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# The 'Characteristic' That Dare Not Speak its Name?: Ethnicity and Excision in the Children and Families Act 2014

Abstract

This article focuses on the removal in the Children and Families Act 2014 of the so-called 'ethnicity clause' relating to adoption. Reviewing the background to the contentious issue of adoption for Black, Asian and Minority Ethnic children  and the coalition's drive to increase its scale, the article analyses the discursive resources deployed – especially during the Bill's passage through Parliament – to justify, oppose or modify the legal change. It is argued that the emergent government policy can be seen as incoherent, even contradictory in relation to ethnicity and its significance and that this can be understood through the competing aims of striking a populist blow against 'political correctness' while staving off accusations of being 'naïve' (or worse) about race and ethnicity. These developments and debates are also analysed in the context of the growing power of racial neo-liberalism in shaping debates on child welfare.


Key words: adoption, neoliberalism, political correctness, race,

Controversy surrounding public policy in respect of adoption for Black, Asian and Minority Ethnic (BAME) children – namely whether they should be adopted 'transracially' into white families or into 'ethnically matched' ones - has persisted in Britain since the 1970s, often latent but periodically erupting into media and political attention. The Children and Families Act 2014 (CFA14) marks a crucial symbolic landmark in this conflict, notably its repeal of the 'ethnicity clause' of the Adoption and Children Act 2002 (ACA02) in England (it remains in Wales), signalling a clear intention to promote transracial adoption (TRA) for BAME children.

Ethnicized aspects of the adoption reform process leading to the CFA14 have been examined elsewhere (Barn and Kirton, 2012; Ali, 2014). In this article, the focus is on the arguments deployed in official discourse and Parliamentary debates for and against legal change. Beyond their relevance for adoption and child welfare, these discursive manoeuvres are also very revealing in terms of the governance of ethnicity. In particular, government pronouncements can be seen to veer between a dogged determination to deliver legal change dramatically reducing the significance of ethnicity and a desire not to appear as 'naïve' or even 'racist' in doing so.

**Historical and Policy Background**

As a policy issue, adoption for BAME children in the UK has passed through three distinct phases. The first, covering the 1960s and 1970s, saw a challenge to the idea that BAME children were 'unadoptable' with the British Adoption Project setting a pattern in which a clear majority of the adoptions were into white families (Thoburn et al., 2000). A second phase began in the 1970s, drawing on similar developments in the US to critique TRA as damaging to children and to minority communities (Maximé, 1986). In particular, ideas of

racial, ethnic and cultural identity were portrayed both as entitlements and resources for survival in a racist society with such needs best met by parents sharing similar ethnic backgrounds. Moreover, the perceived 'shortage' of BAME adopters was blamed on the ethnocentric and sometimes discriminatory, practices of adoption agencies (Small, 1982). In the 1980s, 'same race' policies were implemented, initially in certain urban local authorities and sympathetic voluntary adoption agencies (VAA) and increasingly became an orthodoxy within adoption agencies, albeit variously observed (Ivaldi, 2000). In turn, the salience of ethnicity was reflected in the Children Act 1989 (CA89) (s22(5)(c)) requirement for local authorities to give 'due consideration' to the 'religious persuasion, racial origin and cultural and linguistic background' in decision making for (prospective) looked after children. As contemporary commentators noted, due consideration was open to different interpretations, and offered no clear statement on the merits of ethnic matching (Freeman, 1992). However, subsequent guidance (Social Services Inspectorate, 1990) made the preference for such matching more explicit, while identifying certain exceptional factors, notably existing relationships or networks or special needs – which may change priorities. A long third phase since the early 1990s has seen preference for ethnic matching come under growing pressure, being portrayed as discriminatory (including towards white adoptive applicants), damaging to BAME children through delay or denial of adoption and driven by 'political correctness' (PC). Government pronouncements strengthened warnings against delay due to searching for ethnic matches (Performance and Innovation Unit (PIU), 2000), but nonetheless, the 'due consideration' paragraph was incorporated into New Labour's ACA02 as subsection 1(5). The New Labour government also formally recognised the challenges and importance of increasing the number of BAME adopters and gave opposition from certain BAME groups as one of the reasons for instituting special guardianship, a less 'final' form of substitute family care than plenary adoption (PIU, 2000).

**The Road to Reform - The Narey Report and the Adoption Action Plan**

In opposition, the Conservative party began to focus on the declining rate of adoption (from its mid-2000s peak) and the need to remove perceived barriers. The campaign was in many ways led by the *Times* newspaper and was highly racialized, with PC opposition to TRA almost invariably cited as the main barrier (Times editorial, 29 September 2011), despite the vast majority of (non-)adopted children being white British. The *Times'*s role became more central when it commissioned Martin Narey, former head of the Prison Service and Chief Executive of the children's charity Barnardo's, to write a report (Narey, 2011) that would serve as a 'blueprint' for adoption reform. Although Ministers denied any blueprint status, Narey was appointed as the government's Adviser on Adoption, despite a relative lack of experience in the field.

