NEW ZEALAND ADOPTION RESOURCE

HISTORY
RATIONALE
REFORM & RESEARCH

VOL 2

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K C Griffith
20 Herewini Street, Titahi Bay Wellington, New Zealand
Email <keith-griffith@clear.net.nz> Ph 04-2366215

NEW ZEALAND
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RESOURCE

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VOL 2

ADOPTION HISTORY
RATIONALE - REFORM- RESEARCH

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—Browning 2005
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Non anticipation of long term relationship
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ADOPTION HISTORY

Adoption Old as Human Society

Ancient mythology used adoption to authenticate cultural origins. *cf Romulus and Remus and creation myths.*

Survival adoption insured survival of families and hy-races. Primary purpose was to meet the need of adults.

Ancestor worship Adoption provided persons to fulfil spiritual obligations to ancestors, ensured survival of the cultus.

Paternity From earliest times there was social and physical paternity distinction. Physical paternity could never change but social paternity was transferable. [Attempts to change physical paternity is a recent innovation of legal fiction.]

Kin base Both classical and tribal societies preferred adopting extended kin.

Dual parents Adoption was an open transaction between two sets of parents. A role change not an obliteration.

Earliest written record c4,300 years ago *King Sargon in city of Acade c2300BC*

Earliest Legal code 4,250 years ago *Code of Hammurabi 2285-2242BC Babylon*

Hebrews- Adoption not part of legal code or practice, the few Old Testament references relate to foreign contextural practice- Moses Egypt etc

Christian church- adoption a term used in later writings to define sonship toward God, cf St Paul a Roman. Sonship is not a natural state but one conferred by God's act. Christian countries continued to use adoption laws inherited from a variety of other sources.

Islam- At first practised adoption as a Babylonian tradition but later repudiated it.

Western Adoption

Roman adoption practice ended at Fall of Rome and resulting chaos.
Dark ages 476-1000AD no legal adoption.
1263AD Spain 1st Western Adoption Code cf Great Code of Alfonso *'Las Siete Pardidas'*.
Norman conquest 1066AD Feudal system into England. had no place for adoption

Medieval church - provided a home from those from nowhere. Celibate Monastic Orders perpetuated themselves by adoption into the religious family.
-After Disintegration of Feudal System parentless children were nobody's responsibility.
-Tudor Poor Laws began 1597, a legacy of Medieval concern, administered by the Parish took some responsibility for children - workhouse etc.

Modern Western.

Significance of International Conventions' 'UN Rights of the Child' and Hague Convention"
Globalization of Adoption- Intercountry Adoption...
Opening up of Adoption 1980s> ...

Adoption old as human society

The study of historical adoption reveals that adoption is as old as human society itself. Also, the need for adoption and its nature changes according to the needs of the society. Adoption, formal or informal, in various forms, is found almost universally in all civilizations.

Primary purpose to meet needs of adults

The primary purpose of adoption was to meet the needs of the adopting parents rather than the well being of the child. The welfare of the child is a totally modern concept. Unwanted children in ancient and primitive societies were disposed of by infanticide, which was widely practised. The children that remained were presumably wanted but their individual welfare was not a priority concern. The historic primary adoption motive to meet adopters need's remains today, but is coupled with considerations of the welfare of the child.

Paramount consideration of child very recent

1959 *United Nations Declaration of the Rights of the Child*: Principle 2 includes "the best interests of the child shall be the paramount consideration"
1989 *United Nations Convention on the Rights of Child:* Article 21 "State parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be paramount..."

Adoption and myths

Benet— "Adoption features in many myths and cultural origins that began with a foundling. Thus, Romulus and Remus suckled by a wolf, Moses adopted by the Pharaohs daughter, and the creation myths of Africa and Oceania.

This is part of the general propensity of civilizations to invent myths about their supernatural origin— their founders must be seen as belonging unequivocally to the new order rather than the old, and one way to achieve this discontinuity it to make a mystery of their parentage and the circumstances of their birth. So it is that stories involving adoption play a part in many religions and myths of group origin, whether or not the group itself subsequently practises it: this will be determined by such factors as the system of landholding and inheritance, the ratio of population to land, and the degree of social stratification." Benet 1976 p22

Classical and tribal societies

Benet—"Some use of adoption has been part of the 'unconscious planfulness' of most homogeneous societies. The extent of its use has typically found a balance with other mechanisms for providing children with families and vice versa. Classical Eurasian societies in Rome, China and India practised adoption, as did tribal societies of, for example, tropical Africa and Oceania. Since these two groups of societies have many things in common, there are, not surprisingly, some similarities in their use of adoption.

(a) In both, members of the extended family were the preferred adoptees, and

(b) adoption was a transaction between the two sets of

parents. To contrast their systems in other respects, and to compare each with adoption in the West, tells us much about the nature of the institution itself. In particular, it corrects the impression prevailing in the West that the 'blood tie' has historical precedence over forms of social kinship, and that it takes a complex modern society to invent adoption." Benet 1976 pp22-23

Survival

Benet—"There are many reasons why adoption was important as far back as we can see in human history. Survival, especially that of children, was uncertain. To ensure the continuity of the group, it was necessary to have flexible arrangements for incorporating new members and providing substitute parents. For a ruling group to keep power, it had to attach to itself enough talented members of the next generation." Benet 1976 p23

Social and physical paternity distinction

Benet— "From the very earliest times a distinction was made between social and physical paternity-and the former was usually the more important. Social paternity has typically been established by the mother's marriage. The Romans said Pater est quem nuptiae demonstrant; the early English, "whoso boleth my kyne, ewere calf is mine". It was this distinction that made adoption possible. It was obviously impossible to change physical paternity, but, in social terms, parental rights were theoretically transferable. However, adoption raised some unique problems, which were quickly recognized and which have persisted to this day." Benet 1976 p23

Religion

In ancestor worship, adoption fulfilled an important role to provide a person to fulfil spiritual obligations to ancestors and ensure survival of the cultus. The Religious dimension of adoption is more than a charitable interest. History tells us, it goes back to the inception of adoption, and predates the legal dimensions by thousands of years.

Enlightened ancient law

Babylonian, Greek and Roman adoption law was often more enlightened than ours today. Babylon, 4000 years ago provided individual adoption contracts. Adoptions were in open court, with public ceremony of recognition. Almost all practitioners of adoption, ancients, tribal society, previous civilisations, Asians to Polynesians, would have viewed modern Western adoption secrecy as bizarre.

King Sargon King of Agade c2330BC

City of Akkad also known as Agade

Was an ancient city located in modern day Iraq. It was well known5 for its fertile location right between the Euphrates and Tigris rivers. Unfortunately this intriguing site is still undiscovered. Although this site is still undiscovered there is an archaeologist named Sir Austen Layard who began digging at both Nimrud and Kuyunjik. What he found was astonishing he discovered the ruins of the Royal Library of the great-grandson of Sargon II. They continued to excavate this site for twenty-five years and found over 10,000 tablets of both Sumerian language and Akkadian language. The discovery of these tablets has helped us to figure out information about how these people lived their lives and managed to survive for so long.

What we do know about the city and culture of Akkad is that they were Semitic people. They also had a language of their own, known as Akkadian. We know this because excavations of Sumerian sites at around the first millennium BC which had medicine tablets and other very important tablets which told us about their culture, which where written in this language (Akkadian). From these Akkadian scripts we know that the Akkadian people loved education and knowledge. They strived for more knowledge just so they could improve their well-being. We also know that they had an impressive army that ruled the area along with the Sumerians. There is evidence of tools and weapons, which had sharp points that were hurled through the air at their opposing enemies. We also know that the Akkadian people tended to stay in one place for as long as they could or until the rivers overflowed forcing them to abandon their cities, which they would come back to after the river had receded. They had houses that were made to stay in one place and were not meant to be moved. They where also farmers along with other people in this fertile location between the two rivers Euphrates and the Tigris. Since the site of Agade is still undiscovered we do not know a whole lot about the Akkadian people. We do have some information about the Akkadian people through other sites around this area. **Source** http://www.ianlawton.com

Sargon the Great

Guisepi & Williams—was an ancient Mesopotamian ruler who reigned approximately 2334-2279 BC, and was one of the earliest of the world's great empire builders, conquering all of southern Mesopotamia as well as parts of Syria, Anatolia, and Elam (western Iran). He established the region's first Semitic dynasty and was considered the founder of the Mesopotamian military tradition.

Lack of contemporary record

Sargon is known almost entirely from the legends and tales that followed his reputation through 2,000 years of cuneiform Mesopotamian history, and not from documents that were written during his lifetime. The lack of contemporary record is explained by the fact that the capital city of Agade, which he built, has never been located and excavated. It was destroyed at the end of the dynasty that Sargon founded and was never again inhabited, at least under the name of Agade.

Earliest Adoption Record c2330BC

4,300 yrs ago. An ancient Near Eastern document, the Acadian legend of Sargon, the mighty king of Agade. Note similarity to adoption of Moses. Exodus 2:1-10 c1200BC

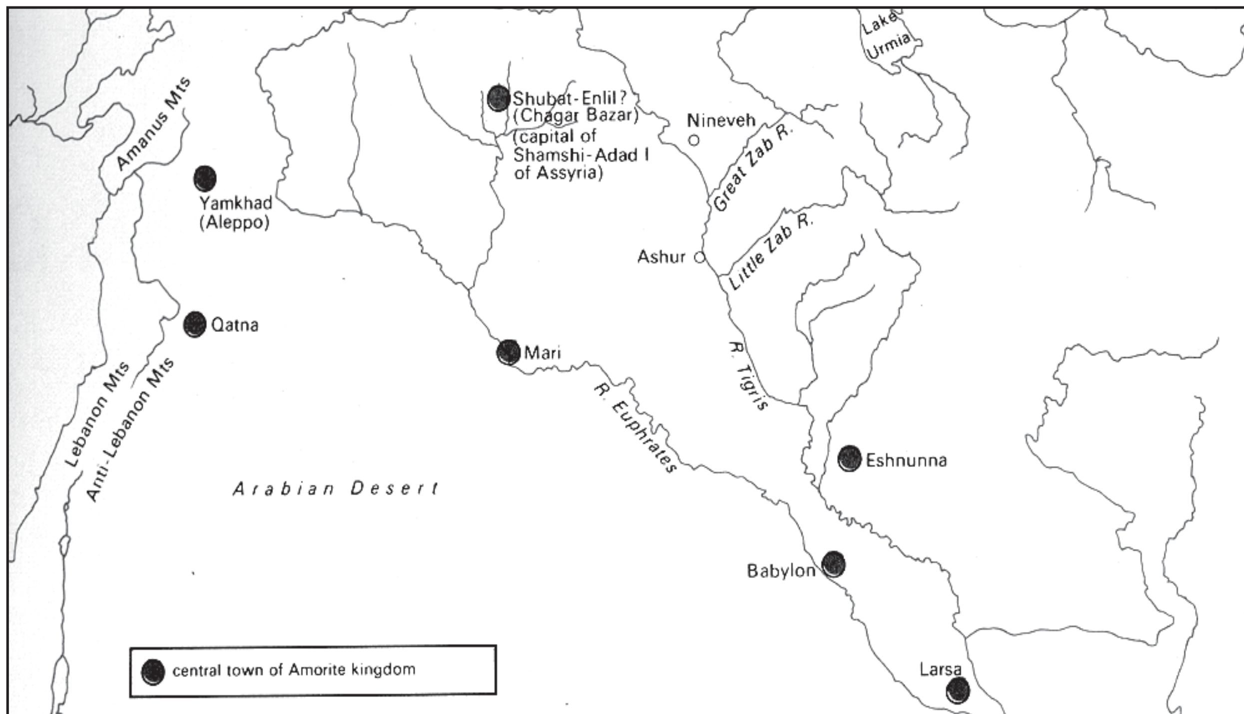
King Sargon and City of Agade

1 Sargon, the mighty king, king of Akkade am I,
2 My mother was lowly; my father I did not know;
3 The brother of my father dwelt in the mountain.
4 My city is Azupiranu, which is situated on the bank of the Purattu [Euphrates],
5 My lowly mother conceived me, in secret she brought me forth.
6 She placed me in a basket of reeds, she closed my entrance with bitumen,
7 She cast me upon the rivers which did not overflow me.
8 The river carried me, it brought me to Akki, the irrigator.
9 Akki, the irrigator, in the goodness of his heart lifted me out,
10 Akki, the irrigator, as his own son brought me up; 11. Akki, the irrigator, as his gardener appointed me.
12 When I was a gardener the goddess Ishtar loved me,
13 And for four years I ruled the kingdom.
14 The black-headed peoples I ruled, I governed;
15 Mighty mountains with axes of bronze I destroyed ?).
16 I ascended the upper mountains;
17 I burst through the lower mountains.
18 The country of the sea I besieged three times;
19 Dilmun I captured (?).
20 Unto the great Durilu I went up, I...
21 I altered....
22 Whatsoever king shall be exalted after me,
23-24 Let him rule, let him govern the black-headed peoples;
25 Mighty mountains with axes of bronze let him destroy;
26 Let him ascend the upper mountains,
27 Let him break through the lower mountains;
28 The country of the sea let him besiege three times;
29 Dilmun let him capture;
30 To great Durilu let him go up.

Source: George A. Barton, *Archaeology and The Bible*, 3rd Ed., (Philadelphia: American Sunday-School Union, 1920), p. 310. Scanned by: J. S. Arkenberg, Dept. of History, Cal. State Fullerton. Prof. Arkenberg has modernized the text.

