnic background.”).

88. Nelson, *supra* note 45, at 157 (“Many transracial adoptees also discussed alienation from others of their birth race as well. In their relationships with others of the same race, adoptees described not fitting in or not meeting expectations placed on them. Many said others of the same race could tell they were different, which led to their rejection.”).

89. Song & Lee, *supra* note 12, at 20.

90. Nelson, *supra* note 45, at 202–08 (tracking adoptees’ transition from assimilation to white cultural norms or rejection of Asian racial identity towards realization that they are people of color).

91. Ruth G. McRoy et al., *Self-Esteem and Racial Identity in Transracial and Inracial Adoptees*, 27 SOC. WORK 522, 522–26 (1982) (studying development of racial identity in transracial adoptees).

revealed that outcomes for transracial adoptees were considered similar to those of children adopted in single parent and traditional homes, even though there was evidence of anxiety, confusion about racial identity, and aggression exhibited by children from the three groups.⁹²

Usually, studies relied on adoptive parents for reporting their children's well-being and adjustment.⁹³ However, adult adoptees' reports reveal that, as children, they were unable or unwilling to articulate their needs for racial identity development.⁹⁴ The point in time at which the work of racial identity development can take place for best results is about seven to eight years of age.⁹⁵ This is also the point at which children and parents are least likely to want or understand how to deliver the resources that could assist in racial identity development.⁹⁶ This could be based on the parents' discomfort with racial awareness or fear of making a child feel separate from the family, rather than any overt animus to a racial group.

For many adoptees, their racial identity is not based on "blood, ethnicities, or territorial belonging," but on displacement.⁹⁷ A significant portion of Asian adoptees desire a sense of belonging with their white adoptive families, and thus often identify as white when they are children.⁹⁸ Transracial adoptees learn quickly through experiences like parents downplaying racial slurs that racial identity is devalued because colorblind discourse supports white dominant culture as the norm.⁹⁹ Just like their adoptive parents, child adoptees often perceive discussions

92. Joan F. Shireman & Penny R. Johnson, *A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional*, 31 SOC. WORK 172, 173 (1986) ("In assessing the overall adjustment, interviewers rated the children of each of three adoptive types [single parent, traditional, transracial] almost identically . . ."); *id.* at 174 (noting that children in both traditional homes and transracially adoptive homes had behavioral issues such as difficulty "controlling aggression and handling frustration;" the transracial adoptees had "underlying confusion about racial identity," and children in single parent adoptions expressed "fears and symptoms of anxiety").

93. Nelson, *supra* note 45, at 129–31.

94. *Id.* at 155 (referring to Huh & Reid, *supra* note 26, at 81–82, showing that Korean adoptees with the strongest Korean identities began developing their identities around age seven or eight).

95. *Id.*; see also MCGINNIS ET AL., *supra* note 8, at 15.

96. Adoptive parents tend to prefer culture-camp-like programs and may not realize that their young children's expressions of discomfort with racial difference reflect the parents' ambiguity about race and culture. Huh & Reid, *supra* note 26, at 80–83 (describing the correlation between adoptive parents' reinforcement and valuation of their child's racial and cultural heritage and the child's positive sense of racial identity).

97. KIM, *supra* note 59, at 86.

98. MCGINNIS ET AL., *supra* note 8, at 11; Kim, *supra* note 24, at 100–02 (respondents recount "being/becoming White was the goal to strive for, because it meant fitting into their [adoptees'] social environment").

99. Gina Miranda Samuels, "Being Raised by White People": Navigating Racial Difference Among Adopted Multiracial Adults, 71 J. MARRIAGE & FAM. 80, 92 (2009) ("[Black transracial adoptees] described parental colorblindness as having the opposite effect, causing them to feel racially alienated with an unavoidable experience of racial stigma that was invalidated by parents."); *id.* at 88–89 ("[P]arental colorblindness meant children often navigated a highly racialized world on their own . . . [so that the children often felt] 'set up' to expect a colorblind experience of race that their stigmatized

about race as something that will separate the child from the family.¹⁰⁰ Consistently being faced with public questions and interest in the racial difference between parents and the child also reinforces the seemingly tenuous bonds of family or reinforces difference.¹⁰¹ In public settings, people frequently demand an origin story for a nonnormative family's formation;¹⁰² unquestioning acceptance of transracial adoptive family formation is unusual because transracial families are visible and cut against the norm of the intact biological family.¹⁰³ Here, transracial adoptees potentially differ from LGBT youth who are in such normative families. If LGBT youth do not conform to mainstream gender norms, they may challenge public notions of normative families. For adoptees, attending culture-camp-like programs could add to the messaging adoptees may already be receiving in their homes that encourage them to downplay racial identity. The culture-camp-like programs that focus on superficial cultural performance operate to cut off Asian adoptees from developing a racial identity in a similar way that conversion therapy operates to cut LGBT youth from the resources that assist in developing a positive identity.

Improving adoptees' outcomes cannot be answered solely through private, social means like community outreach. Advocacy for LGBT youth began as private, community outreach before gaining enough political power to seek legal means for intervention. While private community outreach is an important tool, it may be difficult for transracial adoptees to parlay it into political power because of the diffuse nature of adoptive families. White adoptive parents live in predominantly white areas,¹⁰⁴ geographically isolating their transracially adopted children. A legal solution that accounts for the social nuances inherent in Asian

racial appearances prevented them from accessing."); *see also* Nelson, *supra* note 45, at 197–202, 214 (transcribing transracial adoptees' accounts of racism within and outside of family).

100. Nelson, *supra* note 45, at 158 ("Navigating race as a person of color in a predominantly White society is always a challenge, but is unusually demanding for transracial adoptees because an exploration of birth race is sometimes seen as a rejection of adoptive race and family.").

101. Samuels, *supra* note 99, at 80, 82 (noting that transracial adoptees, like multiracial children, "are viewed as racially 'different' and experience stigma related to those differences. Transracial adoptive families and multiracial individuals contradict biological and monocentric race and kinship norms—that all family members and individuals embody a shared single racial identity and heritage." (citation omitted)).

102. Transracial adoptees are often asked if their adoptive parents are their "real" parents. *See* IOWA FOSTER & ADOPTIVE PARENTS ASS'N, TRANSRACIAL PARENTING IN FOSTER CARE & ADOPTION: STRENGTHENING YOUR BICULTURAL FAMILY, available at http://www.ifapa.org/pdf_docs/transracialparenting.pdf. Foster and adoptive parents are given sample responses to help buffer their transracially fostered and adopted children from intrusive questions about their familial relationships, e.g., "Where's your REAL mom?" "Why don't you look like your mother. . . or sister/brother?" and "Why were you adopted? Didn't your mom want you?"

103. *Id.*

104. Kreider & Raleigh, *supra* note 71, at 20–21 (discussing how indicia that normally indicate which adoptive parents are more likely to live in racially diverse areas show that white parents of Asian adoptees tend to "live in less diverse counties than one would expect given their parents' high [socioeconomic status]").

adoptees raised in culturally white spaces is required to affect large-scale change for a group of disregarded, isolated, and dispersed adoptees.¹⁰⁵ Recent stories expressing concern about the decreasing availability of adoptable international children tend to focus on the prospective adoptive families' ongoing desire to adopt children.¹⁰⁶ Adult adoptees are left out of the debate about the morality of transracial adoption, so that their participation is limited to assessing the need for racial identity development or advice to white parents to make it easier for them to raise their transracially adopted children.¹⁰⁷ Rarely are they sought as a voice of experience with the authority to advocate about adoption, despite having credentials and experience in the field.¹⁰⁸

Currently, adoptive parents of Chinese children and transracial advocates and opponents alike look to the experience of Korean adoptees for guidance in raising their children because they are the largest group of transracial adoptees and have been in America the longest.¹⁰⁹ However, they are usually asked for help in

105. *Id.* at 24. (discussing how transracial adoptees may be at a disadvantage in developing positive racial identity as compared to inracial children in multicultural families because transracial adoptees are less prepared for racism and are socialized more like white children in monoracial white families).

106. Ludden & Peñaloza, *supra* note 73; *International Adoptions Down*, *supra* note 73.

107. After a Minnesota Public Radio program about international adoption was aired, the adult adoptee blogosphere lit up. There were no adoptees on the panel to provide a counterpoint to the pro-transracial adoption advocates. When the expert adoptees were asked to speak, after the social media brouhaha, they were only asked to provide opinions about helping adoptive parents ease their transracially adopted children's way through racial identity development. See JaeRan Kim, *Guest Panelist on MPR's Daily Circuit*, JAERAN KIM (Aug. 10, 2012), <http://jaerankim.wordpress.com/2012/08/10/guest-panelist-on-mprs-daily-circuit/>; Keum Mee, *WTF MPR?, LAND OF A GAZILLION ADOPTEES* (July 10, 2012), <http://landofgazillionadoptees.com/2012/07/10/wtf-mp/>.

108. See, e.g., Kevin Ost-Vollmers, *Land of Gazillion Adoptees Comes Under Fire for Its Podcast Conversation with Tom Difulipo of JCICS*, LAND OF GAZILLION ADOPTEES (Mar. 21, 2012), <http://landofgazillionadoptees.com/2012/03/21/land-of-gazillion-adoptees-comes-under-fire-for-its-podcast-conversation-with-tom-difulipo-of-jcics> (recounting his experience during an interview with one of the main figures in international adoption who has referred to adult adoptees as "angry adoptees" and his attempts to engage with adoption community as an adult adoptee advocate).

