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# Color-Evasive Love and Freedom from Violence in (Neo)Liberal Adoption Laws

*More children with permanent homes mean fewer children with permanent problems.*

—PRESIDENT RONALD REAGAN, NATIONAL ADOPTION WEEK PROCLAMATION, 1984

*Late last year, the State supreme court awarded custody to the mother despite the fact that the child would have to leave a secure home to live with the natural mother in a homeless shelter. Clearly, in my view, the best interest of the child was not the deciding factor for the court in the State of Connecticut.*

—SENATOR CHRIS DODD (D-CONN.), 1993

On November 13, 1984, President Ronald Reagan announced the first National Adoption Week.[1] In his opening statement he articulated the importance of the family: "Families have always stood at the center of our society. . . . At a time when many fear that the family is in decline, it is fitting that we give special recognition to those who are rebuilding families by promoting adoption."[2] Even though Reagan's proclamation referenced adoption as a solution to abortions, adoption was an extremely popular, bipartisan policy since it captured pro-family, pro-life, pro-choice, and pro-diversity groups. As Connecticut Senator Chris Dodd's comments during the 1993 congressional *Barriers to Adoption* hearing indicate, adoption was perceived as in the best interest of the child with respect to poverty, housing insecurity, and so many other issues.

The 1950s through the 1970s saw the emergence and increase of transracial and transnational adoptions as well as the changing language of adoption in general. During the early 1970s there were concerns about child abuse and children languishing in foster care. In 1973, Congress passed the Child Abuse Prevention and

Treatment Act. That same year, Joseph Goldstein, Anna Freund, and Albert Solnit authored the influential book *Beyond the Best Interests of the Child* in which they argued that children needed permanency and that a "psychological parent" could be just as—if not more—important than a biological parent to facilitate secure and continuous relationships, healthier psychological development, and emotional well-being.[3] Thus "permanency planning" became a key strategy to combat abuse and "foster care drift." Permanency advocates also helped shift the view that hard-to-place children (such as older, minority, and special needs children) were "unadoptable."[4]

The Adoption Assistance and Child Welfare Act of 1980 (AACWA) exemplified these efforts toward inclusion and permanency. Prior to 1980, states were financially incentivized to place certain children in foster care rather than try to maintain family ties or reunify them with biological family. The AACWA introduced scheduled case reviews, provided funds and services that worked to prevent family separations, facilitated rehabilitation and maintenance of family ties, and promoted reunification for situations like foster care placements. Nevertheless, it also stipulated that if conditions did not progress, states could terminate parental rights (TPR) and plan for adoption as a path for permanency.[5] By the 1990s the number of children in the U.S. foster care system surged from 262,000 in 1982 to 427,000 in 1992, peaking in 1999 at 567,000.[6] The majority of these placements were due to "parental neglect related to poverty" rather than abuse, which did happen but to a much lesser extent.[7]

This was especially true for children of color. In addition, the civil rights movement, the war on poverty, and the war on drugs brought the government and its attendant surveillance closer to poor communities and families, which were disproportionately of color.[8] This meant that women and families of color were under heightened disciplinary and regulatory control that led to uneven reportage rates of abuse and parental misconduct, which ultimately was linked to increased and disproportionate child removal and termination of parental rights.[9] In 1977, Black children constituted approximately 25 percent of out-of-home placements while only making up 11 percent of the U.S. child population.[10] Responding to the exploding number of children in foster care and with the belief that the AACWA was not doing enough to create permanency, Congress enacted multiple pieces of federal domestic legislation that eventually elevated the status of adoption, specifically domestic transracial adoption, as a preferred permanency option in relation to previous efforts for family reunification.

News stories about domestic transracial adoption battles were common. Headlines from the early 1990s read: "Agency Wants To Take Away Black Tot from White Family," "Ruling Due Next Week on White Couple's Bid To Foster Black Child," "Adoption in Black And White," and "'Transracial Adoptions Reignite Old Debate."[11] These stories represent the extreme controversy over domestic transracial adoption, especially of Black children by White families. While resistance to

such adoptions existed before this era (see chapter 1), it came to a head when the National Association of Black Social Workers (NABSW) published its position paper opposing transracial adoptions in 1972. It stressed that transracial adoption would be harmful to identity development and that every effort should be made to preserve Black families, especially in the context of historical systematic and everyday racism. While no law like the Indian Child Welfare Act (ICWA) was ever passed to limit the transracial adoption of Black children, the NABSW statement did lead to a standardized policy of matching implemented by most agencies.[12] This was in stark contrast to what the American public saw on the popular television shows *Diff'rent Strokes* (1978–1986) and *Webster* (1983–1987), both of which had transracial adoption storylines. As the countless news stories show, and there were hundreds, the controversy over domestic transracial adoption and whether non-White children should be placed with White adoptive parents had reached another high point.

This chapter explores how legal presumptions, representations, and determinations of the best interest of the child for Black children were constructed within adoption and legal discourse. How was the best interest of the child determined in U.S. domestic transracial adoption policymaking? What existing violent structures and representations were operating to activate and facilitate them? How did the legal privileging of transracial adoption, as a loving act, produce further violent outcomes? Examining domestic adoption laws from the 1990s and testimonies from congressional hearings, I argue that politicians and adoption advocates imbued TRA as a form of (neo)liberal state care, where (White) familial love was predicated on privatization, individualism, and color-evasive ideology. These laws worked in concert to construct White adoptive parents as not only the aggrieved party (victims of "racist" same-race matching policies) but also as the vehicle for Black children to achieve freedom from violence and institutional harm. This new expression of state care ignored the structural racism that had continually plagued Black communities, created new forms of violence against Black families, and helped dismantle vital welfare support, while maintaining White adoptive families as the ideal family.

## BACKGROUND ON MEPA AND THE CONGRESSIONAL HEARINGS

Although the "best interest of the child" doctrine had long been ensconced in child welfare policy for divorce and child custody hearings, Dodd's chapter-opening epigraph shows how these considerations took place in the adoption context as well.[13] The doctrine is heralded as the highest standard for child welfare yet derided because it is almost wholly subjective.[14] As Dodd's statement implies, transracial adoption was presumed to be in the best interest of children who came from struggling families. In the eyes of lawmakers and legal advocates in support of adoption,

there was a moral imperative to intervene through adoption for the languishing children in the U.S. foster care system. Moreover, social scientific outcomes studies (problematically) reported that such adoptions could work and were resoundingly in the "best interest of the child," rebuking the NABSW's claims to the contrary. This dire need, coupled with scientific "certainty" that demonstrated positive outcomes for TRAs, activated the government's increased role in facilitating them. The overarching goal was to move abused, neglected, homeless, and parentless children from foster care to safe, permanent, and loving homes.

With the number of Black and Latino children in foster care rising to unprecedented numbers, Congress passed four adoption-related laws between 1994 and 1997: the Multiethnic Placement Act (MEPA 1994), the Interethnic Adoption Provisions (IEP 1996), the Adoption Tax Credit (ATC 1996), and the Adoption and Safe Families Act (ASFA 1997). Together, they accomplished three goals: (1) diminished and ultimately eliminated race as a factor in considering adoptive and foster placements; (2) elevated the objective of adoption in relation to family reunification; and (3) funded a tax credit to encourage lower- and middle-class families to adopt. The laws were established as ways to facilitate adoptions and reduce the high number of children who languished in foster care. In 1994, Congress passed MEPA as a response to the overrepresentation of minority children in foster care.[15] Legislators were concerned that children of color were in foster care at higher rates, stayed in foster care longer, and were adopted at lower rates. African American children in particular had twice the average wait time in foster care than their White counterparts and were less likely to exit foster care through adoptive placement.

MEPA amended Title IV-E of the Social Security Act—Part E was established in 1980 under the Adoption Assistance and Child Welfare Act of 1980 (AACWA), which prohibited federally funded adoption and foster care entities and agencies from denying individuals "the opportunity to become an adoptive or a foster parent, *solely* on the basis of race, color, or national origin of the adoptive parent, or the child involved."[16] In addition, they may not "delay or deny" adoptive or foster care placements on the aforementioned bases. The purpose of the law was threefold: decrease the wait time for children to be adopted, prevent discrimination in adoption and foster care placement, and recruit adoptive and foster families that can "meet children's needs." Importantly, the discrimination that legislators and advocates of MEPA centered was the presumed discrimination against prospective White adoptive parents (i.e., "reverse racism") and children of color, who were both harmed by denying transracial placements, rather than the institutional discrimination that families of color faced in trying to adopt or the structural forms of racial, gendered, and classed oppression that facilitated family separation and prevented family preservation.