Sargon a self-made man of humble origins

According to a folktale, Sargon was a self-made man of humble origins; a gardener, having found him as a baby floating in a basket on the river, brought him up in his own calling. His father is unknown; his own name during his childhood is also unknown; his mother is said to have been a priestess in a town on the middle Euphrates. Rising, therefore, without the help of influential relations, he attained the post of cupbearer to the ruler of the city of Kish, in the north of the ancient land of Sumer. The event that brought him to supremacy was the defeat of Lugalzaggisi of Uruk (biblical Erech, in central Sumer). Lugalzaggisi had already united the city-states of Sumer by defeating each in turn and claimed to rule the lands not only of the Sumerian city-states but also those as far west as the Mediterranean. Thus, Sargon became king over all of southern Mesopotamia, the first great ruler for whom, rather than Sumerian, the Semitic tongue known as Akkadian was natural from birth, although some earlier kings with Semitic names are recorded in the



Principal Amorite kingdoms (above) Babylon's eventual supremacy under Hammurabi was not foreseen by contemporaries, one of whom wrote, 'There is no king who is unquestionably powerful by himself'. Ten or fifteen kings, he reported, followed Hammurabi, but similar numbers supported Rim-Sin of Larsa, Ibalpiel of Eshnunna and Amutpiel of Qatna, while twenty backed Yarimlim of Yamkhad (Aleppo).

Sumerian king list. Victory was ensured, however, only by numerous battles, since each city hoped to regain its independence from Lugalzaggisi without submitting to the new overlord. It may have been before these exploits, when he was gathering followers and an army, that Sargon named himself Sharru-kin ("Rightful King") in support of an accession not achieved in an old-established city through hereditary succession. Historical records are still so meager, however, that there is a complete gap in information relating to this period.

Trade wars

Not content with dominating this area, his wish to secure favorable trade with Agade throughout the known world, together with an energetic temperament, led Sargon to defeat cities along the middle Euphrates to northern Syria and the silver-rich mountains of southern Anatolia. He also dominated Susa, capital city of the Elamites, in the Zagros Mountains of western Iran, where the only truly contemporary record of his reign has been uncovered. Such was his fame that some merchants in an Anatolian city, probably in central Turkey, begged him to intervene in a local quarrel, and, according to the legend, Sargon, with a band of warriors, made a fabulous journey to the still-unlocated city of Burushanda (Purshahanda), at the end of which little more than his appearance was needed to settle the dispute.

Empire created

As the result of Sargon's military prowess and ability to organize, as well as of the legacy of the Sumerian city-states that he had inherited by conquest and of previously existing trade of the old Sumerian city-states with other countries, commercial connections flourished with the Indus Valley, the coast of Oman, the islands and shores of the Persian Gulf, the lapis lazuli mines of Badakhshan, the cedars of Lebanon, the silver-rich Taurus Mountains, Cappadocia, Crete, and perhaps even Greece.

Advent of Akkadian script

During Sargon's rule Akkadian became adapted to the script that previously had been used in the Sumerian language, and the new spirit of calligraphy that is visible upon the clay tablets of this dynasty is also clearly seen on contemporary cylinder seals, with their beautifully arranged and executed scenes of mythology and festive life. Even if this new artistic feeling is not necessarily to be attributed directly to the personal influence of Sargon, it shows that, in his new capital, military and economic values were not alone important.

Deficient of chronology

Because contemporary record is lacking, no sequence can be given for the events of his reign. Neither the number of years during which he lived nor the point in time at which he ruled can be fixed exactly; 2334 BC is now given as a date on which to hang the beginning of the dynasty of Agade, and, according to the Sumerian king list, he was king for 56 years.

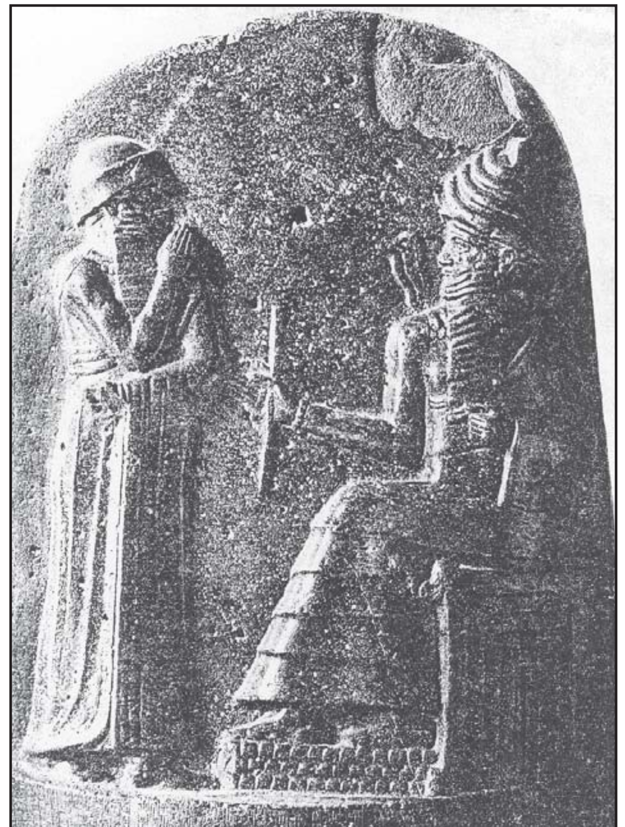
2334 BC is now given as a date on which to hang the beginning of the dynasty of Agade, and, according to the Sumerian king list, he was king for 56 years.

The latter part of his reign was troubled with rebellions, which later literature ascribes, predictably enough, to sacrilegious acts that he is supposed to have committed; but this can be discounted as the standard cause assigned to all disasters by Sumerians and Akkadians alike. The troubles, in fact, were probably caused by the inability of

one man, however energetic, to control so vast an empire without a developed and well-tried administration. There is no evidence to suggest that he was particularly harsh, nor that the Sumerians disliked him for being a Semite. The empire did not collapse totally, for Sargon's successors were able to control their legacy, and later generations thought of him as being perhaps the greatest name in their history.

Attributing his success to the patronage of the goddess Ishtar, in whose honor Agade was erected, Sargon of Akkad became the first great empire builder. Two later Assyrian kings were named in his honor. Although the briefly recorded information of his predecessor Lugalzaggisi shows that expansion beyond the Sumerian homeland had already begun, later Mesopotamians looked to Sargon as the founder of the military tradition that runs through the history of their people.

Source Robert Guisepi & Roy Williams, University of California. *The Akkadians* Home Page World History Center.



Hammurabi receiving the Code from the Sun God The stele in Louvre Museum of Paris, France.

BABYLON

Great Code of Hammurabi 1792-1750BC

Historic Background

Richard S. Ellis— **Hammurabi**, was a king of the first dynasty of Babylonia, reigned 1792 to 1750 BC. He united Babylonia and left as his enduring monument the collection of legal pronouncements known as the "Code of Hammurabi... p750

Early Reign

At the beginning of Hammurabi's reign, Mesopotamia and northern Syria were divided into a mosaic of petty states, with a constantly shifting pattern of alliances and hostilities. It is not known whether his empire was the result of careful planning or of a single stroke of fortune... The turning point came in the 30th year of his reign, when he defeated his southern neighbour, Rim-Sin of Larsa. At a single stroke he became master of all of southern Babylonia including the ancient and prestigious cities of Sumer.... p750

Discovery of code tablets

"In the winter of 1901-1902 the French excavators of Susa in Iran discovered a stele of black diorite some 7 feet (2 meters) high, bearing at the top a sculpture showing a Mesopotamian king receiving the insignia of his office from a god. The Akkadian cuneiform text carved below this relief celebrated the piety and justice of Hammurabi, (Hammurabi), King of Babylon in about the 18th century- B. C., and continued with many pronouncements of a legal nature. This discovery caused an immediate sensation because the inscription contained the first collection of laws known to antedate those of the Bible. It: is now known that this "Code of Hammurabi,", as it came to be called, is not the earliest such document, but it is still the best preserved and most extensive of its kind known from the ancient Middle East. p750

The stele

[Stele- An upright stone slab or column decorated with figures or inscriptions, common in pre-historic times] Had originally been set up in some Babylonian city, perhaps Babylon or Sippar, but together with several other Babylonian monuments it was taken as booty to Susa by an Elamite king of the 12th century B. C. Since the original discovery, numerous fragmentary copies of the "laws" have come to light. Some are roughly contemporary with the stele; others are later. The text was still known and copied in the Late Babylonian period, more than 1,000 years after the time of Hammurabi. These duplicates have made it possible to restore parts of the stele text that were chiselled away, presumably with the intention of adding an Elamite inscription. p750

Earlier legal prescriptions

Three collections of legal prescriptions in the Sumerian language preceding Hammurabi's are known: (1) a nar-

rative account of reforms undertaken by Urukagina, ruler of Lagash in Sumer, about 2400 B. C; (2) a collection of laws of Ur-Nammu, founder of the third dynasty of Ur about 2100 B. C.; and (3) a "code" of Lipit-Ishtar, King of Isin, about 1800 B. C. The only Akkadian "code" antedating Hammurabi's is that of an unknown king of Eshnunna, northeast of Babylon, and it probably was not much earlier. p750

The Text

Besides the laws, the stele text includes a poetic prologue and epilogue, which together comprise about a fifth of the inscription. The prologue celebrates the justice of the King and his concern for his people and for the cults of the gods in various cities of Mesopotamia· Judging from the cities over which he claims control, the stele must date from late in Hammurabi's reign. The epilogue reiterates Hammurabi's praise of his own righteousness, commends his enactments to posterity, and calls down curses on whoever should alter his laws or deface his stele. p750

Laws as conditional statements

Most of the laws are presented as conditional statements, thus: "If a man stole the property of a god [that is, of a temple] or of the palace, ' that man shall be killed." Only five of the 282 laws are presented as direct prohibitions.

The laws are grouped by subject

Though it is sometimes difficult for us to grasp the rationale behind the arrangement. The following broad categories may be distinguished (the laws designated by letters are those reconstructed within the space that was erased on the stele): (1-5) offences against the administration of justice, such as false accusation; (6-25) offences against property, such as theft, robbery, and harbouring fugitive slaves; (26-K) land and houses- regulations governing tenure, rent, lease, damage; (L-126) trade and commerce-loans, debt, deposit, and so forth; (127-194) marriage, family, property-rights of family members regarding status and property, legitimation and adoption, inheritance, sexual offences; (195-214) assaults; (215-240) regulations concerning professional men-physicians, barbers, builders, body-builders, boatmen; (241-267) laws concerning agriculture - the hire of oxen, agricultural workers, and shepherds, and misuse of implements and supplies; (268-277) wage and fee rates-for animals, work-men, artisans, boats; (278-282) laws regulating the sale of slaves. p751

Interpretation

Although the individual provisions give many insights into the social life and structure of the day, ignorance of the precise meanings of many of the technical terms, such as terms for groups of people, makes interpretation difficult. Many points remain controversial.

The laws refer to a threefold division of society. The lowest group, the ***wardum***, consists of slaves. The highest is designated by the word ***awilum***, which usually means "man" but in this context appears to mean "free man" or perhaps "property owner." The exact status of the inter-mediate group, the ***mushkenum***, is even less clear; the laws, together with other sources, give a picture cf persons of low status who enjoyed the protection of the palace. Whether this relationship shows that a ***mushkenum*** was a client of the palace or simply a poor man whose rights a just king was bound to protect is not certain. p751

Womens rights

Women were by no means without rights according to the code. Though a man could divorce his wife at will, he was obliged to return her dowry and to provide for her children. A wife could divorce her husband if she could prove that he was in the wrong. Both married women and those in the service of religion could own and dispose of considerable amounts of property. p751

Punishments

To us, the punishments stipulated by Hammurabi seem cruel and barbaric, particularly those that prescribe retribution in kind, such as "an eye for an eye." This type of punishment, however, was an innovation in Hammurabi's time and, cruel though it seems, can be regarded as an advance in legal theory. It should be noted that retribution was to be exacted by the state, not by the injured party. Before Hammurabi's time, offences like assault were not regarded as crimes against society but as civil torts that could be redressed by cash payments to the persons wronged. Under Hammurabi the concept of crime, which had been limited to offences against temple and palace, was extended to include private offences-though only if the party who was wronged belonged to the awilum class. Hammurabi's law, though it appears crueler and more primitive than earlier Mesopotamian law, is actually closer to our own legal system. p751

Function

The function of the laws in Babylonian society is still a controversial subject. They are not a law code in the modern sense of a complete compendium of a country's laws. Contemporary documents show that situations not covered by the laws were commonly dealt with by judges. There are obvious omissions, as well. For instance, assault and false accusation of murder are included, but not murder itself or attempted murder; looting of property from a burning house, but not arson. Not only are the laws not a code, but it may be questioned whether they are really laws in our sense. Although the epilogue recommends that a man in legal difficulties should consult the stele for clarification of his case, neither in the laws or else-where were judges adjured to regard the pronouncements as binding. Legal documents also show many divergencies between the published standard and practice. Babylonian law, in fact knew no such relationship between statute and decision as we do. The source of justice was the judges, chief among whom was the king. Hammurabi's laws are a sample-book of royal decisions rather than of statutes. pp751-752

What, then, was the purpose of the laws?