109. ELIZABETH M. HOEFFEL ET AL., U.S. CENSUS BUREAU, *THE ASIAN POPULATION: 2010* (2012) (listing the total Korean American population at over 1.7 million Koreans, making total number of Korean adoptees roughly 6.4% of total Korean American population); MCGINNIS ET AL., *supra* note 8, at 20 ("South Koreans comprise the largest group of internationally adopted persons in the U.S., and adoption from South Korea into this country has a longer history than other types of transnational adoption."); Ron Nixon, *Adopted from Korea and in Search of Identity*, N.Y. TIMES, Nov. 9, 2009, at A9 (reporting that since 1953, Americans have adopted more than 250,000 children from foreign countries, approximately 160,000 of whom were from Korea); Hollee McGinnis, *South Korea and Its Children*, N.Y. TIMES RELATIVE CHOICES BLOG (Nov. 27, 2007, 10:27 PM), <http://relativechoices.blogs.nytimes.com/2007/11/27/south-korea-and-its-children> (reporting that ten percent of Korean Americans immigrated through transnational adoption, meaning that 150,944 children were placed between 1953 and 2006); Norimitsu Onishi, *Korea Aims to End Stigma of Adoption and Stop 'Exporting' Babies*, N.Y. TIMES (Oct. 8, 2008), <http://www.nytimes.com/2008/10/09/world/asia/09adopt.html?pagewanted=all> (reporting how the ten percent figure has dropped as South Korea has made concerted efforts to reduce number of Korean children placed for adoption internationally); U.S. Dep't of State, *About Us—Statistics*, INTERCOUNTRY ADOPTION, <http://adoption.state.gov/>

smoothing the way for more Asian adoptees, not for their advice or opinions on whether transracial adoption should continue. Even with longitudinal studies, qualitative studies, and extensive research becoming available about Asian adoptees' identity formation, a legal solution to the issue remains elusive. Unlike a law banning conversion therapy, a legal intervention for Asian adoptees does not present itself as easily. To better understand why formulating a legal solution has proven difficult, it is necessary to provide context for Asian transracial adoption in the United States, including the relationship Asian adoptees have with the Asian American community, and how white adoptive parents' role has evolved because of greater awareness about adoptees' experiences. This context is provided throughout the next section as various legal options are examined.

II. LEGAL SOLUTIONS FOR DELIVERING RACIAL IDENTITY

This section analyzes the legal tools available under the current framework of laws that govern adoption and privacy concerns that intact families have in raising their children. The three major possibilities I consider are increasing oversight in private international adoptions, creating a preference system based on race, or improving and then mandating counseling for transracially adoptive families. I argue that existing legal tools could be better imagined and deployed to resolve the issue of racial identity development for transracial adoptees, but only if the problem is understood. To affect change requires acknowledging the nature of the harm that results from a devaluation of racial identity and balancing that recognition with the interests of parents in family privacy norms. The current state of the law in regards to creating a framework for handling racial identity development may explain adoptive families' reliance on social remedies like support networks and online communities. Ultimately, a combination of social and legal elements needs to be employed to address the problem in a way that is sensitive to those with the greatest need.

The legal tools available include greater state intervention in international adoption, which could put an end to international adoption or severely limit access to international adoptee children. Because international adoption has been intertwined since its inception with charitable, humanitarian overtones, it is difficult to imagine that white prospective adoptive families would rather deliver financial resources to help other people raise their own children when they hope and expect to receive a child in exchange for financial resources. The desire *for* a child and the desire to *help* a child are inextricably combined.¹¹⁰ Were this not the

about_us/statistics.php (presenting interactive graph showing that between the years 2007 and 2011, 4,682 children from South Korea were placed for adoption with American parents).

110. DOROW, *supra* note 1, at 17 ("Transnationally adopted children are not bought and sold, but neither are they given and received freely and altruistically; the people and institutions around them enter into social relationships of exchange, meaning, and value that are both caring and

case, millions of dollars and significant political resources would be devoted to making parenting possible for economically vulnerable women and men in other countries.¹¹¹ In other words, prospective adoptive parents and the adoption industry would rather use resources to continue adoption instead of devoting resources to birth parents so that they could raise their own children.

Another possible solution is utilizing a statutory preference scheme for Asian adoptees in the spirit of the Indian Child Welfare Act (ICWA).¹¹² A preference scheme would acknowledge that a racial group may have an interest in being involved in a transracial child's adoption. Allowing racial groups to make a claim on a child recognizes the value of the child to the continuation of the racial group. In other words, the well-being of the child is directly tied to the well-being of the group.¹¹³ Assuming such a scheme could be created, the various contingencies required to make a scheme possible are many and significant, not the least of which is there are no biological or formal ties between Asian American communities and Asian transnational adoptees. The myth of Asian children's malleable race¹¹⁴ would have to be challenged. Asian Americans would have to express desire for the children and be willing to exert resources and risk political ill will to claim children based on racial group status and not biological or legal ties. The extreme financial and cultural diversity within the larger group would also have to be taken into account. Within cultural groups, there may be lingering bias and stigma for biological ties or condemnation against the birth parents that voluntarily or involuntarily made children available for adoption. Not all Asian Americans have income levels that equal general American income levels.¹¹⁵

consumptive."); KIM, *supra* note 59, at 11 ("[T]he child in transnational adoption is constructed as an object of desire and exchange.").

111. Twila L. Perry, *Transracial and International Adoption: Mother, Hierarchy, Race, and Feminist Legal Theory*, 10 YALE L.J. & FEMINISM 101, 154–55 (1998) (examining transfer of wealth rather than exchange of children between wealthy nations and developing countries where economically vulnerable parents could be supported in raising their children themselves).

112. U.S. Dep't of Health and Human Servs., *Indian Child Welfare Act (ICWA)*, CHILD W. INFO. GATEWAY, <http://www.childwelfare.gov/systemwide/courts/icwa.cfm> (last visited Nov. 28, 2012) ("[ICWA] governs the removal and out-of-home placement of American Indian Children . . . ICWA established standards for the placement of Indian children in foster and adoptive homes and enabled Tribes and families to be involved in child welfare cases.").

113. See generally Addie Rolnick, *The Promise of Mancari: Indian Political Rights as Racial Remedy*, 86 N.Y.U. L. REV. 958, 1042–43 (2011) [hereinafter Rolnick, *Promise of Mancari*] (discussing ICWA and explaining that it "remains unique in its explicit linking of individual and group interests and rights."); Addie Rolnick, *Race and Group Rights: Lessons from Federal Indian Law* (Feb. 29, 2012) (unpublished manuscript) (on file with author) (exploring group right to make racial claims to children based on principles set out in ICWA).

114. KIM, *supra* note 59, at 27 ("[T]he adoption of Asian babies has been construed as a safe choice for financially able Americans to adopt more 'flexibly' racialized children who not only are more easily assimilated but whose birth parents are less likely to make claims on their children.").

115. PEW RESEARCH CENTER, *THE RISE OF ASIAN AMERICANS* 7 (2013), available at <http://www.pewsocialtrends.org/files/2013/04/Asian-Americans-new-full-report-04-2013.pdf> ("On the other side of the socio-economic ledger, Americans with Korean, Vietnamese, Chinese and 'other

Newer immigrant groups and those with fewer educational attainments live well below the poverty line.¹¹⁶ These groups might perceive adoptees as lucky immigrants who have the opportunity to assimilate in white culture and receive resources¹¹⁷ without acknowledging the cost to the adoptee because of the structural pressure they feel to assimilate to white American culture.

Lastly, I consider mandatory counseling for adoptive families. In order to be effective for adoptees, this requirement must be something more significant than the few hours of unregulated programming that is currently in place when families adopt through a private agency.¹¹⁸ Superficial cultural-performance-based counseling is more detrimental than beneficial. The type of counseling that should be implemented needs to include discussions that employ in-depth, sustained treatments of racial identity and racism. Programming should also include building relationships with positive race role models, rather than focusing just on cultural celebration. In crafting policy for this type of intervention, therapeutic models that address transracial adoptee identity development provide valuable insight.

A. The Hague Adoption Convention

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) was approved in 1993, signed by the United States in 1994, and went into effect in 2008. The drafters of the Convention created ethical adoption practices “to protect the best interests of children and prevent the abduction, sale, and trafficking of children.”¹¹⁹ Parties to the Hague Adoption Convention are referred to as

U.S. Asian’ origins have higher shares in poverty than does the U.S. general public, while those with Indian, Japanese and Filipino origins have lower shares.” (citation omitted)); *see also* Julianne Hing, *Asian Americans Respond to Pew: We’re Not Your Model Minority*, COLORLINES.COM, http://colorlines.com/archives/2012/06/pew_asian_american_study.html (last visited Nov. 28, 2012) (“Cambodian and Laotian Americans report poverty rates as high as, and higher than, the poverty rate of African Americans, according to the 2010 census. Even among those that Pew included in its study, like Chinese and Vietnamese Americans, these groups report a below average attainment of high school diplomas.”).

116. PEW RESEARCH CENTER, *supra* note 115, at 10, 29.

117. DOROW, *supra* note 1, at 210–11 (describing the inherent privilege white adoptive parents have in moving to the front of the immigration line with their Chinese children and how those children are not conceptualized as immigrants in the same way that Chinese children with Chinese parents are viewed as immigrants).