The overall thrust of the Narey report was to call for a massive rise in adoption, and in a chapter devoted to ethnicity, he advocates 'sweeping away' existing practices, said to be rooted in an 'unjustified obsession'. The report is very anecdotal and delays relating to black children are sometimes wrongly reported as affecting mixed race and Asian children also. Scant evidence is offered for social workers' obsession with ethnicity and rigid opposition to TRA, claims that have not been supported in research and inspection activity (Dance et al., 2010; OFSTED, 2012).

In all his pronouncements, Narey is at pains to deny that he thinks race and ethnicity are unimportant. Yet he seems unable or unwilling to explain that importance in an account that is somewhat crude and at times antipathetic to recognizing issues of ethnicity and culture. Within the literature on BAME adoption, it is widely recognised that the challenges of TRA, though highly varied for individuals, tend to be most marked in adolescence and early

adulthood, when awareness of (ethnicized) identity and its significance increase (Patton, 2000; Harris, 2006). By contrast with this essentially social view, Narey depicts identity as parental, which is then framed in punitive, racialized (and gendered) terms.

*I am afraid that I find arguments that we need to construct some sort of ethnic identity with a father who has abandoned his child unconvincing.*

Narey's reference to wider social contexts is limited to an amalgam of 'post-race' and racial equivalence. The UK is said to be 'increasingly multicultural' and to have 'moved on', other than in social work, while he states his disbelief (unlikely to be tested in the foreseeable future) that 'if we were ever to have an over-supply of white children relative to white prospective adopters, we would turn otherwise well-qualified black adopters away'. Song (2014) has persuasively shown how racial equivalence strips ideas of racism from their historical and political context, and thus it is not surprising that Narey's formulation addresses neither the challenges faced by BAME children nor the recruitment practices of adoption agencies.

Early in the reform process, Education Minister Michael Gove (Department for Education (DfE), 2011a) had framed current adoption policy as subject to both sinister political control and idiocy and his government as the rescuers of BAME children in care. The press release for the issue of new guidance referred to *'politically correct attitudes', 'ridiculous bureaucracy'* and *'misguided nonsense'* which were to be swept away. Importantly, these were said to revolve around *'left wing prescriptions'*, though strangely these appeared to include factors such as unwillingness to place children with single or older adoptive parents (DfE, 2011b: 89).

The coalition government's plans to boost the scale and speed of adoption were first formally put forward in an action plan (DfE, 2012: 21), subtitled 'tackling delay'. Amid various

measures, and importantly in terms of political symbolism, the first outlined was an intention to 'legislate to reduce the number of adoptions delayed in order to achieve a perfect or near ethnic match between adoptive parents and the adoptive child'. The justification for change starts with the plight of black children and their longer timescales for adoption, yet the plan moves on quickly to refer to delays for B(A)ME children more generally (:21). At no point is there any attempt to disentangle the workings of 'over-emphasis' or their effects across different ethnic groups. Research by Farmer et al (2010) and Selwyn et al (2010) is cited misleadingly to support the notion that the search for a perfect ethnic match is the root cause of delay for BAME children, when neither study argues this. Within the action plan (DfE, 2012a: 22), there is still acknowledgement of some preference for ethnic matching given 'two sets of suitable parents', but in a follow up document, this has disappeared (DfE, 2013: 34).

As statistics played a very prominent role in the reform debates, it is useful at this point to summarize some of the key official data (The figures used at the time were from 2012 ( DfE, 2012b), but have remained fairly constant through the period of ethnicised data collection that began in 2000.) The focal point of the critique was the headline rates and timescales for adoption from state care and its racialized pattern. In particular this related to the seemingly stark comparison of 2 per cent of Black looked after children (3 per cent of Asian children) being adopted compared with 6 per cent of their white counterparts. Despite regular discursive inclusion of mixed race children in the 'disadvantaged' BAME group, their rates for adoption were at least comparable to those for white looked after children. For completed adoptions, timescales for black children were significantly longer with a mean of 1302 days from entry to care, compared with 996, 919 and 835 days respectively for mixed race, White British and Asian peers (DfE, 2011c). However, despite the reformers' 'common sense' claim that lower and slower adoption rates led to BAME children 'languishing in care', analysis by Owen and Statham (2009) found that those ethnic groups from which

children were least likely to be adopted spent the shortest overall time in care. This relationship requires further investigation, but at least partly reflects higher rates of return to birth families or placement within extended families.