Like other kings of is period, Hammurabi designated the first full year of his reign as that in which he "established justice in the land." It was formerly thought that the event referred to was the promulgation of an earlier edition of

the laws but it is now known that what in fact occurred was that the crown temporarily remitted certain types of indebtedness. As a minor part of the same act, however, some moral, rather than economic, pronouncements might have been made that enhanced the King's reputation for righteousness but did not appreciably alter the legal system. When later in his reign the King desired to leave a permanent record of his righteousness, for the gods and for posterity, he drew the material for this monument from his earlier moral pronouncements and legal decisions. Thus Hammurabi's stele is comparable to a monument celebrating a military victory. The text is the record of his legal activity and concern; it is not an achievement in itself. p752

The literary nature of the laws

Is underlined by a comparison with other types of Babylonian scholarly writing. The conditional form ("If a man...") is standard in what are usually called "omen texts" ("If a dog enters a temple, the gods will have no mercy on the land") Also, the arrangement of the laws shows the hand of the scholar rather than the jurist; it often appears that a case was invented as a logical variation of the preceding one, without regard for its likelihood in real life. p752

Relationship to Biblical OT laws

For modern scholars, one of the most interesting facets of the laws has been their relation to the laws of the Old Testament and, thence, to modern legal concepts. Biblical parallels are sufficiently numerous to have persuaded some earlier scholars that the Hebrew laws were borrowed from Babylonian sources. Now that other sources are known, it seems more accurate to say that there existed a body of traditional "common law" in ancient western Asia, from which were drawn the written laws of Babylonia and of Israel, with variations due to different circumstances." p752 Richard S. Ellis, *Yale University*

Source *'Encyclopedia Americana'* Grolier 1994 ed Vol 13. pp750-752.

BABYLON
The Code of Hammurabi 1792-1750 BC

The earliest codified adoption law

Driver & Miles— They recognised and dealt with some of the risks inherent in every adoption. That adoptive parents will treat the child differently from a natural child; that the child will suffer from a change of caretaker; and that the adopted child and family will be unsuited for each other. The adopted person's quest for origins, and issue of dual parentage. Various kinds of adoption are defined and regulated. Adoption was safeguarded by a legal deed, a 'tablet of adoption', that set out the rights and obligations. Revoking an adoption required court consent. Failure of an adopted person to carry out obligations could result in disinheritance, but only with consent of a judge, who was duty bound to do all he could to reconcile the parties. For detailed study of the Code of Hammurabi.*See*

Source G.R.Driver and J.C.Miles, The Babylonian Laws. 1955 Oxford University Press London.

Great Code of Hammurabi 1792-1750BC

Sections Re Adoption L W King Translation

185 If a man adopt a child and to his name as son, and rear him, this grown son can not be demanded back again.

186 If a man adopt a son, and if after he has taken him he injure his foster father and mother, then this adopted son shall return to his father's house.

187 The son of a paramour in the palace service, or of a prostitute, can not be demanded back.

188 If an artizan has undertaken to rear a child and teaches him his craft, he can not be demanded back.

189 If he has not taught him his craft, this adopted son may return to his father's house.

190 If a man does not maintain a child that he has adopted as a son and reared with his other children, then his adopted son may return to his father's house.

191 If a man, who had adopted a son and reared him, founded a household, and had children, wish to put this adopted son out, then this son shall not simply go his way. His adoptive father shall give him of his wealth one-third of a child's portion, and then he may go. He shall not give him of the field, garden, and house.

192 If a son of a paramour or a prostitute say to his adoptive father or mother: "You are not my father, or my mother," his tongue shall be cut off.

193 If the son of a paramour or a prostitute desire his father's house, and desert his adoptive father and adoptive mother, and goes to his father's house, then shall his eye be put out.

Hammurabi (ca. 1792 - 1750 BC) united all of Mesopotamia under his forty-three year reign of Babylon. Although Hammurabi's Code is not the first code of laws (the first records date four centuries earlier), it is the best preserved legal document reflecting the social structure of Babylon during Hammurabi's rule.

About the Code Two hundred eighty-two laws, concerning a wide variety of abuses, justify Hammurabi's claim of having acted "like a real father to his people ... [who] has established prosperity... and (gave) good government to the land." The laws were discovered in 1901 on a stela now in the Louvre Museum of Paris, France.

Source www.canadianlawsite.com

The full translated code is on my World Resource CD KCG

The Code of Hammurabi

Benet- "The oldest written set of laws is the Babylonian code of Hammurabi, which contains a long, sophisticated section on adoption. It deals with some of the risks inherent in every adoption: that the adoptive parents will treat the child differently from a natural child; that the child will suffer from a change of caretaker; and that the adopt-ed child and family will be unsuited to each other. Babylonian adoption only remained valid as long as the adopter treated the child in every way as his own; if the child `persisted in searching for its father and its mother', it was returned to the natural parents. The issue of 'maternal deprivation' was already known and faced. p23

The only adopted child whose ingratitude was severely punished was the one adopted by a courtier, who was

pre-vented by law (and sometimes by castration) from begetting his own children. This kind of adoption was a signal honour, and involved a great leap in social status for the child. p24

Benet- “The [adopted] son of a chamberlain or the [adopted] son of an epicene shall not be [re]claimed... If the [adopted] son of an epicene states to the father who has brought him up or the mother who has brought him up `Thou art not my father’ [or] `Thou art not my mother’, they shall cut out his tongue.” G.R.Driver. & J.C.Miles, *The Babylonian Laws.* 1955 Oxford University Press. p24

Benet- Two other special cases are included by Hammurabi under the heading of adoption: apprentice-ship and wet-nursing. Boys were adopted by free crafts-men to learn and inherit the trade, but the adoption was invalid if the crafts-man did not teach his lore. Any adopter was likely to have need of a wetnurse, who would be in charge of the child for two or three years. There were strict rules relating to her conduct, and there were fierce penalties if a child died while in her care. p24

What were Babylonians’ reasons for adopting?

We have seen that the craftsman and the courtier had spe-cial reasons, but in ordinary cases

In Babylonia the main object of adoption was originally to ac-quire a son to perpetuate the family and to perform the reli-gious rites due to the adopter after his death; but purely secular reasons, such as the continuation of his business or his mainte-nance in old age, also played their part in this institution. The Attic rule that a man could adopt a son only if he had none was not strictly observed in Babylonia, although it seems to have been usual. See G.R.Driver. and J.C.Miles, The Babylonian Laws. 1955 Oxford University Press London. p24

These ‘secular reasons’ still operate today, in spite of claims that adoption is now practised chiefly in the inter-ests of the child.” p24

Adoption- heirs in ancient world

Benet— “In the ancient world adoption was only one of many ways of obtaining heirs. Solutions needed to be found for both male and female infertility, and although many of the ancient methods- polygamy, legitimation- are still in use today, there is one way of obtaining legal descend-ants that has completely died out. This is the le-virate, under which a man inherited his brother’s widow and `raised up’ children to the dead man. p25

‘The custom of the levirate was obviously derived or con-tinued from the desire common to all ancient peoples to ensure the continuance of the family and thereby of the ancestral property and the ancestral cult. The Babylonians and the Assyrians at-tained this end by polygamy, by the legitimation of the chil-dren of slave-wives and concubines, by the begetting of chil-dren on a wife’s maid, and by adoption.’ G.R. Driver and J.C. Miles, The Assyrian Laws Ox-ford University Press 1935. p25

Which of these methods were used had obvious relation to the reasons behind the desire for children. The demands of religion and inheritance could be satisfied by methods like the levirate, but this was only of interest to a landed proprietor: the craftsman, for example, cannot pass on his skill to a son born after his death.” p25

“The economic organization of society is one of the ma-jor determinants of the method chosen to obtain heirs. In the ancient Middle East- p25

Two divergent trends—
(a) Babylonians

<u>farming the great Tigris-Euphrates valley,</u> inherited and passed on tracts of land associated with ancestor cults. In this way they resemble the peoples of China and India. The assumption of a name and a cult went with the inher-itance of land, whether the line was one of blood or of adoption. It was a form of contractual agreement- and indeed a contract was drawn up for every Babylonian adoption, setting, adoption, the terms of inherit-ance and the obligations of both parties. p25

(b) Nomadic desert tribes

The other distinctive social system was that of the no-madic desert tribes. The Isra-elites were the earliest people to show the shift to this kind of economy, and thus to a new attitude towards the ancient ways of obtaining heirs. Traditionally, they practised the levirate, of which there are many examples in the Old Testament. The legitima-tion of the children of concubines and maids was also known, but there is a great deal of doubt about adoption. It is often asserted that there are examples of adoption in the Bible, but the Encyclopedia Judaica disagrees: ‘The evidence for adoption in the Bible is so equivocal that some have denied it was practised in the biblical period...Adoption is not known as a legal institution in Jewish law.’ *Encyclopedia Judaica* entry re adoption.” p25

(c) Turning point

“between the old ways and the new may well have come in the time of Abraham. The Biblical story mythologizes what was probably an historical se-quence Abraham con-siders adopting an heir in the ancient manner, but God makes it possible for Abraham and Sarah, now well past childbearing age, to have Isaac, an heir of the blood. The alternatives of adoption and the legiti-mation of a servant’s child are considered and rejected, and it is the covenant with God-in other words, a new social and religious ori-entation that allows them to be abandoned. p26

This coincides with God’s prediction that the descendants of Abraham will wander for generations until they inherit the land that is rightfully theirs. The change in inheritance patterns, and the rejection of adoption, seem to have gone with a change to a nomadic way of life.

As a result of this change, the old ancestor cults were aban-doned, and in some cases consciously suppressed.

Both [the levirate] and the other methods of perpetuating the family were discouraged by the religious reformers of the na-tion as these disapproved of anything tending to the worship of ancestors. *Encyclopedia Judacia* p26

Benet—The tearing down of idols that continues into the New Testa-ment is a replacement of settled fertility cults by the new nomadic God. The other famous adoption in the Old Testament, that of Moses, only proves that the Egyptians-an-other settled agricultural people knew of adoption, but not necessarily that the Israelites did. And the fact that Moses returned to his own people to lead

them against the Egyptians is enough to make any potential adopter think twice." Benet 1976 pp23-26

ADOPTION (Semitic).-

Encyclopaedia of Religion and Ethics.

1. Adoption in Babylonia. In the great Babylonian Law Code (Code of Hammurabi), adoption of various kinds is referred to and regulated. p114

(1) Reasons for the custom

An obvious reason for the custom might seem to exist in its meeting the needs of childless persons, who desired to provide themselves with an heir, that the family patrimony might not be alienated. But in Babylonia, as in old Israel, a man whose wife was childless could take a concubine, or might, with his wife's acquiescence; enter into relations with a maid-servant for this purpose. And these alternatives sufficed in Israel to· meet such cases so well that adoption was entirely unknown. Besides, adopted children in Babylonia were some-times taken into a family where sons and daughters were living... the real cause most often was that the adopting parents had lost by marriage all their own children and were left with no child to look after them. They then adopted a child whose parents would be glad to see him provided for, to look after them until they died, leaving him the property they had left after portioning their own children. But this was by no means the only operative cause. Sometimes children were adopted where an heir was desired, sometimes as a matter of convenience; in some cases a child was apparently adopted as an apprentice; slaves could be taken for the purposes of adoption, and in the process gained their freedom; and not only sons, but daughters, could be thus secured. p114

(2) Method

Adoption was effected and legally safeguarded by a deed in the usual form of a 'tablet of adoption' or 'sonship'. This was sealed by the adoptive arents, duly sworn to, and witnessed. Tile rights and obligations of the contracting parties were fully set forth, and so long as the tablet remained unbroken, and the seal intact, the position of the adopted child was secure. In eases of informal adoption, where no deed had been properly drawn up, the relationship was not legally binding, and the child could return to its own father's house. An exception was, however, made in the case of an artisan who took a child to bring up, and taught him a handicraft. Under these circumstances the child could not be reclaimed...p114

(3) Conditions and kinds of adoption

The conditions were fully set forth in the 'tablet of adoption' or defined by the Code. The obligation resting on the child might be to support the adoptive parent (details of the 'sustenance' to be supplied in such cases are given in many tablets); or one of service (as when a lady adopts a maid to serve her for life and inherit a certain house;). The adoption of a child (e.g. a daughter) by a lady of fortune was evidently regarded as a good settlement for the child. Certain classes of people appear to have had no legal claim to their own children. These were the palace-favourite (or warder?) and the courtezan, if the children of such, after being adopted, attempted to repudiate their adoptive parents, the action was punished with the greatest severity (C.H. §§ 102, 183). In other cases, however, the possibility of repudiation of the relationship on one side or the other was contemplated. It appears that a clause implying repudiation (on the part of the parents of a son, or *vice vesa* was regularly inserted in the contract, though it could be enforced only by direct appeal to a law-court. Thus parents, according to the contracts, could repudiate adopted sons if they so wished, the son taking a son's share and departing. This looks like an attempt to contract outside the law. Failure on the part of the adopted child to carry out his obligations was good ground for disinheritance; but the penalty could be inflicted only with the consent of the Judges, who felt bound, in the first place, to do all in their power to reconcile the parties. With this object in view, judgment was sometimes reserved. pp114-115

Source '*Encyclopaedia of Religion and Ethics*. Edited James Hastings. Vol 1 p114-115. T & T Clark Edinburgh 1908.