118. Di Zhang, *Intercountry Adoption: Clashing Colors of a Family Portrait*, 15 ASIAN PAC. AM. L.J. 160, 166–67 (2009) (discussing the “notably broad and nebulous” requirements for postadoption counseling that leaves adoption agencies great deal of discretion in designing and implementing post-adoption counseling programs).

119. U.S. Dep’t of Health and Human Servs., *Intercountry Adoption from Hague Convention and Non-Hague Convention Countries*, CHILD W. INFO. GATEWAY 1–2 (2009), <http://www.childwelfare.gov/pubs/factsheets/hague.pdf> [hereinafter *Intercountry Adoption*]. Although the grassroots group, Parents for Ethical Adoption Reform (PEAR) did not organize until 2007, it is the parents who experienced adoption dissolutions and failures who drove the reform. PEAR’s website details their founding and mission. PEAR, <http://www.pear-reform.org> (last visited September 28, 2013).

“Convention countries,” and nonparty countries are “non-Convention countries.” Prospective adoptive parents must comply with the Hague Adoption Convention if they intend to adopt from a Convention country.¹²⁰ A different set of rules applies for the non-Convention countries. American prospective adoptive families can adopt from non-Convention countries.¹²¹

The Hague Adoption Convention acknowledges that a child should be raised in his or her family and home country.¹²² The child’s birth country has an obligation to make it possible for the child to remain in his or her family.¹²³ However, if a suitable permanent family cannot be found for the child, then the child’s home country may make the child available for adoption with safeguards in place to “ensure that intercountry adoptions take place in the best interests of the child and with respect to his or her fundamental rights as recognised in international law” and to prevent the “abduction, the sale of, or traffic in children.”¹²⁴

The protections for adoptive parents include approval or accreditation of the adoption agency, transparency about that agency’s fees and policies, and time for prospective parents to review the child’s medical records prepared by the Convention country.¹²⁵ Protections for children include a stronger state obligation to ensure that children are placed domestically first, if possible.¹²⁶ They also include an establishment of adoptability, including counseling to obtain consent and to inform a child’s family or the guardians about whether adoption will result in the termination of the legal relationship to the child.¹²⁷ Another major protection is ensuring that birth parents’ consent for adoption has not been given as a result of coercion or payment.¹²⁸ The protection that seems to respond to

120. *Intercountry Adoption*, *supra* note 119, at 1–2.

121. *Id.* at 3 (listing Ethiopia, Kazakhstan, Liberia, Russia, South Korea, Ukraine, and Vietnam as non-Hague Convention countries in 2007).

122. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, S. TREATY DOC. 105-51 (1998), 1870 U.N.T.S. 167, <http://www.hcch.net/upload/conventions/txt33en.pdf> [hereinafter Hague Convention] (“Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding, Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin.”).

123. *Id.*

124. *Id.* at art. 1(a)–(b); *see also Understanding the Hague Convention*, INTERCOUNTRY ADOPTION, http://adoption.state.gov/hague_convention/overview.php (last visited Jan. 13, 2013).

125. *Hague vs Non-Hague Adoption Process*, INTERCOUNTRY ADOPTION, http://adoption.state.gov/hague_convention/hague_vs_nonhague.php (last visited Jan. 13, 2013).

126. Hague Convention, *supra* note 122, at art. 1(a)–(b).

127. *Hague vs Non-Hague Adoption Process*, *supra* note 125.

128. Hague Convention, *supra* note 122, at art. 4(c)(3).

adult adoptee advocacy to have access to their records is the retention of the child's records for seventy-five years.¹²⁹

More oversight in private international adoptions with the hope of challenging the systemic inequalities that support white people with greater monetary resources to remove children from their birth countries is problematic. Supporters of the system frame the exchange as motivated by compassion for the children who would otherwise live in poverty or degradation, by social justice to remove children devalued because of their gender,¹³⁰ or by a desire to expand their own families.¹³¹ Opponents frame the exchange of children as a colonizing, antifeminist system that necessarily privileges white, Western motherhood over women of color and their right to motherhood.¹³² Rather than providing resources to women of color living in poverty or suffering under regimes that do not allow them to keep their children, adoptive parents support the market demands that continue the removal of children of color; thus, they support oppressive systems and then justify their actions by compassionately removing the child from the child's birth family and country.¹³³

Another argument for greater compliance to the Hague Adoption Convention on the part of the United States focuses on the unethical practices of trafficking and coercion of birth mothers and fathers.¹³⁴ Rather than making a race- or national identity-based argument for tighter restrictions that benefit international adoptees, this argument focuses on the rights of adoptive parents

129. MCGINNIS ET AL., *supra* note 8, at 7 (recommending that adoptees have more access to information about their origins); *Hague vs Non-Hague Adoption Process*, *supra* note 125.

130. DeLeith Duke Gossett, *If Charity Begins at Home, Why Do We Go Searching Abroad? A Call to Sunset the Portion of the Federal Adoption Tax Credit that Subsidizes International Adoptions* 39 (Sept. 19, 2012) (unpublished manuscript) (on file with the *Lewis & Clark L. Rev.*) (describing arguments proponents of transnational adoption use as a “cosmopolitan view of social justice, seeing the global needs of children”).

131. DOROW, *supra* note 1, at 36–37 (noting that narratives of motivation behind adoption are often desire for family intertwined with humanitarianism).

132. See generally Perry, *supra* note 111 (providing comparative analysis of black and white mothering within context of relinquishing children and transracial adoption).

133. KIM, *supra* note 59, at 27 (“Critics of international adoption view transnational adoption as a flawed system that encourages the exploiting of third world women’s labor in lieu of reforming the structural inequalities that force women to give up their children [T]he children who benefit from international adoption represent but a tiny fraction of the millions of needy children around the world who struggle for basic survival.” (citations omitted)); see also Gossett, *supra* note 130, at 25 (observing considerable profit enjoyed by child-sending adoption agencies in other countries); Diane Clehane, *The Chinese Adoption Effect*, VANITY FAIR (Aug. 18, 2008), <http://www.vanityfair.com/culture/features/2008/08/adoption200808> (utilizing the first person account of a white adoptive mother to address ambiguity and conflicting feelings of happiness and sorrow due to the imagined situation that prompted the birth mother to relinquish the child for adoption).

134. See Elizabeth Long, *Where Are They Coming From, Where Are They Going: Demanding Accountability in International Adoption*, 18 CARDOZO J.L. & GENDER 827, 832 (2012).

and birth parents to have stability¹³⁵ during the adoption process, to prevent children from being taken from their parents by coercive methods,¹³⁶ and to create more transparency for both the sending and receiving countries.¹³⁷ The impact on the child's identity once that child is transracially adopted is obscured, leaving the focus solely on speculations that the child will have greater physical safety and wealth in America.¹³⁸

The challenge with this legal solution lies in the underlying premise that racial identity must be valued more than physical needs and safety, something that society is reluctant to accept. One of the main arguments for transracial adoption is based on the history of transnational adoption as a form of humanitarian aid.¹³⁹ The reluctance to accept race as a barrier to adoption by white prospective adoptive parents is reflected in the passage of the Multiethnic Placement Act and Interethnic Placement Act (MEPA-IEP). MEPA-IEP prohibited the use of race as a dispositive factor in placing foster children in families for adoption.¹⁴⁰ Granted, MEPA-IEP applied only to domestic foster and adoption placement, but the resistance to race-based decisions infiltrated the thinking about adoption more generally. Until MEPA-IEP passed, social workers actively attempted to match children to prospective adoptive parents by religion and race.¹⁴¹ Once white infants were not as readily available in the domestic system and African American and Native American communities resisted transracial placements, white prospective parents fled to the international market for children because of racial preference.¹⁴² In this sense, domestic adoption laws and international adoption policy systems worked together to protect white adoptive race-matching preferences. The intertwined narratives of humanitarian aid¹⁴³ and the drive to

135. *See id.* at 843–44 (noting the emotional investment that adoptive parents place in their prospective children to such an extent that it allows them to overlook even existing birth parents' rights to the child simply because adoptive parents can provide a "best possible chance at life").

136. *See id.* at 844 (recounting a news story that created fear in an adoptive community when recently adopted Chinese girls were "stolen" from their birth parents).

137. *See id.* at 845–46 (noting how during the push for compliance with the Hague Adoption Convention, corruption and criminal activity in adoption agencies for sending and receiving countries were cleaned up).

138. *See id.* at 851–52 (examining how criticism of a more stringent application of the Hague Adoption Convention centers on fears that children in other countries will suffer privation because some countries rely on the United States to alleviate costs of orphans and impoverished children).

139. DOROW, *supra* note 1, at 27; KIM, *supra* note 59, at 43–81.

140. 42 U.S.C. § 1996(b) (2006).

141. ELLEN HERMAN, KINSHIP BY DESIGN 122–23 (2008); WEISBERG & APPLETON, *supra* note 39, at 790 ("[Social workers] asserted expertise in 'matching' children with new families so that adoption would imitate nature.").

142. KIM, *supra* note 59, at 27; Gossett, *supra* note 130, at 12–13 (citing a nearly 200% increase in international adoptions after NABSW's statement against transracial adoption).