**Passage through Parliament – Pre-Legislative Scrutiny**

Once issued, the government's draft legislation revealed that the legal change would entail removing the subsection 1(5) 'due consideration' requirement of the ACA02. This proposal, destined to become section 3 of the CFA14, received fairly extensive treatment in Parliament, including pre-legislative scrutiny by a House of Lords Select Committee. The Committee crucially helped set the parameters for subsequent Parliamentary debate, both in its consideration of oral and written evidence from interested parties and its eventual formulation of an amendment to the government's proposal. If significant expressed opposition was perhaps predictable, the relative lack of support for the government's position was nonetheless striking. Various contributors argued against the need for any legal change - including the Family Justice Council and VAA Coram as well as those that government might regard as 'usual suspects' such as the British Association of Social Workers, the Local Government Association or the Race Equality Foundation (REF) – on the basis that the existing law implied no imperative for ethnic matching and was already clear on the unacceptability of delay.

Other contributors (perhaps most notably British Association for Adoption and Fostering (BAAF)) did accept there had been a degree of over-emphasis and hence need for rebalancing, but were clear that ethnicity must retain its importance.

> *John Simmonds (BAAF): I would be very concerned if we went down the route of the American legislation, where the Multiethnic Placement Act bans any consideration of*

*ethnicity in the placing of a child for adoption.* (House of Lords (HL), 2012a: 204)

(unless otherwise stated, all references in this section are from this record of evidence)

Both BAAF and the NSCPCC, which called for a 'sophisticated debate', offered summaries of both the strengths and difficulties of TRA, while June Thoburn reprised to the Committee the conclusions of her own research (Thoburn et al., 2000) comparing transracial and ethnically matched placements:

> *(all things being equal in terms of skilled and loving parenting) families of the same ethnic and cultural heritage as the child have an advantage over trans-racial adopters, since trans-racial adopters have additional challenges to overcome.* (:981)

Concerns were expressed about the preparedness of adopters and emphasis placed on the make-up of their networks and geographical location.

> *Franca Brenninkmeyer (Post Adoption Centre): Having no one around you who looks like you and having no role models and nothing to mirror your own experience of who you are is a problem. We have had a lot of people coming back to us as adults who were transracially adopted who really did struggle with that part of themselves.* (: 848)

Other contributors raised this bar a notch by emphasising the importance of 'lived' cultural connections and tacitly at least, endorsing ethnic matching as normative (Bradford Metropolitan District Council (MDC))(: 192).

> *What we learn about our histories, our cultures, our religions, our customs and our value systems; we learn through lived experience and no amount of 'identity work' or visits to countries of origin can compensate that experience.* (REF)(: 874)

Two facets of adoption agency practice emerged as particularly contentious, pitting various contributors against the DfE officials interviewed by the Select Committee. First, some witnesses (and written submissions) were keen to dispute the idea of TRA being thwarted by PC on the part of social workers (TACT) (:956), while others questioned the level of interest among adoptive applicants noting that the vast majority wanted a child from the same ethnic background (Adoption West Midlands) (:19). Questioned on this by the Committee, officials from the DfE could only emphasise that they had significant anecdotal evidence of white adopters who would have been willing to adopt black children being turned away by agencies (:487).

Yet more contentious and revealing of government thinking was the issue of recruitment, where critics emphasized the need to improve BAME recruitment, identifying a range of problems from lack of targeted, proactive strategies, language skills, incentives and community engagement with a view to breaking down perceptions of adoptions as essentially 'white' (Bradford MDC)(:192); (Coram) (:411); (BAAF) (:204). Set against these long standing concerns, the DfE response is instructive, and indicative of a fairly hard (if hesitant) line against ethnic matching.

> *I think that the Government's view is that* **we should not be particularly trying to recruit people from particular ethnic groups**. *We think that there may be a shortfall and we want more people from all backgrounds to come forward to adopt children, but* **we would slightly contest the idea that we ought to be looking specifically for adopters from particular ethnic groups in order to match them with children from those ethnic groups**. (:485) (emphasis added)

In subsequent written evidence (:497), the Department emphasized its desire for quick decisions over ethnic matching and made no reference to adopters' experiences, networks or sensitivities in respect of diversity. In effect, this comes close to a colour blind approach and is in stark contradiction to earlier recognition of the advantages of ethnic matching.

Broadening the debates somewhat, a number of contributors also highlighted religious and 'cultural' reservations regarding (plenary) adoption on the part of Muslims and the African diaspora (John Simmonds, BAAF)(:204)(Thoburn)(:981), (with Tri-borough's submission (:995) also referring to socio-economic and housing pressures for many prospective BAME adopters.

