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Barbara Bennett Woodhouse: Hidden in Plain Sight

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INTRODUCTION

AIN'T I A PERSON?

Ain't I a person? Ain't I got rights?

—Questions posed by a thirteen-year-old foster child

The great strength of history in a free society is its capacity for self-correction. This is the endless excitement of historical writing—the search to reconstruct what went before, a quest illuminated by those ever changing prisms that continually place old questions in a new light.

—Historian Arthur M. Schlesinger Jr.¹

The boy I shall call Tony was not very tall or strong for his age, but he was intense, intelligent, and articulate. Tony had been removed from his mentally ill mother's care at age four because of medical neglect. He and his younger half sister had spent the previous nine years in various foster homes. He saw his mother often but she remained unable to care for him. When Tony was thirteen, the attorney for the state had decided to file a motion, known as a TPR, to terminate the parental rights of Tony's mother. A TPR is the ultimate sanction—the “death penalty” of family law. The judge had asked an interdisciplinary team, composed of a lawyer, a psychiatrist, and a social worker, to evaluate mother and children. I was not Tony's lawyer. My job was to advise the child psychiatrist and the social worker on the relevant law. But

Tony knew I was a lawyer, and he had a lot of questions about his rights.

Everywhere but the United States, the answers would have been readily available in “child friendly” language, in booklets describing the United Nations Convention on the Rights of the Child, popularly known as the Children’s Rights Convention or CRC. The United States is alone in refusing to ratify the CRC, the most rapidly and universally accepted of all human rights charters.² Although the CRC was widely supported by mainstream organizations from the American Bar Association to the PTA, ratification in the United States had been blocked by opposition from the religious right because of concerns about undermining the traditional family and because of a pervasive American distrust of international law. Many Americans assumed our laws already gave children all the rights they could need or handle. Others feared that giving rights to children would threaten the autonomy of American families and open the privacy of the home to state intervention.

Meanwhile, Tony and hundreds of thousands of other American children were growing up in the custody of the state—essentially being raised by the government—with few rights and precious little family. For Tony, state intervention in his home life was a given. He lived each day with the state looking over his shoulder, deciding where he would live and what he would be allowed to do. In the words of another foster child, Malcolm X, he was stigmatized before his peers as a “state child” with no real home of his own.³ Whatever family ties Tony had were at the mercy of the state. A child in state custody, as Tony’s story graphically illustrates, even more than an adult in custody, needs legal assistance to navigate the system and correct its mistakes and failures. The U.S. Constitution requires that the states provide lawyers to adults when they are placed in state custody—in prisons or psychiatric institutions, for example. However, abused and neglected children in the United States have no constitutional right to a lawyer and are lucky in some states to have a civilian representative to speak for them. Tony happened to live in a forward-looking