143. KIM, *supra* note 59, at 43–81 (detailing the historical origins of Korean adoption rooted in humanitarian narratives).

continue exporting¹⁴⁴ and importing racially malleable children¹⁴⁵ provide little incentive to critically approach the continuation of Asian transracial adoption.¹⁴⁶ Part of the humanitarian¹⁴⁷ impulse is based on the narrative that Asian girls are devalued, mistreated, impoverished, and perceived as potential prostitutes.¹⁴⁸ In comparison to this parade of terrors, a child's racial identity development pales in significance. Even if the underlying message is that white parents are better at valuing and parenting Asian children than Asian birth parents (and thus deserve to have them), the preferred type of care is normally conceptualized in physical comforts and not racial identity.

B. Racial Preference

Creating a preference for a racial group much like the IWCA would require a major shift in the way that race is valued and conceptualized. Adoption of Asian children to the United States began in the 1950s.¹⁴⁹ Although adoption was an outgrowth of humanitarian efforts after the Korean War, adoption of children from Korea to the United States continued to grow in popularity over the next several decades despite strong economic growth and development in South Korea.¹⁵⁰ The abundance of adoptable children began as a result of poverty, cultural stigma against biracial children, children born out of wedlock, and children born to widowed women.¹⁵¹ Another reality that factored into the production of adoptable children was Korea's drive toward economic prosperity.¹⁵²

Domestically, single mothers in the 1970s refused to relinquish children in

144. Gossett, *supra* note 130, at 24–25 (noting the amount of money generated by developing countries that provide children to the international adoption market).

145. *Id.* at 27.

146. *Id.* at 2–3; *see also id.* at 45 (noting the paradox of a highly developed country with low birth rates placing children for adoption while providing subsistence-level aid to single mothers, incentivizing more placements for transnational adoption); *id.* at 3 (offering a critique of the narrative of a highly developed country displacing its social welfare costs into transnational adoption market being less popular than the narrative of families made whole through transnational adoption).

147. Nelson, *supra* note 45, at 169 (“Adoptive parents . . . are encouraged to see themselves as heroes, the saviors of the unfortunate, and the sharers of their relatively substantial wealth. Through their superior class and their (usually) married status, they are assumed to have more resources and abilities to raise children than the unfortunate birth mothers.”).

148. KIM, *supra* note 59, at 255 (“[F]emale adoptees frequently report having heard cautionary tales from parents and agency workers about how, if they had stayed in Korea, they would have been prostitutes and effectively reduced to a dehumanized and commodified body.”).

149. *Id.* at 43–57.

150. *Id.* at 31–33.

151. *Id.* at 24–25, 29.

152. *Id.* at 5 (“By the 1970s, largely due to the success of the Korean model, transnational adoption became an institutionalized social welfare practice in many nations and a naturalized ‘choice’ for individuals in the Euro-American West.”). Rather than fund social welfare programs, children were processed for adoption. Media coverage of Korean adoptions cast aspersions on the multimillion dollar profit derived from transnational adoptions. *Id.* at 32–33.

record numbers, dramatically reducing the number of children available for adoption.¹⁵³ Prior to 1973, nineteen percent of unmarried mothers who relinquished babies were white compared to less than two percent of black women.¹⁵⁴ After the significant drop in adoptable white infants, adoptive parents considered transracial adoption. During the civil rights movement in the 1960s, racial groups that had historically suffered family disruption fought transracial adoption. Because African American and Native American groups had biological and legal ties to their children, they were able to express desire for their own children to remain in their homes.

In 1972, the National Association of Black Social Workers (NABSW) critiqued transracial adoption as “cultural genocide.”¹⁵⁵ This was a countermove against the attack on unwed black mothers and an attempt to defend a distinct African American cultural identity. During the civil rights movement, black children were removed from their unwed mothers in record numbers.¹⁵⁶ NABSW argued against transracial adoption based on the belief that African American children needed to have racial identity transmitted to them by the African American community. More importantly, the children at stake were children who belonged in the African American community; families and not just community members tied by race were engaged in the struggle to claim children.

A few years later in 1978, the ICWA was passed, returning sovereignty over Native American children to tribes.¹⁵⁷ ICWA has an overarching principle of reparation: to return children to their tribes. After the catastrophic removal of Native children from their tribes, ICWA was enacted as a legal intervention so that tribes have the power to act for the children and the group. Despite the statutorily expressed interest in tribal identity for Native American families, the negative reaction in the media when ICWA measures are in conflict with nontribal adoptive parents’ interests provide evidence that protecting racial and/or tribal¹⁵⁸ identity is not widely popular or accepted as a national interest. The coverage of the recent case of “Baby Veronica” reveals the popular perception about tribal claims for sovereignty.¹⁵⁹ Veronica, a toddler, was returned to her biological

153. LAURA BRIGGS, *SOMEBODY’S CHILDREN: THE POLITICS OF TRANSRACIAL AND TRANSNATIONAL ADOPTION* 7 (2012) (noting less stigma against single mothers, and not abortion or birth control, as accounting for the drop in number of adoptable children).

154. *Id.*

155. *Id.* at 27.

156. *Id.* at 8.

157. *Id.*

158. See e.g., Rolnick, *Promise of Mancari*, *supra* note 113, at 1043 (arguing that political status and racial identity are not fully independent, despite popular interpretations that tribes have political status only).

159. See Stephanie Bainum, *Adoptive Parents ‘Shut Out’ of Veronica’s Life*, ABC NEWS (last updated July 26, 2012, 6:05 PM), <http://www.abcnews4.com/story/19125733/easier-to-lose-a-child-than-this-veronica-not-coming-home>; John Culhane, *In the ‘Baby Veronica’ Case, Shouldn’t We Ask What’s Best for the Child?*, SLATE (Aug. 28, 2012 10:00 AM), http://www.slate.com/blogs/xx_factor/

father, a member of the Cherokee tribe, after Veronica spent about two and a half years with her adoptive parents because of a failure to comply with ICWA.¹⁶⁰ Even though there are justifiable and ethical reasons for making reparations to tribes, those reasons seem to pale in comparison to the emotional investment and questions of agency on the part of the birth parents vis-à-vis the tribe. The combination of biological connections to children and the political status¹⁶¹ of Native Americans worked much like the cultural link¹⁶² that gave NABSW advocacy heft in making a claim for domestic children in the foster system.

Strong public race-based claims for African American and Native American children and the fear that these children came with biological connections to a family that might seek to assert a claim on the child at a later date drove a large number of white adoptive parents towards children that seemed free of a strong racial identity and biological ties that might disrupt the adopted family.¹⁶³ Even though the MEPA-IEP purported to operate as a barrier to race matching and incentivized white parents to return to the domestic foster and adoption market, the fear of entanglements with a child's birth family began to drive prospective adoptive parents to the international market.¹⁶⁴ The desire for finality and stability in adoption and the belief that Asian children were not valued by their birth parents continued the trend.¹⁶⁵ Another reason that Asian children were viewed as a desirable alternative to adopting children of color domestically was the belief that Asian children would assimilate in white culture with greater ease than other children of color.¹⁶⁶

2012/08/28/baby_veronica_case_the_indian_child_welfare_act_is_bad_for_adoption_.html; Marcia Zug, *Doing What's Best for the Tribe*, SLATE (Aug. 23, 2012, 6:32 AM), http://www.slate.com/articles/double_x/doublex/2012/08/baby_veronica_returns_to_her_biological_father_affirming_icwa_south_carolina_s_supreme_court_made_the_right_decision_.html (referring to news coverage of the struggle between Veronica's adoptive parents and birth father as "almost uniformly support[ive of] the Capobiancos [the adoptive parents]").

160. Glenn Smith, *S.C. Supreme Court Says Baby Veronica Must Stay with Biological Father*, POST & COURIER (last updated July 26, 2012, 12:07 PM), <http://www.postandcourier.com/article/20120726/PC16/120729414>.

161. See *Morton v. Mancari*, 417 U.S. 535, 553 n.24 (1974) (explaining that political status and not racial status provided the basis for preference).

162. Dorothy Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 232–33 (1995). Although Roberts argues that, historically, cultural preservation in Black communities was valued because of the devaluation of genetic ties, the reality is that prospective adoptive parents believe that birth family members will continue to make a claim on children. This belief is cited as a reason for shying away from adopting Black children domestically from the U.S. foster care system.

163. KIM, *supra* note 59, at 27. ("[T]he adoption of Asian babies has been construed as a safe choice for financially able Americans to adopt more 'flexibly' racialized children who not only are more easily assimilated but whose birth parents are less likely to make claims on their children.").

164. *Id.* at 27–28.

165. *Id.*

166. Zhang, *supra* note 118, at 176 ("White adoptive parents often feel less need to socialize Asian adoptees compared to Black adoptees (in the domestic transracial context), possibly due to the misperception that Asians are closely aligned with Whites racially.").