In their concluding report, the Select Committee (House of Lords 2012b:.23) rejected the idea that the evidence on delay justified legal change, but conceded that the current subsection 1(5) of the ACA02 gave issues of race, religion, culture and language greater prominence than other factors listed in the 'welfare checklist'. Clearly stating its opposition to complete legal excision, the Committee signalled a compromise, namely that subsection 1(5) should be removed but race and its affiliates then be included explicitly in the welfare checklist. It was largely on this proposal that the subsequent Parliamentary debate was to focus.

**Swinging the Pendulum – A Step Too Far**

Introducing the second reading of the Children and Families Bill, Children's Minister Edward Timpson began with a denial – 'I want to make it absolutely clear, for the avoidance of any doubt, that we do not intend that ethnicity will never be a consideration.' (HC Deb 25 Feb 2013 c51) - before justifying the removal of the 'ethnicity clause' in terms of removing

blocks on adoption created by the search for a perfect ethnic match. Stephen Twigg, Labour's Shadow Secretary of State for Education, broadly welcomed the adoption reforms, but expressed support for the compromise amendment: 'we should indeed reduce the prominence given to ethnicity, but we must not move to the other extreme where it could be ignored entirely, which is the risk in the Bill, as drafted'. (c66).

This statement foreshadowed later debate on the 'pendulum swing' away from reference to ethnicity and whether it was excessive or not. Albeit within the constraints of Parliamentary convention, including appeals to 'faux consensus' (e.g. 'we all want the same thing' HL Deb 9 Dec 2013 c600), opposition to excision was forcefully expressed and drew on various important themes. In both Houses of Parliament, the most detailed discussions were held in respective committees.

Showing continuity from the Select Committee, a significant line of critique was to challenge the (alleged lack of) evidence underpinning the government's proposal. Here, it was variously contended that factors such as age and health had a greater impact than ethnicity, that the problems of PC were minor and diminishing and that overall the case was not made (Baroness Butler-Sloss, Baroness Lister HL Deb 9 Oct 2013 c20, 24GC). A second line of challenge to the proposed legislation was to highlight issues of children's rights and voice. Several contributors reported testimony from adopted and looked after young people emphasizing the importance of ethnic identity to them (Steve Reed, HC Deb 12 Mar 2013 c202; Children's Commissioner HC Deb 5 Mar 2013 cc89-90).

> *The young ones were very vocal, and at least two of them said to us that the question*
> *of ethnicity was extremely important to them, and they were worried about being*

*placed—or the possibility of being placed—with someone who would not understand*

*their background.* (Baroness Butler-Sloss HL Deb 9 Oct 2013 c20GC).

It was also variously argued (including a view expressed by the Joint Committee on Human Rights, Baroness Lister (HL Deb 9 Dec 2013 c605)) that removal of the 'ethnicity clause' contravened the United Nations Convention on the Rights of the Child (UNCRC) and especially article 20(3) which states that for children without families, 'due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background'. Following some skirmishing to establish that this required respect for the child's background rather than necessarily a shared one with the adopter, the government fell back on the notion that the generic term 'characteristics' within the welfare checklist sufficed (Lord Nash, cc605-6) an argument to which we will return, and rejected any question of incompatibility with the Convention.

The importance of ethnic identity for those adopted and hence of understanding on the part of parents was emphasized in a number of ways and at various points in the proceedings. Baroness Benjamin (HL Deb 9 Dec 2013 602) cited one story of many of a young woman being branded as an 'Oreo' (black on the outside, white on the inside) due to lack of exposure to her black heritage. References were also made to autobiographical accounts by transracially adopted adults and to BAAF's recently published follow up study of women adopted from Hong Kong into white British families to show the potential damage that could result from lack of attention to identity needs (Feast et al., 2013).

*Many of them state that they had a loving and caring upbringing on a par with, and*

*perhaps better than, others brought up by both their parents. None the less, many of*

*them will also point to a feeling of a lack, a void or an emptiness where a sense of*

*their heritage and identity should be. No matter that these might be constructed by*

*society; they are very real to the people who experience them.* (Baroness Young, HL Deb 9 Oct 2013 c24GC)

Persisting racism also ensured the salience of ethnicized or racialized identities and their handling within families.

> *If a child experiences racism or rejection because of their religion or culture, they may feel isolated and not able to share this with anyone within the family. Being visibly different from family members can also result in a sense of feeling as though you do not belong.* (Baroness Benjamin, HL Deb 9 Oct 2013 c29GC)

Perhaps reflecting the composition of Parliament and the typical backgrounds of adopters, several contributors had themselves adopted children across ethnic boundaries and while their testimony could be taken as broadly positive about TRA, it was largely deployed to stress the importance of ethnicity and hence its explicit inclusion in legislation.

