

Laura Briggs
Adoption and Culture Conference, 2005

Communities Resisting Interracial Adoption: The Indian Child Welfare Act and the NABSW Statement of 1972

I want to dedicate this paper to Vine Deloria, Jr., theologian, lawyer, professor, Native American activist, and a writer of moving, funny books that changed things. He passed away on Sunday,

The law and the statement I am talking about today are events that popular media, the press, and even scholars love to hate. The National Association of Black Social Workers' Statement of 1972 and the Indian Child Welfare Act of 1978 have been reviled almost universally. A recent law review article on the NABSW statement complained that the organization "has not retreated from the militant position first asserted in...1972,"ⁱ as if its members might be forgiven for a past irrational act, but ought to have come to their senses by now. Radio talk show host Laura Schlesinger referred to ICWA as a "stupid" and "outdated" law. The film *Losing Isaiah* suggests that even cute social workers like Susan Sarandon can lose children they have raised against the odds and who adore them to crackheads because of it. Anthropologists and historians are barely more reserved, referring to the statement as "strong," "strongly-worded," or a "barrier," adding that "tellingly, it persists even though twenty years of empirical studies have concluded that outcomes of transracial placement do not differ from those of adoption in general."ⁱⁱ These comments about the irrational persistence of the NABSW position actually seem rather strange, since by the time they were written, Congress had already outlawed any possible agency rules that might flow from it *twice*; the rules never had the force of law and were even in their heyday much less omnipresent than most people usually think, and, in fact, the NABSW position at least arguably HAD changed.

I am intrigued by the palpable hostility to these events, the assurance with which liberal and conservative (white) commentators dismiss the possibility that there was (or is) any good reason why African-American or Native people would advocate such measures. In this paper, I explore rather more sympathetically the context in which the statement and the law were elaborated, and argue that there actually were good or at least entirely comprehensible reasons why African-American and American Indians child welfare activists were concerned about what was happening to children on reservations and in ghettos.

In a 1994 position paper, *Preserving Families of African Ancestry*, members of the NABSW suggested that the 1972 statement had been widely misread, “Many thought that the organization's position focused exclusively on transracial adoption. Yet, this was one component of the position statement, which instead emphasized the importance of and barriers to preserving families of African ancestry.” I think this is right. The NABSW statement has been decried as a radical, nationalist slap in the face of white civil rights folk who longed for a “colorblind” society, and the plainest reading of the statement supports this view, as its basic claim is that white families are toxic to the psychological well-being of Black children. However, I want to argue against this grain, instead suggesting that the 1994 claim of the NABSW that this statement was about preserving Black families is absolutely right—that it was not, as activist lawyers like Elizabeth Bartholet have suggested, about an irrational program to compel Black children to “languish” in foster care. It was about preventing Black children from getting there in the first place, on the one hand, or if they did, it was about keeping them in their schools, neighborhoods, and extended families if at all possible. Far from being a radical departure from the civil rights movement, it was fully within this under-noted civil rights tradition of fighting for the legitimacy and integrity of Black families.

From its inception in 1968, the NABSW was an organization that fought on a variety of fronts, but mostly on family and reproductive justice issues. This located it within a long but under-noted tradition within post-War civil rights and racial justice movements in the United States. In the late 50s and early 1960s, for example, SNCC fought a proposed Mississippi law that would have made it a felony to have a child out of wedlock.ⁱⁱⁱ At the same time, Fannie Lou Hamer was bringing the issue of the involuntary sterilization of southern Black women to a national audience through the Mississippi Freedom Democratic Party,^{iv} and in the north, the National Welfare Rights Organization was organizing for respect for poor, Black mothers stereotyped by politicians and the press as lazy, promiscuous, and neglectful mothers.^v At the very first NABSW conference, speakers decried the Moynihan Report's claim that Black people were poor because boys were raised in "matriarchal" families, and hence unfitted for employment, and called for an end to the legal categorization of some children as "illegitimate."^{vi} With the NWRO, NABSW called for an end to social workers condescension toward Black mothers receiving AFDC, for increased benefits and credit in department stores, and argued against the policing of welfare recipients' sexual lives.^{vii} The organization expressed disgust with the practice of paying (almost always white) foster parents nearly twice what it paid welfare recipients to raise the same children. It called for increasing housing options for single mothers.^{viii} At its fourth annual conference, the statement against transracial adoption was announced together with a dozen others, including one demanding the right of grandparents to foster their grandchildren, and another denouncing both coercive use of birth control and barriers to birth control use.^{ix} The statement was promulgated at workshops on the black family, where a participant that the concern was that transracial adoption was "a growing threat to the preservation of the Black family."^x In its final form, the statement called transracial adoption a