Asian adoptees are perceived as without family.¹⁶⁷ They are orphans, either in truth or through legal maneuvering, and many parents adopted children from Asia with the belief that the children were truly unwanted and unconnected so there would be no future challenges to the adoptive parents' rights. Unlike the NABSW, which made a concerted effort to oppose transracial adoption in the 1960s, there has never been any attempt by the Asian American community to make any sort of claim on Asian adoptees.¹⁶⁸ While this silence may be fueled by the gap between the "abuses of the very hierarchical transnational adoption system" not being experienced by Asian Americans but by the "least privileged communities" sending children into the system,¹⁶⁹ this may only be part of the explanation. Another piece may be that Asian American communities are less politically cohesive and more geographically dispersed than other racial groups and perhaps not aware of Asian transracial adoptees,¹⁷⁰ let alone their desire for racial identity development. Asian adoptees are not similarly situated to Native American children; there is no history of formal displacement through state intervention in Asian families. Further, the children in question have no biological or legal ties to the Asian American community. Asian adoptees enter the international adoption market as unclaimed children, bereft of international or domestic parents who can lay claim to them. There is also a long history of anti-Asian immigration laws that were aimed at preventing the growth of Asian family populations.¹⁷¹ The historical obstacles to creating Asian American families combined with Asian cultural pressures to prefer biological family formation is another set of factors that animate the distance between Asian adoptees and the Asian American community. Unlike the disruption of African American and Native American families that were already in America, the disruption of Asian families occurred before they were formed.¹⁷² Relatedly, the same malleability of Asian children's racial identity that informs their adoptability also operates to

167. KIM, *supra* note 59, at 27.

168. *Id.* at 64; Nelson, *supra* note 45, at 181 ("Unlike the African American and American Indian communities, no Asian American communities have produced any significant anti-adoption critique or policy.").

169. Nelson, *supra* note 45, at 181.

170. *Id.*

171. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1289–1300 (1993) (providing a brief summary of anti-Asian immigration and naturalization laws). For more in-depth history and analysis, see, for example, HIROSHI MOTOMURA, *AMERICANS IN WAITING* 16–37 (2006); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE* 121–123 (1998) (noting that the few Chinese women who were allowed to immigrate during the 1800s were largely prostitutes, making it difficult for the high number of Chinese men to start families).

172. DOROW, *supra* note 1, at 42–43. Adoptive parents create narratives about their "preexisting or growing interest" in China. *Id.* "The China Center of Adoption Affairs has long asked prospective foreign adopters to indicate in writing that they will teach their children about Chinese culture." *Id.*

undermine the formation of a racial group identity and aligns with the assimilation efforts of Asian Americans.

C. Mandated Counseling

Mandated counseling is a step further than the short counseling programs currently offered to parents who adopt domestically through foster care or private international programs. The programs offered in China function as part of an elaborate narrative on the part of the Chinese government and white adoptive parents.¹⁷³ When white prospective adoptive parents are asked why they want to adopt a girl from China, they are instructed to make some response about their love of Chinese culture.¹⁷⁴ To further this story, when prospective adopters visit China to pick up their children, they are taken on short tours in China and instructed about the history and culture from which they will remove the children.¹⁷⁵ There is no obligation, promise, or expectation that internationally adopting parents will continue teaching Chinese children about Chinese culture, history, or language once they have returned home.

Although private solutions like pre-adoption counseling and post-adoption services have been instituted, they are insufficient to meet the needs of transracial adoptees.¹⁷⁶ There are programs such as adoptive family support groups, magazines, online stores that sell cultural items targeting transracially adoptive parents, and culture camps. However, these resources alone are insufficient for transmitting a racial identity that seems authentic because the focus is usually on cultural performances rather than developing a racial identity, which includes building a strong, positive claim to selfhood as a person of color and strategies for handling racism.¹⁷⁷

Adult adoptees critique superficial cultural sampling as multicultural consumerism by white adoptive parents. They see progress narratives as a disguise for defensiveness about adoptive parents' racial and economic privilege rather than an effort to address the structural inequities that allow transracial adoption and the reality that transracial adoptees will experience life as racialized minorities.¹⁷⁸ Experts note the difference between beneficial and detrimental cultural experiences: superficial cultural experiences are linked to lower levels of well-being, whereas deeper investigation of birth culture and heritage leads to

173. *Id.* at 92–152.

174. *Id.* at 43.

175. *Id.* at 113–15.

176. MCGINNIS ET AL., *supra* note 8, at 8 (“[R]espondents valued cultural celebrations and other opportunities to learn about their origins, but such singular events appear insufficient. Instead, the research points to a need to move beyond strategies that promote cultural socialization to experiences that promote racial and cultural identification and comfort.”).

177. Song, *supra* note 22, at 65–67.

178. KIM, *supra* note 59, at 117.

greater psychological well-being.¹⁷⁹ Adoptive parents tend to prefer superficial cultural exploration.¹⁸⁰ It is impossible to determine conclusively if that tendency is motivated by the belief that America is colorblind, nonwhite racial identity consists only of cultural performances, or supporting nonwhite racial identity compromises parents' privacy rights to raise a child as they see fit. It may be that some white adoptive parents are unprepared to handle racism because they have little or no experience as a racialized people.¹⁸¹

Based on the evidence available from years of studying adoptees, therapeutic intervention of some sort has positive effects. Ten hours of preliminary counseling¹⁸² before adopting is an implicit acknowledgment that the assimilation model is flawed. This is a positive step in helping adoptive families address race. However, rather than providing ongoing counseling about racial identity and racism, a limited amount of preliminary counseling is insufficient to address the complexity of developing a positive racial identity. Since it is during teenage and young adult years that adoptees tend to articulate confusion about identity and the desire to develop their own, it is particularly crucial that there are resources in place before this time period. Scholars and therapists recommend that adoptive families commit to making racial identity development resources available to transracial adoptees. However, if adoptive parents were required to engage in counseling as part of adopting, it is likely to be problematic.

A law of this type requires state intervention in intact families because of the parents' decision to adopt transracially. Mandated counseling runs counter to the privacy concerns that intact families have about raising children in the way that parents see fit.¹⁸³ Coupled with the longstanding legal tradition of protecting parental rights¹⁸⁴ is the belief that adopted children should be treated just like biological children. This is a good principle because there are policy reasons for not differentiating among children not only in how they receive care¹⁸⁵ but also

179. *Id.* (citing Marianne Cederblad et al., *Mental Health in International Adoptees as Teenagers and Young Adults: An Epidemiological Study*, 40 J. CHILD PSYCHOL. & PSYCHIATRY & ALLIED DISCIPLINES 1239, 1239–48 (1990); R.M. Lee & H.D. Grotevant et al., *Cultural Socialization in Families with Internationally Adopted Children*, 20 J. FAM. PSYCHOL. 571, 571–72 (2006)).

180. Song & Lee, *supra* note 12.

181. Zhang, *supra* note 118, at 170 (positing that white adoptive parents with little experience of racial bias and discrimination may not be in a position to sympathize or provide their transracially adopted children with the skill set necessary to withstand racial discrimination and maintain a positive racial identity).

182. *Id.* at 166.

183. JOSEPH GOLDSTEIN ET AL., *BEFORE THE BEST INTERESTS OF THE CHILD* 3–14 (1979).

184. *See, e.g.*, *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925) (standing for the principle that parents have the right to raise their children as they see fit); *Meyer v. Nebraska*, 262 U.S. 390, 398–402 (1923) (holding that parents have the right to employ teachers to teach their children foreign languages).

185. WEISBERG & APPLETON, *supra* note 39, at 789–92 (tracking the historical development of adoption as a social welfare mechanism to the best interest standard with laws to protect the legal

for inheritance¹⁸⁶ and support laws.¹⁸⁷ There is added nuance when considering cultural programming which tends to imagine that culture and cultural practices are static or authentic, as though those factors will determine the efficacy of the programming.

Compare, though, how family privacy concerns are articulated when LGBT youth and conversion therapy are at issue. Instead of authenticity¹⁸⁸ concerns related to outcomes, there is concern about the medical validity of approaches to sexual orientation and gender identity. Even though superficial cultural programming for transracial adoptees may not deliver the positive racial identity outcomes promised, it is not likely that a bill prohibiting culture camps and similar programming for transracial adoptees could be enacted. Conversion therapy that is designed to change sexual orientation is believed to be different from cultural programming that is designed to create positive racial identity. Although the harms of conversion therapy and culture camps appear to be substantively different, this perceived difference generally tells more about the larger narratives of race and orientation than it does about the concern over infringing on parents' rights.

Postracial colorblindness tends to support the belief that racial assimilation and malleability is desirable, and that racial bias and discrimination are largely imagined or reported by overly sensitive people. Sexual orientation and gender identity are now seen by many as inherent traits that should not be changed.¹⁸⁹ Parents who support their children in finding LGBT role models and related resources help them develop identity with less chance of family disruption than if they reject their children.¹⁹⁰ Encouraging parents of LGBT youth to use

relationship between adoptive parents and children); Stephen B. Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443, 465 (1971–1972).

186. See Emilio S. Binavince, *Adoption and the Law of Descent and Distribution: A Comparative Study and a Model Proposal for Model Legislation*, 51 CORNELL L. Q. 152, 158–62 (1965).

187. *Id.* at 858 (citing Associated Press, *Tennessee: Ex-Adoptive Mother Must Pay Support*, N.Y. TIMES, July 14, 2012, at A13) (discussing the obligation of financial support that adoptive parents shoulder, even after a failed or disrupted adoption).

188. One of the themes that emerged in response to queries about culture-specific activities designed to raise racial and cultural awareness was that of authenticity and distance from the experience. One subject recalls:

I remember going to like Holt picnics, and I remember trying *kimchi* once, and I hated it. And I didn't like going to the picnics, because I didn't know these kids. It was weird; it was [a] once a year thing. And I remember, there was this annual camping trip or something, and we did that until I was in 1st or 2nd grade. But I think my parents caught onto the fact that I was not interested in attending these functions. . . . I don't know how authentic it is when White people are talking about Korea.

Kim, *supra* note 24, at 83.