> *I am speaking as the parent of an adoptive child of Asian background—and it is my conviction that any child of a different racial background from the parents is deprived if it cannot identify easily, almost unconsciously, with someone close to it in the way children do. …. You impose a burden and a cause of stress on a child if ethnicity—as far as is possible—is not respected. (*Baroness Whitaker, HL Deb 9 Dec 2013 cc596-597)

Beyond discussion of identity and racialization, critics of excision focused on the importance of BAME recruitment and consideration of alternative forms of permanence such as special guardianship and kinship care, both seen as neglected or marginalised issues in the government's reforms (Baroness Young, HL Deb 9 Oct 2013 c24GC).

The image of the swinging pendulum figured prominently in debate as a means of marking out the implicitly optimal middle ground. A core tenet of opposition to (complete) removal was that this represented 'a step too far'. Lisa Nandy (HC Deb 12 Mar 2013 c201) warned of a return to 'damaging placements that took no account of ethnicity', while Baroness Howarth (HL Deb 9 Oct 2013 cc26-27GC) talked of the danger of seeing 'one dogma replaced by another'. For its supporters, the Select Committee amendment sponsored by Baroness Butler-Sloss offered a neat compromise solution and in the words of Baroness Lister (HL Deb 9 Oct 2013 c25GC) many were 'completely at a loss' to understand the government's refusal to accept it.

**Swinging the Pendulum – It's Off the Scale**

For its part, cutting crudely through debate about causality and context alike, the government response emphasized differential timescales and rates for black children as the justification for complete legal excision.

> *This is completely unacceptable and upsets me now as much as it did when I first heard about it three and a half years ago. This is not a question of the pendulum having swung too far. The pendulum has swung off the scale.* (Lord Nash, HL Deb 9 Dec 2013 c604).

The government's stance can best be described as Janus-faced. On the one hand, the case was made for complete excision of 'ethnicity' from the legislation, including a forceful rejection of compromise proposals. Conversely, government Ministers appeared to go to great lengths to emphasise the crucial importance of ethnicity and how they would ensure its being taken into account. An interesting facet throughout all the debates was how the issue of ethnic

matching and its desirability were essentially ignored, gaining only occasional and oblique attention.

Though rarely articulated in such terms, the demonic shadow of PC loomed large in the case for excision, with the government seemingly determined to exorcise its influence. Responding to a fierce, wide ranging and often very nuanced critique, the governments twin track strategy became apparent, namely a sharp separation of statute law (from which any reference to ethnicity must be erased) and guidance (where it could seemingly be dealt with copiously). It should be noted, however, that the guidance 'solution' only emerged as the excision came under pressure (Lord Storey, HL Deb 9 Dec 2013 c600).

In the legal domain, the government's defence against allegations of dismissing ethnicity rested on the notion that it belonged in the 'other characteristics' category within the welfare checklist and this position was to be pivotal to debates on the main and a subsidiary amendment. Timpson (HC Deb 12 Mar 2013 c205) set out the argument that the checklist was not exhaustive and that excision of reference to ethnicity served to put all 'characteristics' on an equal footing. However, age and sex are included explicitly within the welfare checklist and hence ethnicity was to be moved from having a greater to a lesser prominence relative to those markers. The terminological strand of this debate focused on the respective impacts of explicit inclusion and exclusion. Those supporting Baroness Butler-Sloss's amendment contended that relying solely on guidance made it more likely that they would be overlooked and that it gave them lesser, 'discretionary' weight.

Responding to pressure, the government attempted to provide reassurances in two ways. First, it was suggested in increasingly strident tones that 'background and other characteristics' would 'automatically' ('as a matter of plain English' - Lord Nash, (HL Deb 9 Oct 2013 c21GC) include race, religion, culture and language, obviating the need for their

inclusion in the checklist. At various points, Lord Nash spoke of the 'critical part' played by (ethnic) background and heritage and the government's 'strong view that [the checklist] ..must include ethnicity' (HL Deb 9 Dec 2013 c605). However, the legal wording is ultimately discretionary, referring to characteristics 'that the court or agency considers relevant' – seemingly falling well short of automatic consideration.

Somewhat bizarrely, Timpson and Nash referred to current social work practice as a safeguard, with the latter stating that 'it is not in the nature of social workers to ignore ethnicity' (HL Deb 9 Dec 2013 c605), overlooking both the legal requirement (subsection 1(5)) that the government was now removing and the allegedly 'PC' practice it was trying to exorcise.

Second, new guidance was offered as a bargaining chip. The offer was sweetened with promises that the guidance would state that transracial adopters may need additional training, that post adoption support was to be improved and more resources would be devoted to recruitment though significantly, the government carefully stopped short of any suggestion of targeting. Lord Nash's pronouncement was concluded boldly and seemingly unequivocally.