MEPA did leave room to "consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet

the needs to the child of this background as one of a number of factors used to determine the best interest of the child."[17] Many social workers and agencies who believed transracial adoption to be problematic used this language to circumvent MEPA's goals. Two years later, Congress repealed MEPA and passed the Removal of Barriers to Interethnic Adoption Provisions (IEP 1996), which was attached to the Small Business Job Protection Act of 1996, because race was still being used as a factor in adoptive and foster care placements.[18] IEP kept the same language but removed the word "solely," eliminating exceptions to consider race, color, or national origin in placement decisions. Failure to comply with IEP would be considered a violation of Title VI of the Civil Rights Act, and states would be financially penalized for noncompliance. Thus Congress positioned the combined MEPA-IEP as a legal mechanism that would mobilize transracial adoption as a form of "state care."

MEPA grew from two congressional hearings in 1985 and 1993 that focused on "barriers to adoption."[19] There were numerous testimonies given by a wide range of witnesses, including U.S. senators and representatives, adoptive parents, social workers, agency directors, government officials, adoption experts, religious leaders, and adults who were either adopted or had been a part of the child welfare system. While witnesses addressed many issues, including barriers for minority adoptive families and possible measures to prevent birth families' separation, Congress ultimately focused primarily on enabling transracial adoption. These legal expressions of state care largely ignored existing structural racial violence and contributed to new forms of violence.

## FEIGNED CARE

The first hearings were part of an oversight review of the Adoption Opportunities Act of 1978 that emphasized the placement of children with special needs (e.g., children of color, children with disabilities, those who were older, and/or in sibling groups) in adoptive homes.[20] Senator Dodd testified that the purpose of that law was to place children who have no permanent homes with adoptive families. However, the numbers had not improved since then, with the same number of children still in foster care. Witnesses from *both* hearings provided a long list of barriers to adoption, in particular for children with special needs.[21]

The list of barriers produced from these hearings included social workers having high caseloads and low morale, which caused sharp turnover rates for workers and contributed to children getting "lost in the system." Agency operational barriers included little training, poor record keeping, and lack of reliable data needed to make policy decisions. Financial barriers were also cited, such as high fees and lack of financial assistance, Medicaid portability when families moved, and post-adoption services including counseling, respite care, and childcare. Other barriers were the feeling that judges refused to terminate parental rights and the lack of

leadership within agencies. Some barriers stemmed from faulty and negative attitudes about children with special needs as being "unadoptable" and beliefs that no family was good enough for a particular child. In addition, the lack of full medical health disclosure posed the hazard of disruption during—or worse, after—the finalization of an adoption.[22]

The hearings illustrate that there was some concern about the recruitment of minority families for children of color. For example, Senator Paula Hawkins (R-Fla.), who took over as chair during the second part of the 1985 hearings, asked Father George Clements: "In States other than Illinois, has there been sufficient recruitment of black adoptive parents?" Clements, who headed the One Church, One Child adoption program at the Holy Angels Rectory in Chicago, astutely noted that there had not been enough recruitment because the focus had been on transracial adoption:

> It seems as though we are always talking about '*Webster'* and *Diff'rent Strokes*'; we are always talking about white families taking in black children. And to my mind that is a very specious kind of situation. It is an unusual thing that Tinseltown, Los Angeles, is interested in. . . . What we have to talk about, rather than transracial adoptions, which are few and far between, what we have to talk about are people in the communities, living life there day by day, taking care of the children who were born in those communities by those same kinds of people.[23]

Indeed, a handful of the witnesses testified that there were numerous barriers specific to the recruitment of families of color, and they connected these barriers to the issue of institutional racism inherent in the adoption process and industry. This was confirmed to be true years later when written testimony from the 1993 hearing indicated that a National Urban League study found that of 800 applications by African American families, only 2 were approved.[24]

Black adoptive parents were frequently confronted with insensitive and bureaucratic barriers, where they were required to be within a certain age range, live in their own home (not an apartment), only one parent was allowed to work yet needed to meet income standard, and single parents were ineligible. Many Black prospective adoptive parents were uncomfortable with, and often could not afford, the expensive fees because of the belief that fees were immoral and too closely resembled payments for human bodies made during slavery. Father Paul Engel cited the need to change the process from an investigatory method, which he contended was "very white based since it screens out people economically poor or one-parent families," to a preparatory one.[25] Father Clements, Elizabeth Cole of the Child Welfare League of America, Alice Washington, the executive director of the Black Adoption Placement and Research Center, and the Concerned Citizens for Black Adoption all cited the need to hire more Black social workers at all levels who were knowledgeable about the strengths of the Black families and who knew how to approach, respect, and work in the Black community, as opposed to

basing decisions from popular cultural representations of Black pathology, criminality, and deviant sexuality.[26] They suggested legislation to ensure and hold agencies accountable for recruiting Black families. These same issues and suggestions were also brought up in the 1993 hearing. In her written statement, Drenda Lakin, director of the National Resource Center for Special Needs, recommended that recruitment and retention be a continual structure rather than a temporary or two-year effort and that staff receive ongoing training.[27] Indeed, recruitment of Black families was often hindered by procedural barriers such as long, unresponsive, expensive, and intrusive processes.

Importantly, child welfare professionals highlighted the need for preventative measures. Barbara Tremitiere, director of Adoptions Services at Tressler Lutheran Service Associates, Inc., in Pennsylvania, stated that keeping families together should be the highest priority, which could mean providing supportive services, financial help, homemaker services, respite care, supportive "grandparents" (retired persons), family-to-family help (buddy families), and relative support.[28] Robert Woodson, president of the National Center for Neighborhood Enterprise, noted that contrary to popular opinion, often young mothers do not need housing assistance (because they often live at home) so much as medical and hospital assistance.[29] Cole echoed the sentiment that the government ought to invest as much "time and money and thought in giving services to families in crisis. . . . Let us preserve families so that we do not have to recreate new ones."[30] In response to claims of reverse racism and that race should be ignored, William Merritt, president of the NABSW, outlined a host of reasons why neither—along with other biased testimonies—was a very accurate depiction of what was unfolding for Black children and Black families.[31] Contrary to the belief that the rights of White families were being violated, Merritt argued that institutional racism and cultural insensitivity were in fact destroying Black families.

Indeed, prominent cultural representations from the 1960s through the 1990s of Black families being "deviant," criminal, pathological, and led by matriarchs who were "welfare queens"—a term coined by Ronald Reagan while on the campaign trail in 1976—reified long-existing negative ideas about Blackness in relation to race, gender, sexuality, and class.[32] The news media were quick to publish stories about the increase in use of crack cocaine and so-called "crack babies," creating a "media-driven myth."[33] Headlines from the *Washington Post* to the *New York Times* read: "Babies of Crack Users Fill Hospital Nurseries" and "Crack Babies: The Worst Threat Is Mom Herself."[34] Perhaps one of the most explicit examples came from Charles Krauthammer, a widely syndicated and Pulitzer Prize–winning columnist for the *Washington Post*. He ominously wrote in a July 1989 piece: "The inner-city crack epidemic is now giving birth to the newest horror: a bio-underclass, a generation of physically damaged cocaine babies whose biological inferiority is stamped at birth." He noted that this issue was particularly "acute in the black community," and he cited the former director of the National Center on Child Abuse, who

estimated that use of crack impacted 5 to 15 percent of the Black community.[35] States began passing and amending child abuse and neglect laws to include drug use during pregnancy.[36] Such revisions, along with mandatory reporting policies for suspected prenatal drug use, resulted in Black pregnant women being reported to health authorities at ten times the rate as White pregnant women even though they used drugs at the same rate.[37]