189. *APA Resolution*, *supra* note 14.

190. Susan Saltzburg, *Learning that an Adolescent Child Is Gay or Lesbian: The Parent Experience*, 49 SOC. WORK 109 (2004) (describing the importance of role models and mentors as a way to smooth child to parent disclosure of a child's sexual orientation and increase the likelihood of parental adaptation to the child's identity); Ryan, *supra* note 35, at 8 (positing that rejecting LGBT youth and preventing them from seeking mentors and role models is "just as harmful as physically beating a gay or transgender child").

extrafamilial resources to develop identity is not just to help identity development for its own sake, but instead to help children avoid negative health outcomes. Like discussions about white parents and transracial adoptees, there is concern about infringement on parents' rights when counseling, either mandated or prohibited, is at issue. In contrast, concern about a child's inherent racial identity does not have the same meaning as sexual identity.

Critics might argue that mandated counseling creates an unacceptable disincentive for adopting across race and culture. This argument partially relies on the supposition that adoptive parents need some type of incentive to adopt across race and culture. Considering the large sums of money expended for international adoption¹⁹¹ and the extent to which many adoptive families actively seek support groups and networks,¹⁹² this argument does not reflect the reality that there is an ongoing demand for children available for adoption or the level of care that adoptive parents have for their children.

III. LGBT AND APA COMMUNITIES

Research suggests there is a gap in understanding and racial identity resource delivery between adoptees and the Asian American community.¹⁹³ The gap impacts more than a small portion of the community, but a sizeable portion of all Asian Americans. Approximately six to ten percent of all Korean Americans¹⁹⁴ (there are about 1.7 million Korean Americans)¹⁹⁵ are transracial adoptees. Korea was criticized in the 1980s for the high number of children it exported for adoption. International criticism inspired reform such as policies to encourage Korean families to adopt domestically.¹⁹⁶ With greater restrictions and thus fewer adoptive children available from Korea, adoptive parents turned to China for adoption. Currently, China provides the bulk of Asian adoptees, mainly girls,¹⁹⁷ to

191. Gossett, *supra* note 130, at 24–25 (illustrating the large sums of money spent by Americans on international adoptions); *International Adoption Costs*, ADOPTION.COM, <http://international.adoption.com/foreign/international-adoption-costs.html> (last visited Jan. 13, 2013) (providing examples of international adoption costs, but acknowledging that the numbers are only “sample numbers” with the warning that there may be other fees, such as agency, orphanage, and legal fees).

192. As previously noted, culture camps are private, so they are funded by adoptive parents who pay camp fees and donations, and volunteer their time. Camps like the Heritage Camps in Colorado have enjoyed a robust existence since 1995 with a small paid staff and extensive volunteer resources. *History*, HERITAGE CAMPS FOR ADOPTIVE FAMILIES, <http://www.heritagecamps.org/who-we-are/history.html> (last visited Jan. 13, 2013).

193. Nelson, *supra* note 45, at 11.

194. HOEFFEL ET AL., *supra* note 109.

195. *Id.*

196. KIM, *supra* note 59, at 2 (citing the censure South Korea received from North Korea about the number of children sent abroad for adoption); Onishi, *supra* note 109 (reporting on the efforts to incentivize domestic adoptions in Korea and the decreasing international adoption placements).

197. *International Adoption Facts*, EVAN. B. DONALDSON ADOPTION INSTITUTE, <http://www>

white families in America. The number of Chinese adoptees is expected to soon outstrip the number of Korean adoptees.¹⁹⁸ With the continuing influx of Asian adoptees, the relationship between Asian adoptees and the APA community will not diminish in importance.

There are geographic and social obstacles that prevent Asian adoptees from identifying as part of the APA community. White adoptive parents tend to remain in predominantly white communities.¹⁹⁹ Unless the transracial family moves to an urban center with a large number of Asian Americans, most adoptees live until their late teen years without significant contact with other Asian Americans.²⁰⁰ Adoptees report feeling that they are fraudulent Asians because they cannot speak an Asian language nor have what they believe to be similar cultural experiences to other Asian Americans.²⁰¹

The Asian American community has never made a public, concerted effort to claim Asian adoptees as members of a racial community without whom the continued production of a racial identity will be compromised. There are historical and social factors that account for this silence, but the silence should be broken because there is a strong possibility that Asian transracial adoptees may not suffer as much depression, family alienation, suicide, eating disorders, and poor adjustment if they experience positive racial identity development.²⁰² Asian adoptees' desire for racial identity development may come to serve as a point around which the Asian American community could recognize the challenges that adoptees face, giving the community the impetus to craft its identity around answering part of its community's needs in addition to protecting itself from anti-Asian violence.

Chosen families and supportive networks are tools used by LGBT individuals to help develop and reinforce a positive LGBT identity.²⁰³ Some

.adoptioninstitute.org/FactOverview/international.html (last visited Nov. 29, 2012) (reporting that for the year 2001, most Chinese children adopted were girls, and children from China were more than one-quarter of all international adoptions).

198. Onishi, *supra* note 109 (quoting Kim Dong-won, from the Ministry of Health in South Korea, in an interview: "South Korean is the world's 12th largest economy and is now almost an advanced country, so we would like to rid ourselves of the international stigma or disgrace of being a baby-exporting country"); *International Adoption Facts*, *supra* note 197 (noting that in 1990, thirty-seven percent of international adoptions were Korean; by 2001, twenty-five percent were from China).

199. Kreider & Raleigh, *supra* note 71.

200. MCGINNIS ET AL., *supra* note 8, at 45; Nelson, *supra* note 45, at 166 (citing several studies that "identify a trend for transracial adoption families to live in predominantly White neighborhoods"); *id.* at 216–22 (recounting transracial adoptees' experiences with other Asian Americans and people of color in their late teens and early college years).

201. Nelson, *supra* note 45, at 157.

202. MCGINNIS ET AL., *supra* note 8, at 45 ("Our findings indicate that a strong racial/ethnic identity . . . is an important predictor of comfort with that identity, which in turn is intricately interwoven with comfort with adoption."); *id.* at 49 ("[P]erceived discrimination is linked with greater psychological distress, lower self-esteem, and more discomfort with one's race/ethnicity.").

203. Oswald, *supra* note 1, at 378.

heterosexual families who accept their LGBT children participate in groups that build family-like support networks, such as PFLAG (Parents and Friends of Lesbians and Gays).²⁰⁴ Unlike the concerns about authenticity that plague culture camps and cultural programming for transracial adoptees, there is little concern about the authenticity of groups and networks for LGBT youth and their families.

National LGBT groups like the Trevor Project, PFLAG, the Human Rights Campaign, and the Family Acceptance Project have made a concerted effort to advocate for LGBT youth. These groups have no legal or biological ties to the children they seek to help. Members of national LGBT organizations are demographically diverse and have no legally enforceable right to intervene between a parent and child. Yet, sexual identity has provided a point around which a diffuse, demographically diverse group can coalesce to make a legal intervention. National LGBT groups are not making a claim that they have a right to LGBT children in lieu of the parents' rights. Rather, they advocate on behalf of LGBT youth and offer services that supplement family efforts or support if the family rejects the youth.

There are multiple explanations for the Asian American community's silence in regards to adoptees. Because of immigration laws, there simply were not as many Asians,²⁰⁵ making it difficult to have a cultural presence.²⁰⁶ Related to the obscured history of Asian immigration is the mistaken belief²⁰⁷ that the Asian American community has never had the identity-solidifying experiences of the African American community, such as coercive immigration, Jim Crow laws, and the civil rights movement. Robert Chang challenges the belief that Asian

204. *Id.* at 375–76 (“Heterosexual members of gay and lesbian family networks may also create family relationships out of friendships, especially those formed in support group settings such as Parents and Friends of Lesbians and Gays.”); Ryan, *supra* note 35, at 13 (advising parents to “[f]ind a support group for yourself to talk with other parents and family members with gay and transgender children and adolescents”).

205. TAKAKI, *supra* note 171, at 99–103 (providing a history of restrictive immigration law and social policies that prevented the development of an extensive Chinese American population in the nineteenth century); *id.* at 121–23 (noting the skewed ratio of men to women, discouraging building of families; Chinese women immigrating to America during mid-nineteenth century were predominantly prostitutes, at “a ratio of 1,685 males to every one female”).

206. Nelson, *supra* note 45, at 150–51 (considering that tests conducted in 1970s where Asian children expressed preference for white over black dolls may have been due to smaller numbers of Asian Americans with “less cultural influence” so children would not be aware that they could “be not Black *and* not White”).

207. *Id.* at 102 (noting the historical reality that “blacks, Indians, and Chinese” were classified as not white and therefore could not exercise legal rights like testifying against white people in courts of law). *But see* Sora Y. Han, *The Politics of Race in Asian American Jurisprudence*, 11 ASIAN PAC. AM. L.J. 1, 15–24 (2006). Han critiques Asian American jurisprudence that seeks to make the racial bias experienced by Asian Americans more visible by comparing their experiences of oppression to the oppression experienced by African Americans. I cite to Han’s argument to acknowledge that Asian American scholarship is not monolithic nor is it aligned along a single point in terms of critical methods for creating an Asian American jurisprudence, just as I wish to avoid reiterating the flattening of the idea of Asian American identity as a monolithic, static concept.