> *We have no intention of moving away from the importance of the child's cultural and ethnic background. It is imperative that these are taken into account on every front.* (HL Deb 9 Dec 2013 c608)

Yet the guidance (and moreso legal excision) was also framed by the need to 'change a culture of behaviour' (c608) rooted in over-emphasis on ethnicity, and no explanation was offered as to how it would reconcile these ostensibly conflicting demands. In addition, the importance seemingly being accorded to ethnicity raised obvious questions about the government's determination to remove any reference from the legislation. The rationale given

for rejecting Baroness Butler-Sloss's amendment was for Timpson (HC Deb 12 Mar 2013 c206-7) that it only represented a 'subtle change' from the present position and would therefore be inadequate to address 'misguided practice'.

Baroness Jones (HL Deb 9 Oct 2013 c22GC) had earlier reported a conversation with Lord Nash in which he had allegedly said that any mention of ethnicity would encourage excessive emphasis and that it was therefore necessary 'to go to the opposite extreme to ram the message home to local authorities and adoption agencies', a (mis)use of legislation she rejected. Elaborating on and contextualizing this, Baroness Young (HL Deb 9 Oct 2013 c23GC):

> *I do not understand the argument that there is somehow an excessive emphasis if you mention it. That does not make sense to me, given that we live in a society where there is still racism and discrimination based on religion, cultural background and language.*

Beyond the use of statistics and inferences about PC barriers, government spokespersons (notably Lord Nash) used various discursive techniques to position themselves as champions of racial equality. As Augoustinos and Every (2007) have noted, elites will often appropriate civil rights slogans or leaders to lay claim to their legacy and moral authority. Lord Nash provided two such rhetorical flourishes during the debate, the first a reference to the death of Nelson Mandela.

> *My Lords, it seems ironic that, on a day when we have been paying tribute to probably the greatest force for racial reconciliation ever, we are having a debate about a matter relating to race. However, I am encouraged by today's debate. It is absolutely clear that we are really not very far apart; we are all trying to achieve the same thing – the question is just how.* (HL Deb 9 Dec 2013 c604)

*As I said at the beginning, we have today paid tribute to one of the greatest advocates of racial equality ever. I listen frequently to the wonderful speech given by the other great advocate, Martin Luther King, which in my view is the greatest speech ever made. It is not the "I Have a Dream" speech, which everyone thinks of, but the one he made two months before that at Cobo Hall in Detroit in June 1963…… in which he used that wonderful musical analogy that all God's children, from base black to treble white, are equally important in God's world and on God's keyboard. However, that does not seem to be the result in terms of the outcomes for black children in our adoption system, and this Government are determined to change that.* (c609)

Intertextually referencing this lesser known speech is clearly intended to convey a deeper knowledge of the civil rights movement, though it is rather undermined by implying that there are only two 'great advocates' of racial equality.

It was notable in terms of voice that two of the most prominent opposition figures (alongside Baroness Butler-Sloss) were the black women peers, Baronesses Young and Benjamin. In response to this, Lord Nash attempted to neutralise the power of their critique with somewhat patronising praise, which simultaneously offered consensual identification while resolutely rejecting their arguments on the amendment (van Dijk, 1997).

*It seems to me that we need more successful black people and more successful black role models. It defines our society to have a balance of successful people. I look forward greatly to the day when there are many more Baroness Youngs and Baroness Benjamins. Although I was scribbling some of the time, I think I agreed with everything the noble Baroness, Lady Benjamin, had to say.* (HL Deb 9 Dec 2013 c604)

The amendment was put to the vote and defeated by 233 votes to 216 (HL Deb 9 Dec 2013 c611). A second amendment sponsored by Baroness Hamwee which proposed to remove

references to age and sex in the welfare checklist in order to place all 'characteristics' on an equal footing was withdrawn.

To conclude this passage, it is instructive to offer a close reading of two statements made by Lord Nash in the course of the debate, which appear to capture the extent of the tensions if not outright contradiction in the government's position. In the first, he argues that the reforms:

> *will* **sweep away barriers** *that have stood in the way of finding children stable, loving homes earlier. The Bill contributes to this* **by ... ... removing the explicit requirement to have regard** *to a child's religious persuasion, racial origin and cultural and linguistic background when matching a child and prospective adopters* (HL Deb 2 Jul 2013 c1093) (emphasis added)

(Here, it is worth noting that 'having regard' represents a relatively low threshold.) Later, however, he refers to *ensuring* that *adopters can engage with the cultural background, heritage and ethnicity of the child* and that children's ethnicity is *fully taken into account in all placing and matching decisions.* (HL Deb 9 Dec 2013 cc607-608).