Judaism - Christianity - Islam
Three great transcendent religions

Benet—"From the nomadic peoples of the Middle East came the three great transcendent religions Judaism, Christianity, and Islam. In many ways, their approach to adoption is similar and reflects their common origins. In these religions, man's relationship with God is that of son to father- it is consciously stated in some Biblical commentaries that the relationship of the Chosen People to God is that of an adopted child to its new parent. p26

Adoption not Hebrew custom

Preventing family extinction was very important. Adoption was a solution practiced by Romans, Greeks and Babylonians, but not by Hebrews in Biblical times. The two references to informal adoption in the Old Testament are **Moses** Ex 2:1-10 Moses was plucked from the Nile river and adopted into the Egyptian royal household, and **Esther** 2:7 Mordecai took the orphan Esther, his uncle's daughter to be his. Both result from foreign surroundings and influences not from Hebrew custom or practice.

Judaism- Adoption not practised by Hebrews

"No mention of the practice of adoption occurs in any of the Hebrew Law Codes. No term corresponding to adoption exists in Hebrew, nor does the Greek term for adoption occur in the LXX (Septuagint), while in the Greek Testament it occurs only in the Pauline Epistles. In fact, the practice of adoption would have endangered the principle of maintaining property in the possession of the original tribe, which was the object of such painful solicitude in the Mosaic Code (cf. Num 27/8-11). It is obvious that the reasons which operated in Babylonia were not active in Hebrew life. Babylonian civilization was much more complex and highly developed. Among the Israelites the risk of childlessness was met in the earlier period by polygamy, in the later by facility of divorce. p115

In the Biblical history of the patriarchs the practice of polygamy is explicitly attested. Sarah, being barren, re-

quests Abraham to contract a second (inferior) marriage with Hagar (Gen 16/2) ; cf. also the case of Rachel and her maid Bilhah, and Leah and Zilpah (Gen 30/4-9. p115
Source: '*Encyclopaedia of Religion and Ethics*' Vol.1. p115. T & T Clark NY 1908. For more detail See— 'Israel' in 'World Perspective' CD Folder.

Why Hebrews did not practice adoption when surrounding cultures did

It was their very strong belief in ancestral blood ties. 'Life *is in the blood'* Lev.17:11a. Continuation of a family requires children of blood line. Thus they opted for Polygamy or Levirate conception, not adoption, as an answer to infertility. An adopted child outside the blood line could never perpetuate the family.

Hebrew solution to infertility in bible times Polygamy

If a wife was barren, the husband may take an extra wife to bear his children, *Lamech* Gen. 4:19. *Abram*'s wife Sarai was barren. She requested Abram to have sexual intercourse with her Egyptian maid, Hagar. Ishmael was the result, Gen.16. Abraham had two secondary wives, Gen.16:3,4. "Abraham took another wife,..Keturah": 25:1. *Jacob* had two wives: Gen 29:23-30. Rachael found she was barren. She requested Jacob have sexual intercourse with her maid, Bilhah-Naphtali was the result: Gen. 30: 1-8. When his second wife Leah could no longer bear children she requested Jacob have sexual intercourse with her maid Zilpah, Asher was the result: Gen.30:9-13. Some *Judges* had several wives: Judges 8:30. *"David* took more concubines and wives, and more sons and daughter were born to David": 2 Sam 5:13. *King Solomon* the Temple builder: "Had 700 wives...and 300 concubines." 1 Kings 11:3 cf Song of Songs 6:8-9.

Levirate conception

A widow could request of right her husband's brother to have sexual intercourse with her for the purpose of conception. There is a detailed account of the practice is Gen. 38:1-11. "Then Judah said to Onan, 'Go into your brother's wife, and perform the duty of a brother-in-law to her, and raise up offspring for your brother.'" Onan obeyed, had sexual intercourse with Tamar but withdrew before climax and ejaculated his semen onto the ground. For refusing to deliver his semen into Tamar he was rebuked of the Lord!

Levirate practice codified in Old Testament Law

"If brothers dwell together, and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger; her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband's brother to her. And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel."..*If he refuses* to have sexual intercourse with her-"then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and *spit in his face* and say, 'This is what is done to the man who will not build up his brother's family line.'" Deut. 25:5-10.

Polygamy never forbidden in OT, but fell into disuse However, *Levirate conception* was practiced throughout Old Testament times. The practice is alluded to in the New Testament: Mk. 12:19; Mt. 22:24; Lk. 20:28, but was never part of Christian teaching or practice.

Jewish OT law had no legal adoption

Adoption never became popular among early Christians, even among Gentile Christians. The illegitimate origins of many adoptees could also be a problem in acceptance.

Israel- first adoption law 1960

At age 18 adoptees are entitled to full birth information—including, birth parents names, ages, Israeli ID numbers and country of origin. In contrast, Greeks codified their adoption law by 500 B.C.

ISRAEL BIBLICAL *JUDAISM*

Biblical background

"If adoption played any role at all in Israelite family institutions, it was an insignificant one. It may be that the tribal consciousness of the Israelites did not favor the creation of artificial family ties and that practice of polygamy obviated some of the need for adoption. For the post-Exilic period in Palestine there is no reliable evidence at all.

Later Jewish Law

Adoption was not known as a legal institution in Jewish Law. According to *halakhah* the personal status of parent and child is based on natural family relationship only and there is no recognized way of creating this status artificially by a legal act of fiction. However, Jewish law does provide for consequences essentially similar to those caused by adoption to be created by legal means...guardianship etc. In the State of Israel adoption is governed by the Adoption of Children Law 5720/1960 now replaced by 5741/1981.

Blood relationship

However, the (adoption) order does not effect the consequences of the blood relationship between the adoptee and his natural parents, so that the prohibitions and permissions of marriage and divorce continue to apply. On the other hand, adoption as such does not create new such prohibitions or permissions between the adopted and the adoptive family.

Encyclopaedia Judaica —

ADOPTION, taking another's child as one's own.

Alleged Cases of Adoption in the Bible

The evidence for adoption in the Bible is so equivocal that some have denied it was practiced in the biblical period. p298

(a) Genesis 15:2-3 "Being childless, Abram complains that *Eliezer, his servant, will be his heir. Since in the ancient Near East only relatives, normally sons, could inherit, Abram had probably adopted, or contemplated adopting, Eliezer. This passage is illuminated by the ancient Near Eastern practice of childless couples adopting a son, sometimes a slave, to serve them in their lifetime and bury and mourn them when they die, in return for which the adopted son is designated their heir. If a natural child should subsequently be born to the couple, he would be chief heir and the adopted son would be second to him. p298

(b) Genesis 16:2 and 30:3 Because of their barrenness, Sarai and Rachel give their servant girls to Abram and Jacob as concubines, hoping to "have children" (lit. "be built up") through the concubines. These words are taken as an expression of intention to adopt the children born of the husbands and concubines. Rachel's subsequent statement, "God... has given me a son" (30:6) seems to favor this view. A marriage contract from *Nuzi stipulates that in a similar case the mistress "shall have authority over the offspring." That the sons of Jacob's concubines share in his estate is said to presuppose their adoption. Bilhah's giving birth on (or perhaps "onto") Rachel's knees (30:3; cf. 50:23) is believed to be an adoption ceremony similar to one practiced by ancient European and Asiatic peoples among whom placing a child on a man's knees signified variously acknowledgment, legitimation, and adoption. Such an adoption by a mistress of the offspring of her husband and her slave-girl would not be unparalleled in the ancient Near East (see J. van Seters, JBL 87 (1968), 404-7), but other considerations argue that this did not, in fact, take place in the episodes under consideration.

Elsewhere in the Bible the sons of Bilhah and Zilpah are viewed only as the sons of these concubines, never of the mistresses (e.g., 21:10, 13; 33:2, 6-7; 35:23-26). Rachel's statement "God... has given me a son" reflects not necessarily adoption but Rachel's ownership of the child's mother, Bilhah (cf. Ex. 21:4, and especially the later Aramaic usage in Pritchard, Texts', 548a plus n. 5). The concubines' sons sharing in Jacob's estate does not presuppose adoption by Rachel and Leah because the sons are Jacob's by blood and require only his recognition to inherit (cf. *The code of Hammurapi,* 170-1).

Finally the alleged adoption ceremony must be interpreted otherwise. Placing a child on the knees is known from elsewhere in the ancient Near East (see I. J. Gelb et al., *The Chicago Assyrian Dictionary,* 2B (1965), 256 s.v. birku; H.Hoffner, JNES 27 (1968), 199-201). Outside of cases which signify divine protection and/or nursing, but not adoption (cf. T.Jacobsen, JNES 2 (1943), 119-21)), the knees upon which the child is placed are almost always those of its natural parent or grand-parent. It seems to signify nothing more than affectionate play or welcoming into the family, sometimes combined with naming. (Only once, in the Hurrian Tale of the Cow and the Fisherman (J. Friedrich, *Zeitschrift fuer Assyriologie* 49 (1950), 232-3 11.38ff.), does placing on the lap occur in an apparently adoptive context, but even there it is not clear that the ceremony is part of the adoption.) Some construe the ceremony as an act of legitimation, but no legal significance of any sort is immediately apparent.

Significantly, the one unequivocal adoption ceremony in the Bible (Gen. 48:5-6) does not involve placing the child on the knees (Gen. 48: 12 is from a different document and simply reflects the children's position during Jacob's embrace between, not on, his knees).

Furthermore, Genesis 30:3 speaks not of placing but of giving birth on Rachel's knees. This more likely reflects the position taken in antiquity by 'a woman during childbirth, straddling the knees of an attendant (another woman or at times her own husband) upon whose knees the emerging child was received (cf. perhaps Job 3:12). Perhaps Rachel attended Bilhah herself in order to cure, in a sympathetic-magical way, her own infertility (cf. 30: 18, which may indicate that Rachel had been aiming ultimately at her own fertility), much like the practice of barren Arab women in modern times of being present at other women's deliveries.

Genesis 50:23 (see below) must imply Joseph's assistance at his great-grandchildren's birth; or, if taken to mean sim-

ply that the children were placed upon his knees immediately after birth, it would imply a sort of welcoming or naming ceremony. pp208-299

(c) Genesis 29-31 It is widely held that Jacob was adopted by the originally sonless Laban, on the analogy of a Nuzi contract in which a sonless man adopts a son, makes him his heir, and gives him his daughter as a wife. This in itself is not compelling, but the document adds that, unless sons are later born to the adopter, the adopted son will also inherit his household gods. This passage, it is argued, illuminates Rachel's theft of Laban's household gods (31: 19), and herein lies the strength of the adoption theory. But M.Greenberg (JBL, 81 (1962), 239-48) cast doubt upon the supposed explanation of Rachel's theft, thus depriving the adoption theory of its most convincing feature. In addition, the Bible itself not only fails to speak of adoption but pictures Jacob as Laban's employee. p299

(d) Genesis 48:5-6 Near the end of his life Jacob, recalling God's promise of Canaan for his descendants, announces to Joseph: "Your two sons who were born to you ... before I came to you in Egypt, shall be mine; Ephraim and Manasseh shall be mine, as Reuben and Simeon are"; subsequent sons of Joseph will (according to the most common interpretation of the difficult v. 6), for the purposes of inheritance, be reckoned as sons of Ephraim and Manasseh. In view of the context-note particularly that grandsons, not outsiders, are involved-many believe that this adoption involves inheritance alone, and is not an adoption in the full sense. (M. David compares the classical *adoptio mortis causa*.) This belief is strengthened by the almost unanimous view that this episode is intended etiologically to explain why the descendants of Joseph held, in historical times, two tribal allotments, the territories of Ephraim and Manasseh. p299

(e) Genesis 50:23 "The children of Machir son of Manasseh were likewise born on Joseph's knees" is said to reflect an adoption ceremony. To the objections listed above (b), it may be added that unlike (d), Joseph's adoption of Machir's children would explain nothing in Israel's later history and would be etiologically pointless.