Years later, news media published numerous stories (though not nearly enough to offset the still existing myth) admitting to the overreaction and retreating on the certainty of the "epidemic" and its effects.[38] Yet the racialized characteristics of drug abuse, poverty, childcare, and discipline in Black families were used as criteria and justification for removing Black children from their families. Legal scholar Dorothy Roberts has argued that the child welfare system targets poor people who are disproportionately Black and that research shows racial bias at every point in the "decision making process—reporting, investigating and substantiation, child placement, service provision, and permanency decision-making."[39] In the 1990s Black children were disproportionately placed in foster care at twice the rate as White children, and once they were removed, they remained in foster care longer, moved more often, received fewer services, and were less likely to be unified with family or adopted than children of other backgrounds.[40]

In addition, the lack of outreach and the overscreening of potential Black adoptive families led to the promotion and embrace of transracial adoptions, which ignored Black children's rights to stay with their family and to know their birth heritage along with Black families' right to adopt Black children. In the hearings Merritt called transracial adoption a "hostile act against our community" and a "blatant form of race and cultural genocide."[41] This phrase is often attributed to the 1972 NABSW position statement on TRA, but these words never appeared in that document. For Merritt, systematizing transracial adoption matched one aspect of the United Nations's definition of genocide: "forcibly transferring children of the group to another group."[42] This important connection revealed at the very minimum the systematic nature of what would become MEPA. It indirectly alluded to the long history of genocide and racial violence perpetrated by the U.S. nation-state against African Americans and Native Americans through slavery, lynchings, Indian extermination, as well as the termination of Tribes and cultural assimilation/genocide of Native peoples, especially Native American children through late nineteenth- and twentieth-century boarding schools and the Indian Adoption Project of 1958 through 1967. Throughout U.S. history the state has repeatedly invested in White supremacy through biopolitical strategies that enable White Americans to thrive at the cost of violence against Native Tribes and non-White communities (see chapter 1). As a form of state care to "make Black children live" while not caring for their families, transracial adoption was another iteration of biopolitics.

Merritt's passionate testimony about the institutional racism present in all aspects of the child welfare process, including the current hearings on barriers to adoption, was met with incredulity and dismissal. For Senator Howard Metzenbaum (D-Ohio) the issue was the right of the child, who "ought to have an opportunity to be adopted by a loving parent. . . . Regardless of race. . . . What concerns me is that I have always thought that there ought not to be discrimination based upon race, whether it was in employment, or whether it was in education, and I get the feeling there is a kind of racism involved in your testimony. . . . What about the child?" Although Metzenbaum claimed to agree with Merritt that Black children had an increased probability of entering foster care because of institutional poverty and racism, he reduced the problem to a basic question: "You and I agree on that [systematic inequality needs to be addressed]. Let us get to the basic question. . . . A black child is available for adoption. There are no black parents willing to adopt that child. They have used extensive recruiting efforts. They have gone on radio, done whatever, and it comes down to the bottom line, that there is not a black family willing to adopt that child. Now, as I understand your testimony, that child should not be adopted by a white family[?]"[43]

Their full exchange was contentious. Merritt rejected Metzenbaum's baited attempt to disconnect structural racism from color-evasive adoption practices and the senator's suggestion that he would oppose TRA in this instance and instead pointed to other areas of need. Metzenbaum's feigned concern revolved around the "hypothetical situation" that was meant to prove Merritt's underlying racism. When Merritt did not abide, Metzenbaum, Dodd, and the chairman collectively moved the hearings to the next witness because Merritt's answers exposed the underlying issue of institutional racism. This exchange demonstrated how liberal color-evasiveness easily slipped into what American studies scholar George Lipsitz has called the possessive investment in Whiteness, in which the hypothetical Black child's future rested solely on the promotion of White interests, which were the (new) norm because agencies were invested in transracial adoption rather than seen as their own form of privileged treatment.[44]

Despite the repeated testimonies by multiple experts and practitioners that addressed the issues of recruitment of families of color, prevention strategies to keep families from being separated in the first place, and ways to increase the success rate of family reunification—not to mention other barriers such as caseload, financial, operational, and legal barriers—Congress feigned care about structural barriers to adoption (i.e., institutional and ideological barriers that were created overtime). Instead, Congress was most interested in addressing barriers to transracial adoption and implementing TRA as the solution to children of color without a permanent home. Aside from one extremely brief mention from Senator John Kerry (D-Mass.), the senators largely ignored the preventative framework barriers during the hearings. So too were any meaningful reflections on how to

expand programs that had successfully recruited families of color to adopt. Even other suggestions that concerned adoption more generally—such as hosting adoption parties that have waiting children and prospective adoptive parents meeting in a low-stakes social setting; using churches and neighborhood associations as well as foster and adoptive families as recruiters for their friends and relatives; and going back to the biological family to see if the situation has changed—were given less time in the hearings.

## COLOR-EVASIVE STATE CARE AND REVERSE RACISM

Multiple witnesses mentioned that matching was good in theory but not always realistic because of the absence of available parents of color, or it was not practical for a biracial or multiracial child. What the senators, along with many of the guest speakers, articulated the most was a color-evasive framework. Indeed, the method of MEPA-IEP was an explicit color-evasive approach to adoption, eliminating "race, color, or national origin" as possible factors in considering foster or adoptive placement. Following Subini Ancy Annamma and colleagues, I use "color-evasive" rather than "color-blindness" because it more precisely describes the power dynamics at play—without using disability as a metaphor for lack of knowledge—when people and institutions choose to "ignore" color.[45] The term "colorblind," however, is a historical term that can be traced to many sources. It was significantly influenced by Justice John Harlan's dissent in *Plessy v. Ferguson* (1896). Although Harlan espoused a White supremacist view that the "white race was the dominant race," he invoked the Fourteenth Amendment to declare that "our Constitution is color-blind."[46]

Color-blind legal theory was also used and promoted by Thurgood Marshall when he was a lawyer for the NAACP, before his appointment to the Supreme Court as its first Black justice.[47] Harlan's dissent was the foundation for *Brown v. Board of Education* (1954) 58 years later.[48] Soon after, Martin Luther King Jr. used it to express liberal hope—and one could argue that this was even a radical demand—that one day, his four girls would be judged not "by the color of their skin, but by the content of their character."[49] Color-blindness in this sense was a means to eradicate racism. Yet by the 1950s and 1960s, conservatives had already co-opted color-blindness as a symbolic and institutional legal strategy to prevent racial progress. For example, in 1955 the South Carolina District Court ruled that "the Constitution . . . does not require integration. It merely forbids discrimination," and in 1969, North Carolina passed an anti-integration law that no child shall be forced to attend school based on race, creed, color, or national origin.[50] Indeed, the legal justification for segregation and antimiscegenation laws was that the law was treating groups the same. Eventually, color-blind ideology was embraced by liberals and conservatives alike, as a person from either end of the political spectrum could be apt to say "I don't care if a person is Black,

White, Green, or Purple."[51] The common refrain has been used to stifle difficult discussions about racism or deny accountability for harmful views and actions.[52]

According to many of the speakers at the hearings, the main barrier to transracial adoption was racism against White parents wanting to adopt children of color in foster care who were in desperate need. This was framed as a form of violence. In her written statement Carol Coccia, president of the National Coalition to End Racism, passionately argued that "children are physically dying, and the system is responsible" due to the matching policies for foster care and adoption. She added that it emphasized segregation, which violated the federal rights of children to equal services and discriminated against potential parents on the basis of race.[53] In a somewhat ironic example, Mary Brown, who had eight years of experience as a California foster parent, explained to the committee chairman how local government social workers at first asked if she would be interested in adopting a biracial child that she had fostered for three and a half years. She explained further how she was ultimately denied the chance to adopt "my little girl" because a social worker claimed: "I made an expression on my face, that I had made a statement regarding a carload of people . . . and the expression on my face indicated that I was prejudiced." Since then, the child had been placed in at least two other foster homes and was now in a pre-adoptive home with a Black family. As Chairman Orrin Hatch (R-Utah) stated, one of the concerns was that "you [Ms. Brown] were not sure they would love her like you do?"

Brown replied "yes" and testified how this has been "devastating" to her family, who spent $130,000 in legal fees attempting to adopt the child. Senator Paul Simon (D-Ill.), who disclosed that he was an adoptive father and that an immediate family member had adopted transracially, added to Brown's explanation by stating that in theory same-race placements were the "best situation" for both White and Black children: "But [in] the real world, that is not always going to happen, and what children need is love. . . . if in fact that child is being denied your home with love and care because of race, something is wrong with the officials in that area." To this, Brown agreed: "You do not spell love c-o-l-o-r." Hatch's concluding response encapsulated the sentiment among himself, Simon, and Brown, which was that the situation was "almost criminal."[54] Indeed, the act of considering race during placement decisions would be unlawful after the passage of MEPA-IEP.