**Discussion**

What then can be gleaned from this particular strand of adoption reform under the CFA14 regarding ethnicity and child welfare. As Fortier has argued, policy documents can be seen as 'part of the assemblage of processes, practices, techniques and artefacts of which governmentality is made' (cited Gedalof, 2013: 118) and this can reasonably be extended to Parliamentary scrutiny and debate. In broad terms, the discourse can be seen to function primarily in terms of (de)legitimation, providing justification, apportioning blame, and

constructing identities. Parliament represents a very particular discursive arena, being both the site of (sometimes intense) conflicts and of stylized civility and varying degrees of common identity as Parliamentarians (Wodak, 2009; Ilie, 2010) As Ilie (2010) observes, there is rarely any great expectation that debates will 'change minds' and votes, but rather an exercise in (de)stabilisation aimed at securing political advantage with multi-level audiences, including stakeholders, media and 'public opinion'. As a consequence, the discourse is mostly framed 'for the record', albeit incorporating reactive elements from the debate (van Dijk, 1997). Here, Baroness Jones's disclosure of Ministers' back stage desire to 'ram home' a message, was a clear attempt to embarrass them in relation to rational lawmaking.

Ilie (2010) has argued that political leaders seek to convey a balance of rationality and emotion, or logos and pathos. Government attempts to occupy the emotional domain were apparent in Timpson's claims of 'compassion at my core' (HC Deb 25 Feb 2013 c45) and Nash's expressions of anger which he argued should be universally felt (HL Deb 9 Oct 2013 c21GC). Struggles over the metaphor of the pendulum and varied expressions of bemusement and disbelief on the part of the opposition can all be seen as attempts to stake out the rational ground. Throughout, however, the topos of numbers generated by highly selective government adoption 'scorecards' for local authorities remained central, with the relatively muted challenge perhaps reflecting the workings of power/knowledge in contemporary performance management. As outlined above, the debate witnessed a number of key tactics – such as apparent agreement, empathy and concession - on the part of government identified within critical discourse analysis and aimed at disarming or neutralising opposition (van Dijk, 1997). These include the pronouncements of Timpson and Narey on how they 'take race and racism seriously', yet consistently fail to articulate their significance, providing powerful examples of what Ahmed (2006) has described as a 'non-

performative' use of language i.e. utterances that are designed to obscure and impede their own stated aims.

The discursive framing of debate represents an interesting amalgam. On the one hand, many of the resources deployed have changed relatively little and could easily have operated at any point over the past two decades or so. However, debate on BAME adoption has always articulated with wider concerns over 'race relations', with for instance ethnic matching often pejoratively branded as 'separatist', and here is it important to note changing contexts in the early 21st century. Growing state concerns over migration and Islamic radicalism have been reflected in welfare retrenchment internal and external securitisation (Kapoor, 2013) and the promotion of more assimilationist models of integration (Sachrajda and Griffith, 2014). Relatedly, (the albeit poorly defined) multiculturalism has been deemed to have 'failed', becoming a barrier to integration rather than a pathway, although some commentators have argued that below the ideological radar, it continues to have significant resonance (Korteweg and Triadafilopoulos, 2015). Nonetheless, and despite national differences, almost all western states have witnessed gravitational shifts on race and ethnicity, often with increasing far right political influence, and declining support for either multiculturalism or anti-racism (Lentin and Titley, 2011).

Ideologically, this has manifest in an increasingly hegemonic racial neo-liberalism. The latter has been described as enshrining 'the end of race' as an oppositional force in the public sphere (including concerns with racialized inequalities and racism) and shifting its addressing towards the private domains of family and civil society (Goldberg, 2009; Redclift 2014). Crucially, as Goldberg (2009) contends, the post-racial is ushered in while the legacy of racism is 'buried alive'. What Bonilla-Silva (2012) refers to as 'racial grammar' serves to render race largely invisible, while foregrounding white standards and norms including

formal equality and colour blindness as universal. Inversions figure prominently, with anti-racist opposition cast as racist, and white people and 'innocent' minorities its victims. These features are highly relevant to debates on TRA, with PC social workers readily cast as racist (see Barn and Kirton, 2012 for discussion) and adoption as a (racially) privatised child welfare solution. Similarly, given the paucity of wider media and political interest in the well-being of BAME children, there is little doubt that the attention given to TRA owes much to the status of prospective adopters as white victims. Finally, TRA is often taken uncritically as a positive expression of (white) universal values and transcendent humanity (Seshadri-Crooks, 2001).