(f) Exodua 2: 10 "Moses became her [=Pharaoh's daughter's] son." Some, however, interpret this as fosterage. p299

(g) Leviticus 18:9 A "sister... born outside the household" A' sister, but most commentators interpret the phrase as an illegitimate sister or one born of another marriage of the mother. p299

(h) Judges 11ff S. Feigin argued that Gilead must have adopted Jephthah or else the question of his inheriting could never have arisen. But since Jephthah was already Gilead's son, the passage implies, at most, legitimation, not adoption. p299

(i) Ruth 4: 16-17 Naomi's placing of the child of Ruth and Boaz in her bosom and the neighbors' declaration "a son is born to Naomi" are said to imply adoption by Naomi. But the very purpose of Ruth's marriage to Boaz was, from the legal viewpoint, to engender a son who would be accounted to Ruth's dead husband (see Deut. 25:6 and Gen. 38:8-9) and bear his name (Ruth 4: 10). Adoption by Naomi, even though she was the deceased's mother, would frustrate that purpose. The text says that Naomi became the child's nurse, not his mother. The child is legally Naomi's grandson and the neighbors' words are best taken as referring to this. p300

(j) Esther 2:7, 15 Mordecai adopted his orphaned cousin Hadassah. (This case, too, is taken by some as rather one of fosterage.) This possible case of adoption among Jews living under Persian rule is paralleled by a case among the Jews living in the Persian military garrison at Elephantine, Egypt, in the fifth century B.C.E. (E. Kraeling, *The Brooklyn Museum Aramaic Papyri* (1953), no.8). p300

(k) Ezra 2:61 (=Nehemiah 7:63) One or more priests married descendants of Barzillai the Gileadite and "were called by their name." This may imply adoption into the family of Barzillai. p300

(l) Ezra 10:44 Several Israelites married foreign women. The second half of the verse, unintelligible as it stands, ends with "and they placed/established children." S. Feigin, on the basis of similar Greek expressions and textual emendation, viewed this as a case of adoption. Since the passage is obviously corrupt (the Greek text of Esdras reads differently), no conclusions can be drawn from it, though Feigin's interpretation is not necessarily ruled out. p300

(m) I Chronicles 2:35-41 Since the slave Jarha (approximately a contemporary of David according to the genealogy) married his master's daughter, he was certainly manumitted and, quite likely, was adopted by his master; otherwise, his descendants would not have been listed in the Judahite genealogy. p300

(n) In addition to the above possible cases, one might see a sort of posthumous adoption in the ascription of the first son born of the levirate marriage (Gen. 38:8-9; Deut. 25:6; Ruth 4) to the dead brother. The child is possibly to be called "A son of B [the deceased]"-in this way he preserves the deceased's name (Deut. 25:6-7; Ruth 4:5) and presumably inherits his property. p300

Summary

Of the most plausible cases above, two (A,E) are from the Patriarchal period, one reflects Egyptian practice (F), and another the practice of Persian Jews of the Exilic or post-Exilic period (r). From the pre-Exilic period there is a possible case alleged by the Chronicler to have taken place in the time of David (M), one or two other remotely possible cases (G) and (K), the latter from the late pre-Exilic or Exilic period) and the "posthumous adoption" involved in levirate marriage (N). The evidence for adoption in the pre-Exilic period is thus meager. The possibility that adoption was practiced in this period cannot be excluded, especially since contemporary legal documents are lacking. Nevertheless, it seems that if adoption played any role at all in Israelite family institutions, it was an insignificant one. It may be that the tribal consciousness of the Israelites did not favor the creation of artificial family ties and that the practice of polygamy obviated some of the need for adoption. For the post-Exilic period in Palestine there

is no reliable evidence for adoption at all. p300

Adoption as a Metaphor

(a) God and Israel

The relationship between God and Israel is often likened to that of father and son (Ex. 4:22; Deut. 8:5; 14: 1). Usually there is no indication that this is meant in an adoptive sense, but this may be the sense of Jeremiah 3: 19; 31:8; and Hosea 11: 1. p300

(b) In Kingship

The idea that the king is the son of a god occurs in Canaanite (Pritchard, Texts, 147-8) and other ancient Near Eastern sources. In Israel-which borrowed the very institution of kingship from its neighbors (1 Sam. 8:5, 20)-this idea could not be accepted literally; biblical references to the king as God's son therefore seem intended in an adoptive sense. Several are reminiscent of ancient Near Eastern adoption contracts. Thus, Psalms 2:7-8 contains a declaration, "You are my son," a typical date formula "this day" (the next phrase, "I have born you," may reflect the conception of adoption as a new birth), and a promise of inheritance (an empire); II Samuel 17: 11-16 contains a promise of inheritance (an enduring dynasty), a declaration of adoption, and a statement of the father's right to discipline the adoptive son (cf. Ps. 89:27ff.; I Chron. 17: 13; 22: 10; 28:6). p300

Since the divine adoption of kings was not known in the ancient Near East, and the very institution of adoption was rare-if at all existent— in Israel, the question arises as to where the model for these metaphors was found. According to M. Weinfeld (JAOS 90 (1970)) the answer is found in the covenants made by God with David and Israel. These are essentially covenants of grant, a legal form which is widespread in the ancient Near East. In some of these a donor adopts the donee and the grant takes the form of an inheritance. Thus in the biblical metaphor God's adoption of David serves as the legal basis for the grant of the dynasty and empire, and God's adoption of Israel underlies the grant of a land (Jer. 3:19; also noted by S. Paul). According to Y. Muffs, the pattern of the covenant in the Priestly Document (P) is modeled on adoption by redemption from slavery (cf. Ex. 6:6-8). In later times adoption was used metaphorically in the Pauline epistles to refer variously to Israel's election (Rom. 9:4), to the believers who were redeemed from spiritual bondage by Jesus (Rom. 8: 15; Eph. t :5; Gal. 4: 5), and to the final eschatological redemption from bondage (Rom. 8:21-23). Whether Paul modeled the metaphor on biblical or post-biblical, ancient Near Eastern or Roman legal sources is debated. [J.H.T.] p p300-301

Later Jewish Law

Adoption is not known as a legal institution in Jewish law. According to *halakhah* the personal status of parent and child is based on the natural family relationship only and there is no recognized way of creating this status artificially by a legal act or fiction. However, Jewish law does provide for consequences essentially similar to those caused by adoption to be created by legal means. p301

These consequences are the right and obligation of a person to assume responsibility for
(a) a child's physical and mental welfare and
(b) his financial position, including matters of inheritance and maintenance. The legal means of achieving this result are:

(1) by the appointment of the. adoptor as a "guardian" (see *Apotropos) of the child, with exclusive authority to care for the latter's personal welfare, including his upbringing, education and determination of his place of abode; and

(2) by entrusting the administration of the child's property to the adopter. The latter undertaking to be accountable to the child and, at his own expense and without any right of recourse, would assume all such financial obligations as are imposed by law on natural parents vis-a-vis their children. Thus, the child is for all practical purposes placed in the same position toward his adopters as he would otherwise be toward his natural parents, since all matters of education, maintenance, upbringing, and financial administration are taken care of (Ket. 101 b; Maim., Yad, Ishut, 23:17-18; and Sh. Ar., EH 114 and Tur *ibid*., Sh. Ar., HM 60:2-5; 207: 20-21; PDR, 3 (n.d.), 109-125). On the death of the adopter, his heirs would be obliged to continue to maintain the "adopted" child out of the former's estate the said undertaking having created a legal debt to be satisfied as any other debt (Sh. Ar., HM 60:4). p301

Indeed, in principle neither the rights of the child toward his natural parents, nor their obligations toward him are in any way affected by the method of "adoption" described above; but in fact, the result approximated very closely to what is generally understood as adoption in the full sense of the word. The primary question in matters of adoption is the extent to which the natural parents are to be deprived of, and the adoptive parents vested with, the rights and obligations to look after the child's welfare. This is in accordance with the rule that determined that in all matters concerning a child, his welfare and interests are the overriding considerations always to be regarded as decisive (Responsa Rashba, attributed to Nahmanides, 38; Respon-sa Radbaz, l: 123; Responsa Samuel di Modena, EH 123; Sh. Ar., EH 82, *Pithei Teshuvah* 7). p301

Even without private adoption, the court, as the "father of all orphans," has the power to order the removal of a child from his parents' custody, if this is considered necessary for his welfare (see Apotropos). So far as his pecuniary rights are concerned, the child, by virtue of his adopters' legal undertakings toward him, acquires in additional debtor, since his natural parents are not released from their own obligations imposed on them by law, i.e. until the age of six. Furthermore, the natural parents continue to be liable for the basic needs of their child from the age of six, to the extent that such needs are not or cannot be satisfied by the adopter; the continuation of this liability is based on *Dinei Zedakah*—the duty to give charity (see *Parent & Child; PDR, 3 (n.d.), 170—6; 4 (n.d.), 3—8). pp301-302

With regard to right of inheritance, which according to *halakhah* is recognized as existing between a child and

his natural parents only, the matter can be dealt with by means of testamentary disposition, whereby the adopter makes provision in his will for such portion of his estate to devolve on the child as the latter would have got by law had the former been his natural parent (sec Civil Case 85/49, in: *Pesakim shel Beit ha-Mishpat ha-Eloyn u-Vattei ha-Mishpat ha-Mehoziyyini be-Yisrael*, 1 (1948/49), 343—8. In accordance with the rule that "Scripture looks upon one who brings up an orphan as if he had begotten him" (Sanh. 19b; Meg. 13a), there is no halakhic objection to the adopter calling the "adopted" child his son and the latter calling the former his father (Sanh. *ibid.*, based on 11 Sam. 21:8). Hence, provisions in documents in which these appellations are used by either party, where the adopter has no natural children and/or the child has no natural parent, may be taken as intended by the one to favor the other, according to the general tenor of the document (Sh. Ar., EH 19; Pithei Teshuvah, 3; HM 42: 15; Responsa Hatam Sofer, EH 76). Since the legal acts mentioned above bring about no actual change in personal status, they do not affect the laws of marriage and divorce, so far as they might concern any of the parties involved. p302

In the State of Israel adoption is governed by the Adoption of Children Law, 5720/1960, which empowers the district court and, with the consent of all the parties concerned, the rabbinical court, to grant an adoption order in respect of any person under the age of 18 years, provided that the prospective adopter is at least 18 years older than the prospective adoptee and the court is satisfied that the matter is in the best interests of the adoptee. Such an order has the effect of severing all family ties between the child and his natural parents. On the other hand, such a court order creates new family ties between the adopter and the child to the same extent as are legally recognized as existing between natural parents and their child-unless the order is restricted or conditional in some respect. Thus, an adoption order would generally confer rights of intestate succession on the adoptee, who would henceforth also bear his adopter's name. However, the order does not affect the consequences of the blood relationship between the adoptee and his natural parents, so that the prohibitions and permissions of marriage and divorce continue to apply. On the other hand, adoption as such does not create new such prohibitions or permissions between the adopted and the adoptive family. There is no legal adoption of persons over the age of 18 years. [B.-Z.SCH.] p302

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Source *'Encyclopaedia Judaica'* 1971 ed. Vol.1. pp298-302.

Adoption not practised by Hebrews

Encyclopaedia of Religion and Ethics— "No mention of the practice of adoption occurs in any of the Hebrew Law Codes. No term corresponding to adoption exists in Hebrew, nor does the Greek term for adoption occur in the LXX (Septuagint), while in the Greek Testament it occurs only in the Pauline Epistles. In fact, the practice of adoption would have endangered the principle of maintaining property in the possession of the original tribe, which was the object of such painful solicitude in the Mosaic Code (cf. Num 27/8-11). It is obvious that the reasons which operated in Babylonia were not active in Hebrew life. Babylonian civilization was much more complex and highly developed. Among the Israelites the risk of childlessness was met in the earlier period by polygamy, in the later by facility of divorce. p115

In the Biblical history of the patriarchs the practice of polygamy is explicitly attested. Sarah, being barren, requests Abraham to contract a second (inferior) marriage with Hagar (Gen 16/2) ; cf. also the case of Rachel and her maid Bilhah, and Leah and Zilpah (Gen 30/4-9. p115

1 Isolated cases of possible adoption

or something analogous, are, however, met with in the Old Testament literature. Thus,

(a) three cases of informal adoption can plausibly be said to occur in the Old Testament —those of Moses, adopted by the Egyptian princess (Ex 2/10; of Genubath, possibly (1 Kings 11/20); and of Esther, who was adopted by her father's nephew Mordecai (Esther 2/7,15).It is noticeable that in all three cases the locale is outside Palestine, and the influence of foreign ideas is apparent. p115

(b) Further, something, analogous to adoption seems to be implied in the case of Ephraim and Manasseh, sons of .Joseph, to whom Jacob is represented as giving the status of his own sons (Gen 48/5) 'And now thy two sons... are mine ; Ephraim and Manasseh, even as Reuben and Simeon, shall be mine'). As a full son of Jacob each receives a share in the division of the land under Joshua, Joseph thus (in the person of his two sons) receiving a double portion. This, however, is not really a case of adoption, but one where the rights of the first-born were transferred (for sufficient, grave reasons) to a younger son (cf. Gen 49/4 for the sin of Reuben, vv22-26 for Joseph's elevation). To Joseph in effect are transferred the privileges of the eldest son; cf. further 1 Ch 5/1-2 p115

(c) The levitate law has also some points of contact with adoption. The brother of a man dying without children entered into a union with the widow, in order to provide the dead man with an heir. The first-born in this case received the name and the heritage of the deceased. Some of the Church fathers (e.g. Augustine) have actually given the name of 'adoption' to this Mosaic ordinance. But the two things are obviously distinguished by fundamental differences. In real adoption the adopting parent exercises an act of deliberate choice. Thus the levirate law is not a case of adoption in any real sense, but ' the legal substitution, made for sufficient reasons, of a fictitious for a natural father' p115

2 Legal adoption unknown among Arabs

Of adoption as a recognized institution among the Arabs no clear and certain traces exist. The practice of polygamy was sufficient to meet cases where the need of adoption might have been felt. p115

3 Theological application of idea of adoption

Adoption as an institution was evidently unfamiliar in Palestine during the New Testament period. None of the New Testament writers uses the technical Greek term (viotheaia) except St. Paul. He doubtless employed the term having been horn in Cilicia, he had received a partially Greek education, and was acquainted with the institutions and terminology of the Greeks, among whom adoption was commonly practised. p115

Theologically the conception of adoption is applied by St. Paul to the special relation existing between God and His people, or between God and redeemed individuals. For the former sense, cf. Rom 9/4 (Israelites...whose is the *adoption*, and the glory, and the covenants, and the giving of the law, and the service of God, and the promises'). Here the people of Israel as a whole is thought of. The redemption from Egyptian bondage was specially associated with the thought of Israel's becoming a nation and Jahweh's son. In this sense the people is sometimes called Jahweh's son (cf. Hos 11/1, Exd 4/27f. ' Israel is my son, my first- born,' etc.).The same thought is also prominently expressed in the Synagogue Liturgy (esp. in the Thanksgiving for redemption from Egypt which immediately follows the recitation of the Shema'. p115

In the four other passages in St. Paul's Epistles, where the word (viotheaia) occurs, it has an individual application, and an ethical sense, denoting 'the nature and condition of the true disciples of Christ, who by receiving the spirit of God into their souls become the sons of God' cf. Rom 8/15, Gal 4/5, Eph 1/5; in Rom 8/23 the phrase 'to wait for the adoption' includes the future, when the full ethical effects of having become God's adopted sons will be made manifest in their completeness. p115 Adoption in this sense implies the distinction that exists between the redeemed and Christ. 'We are sons by grace; He is so by nature.' The thought of ethical adoption is finely expressed in Jn 1/12-13." **Source**: 'Encyclopaedia of Religion and Ethics' Vol.1. p115. T & T Clark NY 1908.