Americans were uninvolved with the civil rights movement in America. In fact, Asian American groups have consistently fought against inequality, but the model minority myth has obscured that history.²⁰⁸ Another possibility is that Asian Americans have a diffuse, nation-based identity, making it difficult to coalesce and identify as Asian American.²⁰⁹ A third related theory is that various national groups immigrated at different times and sought to distance themselves from each other in hopes of assimilating and not suffering bias and discrimination like their predecessors.²¹⁰ The drive for each group to assimilate with white culture and distance themselves from other Asian immigrant groups would drive Asian American communities to downplay racial identity. Downplaying identity may lead to the devaluing and obscuring of the value of racial identity.

As discussed earlier, many Asian adoptees are raised in culturally white spaces so they tend to identify with their families' racial identity. When Asian adoptees become adults, a large percentage of them begin to self-identify as Asian American, rather than white. However, even as they self-identify as Asian American, that designation is also fraught because many report experiences that highlight their inability to fit comfortably within Asian American communities because of their lack of acculturation with other Asians. There are multiple layers of identity for Asian adoptees that are difficult to reconcile causing them to experience cognitive dissonance not only because they do not physically resemble their parents, but also because they do not have the characteristics associated with their racial appearance. They are perceived as Asian based on phenotypic appearance, but adoptees have no Asian cultural capital.²¹¹ In one study,

participants found that they were not accepted as members of their birth group due to their family experience, because they lacked a common experience. For instance, Carrie learned that, due to her adoptee status, she was no longer considered Korean by the Korean people in the United States and, at the same time, was seen as a social outcast in Korea.²¹²

Another respondent was “openly criticized [by other Korean Americans]

208. Barbara Stark, *Baby Girls From China in New York: A Thrice-Told Tale*, 2003 UTAH L. REV. 1231, 1261–62 (discussing the model minority myth and the obfuscation of the racial discrimination that Asian Americans have experienced, particularly in comparison to the discrimination against African Americans).

209. Chang, *supra* note 171, at 1312–14 (detailing the struggle to identify as Asian American across class and national origin lines to coalesce around fighting anti-Asian violence and oppression).

210. *Id.* at 1289–90 (tracking Asian immigrants' efforts to distance themselves from earlier Asian immigrants as an effort to deflect violence and anti-Asian sentiment through assimilation to Western norms instead of coalescing to form a pan-Asian identity).

211. Nelson, *supra* note 45, at 157; *id.* at 208 (“[P]erhaps there is also the feeling of isolation, of being familiar with a racial group that one is not part of and being excluded culturally by the racial group one is part of. All of these thoughts and their attached emotions can make for an awkward moment, even in a wordless chance encounter with another Asian person.”).

212. Kim, *supra* note 24, at 107–08.

... for ‘not being Korean enough,’ because she did not know the language or was not versed in the cultural [process].”²¹³ Asian adoptees, even if they are considered part of the Asian American community when tabulating racial demographics, may not have any group affiliation or geographic closeness to other Asian Americans. The bewildering experience of meeting other Asian Americans for the first time in college or more urban centers is a frequent trope in Asian adoptee experiences.²¹⁴ Lastly, there are the cultural and familial ties to white communities that are an important part of Asian adoptees’ identity that is often overlooked or explained away as assimilation into American culture. Asian adoptees exemplify the concept of “honorary whiteness”²¹⁵ and their experiences simultaneously reveal the limits of colorblindness and obscure how honorary whiteness devalues Asian racial identity.

The desire voiced by Asian adoptees for a racial identity should be heard as a call to the APA community to reclaim and revalue racial identity as Asian Americans and people of color, not just as nationalistic subgroups and not as a solely political entity in competition with other immigrant and racial groups. In part, this call to action requires shuffling off the assimilation desires that feed the

213. *Id.* at 108.

214. Nelson, *supra* note 45, 214–22 (listing various accounts of Asian adoptees encountering other adoptees and Asian Americans in college and larger metropolitan settings).

215. DOROW, *supra* note 1, at 37–38 (discussing adoptive parents’ beliefs that Asian children are more desirable than African American children based on racialized history of Asian model minority myths used to discipline other racial groups); KIM, *supra* note 59, at 28 (“[M]odel-minority myths about Asian immigrants coincide with predominant views of infant Asian girls as most likely to be accepted in white homes and communities.”); Han, *supra* note 205, at 15–24 (critiquing Asian American jurisprudence, particularly that proposed by Robert Chang, that seeks to make Asian American narratives of racial bias and discrimination visible at the expense of negating black narratives of racial bias and discrimination); Nadia Y. Kim, *Critical Thoughts on Asian American Assimilation in the Whitening Literature*, 96 SOC. FORCES 561, 570–71 (2007) (“Asian and black Americans have been played off of one another, respectively, as ‘harder working than blacks’ and ‘more American than Asians’ and, at different points in time, ‘more like those blacks’ (‘Filipino brown brothers’) and ‘more like us.’ While it does matter that white America ideologically valorizes Asian ethnics above blacks in the color order, this tripartite arrangement also reveals a citizenship order in which Asian Americans experience their most profound subordination. This white-led racial system, then, has racialized Asian and black Americans vis-à-vis one another not only to ensure an internecine minority war, but to legitimize the ‘foolproof’ existence of American meritocracy. That is, if the system can racially lump and stereotype all Asian Americans as model minorities, then blacks have only themselves, not the system, to blame. This point is also crucial insofar as it shows that Asian Americans have been valorized for their success as a *racial minority* group, not as a white majority. They have also experienced the highest rates of discrimination and violence precisely for being *too model* a minority, from the Chinese gold miners to engineer Vincent Chin to the college students who systematically face racial animus. While it matters, then, that Asian Americans are non-black, what matters most is that Asian and black people in the United States are both non-white.” (citations omitted)); Nelson, *supra* note 45, at 316–17 (analogizing Asian transracial adoptees to second- and third-generation Asian Americans where cultural “whitening” occurs because of assimilation with dominant cultural norms; for adoptees, the process is accelerated and Nelson argues that the acceleration is not entirely negative, but may also confer economic and social privilege on adoptees because of their familiarity and acceptance of white cultural norms).

model minority myth. It is painful to think about mistreatment, ethnic slurs, and race-based violence, but if the community appropriated the pain and race-based mistreatment it could counter the pressure to assimilate. For the Asian adoptees that battle racism in small communities and quiet family spaces without any help from Asian Americans or the media,²¹⁶ which persists in narrowly portraying Asians as villainous,²¹⁷ sexy,²¹⁸ extremely skilled in martial arts,²¹⁹ or nerdy,²²⁰ finding a community that acknowledges the reality of racism can be a lifesaving revelation. In part, this calls for embracing a constructed identity.²²¹ Leaders in the Asian American community can take the opportunity to learn about Asian adoptees and respond as a community to their unique needs by critically addressing what it means to have a racial identity as an Asian American.

The concept of honorary whiteness cuts in much the way that the model minority myth does and also has to be eschewed in order to claim and reveal the devaluation of Asian identity that is implicit in being white-like. Claiming racial value is a bold, risky move that challenges the white standard as the measure of all racial value. If we compare attitudes about sovereignty and the right to govern one's own group to racial group identity, we can see there is great strength in turning inward to one's group and valuing its needs over the drive to be accepted by other groups. In contrast, individual racial identity is too often measured against a white standard. Income levels, educational attainments, housing, and other outcomes measured by race are typically compared to white standards.²²²

216. Kim, *supra* note 24, at 97–100 (discussing the impact one-dimensional portrayals of Asians in the media had on Asian transracial adoptees living in predominantly white communities without significant contacts with Asian Americans).

217. See, e.g., BUCK ROGERS (Universal Pictures Co. 1939) (portraying an Asian villain with the character Ming the Merciless); GOLDFINGER (Eon Productions 1964) (portraying an Asian villain with the character Oddjob); RED DAWN (Contrafilm 2012) (the North Koreans invade America); STAR TREK II: THE WRATH OF KHAN (Paramount Pictures 1982) (portraying an Asian villain with the character Khan); THE HANGOVER (Warner Bros. 2009) (portraying an Asian villain with the character Ken Jeong).

218. See, e.g., Moni Basu, 'Sexy Little Geisha?' Not So Much, Say Many Asian Americans, CNN (Sept. 26, 2012, 5:42 PM), <http://inamerica.blogs.cnn.com/2012/09/26/sexy-little-geisha-not-so-much-say-many-asian-americans> (chronicling media criticism about an advertisement using exotic, sexy Asian stereotypes to sell lingerie); CHARLIE'S ANGELS (Columbia Pictures 2000) (Lucy Liu as one of Charlie's Angels); *Nikita* (The CW television broadcast Sept. 9, 2010) (Maggie Q as a sexy assassin).

219. See, e.g., CROUCHING TIGER, HIDDEN DRAGON (EDKO Films 2000) (Michelle Yeoh as Yu Shu Lien); WENDY WU: HOMECOMING WARRIOR (Disney Channel 2006) (Brenda Song as the homecoming warrior).

220. See, e.g., GUNG HO (Paramount Pictures 1986) (Takahara Kazuhiro as a nerdy Japanese executive); *Hawaii Five-O* (CBS television broadcast Sept. 20, 2010) (Masi Oka as the nerdy Dr. Max Bergman); SIXTEEN CANDLES (Universal Pictures 1984) (Long Duk Dong as a nerdy foreign exchange student).