“form of genocide.” It argued that “Black children belong physically, psychologically, and culturally in Black families.”

In this context, then, I am arguing that we need to read the statement on transnational adoption as part of this broader effort to de-pathologize the Black family, put an end to damaging attitudes and unwanted state intrusion, whether in the form of laws criminalizing illegitimacy or foster care that targeted families for poverty and sexual immorality more than abuse. But if this was the goal, then, one might ask, why was the statement written in terms of the psychological damage white families might inflict on Black children? In part, it was because NABSW members were in fact quite concerned about this specific question: in an overwhelmingly segregated society—geographically, academically, religiously, and socially—what would a Black child become who lived in an exclusively or overwhelmingly white world? This was and remains a legitimate question; sociologist Sandra Patton’s *Birthmarks* suggests some of the real pain of transracial adoptees as they reach adulthood. But the larger reason is simply that this is an *effective* language with which to slow down child-removal from Black families. By insisting that African-American families are not the “tangle of pathology” of the Moynihan report, but a good and healthy resource for Black children, and that child welfare workers should place children there (and, implicitly, should not remove more Black children than they can place in the Black community), 1100 African-Americans, mostly women, accomplished something that is still hard to fathom, in the context of the ongoing failures of anyone to fight for poor black women and win: they changed child welfare rules in 35 states. In drawing on the notion of psychological harm to the child, NABSW members were following the exact same strategy that the lawyers in the *Brown v. Board* case had eighteen years earlier. The *Brown* lawyers rejected a justice-based claim of a human right to a decent education that pertained even to Black children in favor of a

psychological argument that Black children’s sense of worth and personhood were damaged by segregated schools. It would have been a losing political strategy in 1972—or now—to insist that the supposedly lazy, neglectful Black mothers of illegitimate children ought to be allowed to raise them. It was far more fruitful to raise questions about the alternatives.^{xi}

The campaign for ICWA began earlier, in 1968, as a series of tribal resolutions about alarming rates of child removal—not just from their families, but from their reservations and communities. The organization that brought these local efforts together into a national campaign was the Association of American Indian Affairs (AAIA), which began its organizational life by developing a stunning statistic: one in four Indian children in states with significant Native populations was in foster, adoptive, or institutional care. By design or effect, the organization contended, children were being de-tribalized and de-Indianized by the child welfare system just as more than a century of federally-funded boarding schools had tried to “civilize” and whiten Native American “savages.” Abuses were rampant in the system, they argued, and AAIA members told heart-rending stories of children being taken by child welfare workers because they had been left with extended family for a few days or weeks, and non-Indian social workers saw that as neglect rather than recognizing that it was what they called “culturally appropriate” for parents to treat extended family or even other members of the tribe as natural and responsible caretakers for their children (as opposed to whom has never been clear to me. White parents never leave children with their grandparents? But never mind.) The AAIA also told still more horrifying stories, including that white missionaries were still kidnapping Indian children without any color of law, just as boarding school agents and those involved in the Indian slave trade had since the 19th century. The AAIA litigated more than 20 such cases, including the case of Benita Rowland, a three-year old Oglala Sioux child from the Pine Ridge reservation in South Dakota