ISRAEL - MODERN

"Israel has a surprisingly conservative adoption law, considering that it was only passed in 1960. This reflects the long absence of adoption in Jewish religious law. The adopters must be over 35 and of the same faith as the child; the new birth certificate issued for an adopted child is practically indistinguishable from the old one, except for the change of name. Adoption is something of a shameful secret; in fact, the law states: 'Unauthorized disclosure of information in relation to an adopter or an adoptee of his parents leading to their identification is punishable with imprisonment for 3 months.' Only in Soviet law is there a similar provision.

The Israeli law of 1960 not only provides for the punishment of a person who reveals particulars about an adoption, but also opens the register of adoptions to adoptees over the age of 18. Thus the concept of secrecy coexists with the idea that the child's origins are ineradicable, and that it is his right to know them.

In Israel the child welfare services are seen as 'an effort to lessen the gap between members of the various social classes and prevent the creation of a new generation of underprivileged children.' The aim is to have not only a complete system of institutions for children without families, but a comprehensive day care and nursery school system open to all children. This, it is hoped, will prevent the break-up of families for economic reasons, and avoid the accusation that adoption favours the well-to-do.

The Israeli state extends the sphere of responsibility almost as widely as do the communist states. Indeed, in the kibbutzim, Israel has created a model of communal child-rearing that appeals deeply to people in many Western countries. At the same time, adoption is explicitly preferred to institutionalization, and there is a compulsory review of the situation of children in care every two years."
Aviva Lion

Access to information
Adoption of Children Law 5741-1981.
Section 30: Inspection of register.

"**(a)** The Register of Adoptions shall not be open for inspection; it may, however be inspected-

(1) by the Attorney-General or his representatives;

(2) by a marriage registrar, or a person empowered in that behalf by a marriage registrar, where the inspection is necessary for carrying out his official function;

(3) by a chief welfare officer.

(b) On the application of the adoptee aged eighteen years or over, a welfare officer may permit him to inspect the register entry relating to him. If the welfare officer refuses the application the court may permit the inspection after receiving a report from the welfare officer."

The 1981 Statute is a revision of the 1960 Adoption of Children Law 5720- 1960 Sec:27. The new 1981 Act is identical re clauses 30:(a) 1,2. But (3) in the 1960 Act was simply 'An adoptee after he has reached the age of eighteen years'.

Prior to 1960

The British Law prevailed since Mandate days provided the legal basis and guidelines for adoption procedures until the first Israeli Adoption Law 1960.

Application for access to information

"Israeli law specifies that all 18 year old adoptees requiring information be granted the right to receive exact details about their biological parents, names, ages, ID numbers, country of origin and civil status.

This information is to be given 45 days after the application to the registrar of adoption has been filed. All applications are first referred to the Chief Welfare Officer in charge of the adoption, who, by law, must be a professional social worker. In practice the 45 days are used in

attempt to establish a relationship with the adoptee and to gain an understanding of his wants and needs. This means whether full information leading to an encounter with the biological parents is requested or whether an open discussion about his origins will satisfy the applicant.

If the adoptee wants to make contact with a birth parent, the mediation services of the Agency are made available to them. Note the inspection of their birth records by the adoptee is of right after waiting a period of 45 days, from the date of application for inspection.

Israel undoubtedly enacted this law as a result of the Jewish tradition and even more so- the strong belief in blood ties." Aviva Lion

Religious considerations

Section 5 Adoption of Children Law. 5741-1981

The adopter shall be of the same religion as the adoptee

" Adoption orders can be made by either civil or religious Courts. Jewishness is passed on through the mother- that is, the child of a Jewish mother is Jewish, regardless of the religion of the father, but the reverse is not true. Orthodox marriage and other religious rituals are not permitted to non- Jews, and so adoption creates special problems, even today." Aviva Lion

The Bin Din- ecclesiastical court

"It is essential that Jewish adoptive parents should be advised before adopting a child to consult the Beth Din (Jewish Ecclesiatical Court) as to make sure that the child to be adopted is Jewish. The Beth Din keeps a register of adopted children, so that when the question of marriage arises the existence of such registration will prevent any difficulties. The fact that the child has been brought up in a Jewish home does not by itself constitute Jewishness in the ecclesiastical meaning of the word". *The Law Relating to Children.* Clarke Hall- Morrison. 1972.

Israeli contribution to adoption knowledge

The wide range of cultural backgrounds due to the massive influx of displaced people has produced important research material. The Paper "Children's Needs and Parent's Rights- Legal and Psychological Dilemmas" Avia Lion is most informative. A few brief extracts—

Identity and origins

Their research seems to indicate- "It is not a quest to know about origins in order to find an identity, but rather the fear of the unknown and what it means to the ego when it suddenly becomes known, specifically, its a threat to already established identity.

Erickson: "The individual's mastery over his neurosis begins were he is put in a position to accept the historical necessity which made him what he is. For the adoptee, his historical necessity is deeply imbedded in the life stream and identity of his psychological - adoptive family. On the other hand, the environment's messages create an anxiety and uncertainty in his identity, and, especially, a fear of what may become of him when faced with his origins."

"There is no doubt that the genealogical bewilderment of the Israeli adoptee is increased by both the cross-ethnic placement and by the community encountered socio-psychological gap between the biological and the adoptive parents".

Telling "When parents fail to give concrete information, but use hidden hints and perhaps double messages- it created in children a feeling of unworthiness or at least inferiority."

Relating to needs "Politics, Religion and womens liberation can be equally pone to vigorous banner waving, all to little avail if they fail to relate to specific individual needs."

Guilt "The more guilt and shame that can be heaped on the birth-mother, eases the guilt of those who take the child-elements from the past."

Major function of open file "Is allowing the adoptee an extensive and open discussion of what it means to have been given up and placed for adoption, and, whenever possible, the facts of his parental life events, rather than the actual encounter with his birth givers. Of course, this would be meaningless to him, should he not retain from the very beginning the choice to meet or not to meet them". Aviva Lion.

Israel open file results

"It has been our experience that adoptees almost always benefit from the "right to know" whether or not they utilize that right. Moreover, we rarely find that 'opening the file' adversely affects the adoptee or his adoptive parents. Often adoptive mothers and fathers stand by, anxiously perhaps but nevertheless lovingly, accompanying their child on his complex journey into the past." Aviva Lion. *"Adoption in Nationwide Perspective" 1986.* 201p.

Statistical data

Prior to 1950 approx 300 adoptions. Adoptions 1950-1958 = 602. Total approx 900 at 1958. By 1976 out of 900 adoptees aged 18+ approx 60 or 6.6% made use of the access law- 50 responded to Research survey. As at 1986 - 500 adoptive parents on waiting list, and approx 150 babies adopted annually. 5 year waiting list.

Sources Direct correspondence between Aviva Lion Israeli 'Director of the Adoption Services', Ministry of Labor and Social Affairs 10 Yad Harutrim Street, 91000 Jerusalem. Israel and KCG. Much additional information (in English) can be obtained from Aviva Lion's chapter on "Adoption in Israel" in the book "Adoption in Worldwide Perspective" Edited by R.A.C. Hoksbergen. Pub. 1986 by Swets North America. ISBN 90-265-0738-0

Adoption Laws and developments

Aviva Lion- Director of Adoption Services "The British Law which prevailed since Mandate days provided the legal basis and guidelines for adoption procedures until 1960. Twelve years later, Israel's Parliament passed a new law which in effect was a compromise between universal legal thinking and the sentiments of the three religions co-existing in this strife ridden corner of the world. Basically, the law reflected a benign attitude toward children, but it did not give them primacy over the rights of adults.

It was geared more to the possibilities for adult adopters than to the possibility of psychologically parentless children becoming adopted. Some of its phrasing was ambiguous, and some issues left to the discretion of the courts.

Growing awareness of child-welfare

The growing awareness of child-welfare people with respect to children's needs made changes in the law necessary. However, the new law which was passed by Parliament in 1981 was preceded by a highly charged emotional debate and open conflict between public and professional opinions. We will consider the evolution of the new law in some detail because it may prove a useful lesson to others who encounter resistance to change, and rigid attitudes, with blood ties taking precedence over the emotional and developmental needs of children. p199

Its beginnings can be traced back to 1969 when Professor Rafael Moses, a distinguished psychiatrist, was appointed consultant to the adoption service. Unlike other mental health professionals, he stepped out of his psychiatric practice and actively engaged in helping adoption agency workers identify the causes of what they (a rather isolated, and even professionally alienated, group) perceived to be a harmful system for children. His thinking and support encouraged them to embark on a social action venture which is still going on. p199

Beyond the Best Interests of the Child

The appearance of "Beyond the Best Interests of the Child" which contested the prevailing legal, developmental, and psychological ideas caused a powerful stir in 1973. (In Bruno Bettelheim's words, the book "should be made required reading for all to whom society entrusts decisions on the placement of children... ") We were fortunate at the time not only to partake of its original, perhaps revolutionary, thoughts on children but to have among us one of its distinguished authors, Albert Solnit. Fired by enthusiasm and optimism, he joined forces with the adoption agency to try to convey the book's message to the legal, psychiatric, and social work communities. Supreme Court judges all received a copy of the book, and an appeal went out to the Attorney-General to take steps to change an adoption law which accorded biological and legal parenthood precedence over psychological parenthood - the latter alone promoting the child's emotional health. The book thereby became the vehicle in a dialogue between children's advocates and the legal system. A special committee was appointed, charged by the Minister of Justice, with reviewing the existing law and formulating changes. With Judge Etzioni of the Supreme Court presiding, the committee consisted of Member of Parliament Katzav (later to become Minister of Welfare and Labour), assistant to the Attorney-General Mrs. Albeck, and Professor Moses, consultant to the adoption service. In its attempts to study all aspects of the plight of children, it visited institutions, met with social workers, parents, and interested parties. pp199-200

Israel's grinding the political machinery

It took years for the committee to work its way through the political machinery until the stage where it was ready to translate its recommendations into the tabling of a new law. Suddenly in the winter of 1980, with new elections looming at the end of the year, it became clear that the law had to be passed prior to the elections. And not a moment was to be lost. Aware of the significance of time in the lives of children, we could not ignore the number of children in temporary arrangements with no hope of permanent settings under the existent law. It is beyond the scope of this paper to go into all the details of this most exciting social action venture. Suffice it to mention a few facts. Social workers and adoptive parents, who had intimate knowledge of the suffering experienced by institutionalized children prior to adoption, together with the media, formed a coalition. This lobby pressured Parliament to act swiftly and surely, and the new law was approved in May 1980. It was passed by an overriding majority, and the Prime Minister at the time termed it "the jewel in the crown" of his government. Before closing this chapter on social action, it is perhaps worth singling out one aspect of the campaign. On the day of the vote, an early morning radio programme called on the wives of parliament members to remind their husbands to attend that day's session - because "the children were waiting".

Passing laws is not enough, however. It takes time and experience to realize the fallacy of delayed decision-making, and the power of love and care to reverse trauma. Though social workers are gradually referring to the agency adoptable children earlier in their lives, and more "adoptable" orders are given, we still have a long way to go.

The 1981 law opened up new avenues for children and contained many innovative ideas, some of which we will highlight. We will also note certain portions which were carried over from the 1960 law. p200

7.1 In the best interests of the child

The opening paragraph of the new law is all-embracing and states that an adoption order and any other decision under the law shall be made if the Court is satisfied that it is in the interest of the adoptee to do so. The words "and any other decision", which were added to the old law, obligates the court to weigh the child's interests not only when legalizing relationships as in the past, but also at any time that the Court decides to declare a child adoptable, or to allow his birthparents to withdraw their prior consent to his adoption.

7.2 Parental consent for adoption

Both laws use the phrase "the consent of a parent" for voluntary termination of parental rights. Voluntary termination thus was, and is, regarded as a parental act (or the execution of parental responsibility) and not an act of abandonment.

7.3 Legal basis for placement in adoption

The 1960 law specified only the conditions under which adoption can be made, provided that the child had lived with the family wishing to adopt him for more than 6 months. The 1981 law sets down the manner and legal conditions whereby a child can be placed for adoption - a process totally absent in the 1960 law. One of the stipulations is that a child can be placed only by an "adoption

officer" (which by law means a social worker appointed by the Minister of Social Affairs).

The law's major innovation is the "declaration of a child as adoptable" prior to placement, omitted in former legislation (appendix, par. 13).

7.4 Legitimacy
In both laws both birthparents have equal status, since a child born out of wedlock in Israel is not considered illegitimate and has the same rights as a child born in marriage. The change in the new law is that the unmarried father who has not recognized the child loses his equal rights.