This conversation demonstrated the ways White prospective adoptive parents claimed victimization of discrimination even when social workers had valid claims and concerns about the safety of White homes. Here, transracial adoption was taken at face-value as better than same-race adoption. Even as Senator Simon admitted that same-race placements were the "best situation," he quickly negated the importance of his claim in the name of color-evasive love. As legal scholar Neil Gotanda has noted, color-evasiveness does not work because "the racially color-blind individual perceives race and then ignores it."[55] The hearings offered no context on whether the new prospective Black adoptive family loved Brown's

former foster child. Instead, it presumed that Brown's love was incomparable. Family reunification was not even an afterthought. Instead, a one-size-fits-all (color-evasive) solution was established for a complex problem. Simon inadvertently revealed that adoption legislation has been driven by adoptive parent lawmakers, reinscribing the cycle in which adoptive parents have disproportionate power in producing policy and knowledge even though they only comprise one-third of the major parties involved in adoption. MEPA-IEP, under (neo)liberal color-evasive ideology, used love as the rationale to stop "discrimination" against White families, which ultimately erased the structural violence harming and separating families of color while denying those communities a chance to adopt children of color.

William Pierce, president of the National Council for Adoption, conveyed in his written statement that race matching was a form of "reverse racism," where he questioned: "We now label any child with a 'drop of Black blood' Black—as the Ku Klux Klan and some state laws used to?"[56] Removing the historical context from this comparison, Pierce suggested that the original machinations of the one-drop rule—a form of racial classification and subjugation deployed to increase the number of enslaved people an enslaver possessed, maintain the biological racial "purity" of Whiteness, and continue segregation—could be equally evaluated against efforts by social workers to preserve Black families, culture, and communities. This reflected one of the central tenets of color-evasiveness, which was, above all else, that the prescription for racial problems of the state must not ever consider the context of race.[57] As Metzenbaum, MEPA's main author, expressed, to think otherwise was disreputable: "I am one who believes, I as well as my family and others, in a color unconscious society. I just think it is very disturbing that there are actually people who are respected who take this position."[58] Pierce and Metzenbaum used claims of discrimination and reverse racism as weapons of symbolic violence that would help establish transracial adoption as the "just" form of care.

The issues of individual love, color-evasiveness, reverse racism, and state care crystallized during Metzenbaum's opening statement in part two of the 1985 congressional hearings held a week later. There he expressed his polar reactions to the initial hearings. Extremely revealing, it merits a longer quotation:

> Mr. Chairman, last week's hearing was one of the most impressive that I have ever participated in. Never before in a hearing in the U.S. Senate have I been so moved as I was by the family from Louisiana that had adopted eight or nine children after having a natural-born child of their own. . . . It is the only hearing that I remember that ever brought tears to my eyes. And I just felt such a sense of gratitude that there are such people in the world. . . . But as compelled and as moved as I was by some of the testimony, that is how concerned and disturbed I was by some of the other testimony. I was moved by the testimony of a foster parent who declared that she did not spell love 'c-o-l-o-r.' All of my life, I have been involved with what I consider to be the needs of this country; that is, for it not to be race conscious, not to be conscious of people's distinctions on the basis of their ethnic background or their religion. And

> so when it comes to the matter of placement of children for adoption, I feel strongly that no little child should be denied placement because some exterior force says that there is something inappropriate about placing a black child with a white family. I have difficulty in comprehending that, and I resent it. It is repugnant to everything I believe about our society. I believe that everybody ought to be treated the same way, and we ought not to look at the color of skin of people, whether it is that little baby, or whether it is an adult. I am concerned about that little child's right to a loving, permanent home, and I really do not care where that home can be found.[59]

While Metzenbaum praised TRA supporters, he articulated his disgust for those who would "incomprehensibly" and "repugnantly" question or attempt to deprioritize transracial adoption. His push to deracinate adoption highlighted the ways in which color-evasiveness believed that children and parents were individuals not defined by race. Race was perceived only as a formal, objective classification of skin color rather than a historical construction and onto-epistemological technology of power. It followed TRA supporters who argued that racism was not endemic to society.[60] Therefore, concerns about positive racial identity and healthy coping mechanisms were minor because children adopted transracially only had to negotiate minor individual acts of racism. For Metzenbaum, race-matching policies and criticism of TRA were attacks on humanist values.

In 1993, eight years after the initial hearings on the "barriers to adoption," Congress held a second hearing on the same subject. Like the first hearings, there was a token mention of needing to "do everything we can to strengthen and preserve the family." However, the main questions and themes centered on the issue of transracial adoption as a solution and the need to eliminate discriminatory barriers, which would benefit children of color, White families, and society in general. At this point, Metzenbaum and Senator Carol Moseley-Braun (D-Ill.) introduced S. 1224, or MEPA. In his opening statement, Metzenbaum clarified that adoption was a primary concern for the federal government: "I do not know of any issue in the Congress that I feel more strongly about. . . . [T]he child who does not have a parent, and may be in a foster home or may even be in an institution, needs all our tender, loving concern."[61]

Pierce reprised his role as a fervent advocate of TRA, where the key issue was "the barrier of racism or discrimination based on ethnicity in adoption programs."[62] He claimed that the proposed legislation would solve the problem of bigotry: "This piece of legislation will give those of us who are child advocates all across the country a way to grab hold of these bigots who are killing children, literally killing children, through neglect and haul them into court and stop their actions." For Pierce this issue was a matter of justice instead of discrimination; life rather than death; and fact versus conjecture, emotion, and ideology. He reiterated the social scientific research that clearly "proved" the success of transracial adoption: "The research is clear and unequivocal. . . . There is no debate about the outcome of children."[63]

The hearings and the MEPA-IEP laws demonstrated how institutional racism used exceptions and hypotheticals to justify color-evasive logic. Twice senators mentioned that there were transracial adoptions involving non-White parents to diffuse the highly unequal movement of children. Dodd asked two witnesses if the reverse situation of a Black family wanting to adopt a White child would be allowed.[64] Both witnesses replied they would certainly consider it, but thus far no instances had occurred beyond transracial foster placements. Metzenbaum believed that TRAs are not just by White families: "Isn't it a fact that transracial placements include blacks and Hispanics, fostering and adopting children from other racial and ethnic groups as well?"[65] Efforts by both senators to diminish the uneven power dynamics of transracial adoption by highlighting the small number of non-White families who adopt transracially—or even posit the hypothetical that it would be allowed—was challenged by Sandy Duncan of Homes for Black Children in Detroit. In her written statement Duncan pointed out that if Anglo-American children needed adoptive families, the first thought would not be to seek out African American agencies or communities. Nevertheless, this was precisely what happened to Black children. White agencies that historically refused services to Black children and Black clients were now the primary means for Black children to be adopted but not by Black families who wanted to adopt.[66]

The myriad of examples showcase how claims of discrimination and reverse racism use color-evasive ideology, a form of symbolic violence, to actively not acknowledge the ways race informs identities, experiences, and disparate outcomes. They underscore how symbolic violence contributes to ideological and institutional racism, and ultimately structural violence. Instead, color-evasive ideology positions the importance of ignoring, dismissing, or negating race as the solution to problems caused by racism, which has led to the prominent belief that race-conscious policies are harmful and racist. With adoption already considered a revered institution, TRA was framed as an even greater success for the litany of pro-diversity, pro-family, pro-choice, and pro-life groups that coalesced around them. Unlike the reverse racists who opposed TRAs, supporters of transracial adoption proved the United States was not a racist society and in fact such adoptions made it *less* racist.