221. Chang, *supra* note 115, at 12, 20 (detailing how those "occupying the Asian racial category" coalesced around racial discrimination, but ultimately concluding that Asian American identity is an invention and a shared history of discrimination may not be enough to produce racial solidarity).

222. PEW RESEARCH CENTER, *supra* note 115, at 19–75.

Unlike Native American tribes, Asian Americans are not a separate sovereignty with the carved out right to govern themselves.²²³ Asian Americans are more like other racial minorities in that racial identity is something that must be created and valued in spite of pushback framed as colorblindness or generic multicultural appreciation for cultural performance. While there is no specific formula or program of thinking that can adequately encompass the existing diversity within the Asian American community, those at the center of the APA community, like politicians, thought leaders, policy makers, and media personalities, could harness the desire and energy of those on the fringes who want an Asian American racial identity. This could help shake off the idea that the APA community is hopelessly fractured and practically white. The APA community, like national LGBT advocacy groups, could focus on defining itself across one identity trait, reframing its fractured and diffuse characteristics as being everywhere and touching many people's lives.²²⁴

IV. LGBT APA FAMILIES

This Article considers white LGBT couples who adopt Asian children as a site for “looking to the bottom”²²⁵ to find solutions from those in the margins. Extending this idea to white LGBT couples that adopt Asian children is a beginning point for crafting new ways of delivering extrafamilial resources to support identity development without undermining the parent-child relationship. Without suggesting that transracial adoptees must reject their families in order to develop a racial identity or that all LGBT youth are rejected by their families, the pairing of white LGBT parents and Asian children is a model for utilizing extrafamilial racial identity development in much the same way that many families already employ an expanded, supplemented concept of family without undermining the parent-child relationship. Therapeutic models and research about

223. See Matthew L.M. Fletcher, *The Original Understanding of the Political Status of Indian Tribes*, 82 ST. JOHN'S L. REV. 153, 154–56 (2008) (explaining legal precedent behind political status). Although the right is not perfect and there is a long history of the federal government making inroads into Native sovereignty, the fact that there has been Native sovereignty supports the ability of tribes to look inward and care for their members in traditional ways that may or may not align with mainstream American methods. See Addie Rolnick, *Rewriting the End of a Sovereignty Story: Santa Clara Pueblo Members Vote to Change Patrilineal Membership Rule*, PRAWFSBLAWG (June 18, 2012, 5:59 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2012/06/rewriting-the-end-of-a-sovereignty-story-santa-clara-pueblo-members-vote-to-change-patrilineal-membe.html>.

224. Advertisements aired before the Proposition 8 election in California often relied on testimonials from LGBT families that aimed at humanizing and demonstrating that LGBT individuals were already part of the fabric of society. Karen Grigsby Bates, *Prop. 8 Reignites Calif. Same-Sex Marriage Battle*, NAT'L PUB. RADIO (Oct. 11, 2008, 12:05 AM), <http://www.npr.org/templates/story/story.php?storyId=95568740> (discussing a TV spot featuring a couple talking about their gay daughter).

225. See generally Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, *passim* (2007) (suggesting how critical scholars can improve their methodology in defining the elements of justice by “looking to the bottom,” or adopting the perspective of those who have experienced discrimination).

LGBT experiences show that LGBT identity development can also occur outside of the family, sometimes with family support and sometimes because of family rejection.²²⁶

Although the issue of racial identity formation is an experience relevant to Asian children adopted by white heterosexual and LGBT families,²²⁷ my focus on LGBT APA adoptive families is a deliberate contemplation of the point where race and orientation intersect. The pairing of white LGBT parents with Asian children is a point where white resource privilege undercut by sexual minority status²²⁸ meets white cultural transmission undercut by the reality of a phenotypic racial appearance.²²⁹ In other words, both parent and child simultaneously experience privilege and disfavor because of identity. Opponents to LGBT transracial adoption argue that crossing racial lines is already burdensome for children, so adding orientation is an unfair burden for the adopted child. On the other hand, some proponents of LGBT adoption caution against transracial adoption because of structural inequities or fear that white LGBT parents are not equipped to prepare transracially adopted children to develop racial identity.²³⁰

White LGBT parents adopt a high percentage of Asian children. Of the thousands of Asian children adopted by Americans, about 1900 are adopted into white LGBT families.²³¹ This phenomenon is, in part, the outgrowth of prohibitions against LGBT families adopting children and the interaction between white parents' preference for white babies and laws that encourage race blindness. LGBT adoption bans in the domestic foster and adoption systems drove white

226. Oswald, *supra* note 1, at 374.

227. MCGINNIS ET AL., *supra* note 8, does not provide data comparing heterosexual and LGBT adoptive parents of Asian adoptees. DOROW, *supra* note 1, at 32, includes white LGBT parents in her study respondents, offering anecdotal observations that fit within her larger project of analyzing intersecting identities.

228. Pearson, *supra* note 31, at 187–89 (noting that stereotypes of gay men as having large disposable incomes is undercut by the reality that many gay men experience gender and orientation bias when they attempt to parent).

229. Nelson, *supra* note 45, at 206–10 (noting how accounts of Korean adoptees discovering their self-identification as a white person, due to assimilation with their adopted family, is not an accurate reflection of how they are viewed as racialized subjects in society).

230. John Raible, *LGBT Parents & Transracial Adoption*, JOHN RAIBLE ONLINE, <http://johnraible.wordpress.com/lgbt-parents-transracial-adoption> (last visited Jan. 13, 2013) (expressing concern that “the issues of race in adoption may be overlooked and overshadowed in the rush to increase LGBT legitimacy and visibility” because white LGBT adoptive parents view sexual minority status as fungible with racial minority status).

231. E-mail from Gary Gates, Williams Distinguished Scholar, to Kim H. Pearson, Assistant Professor of Law, Gonzaga University Coll. Of Law (Feb. 10, 2012) (discussing data gathered from 2010 U.S. Census: “More than 21,000 same-sex couples report having an adopted child in their home . . . about 9% report having an API adopted child, so more than 1,900 couples [have an API adopted child] . . . among API adopted children living with a same-sex couple, 80% are in homes where neither partner is API and 20% are living with a couple that has at least one API partner.”).

LGBT adoptive parents to the international market where there were fewer restrictions based on parents' sexual orientation.²³²

While anti-LGBT bias in America is diminishing, which will improve LGBT families' ability to foster,²³³ and while advocacy work has begun to address social justice (e.g., the Hague Adoption Convention), the issue of racial identity for transracial adoptees could be better answered by using therapeutic models that already exist. Rather than framing LGBT APA transracial families as adding the burden of developing a positive LGBT family identity, this should be a site for crafting a legal solution for assisting adoptees in developing racial identity without undermining the family structure. Considering the development of sexual orientation identity as something that informs many LGBT adults' experiences may explain why, at least anecdotally, some white LGBT parents who adopt transracially are more likely to seek extrafamilial resources for their adoptive children and embrace more substantial racial identity development.²³⁴ During the time period when many of the white LGBT adoptive parents tracked as transracially adopting parents were growing up, there was less popular support for gay rights and little awareness of the challenges faced by LGBT youth. This likely meant that there were higher rates of family rejection and shame for LGBT youths, prompting them to leave home or delay identity development until they left home if they were not forced from home. Perhaps growing up in a climate that was less open and positive led LGBT youth to seek out racial and cultural resources for their children when they adopted transracially as adults.

CONCLUSION

Creating a legal solution that adequately balances the interests of adoptive parents, adoptees, the state, and the APA community is difficult at best, but impossible without recognizing and understanding the problem. The adoptive parents have a right to raise their children as they deem appropriate; the state is concerned about the best interests of the child; the APA community should have an interest in valuing all of its members; and, the adoptee may have an interest in developing his or her own racial identity unique from the adoptive family's identity. Although there is not yet a perfect legal solution, understanding the desire for racial identity on the part of Asian adoptees and the social and historical

232. DOROW, *supra* note 1, at 59 (describing unofficial policy that allowed Chinese agencies to place children with gay and lesbian adoptive parents); Julie Bolcer, *Gay Adoptions Triple Over Last Decade*, ADVOCATE (Oct. 21, 2011, 8:25 AM), <http://www.advocate.com/news/daily-news/2011/10/21/gay-adoptions-triple-over-last-decade> (“[S]ame-sex individuals and couples who adopted children tripled over the past decade, in part because of eased state restrictions and more foster care adoptions. . . . In the past, adoption was often an option only for wealthy gay families who could afford to adopt internationally. . . .”).

233. *But* see Lofton v. Sec’y of the Dept. of Children and Family Servs., 358 F.3d 804 (11th Cir. 2004) (upholding Florida’s ban on the adoption of children by homosexual couples).

234. DOROW, *supra* note 1, at 247.

factors that create obstacles for complete integration into the APA community will help craft a solution. Additionally, looking to nontraditional family forms, like white LGBT parents who adopt Asian children, provides a model for the types of interactions and attitudes that promise to serve as a practical, principled basis for meeting adoptees' needs. The theme of this symposium is "Reigniting Community." To reignite and reimagine the APA community requires the bold step of claiming a racial identity and delivering it to those who desire not only to be a part of it, but also to help in defining community. White LGBT parents with Asian children may not be the obvious starting point for reclaiming racial identity, but if nonmainstream families were defined as part of the APA community, the possibility of greater acceptance would not just accrue to Asian adoptees, but also to Asian LGBT individuals, Asians who do not fit the model minority stereotype, and the national LGBT community.