7.5 Legal guardian
Another important matter dealt with by the law is the automatic appointment of an adoption officer as the legal guardian for the period between the declaration of adoptability and the adoption order.

7.6 Interim placement (High-risk adoption)
In extreme situations, and before grounds have been established for the termination of parental rights, it has become possible to place a child, by temporary order, with a family who might in future adopt him. This provision minimizes the child's separation experiences since if he is declared adoptable, he need not move from foster care to a new adoptive family. Separation from the foster parents occurs only when there is a possibility of reunification with his parents. Despite its existence, there is a great deal of reluctance on the part of judges and even adoption workers to avail themselves of this provision, and ways still need to be found to make it more useful.

7.7 Open file
Finally we come to a provision which has been part of Israel's adoption laws since 1965, allowing an adoptee who has reached the age of 18 to obtain information on his origins if he so desires (see appendix, par 29-30) It has been our experience that adoptees almost always benefit from the "right to know" whether or not they utilize that right.21 Moreover, we rarely find that "opening the file" adversely affects the adoptee or his adoptive parents. Often enough adoptive mothers and fathers stand by, anxiously perhaps but nevertheless lovingly, accompanying their child on his complex journey into the past." pp200-1

Source: Aviva Lion*, *Adoption in Worldwide Perspective* by R.C.A. Hoksbergen, 1985 pp. 199-201. *Director of Adoption Services, Ministry of Labour and Social Services. 10 Yad Harutrim Street, 91000 Jerusalem Israel.

Extra Information The above book contains much more detailed information from Aviva Lion on pp189-209 Chapter headings are l. Introduction; 2. Historical background; 3. Birth-parents of potential adoption candidates; 4. Services for unmarried mothers; 5. Basic approaches to placement of children in adoption; 5.1 Older children; 6. Adopting: current issues and procedures; 6.1 Post-adoption services; 7. Adoption laws and developments; 7.1 In the best interests of the child; 7.2 Parental consent for adoption; 7.3 Legal basis for placement in adoption; 7.4 Legitimacy; 7.5 Legal guardian...

Jewishness passed on through the mother

"Jewishness is passed on through the mother-that is, the child of a Jewish mother is Jewish, regardless of the religion of the father, but the reverse is not true. Orthodox marriage and other church rituals are not permitted to non Jews, and so adoption creates special problems, even today.

'It is essential that Jewish adoptive parents should be advised before adopting a child to consult the Beth Din [Jewish Ecclesiastical Court] so as to make sure that the child to be adopted is Jewish. The Beth Din keeps a register of adopted children, so that when the question of marriage arises the existence of such registration will prevent any difficulties. The fact that a child has been brought up in a Jewish home does not by itself constitute Jewishness in the ecclesiastical meaning of the word.' Clark Hall & Morrison, The Law Relating to Children Butterworth London 1972.

There have, in the West, been very few Jewish children available for adoption, but many Jews who wanted to adopt; most of these have ceased to be Orthodox, so that the issue is no longer a live one. The religion has not changed, it has simply been bypassed." Benet p28

If Jewish parents adopt, is child automatically Jewish?
According to Jewish Law, a person is Jewish if his/her mother is Jewish or if he/she converted according to Jewish Law. If the religion of the child's biological mother is unknown, we go by the majority of the population, which (outside of Israel) is assumed to be non-Jewish. Because of the intricacies of Jewish Law a competent Orthodox rabbi or Beth Din (Jewish Religious Court) must be consulted regarding the conversion process.

In general three requirements must be fulfilled in order for a convert to be accepted as an equal among fellow Jews: 1) in the case of a male, he must undergo proper circumcision (standard hospital procedures do not fulfill this requirement. If the child has been circumcised medically a competent orthodox rabbi shold be consulted). There is no corresponding rite for a female; 2) the person must immerse in a mikvah; 3) the person must accept upon themselves to observe Jewish laws and customs.

Parents of an adopted child under the age of bar/bat mitzvah (13 for a boy; 12 for a girl) are permitted to have the child undergo circumcision (for a male) and immersion (for both male and female) and they must undertake to teach the child at least the basics of Jewish faith and practice. However, after the child's twelfth birthday (for a girl), or thirteenth (for a boy), they have the choice to accept Judaism upon themselves willingly, with all that this entails, or to reject it. If the now mature adult rejects Judaism, they are non-Jews in every way.

If the child does not undergo a proper conversion, then the adoption by Jewish parents per se *does not render the child Jewish.*

Proper conversion is an absolute requirement of Jewish law, and dispensing with it may have serious consequences later in life, such as when the person wishes to marry or

send his/her children to a Jewish school, only to be told that he or she is not really Jewish. We have all seen a tremendous return to traditional religion in the last few years. It is devastating for a young adult to find out after years of practicing Judaism that he or she is in fact not Jewish.
Source Rabbi Moshe Miller www.askmoses.com

Statute: Israel- 'Adoption of Children Law 5741-1981
See full Copy 'Overseas Adoption Statutes' Appendix this book.

CHRISTIANITY

Paul's adoption metaphor

The Greek word for adoption υιοθεσια-*whyothesia*, is used only 5 times in the Bible, each by Paul as a metaphor. Based on Roman adoption practice. Christians become sons of God, not by nature, but by adoption. "When we cry Abba Father...we are God's children": Rom. 8:15 "We wait for adoption as sons": Rom 8:23. "They are Israelites, and to them belong the adoption": Rom. 9:4; "to redeem those who were under the law, so that we might receive adoption as sons": Gal. 4:5. "Having predestined us into the adoption of children by Jesus Christ": Eph. 1:5. Some Bibles translate the Greek word for adoption as "sonship."

Christianity - Adoption- and sonship

Schweizer— The term is used only for placing in sonship towards God and occurs only in Paul's Epistles. The choice of the word shows already that the sonship is not regarded as a natural one but as a sonship conferred by God's act. But since it occurs only later one cannot be sure whether the term applies always to the act and not also to its result...

Romans 8.23; Gal 4.5 Even so, the reference would still be to sonship resting on the act. This is true already of Israel's sonship in Rom. 9:4, where God's covenants and promises seem to be associated with it and where the main point in what follows is that sonship be understood not as an assured sonship by natural descent or merit but as a sonship always dependent on God's free grace and to be received in faith. In Gal.4:5 reception of sonship is identical with liberation from the Law...

Institution by God is again set forth as the only ground of sonship. If Rom. 8:15 presents the Spirit who governs the life of the community as the Spirit of sonship in distinction from the spirit of bondage, this is the same point. It is the all-transforming act of the Son that changes bondage into sonship. Eph.1:5 backs this with a reference to God's foreordination which rules out all the boasting of man with his natural or acquired qualities. An important point is that Rom. 8:23 can also describe as future...

This is not merely asserting that man can never possess this sonship, never have it in his hands, never be in a position where he no longer needs God. As opposed to an enthusiasm which thinks it has all things in sacramental transformation by baptism or even in the acceptance of the doctrine of justification, it is also making it plain that God follows a uniform course in His dealings with believers, so that sanctification acquires its meaning from the goal of the perfect and definitive consummation in which our body will be redeemed from the conflicts of unbelief and error and death, so that faith becomes sight.
Source: Schweizer Vol.1. p399 '*Theological Dictionary to the New Testament*' Ed Gerhard Kittel & G Bromiley 8 vols. Eerdmans 1972.

All Christians adopted into family of God

A metaphor well understood by Gentile Christians. Christians were given a new 'Christian' name, along with retaining their Gentile or Jewish name. Saul, became know as Paul, Simon became Peter. Adopted persons retain their birth and adoptive names under both Roman and Greek law. Neither Roman, Greek or New Testament usage had secrecy about birth origins of adoptees. Modern secrecy concerning adoptee birth origins is neither Roman, Greek, Biblical or Christian.

Christian attitude to adoption secrecy

Discovering truth is a priority concern of Christian faith. The faith is not based on mysticism but on truth. God is a God of truth, and he requires us to be truthful with Him, truthful to one another, and truthful with ourselves. The root meaning of the New Testament Greek word for truth, αληθεια-*aleethia* means "non-concealment." "It indicates a matter or state to the extent that it is seen, indicated or expressed, and that in such seeing, indication or expression it is disclosed, or discloses itself, as it really is, with the implication, of course, that it might be concealed, falsified, truncated, or suppressed. Truth therefore, denotes the 'full or real state of affairs.'" Gerhard Kittle, ed., Geoffrey W. Bromley, trans. and ed., *Theological Dictionary of the New Testament,* Vol.1:238

God demands total honesty

In our relationship with him, with one another and with ourselves. Concealment of truth is identified with forces of darkness and hypocrisy. "Know the truth and truth shall set you free": Jn. 8:32. The thrust of early Scientific discovery came through open, honest quest for truth as a foundation of reality. The Royal Society of Science in England included many Christians as foundation members with a strong conviction for truth as the foundation belief. Concealment of truth from a person seeking the real truth about themselves is contrary to Biblical and Christian foundations.

Biblical attitude to genealogy

Genealogies are records of ancestry and descent of persons. They are an important part of Scripture. The genealogy of Jesus is given prominence in the New Testament. Mt. 1:1-17; Lk. 3:23-38. To biblical persons, origins are a very important component of the deep sense of belonging. You can change your future, but you can't change your genetic structure, it's fixed from the time of conception. Part of fronting up to reality is owning and accepting one's genetic reality, and the persons who conceived you. To deny one own genetic reality is to deny the truth.

Biblical writers face past with open honesty

Owning rich and poor, powerful and powerless, wise and foolish, good and bad, saint and sinner all as part of life's

realities. The genealogy of Jesus, contains the great, the sinners- *Rahab*, the prostitute from Jerecho: Mt. 1:5; Jos. 2:1-7. *Tamar* a seducer and an adulterer: Mt. 1:3; Gen. 38. *Ruth* was not a Jew Mt. 1:5; Ruth 1:4. *Bathsheba*, mother of Solomon: Mt. 1:6 was the woman who *David* seduced from Uriah, her husband with great cruelty: 2 Sam 11-12. Attempts to suppress the genealogical ancestry of a person are neither Biblical nor Christian.

Attitude to blood tie genetic link

Blood-ties are very important in the Old Testament. The reason for detailed genealogies is to establish blood ties. The concept that "life" was in the "blood" has been held from ancient times. In modern times blood is given less importance, because we now know inheritance is the "genes" that establish the continuing link with one's genetic past. However, blood and genetic ties remain parallel truths, the effective truth of the blood tie remains. We now have a detailed more accurate explanation of the inheriting phenomenon. The genetic links are very important. One's body and basic personality is inherited. Therefore, attempts to break the blood/genetic link by Statute or society is but a legal or social fiction, quite contrary to scientific truth. Likewise attempts to break with the past by secrecy are but a denial of truth and reality.

Most adoption statutes, safeguard blood-tie

Most prohibited Marriage Statutes affirm extend prohibiting marriage relationships for adoptees to their natural families, as well as adoptive families. The *Comparative Analysis of Adoption Law* by the UN 1956 found half the adoption Statutes had no prohibitions re marriage within adoptive relationship. To deny the unbreakable blood tie genetic link would be contrary to all scientific evidence and is neither Biblical nor Christian.

Summary Christian attitude to adoption secrecy

— Adoption of children was not a Jewish or Christian practice in Biblical times.

— Paul used adoption as a metaphor of our relationship to God but not as a Christian practice of adopting children.

— In Greek and Roman adoption the adoptee's new name was added to the birth name. No denial of birth name.

— Modern secrecy concerning adoptee birth origins is neither Roman, Greek, Biblical or Christian.

— Concealment of truth from a person seeking the truth is contrary to Biblical and Christian foundations.

— Attempts to suppress the genealogical ancestry of a person are neither Biblical nor Christian.

— To deny unbreakable blood tie-genetic links is contrary to scientific facts, is neither Biblical nor Christian.

— The chances of adoptees entering a prohibited marriage relationship are small but the social and legal consequences are horrendous.