## FREEDOM FROM VIOLENCE

The congressional hearings' descriptions of children's situations engendered another theme of imagined violent futures. For example, Pierce submitted a short article by Carl Rowan for the record, titled "Should Whites Adopt a Black?" In the piece Rowan described his encounter with a Black Baltimore County adoption supervisor who opposed transracial adoption. Rowan conceded that "Koreans, Japanese and blacks adopted by whites may have some worrisome problems." Nevertheless, he posited the bleak alternative: "But please consider this. The average

black child who lives in a black family in a black section of America today is jobless, and will have no work experience into adulthood, if ever. That child is vulnerable to all kinds of sexual and physical abuse. A tragic number of young black men will be caught up in crime and drug addiction by the time they reach puberty. Young women will become pregnant, though unmarried, in their teens."[67] Rowan, and by extension Pierce, construct a particular spatio-temporal argument about the alternative to transracial adoption, which enacts a form of symbolic violence by suggesting any deleterious effects of transracial White adoptive homes were incomparable to the hostile Black environment. Pierce in fact would not even go so far as to admit that White homes and families *might* provide challenges for children of color who were adopted, citing the positivistic outcome research done by Howard Altstein and Rita Simon.

Pierce framed transracial adoption as the alternative and indeed opposite future of remaining in foster care. The framework can be analyzed through gender and sexuality studies scholar Chandan Reddy's concept of "freedom with violence." Reddy considered freedom and emancipation mutually constitutive with U.S. state-sanctioned, naturalized (material and symbolic) violence. "The state's claim to legitimate violence," he stated, "is predicated on its ability to achieve a monopoly on rationality as well, most powerfully through the extension of universal citizenship."[68] In his introductory example, he applied "freedom with violence" in his pairing of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (a form of individual freedom) with the National Defense Authorization Act of 2010 (a form of militarized violence). Since the state afforded "universal citizenship" on the one hand, it can justify any state violence as rational on the other. Freedom *from* violence is useful for my analysis because the liberal guarantee is not just freedom from nominal "arbitrary" (i.e., *individual* hate crimes) violence.

Instead, the extension of adoption to children of color, especially transracial adoption of Black children, in the United States was conceived as a form of universal citizenship, or more specifically, a future that would provide freedom from violence that included freedom from poverty, backward child welfare policies, and reverse racist ideologies. Reddy's concept demonstrates that freedom was not just abstract or in the negative sense, such as the First Amendment (e.g., the government will *not* infringe on individual rights), but that the state would enact a form of positive freedom (e.g., the government will *provide* rights or protection to ensure liberty) for adopted children—the right to a White adoptive family. In this sense, the state's promotion of transracial adoption provides or guarantees freedom *from* violence, enacting positive freedom that "intervenes" and "removes" vulnerable children from harm. But, of course, we must also examine the attendant violence that comes *with* and is masked by the loving freedom of adoption.

But again, the prospect of even the Black adoptive family was not ideal for some adoption advocates. Both Pierce and Harvard law professor Randall Kennedy argued that kinship care was a racist pretext to deny TRA. Pierce offered an

example of a case in Minnesota in which White foster parents wished to adopt an African American toddler. Instead, social workers conducted a search to find a biological relative for the purpose of "family preservation." The maternal grandparents were found in Virginia, but they had not known the child existed. The tragedy for Pierce was that "the child's life was disrupted as he left the only parents he had ever known" because of racist politics.[69] Pierce's statement reflected the resentment some adoption advocates felt toward kinship adoption. Kennedy, in the follow-up hearings to IEP in 1998, lamented that foster parents would bond with a child of a different race but would be prevented from adopting because social workers would oppose TRA. What happened instead was "authorities select as the adoptive parent a relative of the same race as the child, even when that relative is not as close to the child as the foster parent and will likely prove to be an inferior adoptive parent."[70]

The presumption made by both Pierce and Kennedy was that the relative would not be able to love or care for the child in the same way that the White foster parents would have. "Success" in this way was dependent on the unmarked conditions of Whiteness. It was inevitable and even okay that some Black children grew up in Black homes. Yet, *once a child was in a White home*, that was the better option and in the best interest of the child's future. Thus their statements underscored the way in which representations of opposite futures played out in different forms. It was freedom and love *from* and *with* violence. In other words, transracial adoption supposedly rescued Black children from harm, and that love and freedom were constructed and existed in relation to a love that was violently imagined as inferior.

Altstein, in his testimony, claimed that TRA must be viewed objectively and without emotions. He asserted that he had "no proverbial axe to grind" and that "you have got to call it the way it is, and look at where the data fall."[71] Coming on the heels of Merritt's testimony, Altstein's statement implied that Merritt's claims were based on emotion and ideology rather than scientific evidence. For instance, according to Peter Hayes, the NABSW's venomous claim that transracial adoption was a form of genocide was merely an extension of Black separatist ideology. Hayes argued that this ideology places group rights and interests over the rights of individuals, both children of color and White parents.[72] Naming criticism of transracial adoption as separatist ideology or emotional-based argument was one way supporters tried to discredit the argument of critiques. In the IEP follow-up hearing, Rita Simon made this very claim: "The case against transracial adoption, I'm sorry to say, is based on rhetoric and ideology. There are no systematic studies that show that transracial adoptions do not serve the children's best interests."[73] Thus scientific knowledge became infallible, despite being rife with methodological limits (see chapter 2), while experiential or practical knowledge was discredited. For supporters, TRA was a form of liberal (or neoliberal for those who appreciated the privatization of care), objective, and familial love that would always outmatch illiberal and "tribal" love put forth by so-called Black separatists.

While the common refrain during the hearings was that Congress was concerned about all barriers to adoption, the centerpiece of both the 1985 hearing and 1993 hearings were the "racist" barriers to transracial adoption, a discourse that perpetuated the belief that White families were the only solution for a better future. The 1993 hearing concluded with a verbal sparring session between Metzenbaum and Joe Kroll. An issue for Kroll was that the new legislation would not provide the same access to children of color; it would create a preference for White parents since they were easier to recruit. Metzenbaum expressed utter disbelief that Kroll's organization, made of White transracial adoptive parents, would express the need for more research when the problem is so crystal clear and present:

> One day's delay is too much delay. . . . I am through with studies. I want some action. In 1985, we conducted the same kind of hearing, and now it's 8 years later, and nothing has happened. You can talk all you want about additional recruitment of Black parents in order to make the adoptions. I'll help you. I'll do anything you want. I'll help you get a public service announcement. But let's not hold up. We need to go forward in this area. And I would just say to you that I am so disturbed that you, a transracial parent, would be here somewhat opposing future transracial adoptions.[74]

For Metzenbaum the situation was urgent, and he placed the issue in the local-present context. No historical or other contexts matter. Instead, he argued that the liberal state was attempting to care for children of color and grant them "freedom" from the appalling child welfare system. Metzenbaum's ending comment takes a swipe at Kroll for not using his identity as a White adoptive parent to further the possessive investment in Whiteness.[75]

Kroll clarified that his organization did not oppose TRA but that TRA was not the issue. Rather, it was about how parental rights were severed disproportionately and unequally, which allowed children to be adopted, and the need to ensure families of color had equal access to adopt those children. Reverend Wilbert Talley tried to clarify the argument: "No one is opposed, in the final analysis, to transracial adoption. But if on the one hand, you are saying let's go forth with transracial adoptions, and on the other hand, you are not making the efforts to recruit the [non-White] families, it seems to me that you are simply encouraging what has been a problem over the years." The fear for both Kroll and Talley was that if TRA were to be sanctioned by law, current practices of catering to White families would continue to be the norm with no mechanism to keep adoption agencies and workers accountable. Metzenbaum lauded Talley for doing a wonderful job but simultaneously claimed there was no alternative: "I am not against you. I am for you. But absent of that, what concerns me is the child." Dodd added that most social workers were "good people and care about this stuff" and that being a "racist" social worker seemed inconsistent with their career choice.[76] The hearings ultimately revealed that for Congress the best interest of the child is transracial adoption.

Despite the wide chasm in terms of which barriers were most important, Dodd articulated a "consensus" among the witnesses during the 1993 hearing by

suggesting that there was a workable, baseline agreement by everyone: "My sense is of a coming together here. I know there may be people on the extremes, but I hear a clear consensus emerging on these questions. So far, that's what I have heard, anyway. There may be nuances, but I think there is a real consensus on the special needs issue, and particularly the transracial issue." He reiterated this in his concluding remarks: "Everybody has the same desires and interests at heart here, I think. I don't hear a whole lot of opposition. Our goal is to try to help."[77] In narrating a consensus, Dodd erased the critiques of structural racism and alternative solutions by using a color-evasive framework. This discursive move enabled the state to achieve its (neo)liberal and conservative goal of "freeing" children of color from the violent child welfare system through privileging the loving care of transracial adoption.