who was essentially kidnapped by two women from Wisconsin, including a history professor at the University of Wisconsin-Whitewater, on January 1, 1972. Ten months later, with the help of a lawyer hired by the AAIA, the birth parents went to court in Milwaukee and got their child back.^{xii} (It was not an accident that resistance to child removal blossomed among the Oglala Sioux or at Pine Ridge—this case was litigated at a time and place where the American Indian Movement was particularly strong, and just a few months before the beginning of the three-year FBI occupation at Pine Ridge to suppress AIM activity, resulting in 562 arrests and, by Ward Churchill’s count, 61 deaths of AIM members and supporters).^{xiii}

In a recent interview with me, a historian from UW-Whitewater confirmed that history professor Janette Bohi, and her former student, Judy Athas, had considered this an “adoption,” although they had no legal relation to this child, and only barely ducked kidnapping charges. Bohi was described to me as a “devout but not nutty” fundamentalist Christian; Athas remained her lifelong friend and companion, even after Bohi married and had children of her own. The lawyer who defended the birth family, Frederick van Hecke, added some additional details: the parents had separated shortly before Benita had been taken, or given, to Bohi and Athas, and van Hecke thought the mother was struggling and was hoping for some temporary help, but the father was furious when he found out that she had given up Benita. What emerges from this story is a troubling picture, in which two women who may or may not have been a couple could visit a reservation in which they had church connections and pick up a child from a mother facing some serious, if temporary, problems, without dealing even with a social worker, much less a judge. More broadly, AAIA documented case after case in which minimal legal standards were not upheld, and reservation children ran and hid at the sight of a new car, signaling the arrival of a case worker.

Looking at these two campaigns together, for ICWA and for reformed child welfare agency procedures with respect to the adoption of Black children, it is not at all clear to me that they deserve the kind of withering contempt to which they have been subjected.^{xiv} Together, they were trying to minimize extraordinarily high rates of child removal in ghettos and on reservations, removals that were sometimes justified on the grounds of things like immorality and poverty, and sometimes barely justified at all. Although these measures generated opposition among some liberals almost immediately, our contemporary disrespect for these efforts has roots in the mid-1990s efforts of Congressional conservatives to join a “putting the children of welfare mothers in orphanages” measure with welfare “reform.” While they won—passing the Multi-ethnic Placement Act, the Inter-ethnic Placement Act, and the Adoption and Safe Families Act between 1994 and 1997—we as scholars do not have to accede to with accounts of the history of these events.

- Chiles, Chip. "A Hand to Rock the Cradle: Transracial Adoption, the Multiethnic Placement Act, and a Proposal for the Arkansas General Assembly." *Arkansas Law Review* 49, no. 501 (1996-1997): 501-23.
- Clines, Francis X. "Group Will Seek Militants' Fund." *New York Times*, May 28 1969.
- Fraser, C. Gerald. "Blacks Condemn Mixed Adoptions." *New York Times*, April 10 1972, 27.
- Fraser, Gerald. "Black Social Workers Assail Agencies." *New York Times*, November 7 1971, 72.
- Johnson, Rudy. "Group to Battle 'Anti-Blackism'." *New York Times*, February 23 1969, 56.
- Lee, Chana Kai. *For Freedom's Sake: The Life of Fannie Lou Hamer*. Urbana: University of Illinois Press, 1999.
- Melosh, Barbara. *Strangers and Kin: The American Way of Adoption*. Cambridge, Mass.; London: Harvard University Press, 2002.
- Mills, Kay. *This Little Light of Mine: The Life of Fannie Lou Hamer*. New York: Dutton, 1993.
- Nadasen, Premilla. *Welfare Warriors: The Welfare Rights Movement in the United States*. New York: Routledge, 2005.
- Paul, Julius. "The Return of Punitive Sterilization Proposals: Current Attacks on Illegitimacy and the Afdc Program." *Law and Society Review* 3 (1968): 77-106.
- Roberts, Dorothy. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. New York: Vintage, 1997.
- Student Nonviolent Coordinating Committee. "Genocide in Mississippi." 12. Atlanta, GA: Student Nonviolent Coordinating Committee, n.d., c. 1965.
- Volkman, Toby Alice. "Embodying Chinese Culture: Transnational Adoption in North America." In *Cultures of Transnational Adoption*, edited by Toby Allis Volkman, 2005.

