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Foreword

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SYMPOSIUM ON TRANSRACIAL ADOPTION

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This special section of *The Boston University Public Interest Law Journal* addresses the issue of transracial adoptions. Few topics within family law generate as much controversy as the placement of Black or other minority and mixed race children for adoption with white families. Although transracial placement could in theory apply to the placement of white children with mixed race and Black families, in practice it has not. The predominant practice of matching adoptive children with adoptive parents of the same race has come under increasing scrutiny in recent years as many older and difficult to place minority children wait in foster care for a same-race placement, and many white families wishing to adopt find themselves unable to locate a white infant to join their family. The topic is also unusually timely. A lawsuit in Texas, discussed in this section, and Congressional action on the subject have moved this debate from the academic community into the political arena.

This section adds to an already growing literature on the topic. It provides possible responses to some of the many vexing questions frequently raised over the practice of transracial adoption. What is in a child's best interest, and who is qualified to make that judgment? What is a positive racial identity? How important is a parent's race or ethnicity to the positive racial identity of a child? How important is a positive racial identity to a child's overall well-being? What is the appropriate racial identity of a child born to parents of different races? Can the concerns of an individual child be separated from the concerns of the community into which she is born, or are they necessarily interdependent? Who does the child welfare system serve: children, adults, or communities? When are racial distinctions justifiable in this culture? Should ideals give way to pragmatics when minority children are disproportionately represented among those waiting for homes? Why are there so many minority children waiting for placements, and does this reflect a weak public commitment to family preservation in minority communities? When was the first day of taking race into account in the life of a mixed race or minority child waiting for placement? Is it possible to insulate children from racial politics, or naive to try? The practice of transracial adoption presses the most basic and difficult questions over the meaning and nature of race and over the multiple purposes served by adoption.

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This special section is unusual in the world of law review symposia in that it includes a diversity of formats for addressing a common topic. Within these pages are two legal briefs from a pending case challenging race-matching practices that require us to think in concrete terms about injured parties and appropriate remedies; an essay by a political scientist who employs moral theory rather than legal analysis to the question of adult responsibility for child welfare; and an article by a law professor that begins with a narrative account of a trip to a slave-trade site in Senegal and goes on to ask that transracial adoption be understood as arising from particular historical practices. In that sense, this section reflects the significant intertwining of theoretical, legal, practical, and moral aspects of the debate over transracial adoption.

In addition to containing a diverse range of formats for expressing views on transracial adoption, this section also contains a full range of opinions as to the appropriate role for the practice of race matching in adoption. On one end of the spectrum, the Institute for Justice, in conjunction with Harvard Law Professors Elizabeth Bartholet, Randall Kennedy, and Laurence H. Tribe, has written briefs in a Texas case arguing that injecting race into the decision-making process gives rise to equal protection violations, and that adoptive placements should be made on a color-blind basis. They argue that race matching in adoption is a rare surviving instance of a widespread government practice of making impermissible racial distinctions. They will effect a revolution in current placement practices if they prevail in their suit and awareness of race is removed entirely from the process of adoption placement. At the other end of the spectrum, Professor Ruth-Arlene W. Howe argues that transracial adoption is aptly compared to the slave trade, with agencies running a business operation to meet the desires of white adults who wish to parent. She views transracial adoption as a serious threat to the African-American community, and credits the financial imperatives felt by private social service agencies in the 1960s with the rise in the practice of transracial adoption. In between, political scientist Hawley Fogg-Davis approves of transracial adoptions in some contexts, but criticizes Bartholet's colorblind liberal individual rights perspective for being insufficiently other-regarding. Fogg-Davis applies an ethic of care to the topic of transracial adoption, and criticizes both sides of the debate for failure to distinguish between advocacy and the adult trusteeship of children's welfare.

Last year, the House and Senate passed, and President Clinton signed, the Adoption Promotion and Stability Act of 1996. The Act provides that no State that receives funds from the Federal Government may deny the opportunity to become a foster or adoptive parent, nor delay or deny the placement of a child for adoption or foster care on the basis of race, color, or national origin. We can now expect to see some questions over the interpretation of "delay or deny:" does the word "deny" mean that adoptive placements are now to be colorblind? Legislative efforts to slow or prevent race matching in the past, most notably the MultiEthnic Placement Act, have failed to remove race from the process, and so it remains to be seen whether last year's legislation will do so. In the meantime the debate continues to take on new forms within the legal and the social service

community. The reader will find that *The Boston University Public Interest Law Journal* expands that debate in the pages that follow.