The closing of the 1993 congressional hearing encapsulated liberal state care and the neoliberal policy of transracial adoption, which were both informed by notions of individual and familial love. It highlighted how themes of love, freedom from violence, immediacy, morality, and color-evasiveness were used to encourage transracial adoptions as the primary solution for children in state care. The testimonies and discussion within the hearings demonstrated how TRA was imagined as an opposite future in relation to the child welfare system, incarceration, criminality, prostitution, or death. Color-evasiveness was deployed as a technique of power that attempted to erase and ignore the long history of how racial meaning has shaped subjectivity, mistreatment, and unequal outcomes. Despite the testimonies articulating disagreements, Dodd tried to narrate a consensus, which dismissed other principal and underlying issues such as the disproportionate rate of separation of families of color due to racist representations of the Black "welfare queens" and "crack babies" and the unequal access to adoption for both families and children of color.[78] The violence that was produced by this discourse was not just the "abject" conditions of poverty or foster care drift that preceded adoption. It was a productive force because in erasing the significance of past racial context, it concretized Black and White racial subjects and families as opposite futures.

Congress ultimately inserted the Multiethnic Placement Act as a provision in the much larger bipartisan Improving America's Schools Act.[79] MEPA afforded some consideration of "the cultural, ethnic, or racial background of the child" as well as the ability of the prospective adoptive or foster parents "to meet the needs of a child of this background as one of a number of factors used to determine the best interest of a child." The U.S. Constitution and Title VI of the Civil Rights Act only permitted such considerations if they advanced "a compelling governmental interest," which in this case was the "best interest of the child." Hence, guidelines for MEPA from the Department of Health and Human Services stated that such considerations must be "narrowly tailored," determined individually, and not delay placement in order "to advance the best interest of the child."

The guidelines clarified that agencies may evaluate a child's needs and the ability of prospective adoptive parents to care for a child from another racial background. However, they may not "rely on generalizations about the identity needs of

children of a particular race or ethnicity or on generalizations about the abilities of prospective parents of one race or ethnicity to care for, or nurture the sense of identity of, a child of another race, culture, or ethnicity." Importantly, the guidelines also stated that failure by agencies to "diligently recruit" families of color to "reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes [were] needed" would constitute a violation of Title VI. Agencies should have a comprehensive recruitment plan that includes strategies for all members of the community, training staff on working with diverse communities and linguistic barriers, and nondiscriminatory fee structures.[80]

Two years later, in 1996, Congress amended MEPA by passing the Removal of Barriers to Interethnic Adoptions Provision (IEP) because the former did not embrace color-evasiveness enough. Senator John McCain (R-Ariz.), the father to a daughter adopted from Bangladesh, led the effort by introducing the Adoption Antidiscrimination Act of 1995, in which he cited Altstein's conclusions that "interracial adoptions do not hurt the children or deprive them of their culture," chalking it up to the "nonsense" of "political correctness" from those who opposed transracial adoption.[81] The IEP permitted color-evasive ideology to flourish as the original MEPA supporters had intended. This enabled TRA to reproduce "ideal" family formations and futures that were free from violence as well as reduce burdensome federal regulations by emphasizing adoption assistance rather than social services that would help preserve struggling families. While MEPA and its guidelines referenced the need to "diligently recruit" families of color and how failure to do so would constitute a violation of the Civil Rights Act, IEP did not mention such recruitment, nor did it establish any financial penalties or enforcement mechanisms as it did for the color-evasive components attached to MEPA-IEP.

The lack of enforcement for recruiting families of color in IEP further illustrated that this was never a sincere goal of MEPA. Moreover, vocal TRA advocates such as Kennedy, Elizabeth Bartholet, Pierce, and Hayes believed that strategies such as kinship care and cultural competency were racist and used as guises to deny transracial adoptions. The primary aim of MEPA-IEP was to facilitate more TRAs, while ignoring the root causes of why such adoptions were needed in the first place—the coupled racist child welfare and criminal justice systems as well as not investing in potential adoptive families of color.

## CONTINUED INVESTMENTS IN TRA AND PRODUCING STATE ORPHANS

While MEPA-IEP was the main legislation to promote transracial adoption, two other laws were passed in 1996 and 1997 that significantly impacted not only domestic TRAs but transnational adoptions as well: the Adoption Tax Credit (ATC) and the Adoption and Safe Families Act (ASFA), which invested in primarily (White) middle-class adoptive families, while divesting from poor families, who were disproportionately families of color.[82] Tax benefits for adoption were first established

in 1981, allowing taxpayers to itemize $1,500 of qualified adoption expenses for children with special needs. Congress eventually turned this into a direct spending program through adoption assistance agreements with states that reimbursed nonrecurring expenses to families who adopted a child with special needs.[83] Broader adoption tax assistance was proposed multiple times to no avail. However, the ATC gained traction in the two-pronged bill titled the Adoption Promotion and Stability Act that proposed the tax credit and the IEP, which were eventually both inserted into the larger Small Business and Jobs Protection Act of 1996.

The ATC provided a $5,000 credit to adoptive families for nonrecurring adoption-related expenses—for example, adoption fees, court costs, and attorney fees. The credit was $6,000 for families who adopted a child with special needs. Families whose adjusted gross income (AGI) was between $75,000 and $115,000 would receive partial credit, while those with AGI that exceeded $115,000 would no longer be eligible for credit. It was also available for transnational adoptions but did not include kinship adoption or adoption by a spouse. In addition, the ATC allowed a maximum of $5,000 exclusion from taxable gross income for benefits received by an employee from an employer for adoption-related expenses, which was phased out for the same AGI scale as the tax credit. If eligible, tax-paying adoptive families could receive both the credit and exclusion.[84] For instance, if a taxpayer spent $10,000 on adoption fees and an employer paid $5,000 of their adoption court costs, the taxpayer would be eligible for both the credit and exclusion. With the ATC, Congress demonstrated again its investment in adoptive family-making as a form of state-funded yet privatized care.

On top of MEPA-IEP and the ATC, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, which "ended welfare as we know it." Republican Speaker of the House Newt Gingrich had callously suggested that children of young, single, and poor mothers who could not support them should be placed in orphanages.[85] Aid to Families with Dependent Children (AFDC)—ended by PRWORA—was a New Deal program that was created specifically to support mothers and prevent such institutionalization.[86] PRWORA created Temporary Aid to Needy Families (TANF) to replace AFDC and instituted a five-year lifetime limit on the benefits. For conservative lawmakers, especially, adoption was seen as a neoliberal solution to "illegitimacy" and reinstitution of "individual responsibility," "family values," and the two-parent heterosexual "traditional" family structure.[87] In their infamous book *The Bell Curve*, coauthors Charles Murray and Richard Herrnstein argued:

> In terms of government budgets, adoption is cheap; the new parents bear all the costs of twenty-four-hour-a-day care for eighteen years or so. . . . If adoption is one of the only affordable and successful ways known to improve the life chances of disadvantaged children appreciably, why has it been ignored in congressional debate and presidential proposals? . . . Why are cross-racial adoptions so often restricted or even banned? . . . Anyone seeking an inexpensive way to do good for an expandable number of the most disadvantaged infants should look at adoption.[88]

For Murray and Herrnstein, adoption was a clearly neoliberal and conservative tool to privatize care, relieving the state from having to provide other mechanisms of social support that would be according to them wasted by the "underclass."