ⁱ Chip Chiles, "A Hand to Rock the Cradle: Transracial Adoption, the Multiethnic Placement Act, and a Proposal for the Arkansas General Assembly," *Arkansas Law Review* 49, no. 501 (1996-1997).

ⁱⁱ Barbara Melosh, *Strangers and Kin: The American Way of Adoption* (Cambridge, Mass.; London: Harvard University Press, 2002); Toby Alice Volkman, "Embodying Chinese Culture: Transnational Adoption in North America," in *Cultures of Transnational Adoption*, ed. Toby Allis Volkman (2005).

ⁱⁱⁱ Student Nonviolent Coordinating Committee, "Genocide in Mississippi," (Atlanta, GA: Student Nonviolent Coordinating Committee, n.d., c. 1965). Available through the University of Michigan's pamphlet collection, and the archives of the King center in Atlanta.

^{iv} Julius Paul, "The Return of Punitive Sterilization Proposals: Current Attacks on Illegitimacy and the Afdc Program," *Law and Society Review* 3 (1968): 92. Chana Kai Lee, *For Freedom's Sake: The Life of Fannie Lou Hamer* (Urbana: University of Illinois Press, 1999), 190. Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage, 1997), 90. Kay Mills, *This Little Light of Mine: The Life of Fannie Lou Hamer* (New York: Dutton, 1993), 21-22, 200-03, 76.

^v Premilla Nadasen, *Welfare Warriors: The Welfare Rights Movement in the United States* (New York: Routledge, 2005).

^{vi} Rudy Johnson, "Group to Battle 'Anti-Blackism'," *New York Times*, February 23 1969.

^{vii} Francis X. Clines, "Group Will Seek Militants' Fund," *New York Times*, May 28 1969; Gerald Fraser, "Black Social Workers Assail Agencies," *New York Times*, November 7 1971.

^{viii} Fraser, "Black Social Workers Assail Agencies."

^{ix} Ibid.

^x C. Gerald Fraser, "Blacks Condemn Mixed Adoptions," *New York Times*, April 10 1972.

^{xi} My thanks to Jennifer Nye, Esq., for pointing out the congruence between the legal strategy in *Brown* and the NABSW statement.

^{xii} "Benita Rowland Article" *Indian Family Defense* 1:1 (1972).

^{xiii} Ward Churchill, *Indians R Us?*

^{xiv} I would include in this problem the neglect of historians, and the badly researched misinformation that passes for authoritative knowledge among us. Wayne Carp does not mention ICWA. Barbara Melosh ignores the AAIA altogether, suggesting that ICWA was inspired by National Association of Black Social Workers statement of 1972 (rather than a campaign begun by the Devil's Lake Sioux in 1968), writing, "Soon after [the 1972 statement], some American Indians likewise took up the politics of nationalism, pressing historic claims to tribal autonomy. As part of that movement, activists forcefully protested the adoption of American Indian children outside of their tribal communities. For them, the American Indian Project became a potent symbol of the damage inflicted by paternalistic outsiders, and in response they demanded and won tribal control of child placement in the Indian Child Welfare Act of 1978." (It was actually a 1975 act that strengthened tribal sovereignty, not a "historic claim," and the AIP, which placed barely 300 children, was not mentioned in the testimony or materials campaigning for ICWA, which focused largely on foster care and extra-legal adoption).