In the United Kingdom and especially in England during the period of coalition government, there has been a huge paring back of the infrastructure of equality, and a markedly more assertive 'muscular' approach taken towards perceived illiberalism linked to race and ethnicity (Jones, 2014; Sachrajda and Griffith, 2014). Broader neo-liberal currents in UK/English child welfare are also important, with the resurgence of 'child rescue' and continuing/increased use of forced adoption (i.e. against parental consent) being powerfully criticised on human rights grounds by the Council of Europe (Borzova, 2015).

The influence of racial neo-liberalism is evident within the reform programme in a number of ways. First, despite known ethnicized profiles, there is no interrogation of the careers of BAME looked after children, simply a demand that they should be adopted as frequently as their white peers. Second, there has been a retreat from any questioning of plenary adoption, irrespective of BAME reservations or opposition. Third and related to this is the prioritisation of a largely ethnocentric model of attachment, with very little attention paid to the various 'lost attachments' typically associated with plenary TRA. Fourth, the unwillingness to

promote recruitment of BAME families (either financially or through the levers of performance monitoring and management) confirms that adoption agencies will be readily held more accountable for perceived obstruction of TRA than for such recruitment shortfalls. There is also here an implicit Othering of BAME substitute carers, which reinforces that of BAME birth families. Fifth, there is a general lack of reflexivity in relation to whiteness (Garner, 2007), both in respect of the challenges facing transracial adoptive parents and those relating to empathy for BAME adoptees. Finally, it can be seen that TRA fits well with racial neo-liberalism's 'assimilative integrationism' and emphasis on individual autonomous individuals standing outside the particularistic ties of family, community and (cultural) tradition (Gedalof, 2013).

The counter-narratives to those of the government challenged aspects of the hegemonic position but fell short of any radical critique. The prime concerns appeared to be to highlight the danger of 'colour blindness', emphasizing the continuing importance of ethnicity both for children (notably in respect of identity, culture and racism) and their (adoptive) families and pressing for greater recruitment within BAME communities. Children's rights were invoked in respect of children's testimony on this importance and the formal recognition of identity and cultural rights within the UNCRC. What was lacking however, was any deeper sense of ethnicized and crucially classed division within child welfare, including the lack of family support services offered to (poor) BAME families and white mothers of mixed race children (Harman, 2013). While ultimately unsuccessful in preventing the excision of ethnicity from the statute, it is apparent from the record that these counter-narratives exerted significant pressure on government, resulting in concessions on guidance and recognition of the continuing importance of ethnicity, however incoherently this is now expressed.

As noted earlier, a feature of the debate was its limited engagement with shifting ethnoscapes, for the most part reprising tussles over the (un)importance of race and ethnicity. There was for instance, no reference to 'superdiversity' (Vertovec, 2007) nor adoptions from Eastern European migrant families. Arguably, the most striking silence related to religion, consideration of which was also to be removed by the excision. This can be seen as very surprising for two reasons: first that since 2001, wider discourse on ethnicity, community cohesion and so forth has increasingly focused on British Muslims (Modood, 2007) and second, that headline adoption rates for Pakistani and Bangladeshi children are among the lowest for any ethnic group, being roughly on a par with those for children of Black Caribbean origin. The silence may be partly explicable in terms of the likely controversies that would have arisen over potential adoption of Muslim children into non-Muslim homes but the overwhelmingly secularized terms of debate remain noteworthy. The complex intersections of race and class in relation to BAME adoption were likewise ignored. The allegation of reverse racism against adopters has frequently been an overtly classed one, with regular media claims of applicants being deemed 'too white and too middle class' to adopt (see e.g. Bennett and Taylor, 2011), even while the vast majority of adoptive parents are white and middle class. The intersection has also been important to TRA in other ways, including patterns of racialized geography that can contribute to a sense of isolation for BAME adoptees. It is also the case that 'black identities' are often assumed to be working class or 'urban' and as Butler-Sweet's (2014) research in the US has shown, classed notions of 'acting white/black' pose challenges for middle class black or biracial children raised in their birth families as well as for those transracially adopted.

Although there is no reason to doubt the sincerity of reformers' desire to increase the scale of adoption for BAME children, it is also clear that the reform process has important political dimensions. In particular, the power of the media and associated 'public audience' cannot be

over-estimated and it is evident that Narey and Gove in particular were keen to secure a symbolic victory over the dark forces of 'PC'. This may explain the determination not to accept legal compromise, even while feverishly rowing back on their apparent dismissal of ethnicity. Baroness Morris (HL Deb 9 Dec 2013 c599) was one of several Parliamentarians to note how government spin had promised a decisive move away from taking ethnicity into account. As to the effects of the legal change and new guidance on policy and practice, these arguably remain as uncertain as they have been over the past three decades, with ample scope for different messages to be drawn and responses made.

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