Similar to MEPA-IEP, the ATC and PRWORA received bipartisan support and were primary components of the Republicans' "Contract with America."[89] Ending welfare for poor and working-class families, especially families of color, was paired with "tough on crime" laws such as the Violent Crime Control and Law Enforcement Act of 1994, which established stricter and more severe prison sentencing and increased funding for states to expand police and prisons. These laws reinforced delineations among families based on race, class, and sexuality that constructed notions of good choice makers and bad choice makers.[90] Just a year later, Congress passed the Adoption and Safe Families Act, which created stricter time limits for family reunification and established new mechanisms to promote adoption.[91] On its face, ASFA reaffirmed some prioritization to family reunification by keeping the "reasonable efforts" provision regarding services to maintain or reunify the family. The previous major adoption legislation, the Adoption Assistance and Child Welfare Act of 1980 (AACWA), also had this provision, but family preservation advocates criticized this aspect because a minimum standard was never defined; states were free to interpret it as they wished. This resulted in a lack of, delayed, uneven, and ineffective services. Instead of defining what those services should entail, Congress simply clarified when services should be provided, and its result was to limit the time. Hence, in actuality the ASFA detrimentally placed strict time limits on these "reasonable efforts," where parents of children who had been in foster care for 15 of the most recent 22 months could have their parental rights terminated. Congress also implemented financial incentives to states for every successful adoption as cost-saving measures.[92]

Adoptions can be costly to the state due to lengthy court appeals processes and can be less time efficient (28.5 months for adoption) compared to other permanency options, such as relative custody (5.7 months) and guardianship (17.4 months).[93] The ASFA time limits not only diluted "reasonable efforts" for reunification into a "rubber stamp" event, but there was now a *financial incentive* to do so.[94] Social workers and agencies were confronted with conflicting goals in this expedited timeframe. Their roles might involve investigating families and recommending removal of children or termination of parental rights, but they are also contradictorily charged with helping families reunify even when there are no substantial incentives to do so. At the same time, they might begin recruiting, training, and working with foster parents—or, even more detrimental to reunification, begin the process of making an adoption plan, even when the likelihood of adoption is low.[95]

Dorothy Roberts has noted that termination of parental rights (TPR) increased dramatically after the Adoption and Safe Families Act was passed. In Chicago, TPR surged from 958 cases in 1993, to 3,743 cases by 1997. While supporters of ASFA argued that children of color, and Black children in particular, were languishing in

foster care, critics argued that reunification requirements were often unreasonably difficult to meet.[96] Part of the issue is what has been called the "competing clocks" dilemma, where the timeline for welfare benefits, child development, reunification efforts, drug treatment, and agency responsiveness can be in conflict with each other.[97] For parents with substance abuse, there are issues such as availability, timely access, work schedule alignment, transportation, and duration of drug treatments, which can make requirements impossible to complete.[98] Even though necessary services might not exist or access to them is limited, judges by and large "accept what the social service agency tells them" when it comes to whether reasonable services and efforts were provided, which means the "reasonable efforts" provision of ASFA is not well monitored or enforced.[99] Moreover, the overlap of welfare reform time limits and ASFA time limits undermined the ability of families to stay together and reunify. On the one hand, parents who reached their TANF limits were vulnerable to homelessness or claims of neglect due to poverty and ultimately termination of parental rights. On the other hand, parents who experienced TPR would lose TANF benefits, which made it difficult to complete reunification requirements, leading to a "double jeopardy."[100]

Family preservation efforts have centered "changing family dynamics and behaviors" when most families needed material and financial assistance.[101] For example, drug and alcohol addiction, which account for nearly 40 percent of child removals, have been treated as harmful behaviors rather than diseases, and the ASFA creates a universal timeline that does not account for the time it takes to complete treatment, let alone the individual contexts of parents who might be struggling with their own past traumas, grief, shame, and/or survival of domestic violence.[102] In addition, many local social service agencies employ the practice of concurrently planning—beginning adoption or alternative permanency plans before the reunification timeline ends—which has "created 'expectations of failure' to reunify, resulting in some foster parents being 'foster-adopt' parents even before TPR."[103]

The cuts to welfare, promotion of transracial adoption, and deemphasis of family reunification illustrate how race, gender, class, and sexuality intersected. Surveillance of Black parents and children in school, medical, social services, and other settings triggered disproportionate interventions and substantiations, which were exacerbated by racial bias during evaluation and reunification processes. Thus, as Black mothers and parents were receiving what has been termed the "civil (or family) death penalty" through termination of parental rights, White adoptive families were being supported by facilitative laws and financial support. As historian Rickie Solinger has argued, "one woman's possession of reproductive choice may actually depend on or deepen another woman's reproductive vulnerability."[104]

Moreover, these racial, gendered, and classed logics, practices, and policies that facilitated greater TPRs have meant that thousands of children become "legal orphans" or "state orphans." They are children who remained in foster care, aged

out, and stayed parentless because the legal ties to their parents were terminated, and they were never adopted.[105] In only two years the number of children who were legally orphaned through TPR increased from 5,970 in 1997 to 24,219 in 1999.[106] In 2019 there were approximately 71,300 TPRs.[107] Many of these children are adopted, but every year there are tens of thousands of youth for whom TPRs did not facilitate permanency, where they exit state care in legal limbo; in 2019, 20,445 individuals exited foster care via emancipation.[108] Black and Native American children experience the highest rates of TPR and legal orphan status at 2.4 and 2.7 times the rate of White children.[109] Martin Guggenheim has called TPR a euphemism for "the permanent destruction" of families and the "atomic bomb" in child welfare.[110]

Termination of parental rights affects more than just parent-child relationships. After TPR, children are also no longer legally connected to other immediate and extended biological family, preventing possible visitation rights with siblings and grandparents.[111] Many TPRs violate constitutional rights under the Fourteenth Amendment to "direct the care, custody, and control of their child" because states must have "compelling interests" and actions must be "narrowly tailored."[112] Yet the ASFA was created and passed on the belief that there was compelling state interest to stop horrific abuse and the harm of foster drift. Individuals who work with or for the state such as court-appointed special advocates, guardian ad litems, and caseworkers contribute to unnecessary and disproportionate separation of families of color and poor families by bringing their own biases about race and poverty into the question of fitness and neglect.[113] Race, gender, and class intersect to construct what are perceived as inherently unfit and neglectful environments, especially in relation to privileged foster or adoptive families, which has led to promotion of a system built to "search and destroy" Black and marginalized families.[114]

The ASFA was promoted by Congress because advocates viewed adoption as more cost-effective than funding both services to maintain or reunify families as well as maintain foster care placements.[115] Yet, by 2006, Congress was allocating nearly $2 billion for adoption assistance and related programs and approximately $350 million for the ATC. Child Trends, a nonprofit, nonpartisan research center, published a 2007 report stating that the ATC was not accomplishing its intended goal of increasing foster care adoptions, especially of older children, and supporting prospective adoptive parents who needed financial support. Most of the funds were used for transnational and private adoptions of younger children, and two-thirds of the families supported were those with incomes of more than $75,000.[116] Estimated financial spending in 2023 for adoption-related programs exceeded $4.7 billion.[117] Another $900 million is allocated for the ATC, which has increased to $15,950 for 2023.[118]

The wide (and continued) support for the ATC reflected the broader neoliberal shift of decreased social welfare services that was epitomized in the draconian

welfare reform of PRWORA, which led to "voluntary" and involuntary adoptive placements. While struggling mothers and families were scrutinized and harmed by these policy changes, the state provided legal and financial support for adoptive families. For example, families adopting from foster care can receive monthly payments to cover the child's needs and up to $2,000 for nonrecurring adoption expenses.[119] The passage of MEPA-IEP, ASFA, and the ATC in the 1990s, along with welfare reform and greater criminalization underscored, on the one hand, the state's investment in biopolitical strategies for child welfare. On the other, it indicated the government's belief that only certain families fulfill that function to provide freedom from violence, disregarding how the state produced its own forms of structural violence that contributed to producing "state orphans" and the "need" for adoption.

## CONCLUSION

Even though adoption typically operates under state law, the bevy of federal legislation passed in the 1990s (MEPA-IEP, ATC, and ASFA) stressed the nation-state's investment in adoption and transracial adoptions in particular. Such policies were intersectionally informed by ideas of race, gender, and class, appealing to both conservatives and liberals because they were supposedly pro-life, pro-family, and pro-diversity. More than this, the family, as Foucault suggested, continued to be an instrument for the state as a means to produce a better government and nation.[120] Thus these (neo)liberal laws legitimized and promoted TRAs, which on their face seemed beneficial for the child rather than the state. Yet transracial adoptions have mirrored neoliberal desires for privatization and efficiency to answer problems of social welfare. They have also fortified the myth of individual freedom and responsibility by rewarding entitlements to dutiful neoliberal subjects (White adoptive families) while regulating deviant neoliberal subjects (non-White birth parents).

Despite the passage of MEPA-IEP and the ASFA, African American children have continued to disproportionately languish in foster care. As social work scholars Alan Dettlaff and Reiko Boyd have stated, "despite decades of efforts to address this, Black children remain overrepresented in foster care at a rate more than 1.6 times their proportion of the general population."[121] Another disturbing outcome has been the overseas adoption of Black children to Canada and other European countries. The Canadian Broadcasting Company reported in 2014 that nearly 500 children were being adopted each year from the United States to mostly Canada. A majority of children were Black, and they cost less than adopting other non-Black children in Canada.[122] At the same time, White American families continued to adopt White, Asian, Latinx, and African children. White families adopted Asian children in particular at incredibly high rates. Sara Dorow argues that in making adoption plans, "Whiteness" operates as the invisible background noise for prospective adoptive parents' racialized choices.[123] For White adoptive families, Asian

babies are desirably different and relatively baggage-free, which allows for the celebration of positive culture while washing away negative cultural traits. Asian Americans are thus racialized as the "model minority" and "honorary Whites," which acts as a form of relational racialization against Black children, who remain baggage-laden, tainted with abjectness and criminality.[124]

This dynamic has also played out in the adoption of African children. Between 1999 and 2016, American families adopted more than 15,000 children from Ethiopia.[125] In this sense, while there have been domestic transracial adoptions of Black children, African (including other countries beyond Ethiopia) transnational adoptions occurred at a staggeringly high rate.[126] This "contradiction" between the United States allowing African American children to be adopted to Canada while adopting thousands of Ethiopian children, shows the ways that U.S. adoptive parents imagined African Blackness to be more malleable than African American Blackness.

While the state might have attempted to address racial inequality within the domestic adoption sphere through race-neutral love and care, it ignored how institutionalized social, economic, and political factors shaped the market of adoption, creating what anthropologist Aihwa Ong has termed "compassionate domination."[127] Such racialized choices in adoption planning provide some explanation for the differential (and relational) cost structures within adoption fees. Private agency adoptions that are a majority nontransracial typically range between $30,000 to $60,000 or more, while adoptions from foster care, where the majority of domestic TRAs occur, are "virtually free of costs" and many times are eligible for monthly financial support.[128] Current costs for transnational adoption, that have historically been transracial, are between $13,450 and $61,988, with the median cost being $38,435.[129] It is not just that adoption costs vary from type and region, but they can vary *within* agencies, which often have tiered systems with White children requiring a higher cost than biracial-Black and White children and much higher than Black children.[130]

This disparity in adoption costs shows how transracial adoption becomes what sociologist Elizabeth Raleigh has called "a market calculation." While the best interest of the child calculus is supposed to be the driving force in adoption, Raleigh argues that adoption professionals are required to be "de facto adoption sellers." The prospective adoptive parents' needs as the paying customer get elevated, and as a result, children transform into an "object of exchange." As objects that "get chosen," they are not in fact "universally priceless" but instead inherit different market values.[131] This racial market calculation has historically placed Asian children below White children but above Black children, with Native American children falling in between.

Early adoption discourse and social scientific studies attempted to diminish the importance of race in TRNAs. Building from these forms of adoption knowledge, federal adoption laws embraced similar color-evasive logic. MEPA-IEP, and other

facilitative adoption laws, have ignored race as a concept and in practice. As this chapter has demonstrated, color-evasive love might be a nice sentiment in a world in which race did not exist, but for transracial adoption, race matters in ways that name which families should be regulated, which ones can be separated, and which ones will (supposedly) provide, through adoption, a future that is free from violence. Yet we know that violence is attached to adoption in complex ways. The Donaldson Adoption Institute published a 2008 report that was critical of MEPA, stating that the law's "unyielding colorblindness" was "counter to the best interest of children and sound adoption practice."[132]

In 2020 the Department of Health and Human Services published a report on Diligent Recruitment Plans for prospective families of color, which are a supposedly integral part of MEPA-IEP, noting that 34 states received an "ANI" rating, which meant "area in need of improvement." The report indicated numerous agency issues relating to recruitment, such as little monitoring and oversight taking place between states and counties; lack of system to track race and ethnicity data, or staff were poorly trained to effectively use the system, or they did not know how to use data to improve recruitment; difficulty retaining existing foster parents; and lack of capacity to meet the language (especially Spanish) needs of foster children.[133] More recently, the Children's Bureau confirmed that MEPA-IEP and other laws have not diminished the overrepresentation of Black children and Native American children in foster care and disparity in outcomes.[134]

Black families are suspected of child maltreatment and investigated by Child Protective Services—what others have termed the family policing system—at higher rates. Black and Native children have a greater risk of being confirmed of maltreatment and placed in out-of-home care, and their parents are more likely to experience termination of parental rights.[135] This disparity was even acknowledged by the Biden administration's National Adoption Month Proclamation.[136] As legal scholars Nancy Polikoff and Jane Spinak have expressed, foster care and adoption within the child welfare system are "enduring, devastating, American practice[s] of separating parents and children through state agency and court procedures cloaked under the misleading name of the child welfare system."[137] The color-evasive approach, especially in the wake of anti-Black murders at the hands of police officers, has led to transracial adoptees expressing that "I know my parents love me, but they don't love my people."[138]

One cannot help but reflect on how early outcome studies that were rife with methodological limits—such as studying primarily young children, interviewing or surveying adoptive parents only, low participation rates, high attrition rates for longitudinal studies, not examining the categories of race or ethnic identity, exclusion of disruptions and dissolutions, and so forth—were a main driver in justifying MEPA-IEP and the handful of other federal adoption legislation that have promoted adoption as a panacea for children (and families) who need support rather than the larger structural issues that produce such need in the first place.

Reforms of the welfare system and adoption laws have, in other words, worked in concert to optimize the state's organization of families. While some families have been obfuscated, left to fall through the cracks of the social safety net because they are symbolically deemed "illegitimate" and undeserving, adoptive families have been institutionally privileged by new laws and the predominance of uncritical adoption discourse.

Similar to the attacks and rollbacks against affirmative action, MEPA-IEP created a mechanism that by default protected White group rights. The race "neutrality" of MEPA-IEP was another example in which Whiteness "loses" its racial identity and attachment to a "group." Instead, it is the hidden norm and subject or beneficiary of the law. The plethora of adoption laws is another example of what scholars Cheryl Harris has called "whiteness as property" and George Lipsitz has named the "possessive investment in whiteness."[139] Such laws showcase how Whiteness holds an array of (property) value that is both protected and shapes how some people benefit from the law, while others are harmed.

With the focus of this chapter centering on color-evasive love, it might be tempting to believe that considering race before, during, and after the adoption process would go a long way in resolving the violence of love produced by transracial adoptions. However, the issues with adoption are deeper because adoption is inherently violent at the structural and symbolic levels, not just traumatic aspects that result from adoptive parents ignoring race. Thus the questions are less about how adoptions might help children in need, protect them from institutionalization, and become more accessible for families of color. Normative adoption discourse considers MEPA-IEP, ATC, and ASFA as incredibly successful laws for how many adoptions, and domestic transracial adoptions in particular, they have produced. Yet, one must wonder, how many adoptions would have been necessary if our policies, practices, and laws addressed the long-ignored structural racism and heteropatriarchy that enable family separation and created "state orphans" in the first place? How can we support mothers and families so they can parent their own children rather than "choose" or be forced into the civil death penalty?

Even in cases where termination of parental rights seems necessary, what might it mean to create legal relationships that could overlap or change? As legal scholar LaShanda Taylor has shown, some mothers who have been legally separated from their children continue to maintain informal relationships and attempt to reassert their legal parenthood after their children exit state care.[140] Studies show that children who are adopted from foster care after TPR can experience ambiguous loss and continue to seek emotional comfort from their birth family as well as have challenging relationships with their adoptive family.[141] I support and agree with the editors of *Outsiders Within*, who state that "the real alternative is found in welfare policies that support poor mothers of color rather than penalizing them, criminal justice policies that strengthen and heal communities rather than destroying them, and international policies that prioritize human security over profits."[142]

The numerous laws passed in the 1990s not only facilitated domestic TRA but also paved the way for the dramatic increase of TNAs in the latter part of the decade and through their peak in the 2000s. Chapter 4 examines how racial discourse, love, and the law have intersected in the context of transnational adoption from Asia.