Part of old ideology survives

Benet—The obligations felt by the adoptee are a return for the land conferred upon him. The Christian mythology goes even further in the religious creation of a fictive family: nuns are the brides of Christ, the Mother Church complements God the Father, and the Holy Trinity parallels the nuclear family. In Medieval times, the substitution of the Church for the family, in the monastic orders for example, became even more apparent." p27

Faith more important than families

Benet—"In all of these religions, the faith is more important than the family. Adoption in the West has grown only as religious belief has declined-contrary to the view that adoption is an outgrowth of 'Christian charity'". p28

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976 pp26-28

Christian history

Benet— "Christian countries have continued to use the adoption laws inherited from a variety of other sources, and the Church has accommodated itself more or less to these. It has imposed a few restrictions about allowing children to be adopted by those of another religion, and about the baptism of adopted children. p28

Catholics have, by and large, opposed adoption more often than they have promoted it. Because of the Church's opposition to birth control, there have often been many Catholic babies available for adoption and few Catholics who wanted to add to their own large families by this means. None the less, the Church has preferred to keep the children in Catholic institutions rather than to allow adoption by non-Catholics. Social workers say that if a child has a secure family, he doesn't need much else, and without that, it doesn't matter what else he has. Catholics seem to attach the same importance to the faith; the two notions continue to coexist uneasily. Recruitment to the Church has always been the prevailing idea behind the varying Catholic attitudes to adoption; it was approved when it could be turned to the Church's advantage. p28

The early Church, with its history of asceticism and its suspicion of the family, is the source of much of this thinking. The Christians, as an embattled minority, were more interested in conversion and recruitment than in founding personal dynasties; the radical separation between the Church and the societies around it, the disregard of material property (natural enough in a group that had very little), the belief in immortality -all worked against the establishment of mechanisms of personal continuity like adoption. p29

The Christian Church grew up in the old-established society of the Roman Empire. This affected its development, and gave it a background that was not part of the original desert heritage. The laws and customs of Rome were directly descended from the Babylonians and the Greeks, and the structure of their society was, at least in the early days, quite similar." p29

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976 pp28-29

Biblical New Testament adoption
"Adoption as a child" υιοθεσια
1 In the Greek World

On the formation- The word is attested only from the 2nd cent. B.C. and means "adoption as a child"; there are, however, older verbal equivalents in the sense "to adopt." p397

a Legal Presuppositions

Obviously in ancient Greece adoption was not always strictly formal. In the civic law of Gortyn in Crete (probably codified in the 5th cent., but on a much older basis) adoption...had to take place on the market-square before the assembled citizens and from the speaker's tribunal. The rules allowed adoption even when there were already male descendants. In Athens..."adoption" seems to be a way of meeting the absence of such heirs. It is also permitted only for Attic citizens of legitimate descent. The adopted son is introduced to the family cultus, presented to the family, clan, phratria... which could not be done without the consent of the phraters, then at the people's assembly at the beginning of the Attic official year entered on the public roll...The name of the adopted person did not change. The continuity of the family and the family cultus was maintained by adoption... Thus the legal process of adoption was often combined with making a will...Not infrequently testamentary adoption included the duty of providing for the adopting parent. The adopted son entered at once into the rights of the parent and undertook out of the assigned income to keep the testator and his family to the end of their lives..Hence adoption was a way of providing for old age...p398

b Religious Presuppositions

In Greek there are no instances of adoption in the transfer sense. Even when the ruler cult made its way into the Gk. world... the divinity of the ruler was viewed in terms of descent rather than adoption. For this reason the use of adoption terminology in a myth in Diod. S., 4, 39, 2 9 is all the more noteworthy. After the deifying...of Heracles Zeus persuaded his spouse Hera to adopt him...to this end Hera took him to her body and let him slip down to earth under her robes. She imitated the process of natural birth... The point of this remarkable rite was to confer legitimacy on the son of Zeus, this being regarded as necessary in addition to apotheosis. p398

2 In Judaism

The word does not occur at all in the LXX (The Greek version of the Hebrew Old Testament) The thing itself is found in Philo for the relation of the wise to God. p399

3 In the New Testament

The term is used only for placing in sonship towards God and occurs only in Paul (including Eph.). The choice of the word shows already that the sonship is not regarded as a natural one but as a sonship conferred by God's act. But since it occurs only later one cannot be sure whether the term applies always to the act and not also to its result...Romans 8.23; Gal 4.5 Even so, the reference would still be to sonship resting on the act. This is true already of Israel's sonship in Rpm. 9:4, where God's covenants and promises seem to be associated with it and where the main point in what follows is that sonship be understood not as an assured sonship by natural descent or merit but as a sonship always dependent on God's free grace and to be received in faith. In Gal.4:5 reception of sonship is identical with liberation from the Law... Institution by God is again set forth as the only ground of sonship. If Rom. 8:15 presents the Spirit who governs the life of the community as the Spirit of sonship in distinction from the spirit of bondage, this is the same point. It is the all-transforming act of the Son that changes bondage into sonship. Eph.1:5 backs this with a reference to God's foreordination which rules out all the boasting of man with his natural or acquired qualities. An important point is that Rom.8:23 can also describe as future... This is not merely asserting that man can never possess this sonship, never have it in his hands, never be in a position where he no longer needs God. As opposed to an enthusiasm which thinks it has all things in sacramental transformation by baptism or even in the acceptance of the doctrine of justification, it is also making it plain that God follows a uniform course in His dealings with believers, so that sanctification acquires its meaning from the goal of the perfect and definitive consummation in which our body will be redeemed from the conflicts of unbelief and error and death, so that faith becomes sight. *Schweizer* p399

Source 'Theological Dictionary to the New Testament' Ed Gerhard Kittel & G Bromiley 8 volumes. Eerdmans 1972. Reference above is Vol.8. pp397-399 *See* full text for extensive references and foot notes.

Biblical considerations

KCG— "Modern secrecy concerning adoptee birth origins is neither Roman, Greek, Biblical or Christian.

Adoption not Hebrew custom

Preventing family extinction was very important. Adoption was a solution practiced by Romans, Greeks and Baby-lonians, but not by Hebrews in Biblical times. The two references to informal adoption in the Old Testament are Moses Ex. 2:1-10 - Moses was plucked from the Nile river and adopted into the Egyptian royal household. and Esther 2:7 Mordecai took the orphan Esther, his uncle's daughter to be his. Both result from foreign surroundings and influences not from Hebrew custom or practice.

Why Hebrews did not practice adoption when surrounding cultures did?

It was their very strong belief in ancestral blood ties. 'Life is in the blood': Lev. 17:11a. Continuation of a family requires children of blood line. Thus they opted for Polygamy or Levirate conception, not adoption, as an answer to infertility. An adopted child outside the blood line could never perpetuate the family.

Hebrew solution to infertility in bible times Polygamy

If a wife was barren, the husband may take an extra wife to bear his children: Lamech: Gen. 4:19. Abram's wife Sarai was barren. She requested Abram to have sexual intercourse with her Egyptian maid, Hagar. Ishmael was the result: Gen. 16. Abraham had two secondary wives: Gen. 16:3,4. "Abraham took another wife, . . . Keturah": 25:1. Jacob had two wives: Gen. 29:23-30. Rachael found she was barren. She requested Jacob have sexual intercourse with her maid Bilhah--Naphtali was the result: Gen. 30: 1-8. When his second wife Leah could no longer bear children she requested Jacob have sexual intercourse with her maid Zilpah. Asher was the result: Gen. 30:9-13. Some Judges had several wives: Judges 8:30. "David took more

concubines and wives, and more sons and daughter were born to David": 2 Sam 5:13.

King Solomon the Temple builder: "Had 700 wives...and 300 concubines." 1 Kg. 11:3. cf Song of Songs 6:8-9.

Levirate conception

A widow could request of right her husband's brother to have sexual intercourse with her for the purpose of conception. A detailed account of the practice is Gen. 38:1-11. "Then Judah said to Onan, 'Go into your brother's wife, and perform the duty of a brother-in-law to her, and raise up offspring for your brother.'" Onan obeyed, had sexual intercourse with Tamar but withdrew before climax and ejaculated his semen onto the ground. For refusing to deliver his semen into Tamar he was rebuked of the Lord!

Levirate practice codified in Old Testament Law

"If brothers dwell together, and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger; her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband's brother to her. And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel." ... If he refuses to have sexual intercourse with her--"then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face and say, 'This is what is done to the man who will not build up his brother's family line.'": Deut. 25:5-10.

Polygamy was never forbidden in the Old Testament, but fell into disuse

However, Levirate conception was practiced throughout Old Testament times. The practice is alluded to in New Testament: Mk. 12:19; Mt. 22:24; Lk. 20:28, but was never part of Christian teaching or practice.

Jewish O.T. law had no legal adoption

Adoption never became popular among early Christians, even among Gentile Christians. The illegitimate origins of many adoptees could also be a problem in acceptance.

Israel- first adoption law 1960

At age 18 adoptees are entitled to full birth information--including, birth parents names, ages, Israeli ID numbers and country of origin. In contrast, Greeks codified their adoption law by 500 B.C.

Paul's adoption metaphor

The Greek word for adoption nioqesia *whyothesia*, is used only 5 times in the Bible, each by Paul as a metaphor.

Based on Roman adoption practice. Christians become sons of God, not by nature, but by adoption. "When we cry Abba Father...we are God's children": Rom. 8:15. "We wait for adoption as sons": Rom 8:23. "They are Israelites, and to them belong the adoption": Rom. 9:4; "to redeem those who were under the law, so that we might receive adoption as sons": Gal. 4:5. "Having predestined us into the adoption of children by Jesus Christ": Eph. 1:5. Some Bibles translate the Greek word for adoption as "sonship."

All Christians adopted into family of God

A metaphor well understood by Gentile Christians. Christians were given a new 'Christian' name, along with retaining their Gentile or Jewish name. Saul, became know as Paul, Simon became Peter. Adopted persons retain their birth and adoptive names under both Roman and Greek law. Neither Roman, Greek or New Testament usage had secrecy about birth origins of adoptees. Modern secrecy concerning adoptee birth origins is neither Roman, Greek, Biblical or Christian."

Source: 'The Right to Know Who You Are' K C Griffith Pub Kimbell 1992 Canada. Sec9 pp1-2

ISLAM - Mohammedan

ADOPTION

Islamic view with regard to adoption?

If by adoption is meant that you take a poor child and look after his boarding, lodging and clothing, Islam has always stressed the importance of helping the poor and needy people. One can always give charity and fatherly love to the child.

It is reported in a Hadith that the one who assumes responsibility for the well-being of an orphan will be granted the nearness of Nabi (Sallallahu Alayhi Wasallam) in Jannat (Mishkaat). This is an extremely neglected Sunnat of our beloved Nabi (Sallallaahu Alayhi Wasallam) and we should definitely aspire in this direction; however, we must uphold the framework of the Shariah.

One cannot legally adopt; you cannot give your name to the child. Legal adoption like this is prohibited in Islam.

If a person legally adopts a child there can be several complications. Firstly, the child will lose his identity. Secondly, suppose after adopting a child one has children of his own. It is natural that in such a situation you will show bias in favour of your own blood child. Thirdly, if the child born to you is of the opposite sex to the adopted child, they cannot freely stay in the same home because they aren't blood related to each other. When the adopted child, a girl, grows up, she has to make Purdah (Hijaab) with the adopted father as he is not her real father. If the boy becomes a man and marries, there will be Hijaab between the so called father and daughter-in-law.

If you adopt a child you will be depriving him/her of many rights. If a person dies, the property that he leaves behind has to be divided according to what is mentioned in the Qur'an.

If the person has children and if he legally adopted a child, he will be depriving his own child of his legitimate inheritance. If a person has no children when he dies, then his wife will get 1/4 the estate. If there are children she gets 1/8. Again the adopted child will reduce the share of the mother should this child be considered legally legitimate.

To avoid all these complications, legal adoption is prohibited in Islam. However this should in no way dissuade us from earning tremendous reward by taking care of orphan children.

Source www.jamait.org.za/adoption

Islamic legal rulings about foster parenting and adoption *Islamic sources—*

The Prophet Muhammad once said that a person who cares for an orphaned child will be in Paradise with him, and motioned to show that they would be as close as two fingers of a single hand. An orphan himself, Muhammad paid special attention to the care of children. He himself adopted a former slave and raised him with the same care as if he were his own son.

However, the Qur'an gives specific rules about the legal relationship between a child and his/her adoptive family. The child's biological family is never hidden; their ties to the child are never severed. The Qur'an specifically reminds adoptive parents that they are not the child's biological parents:

"...Nor has He made your adopted sons your (biological) sons. Such is (only) your (manner of) speech by your mouths. But Allah tells (you) the Truth, and He shows the (right) Way. Call them by (the names of) their fathers; that is juster in the sight of Allah. But if you know not their father's (names, call them) your brothers in faith, or your trustees. But there is no blame on you if you make a mistake therein. (What counts is) the intention of your hearts. And Allah is Oft-Returning, Most Merciful."(Qur'an 33:4-5)

Islamic adoption rules

The guardian/child relationship has specific rules under Islamic law, which render the relationship a bit different than what is common adoption practice today. The Islamic term for what is commonly called adoption is *kafala*, which comes from a word that means "to feed." In essence, it describes more of a foster-parent relationship. Some of the rules in Islam surrounding this relationship:

1 An adopted child retains his or her own biological family name (surname) and does not change his or her name to match that of the adoptive family.

2 An adopted child inherits from his or her biological parents, not automatically from the adoptive parents.

3 When the child is grown, members of the adoptive family are not considered blood relatives, and are therefore not *muhrim* to him or her. "Muhrim" refers to a specific legal relationship that regulates marriage and other aspects of life. Essentially, members of the adoptive family would be permissible as possible marriage partners, and rules of modesty exist between the grown child and adoptive family members of the opposite sex.

4 If the child is provided with property/wealth from the biological family, adoptive parents are commanded to take care and not intermingle that property/wealth with their own. They serve merely as trustees.

These Islamic rules emphasize to the adoptive family that they are not taking the place of the biological family — they are trustees and caretakers of *someone else's* child. Their role is very clearly defined, but nevertheless very valued and important.

It is also important to note that in Islam, the extended family network is vast and very strong. It is rare for a child to be completely orphaned, without a single family member to care for him or her. Islam places a great emphasis on the ties of kinship — a completely abandoned child is practically unheard of. Islamic law would place an emphasis on locating a relative to care for the child, before allowing someone outside of the family, much less the community or country, to adopt and remove the child from his or her familial, cultural, and religious roots. This is especially important during times of war, famine, or economic crisis — when families may be temporarily uprooted or divided.

Source http://islam.about.com/cs/parenting/a/adoption.htm

Background to Islam adoption

"In Arabia, in the days of Mohammad, a man could adopt another person as his son (Arab. tabanna, The Prophet himself adopted Zaid ibn Haritha. The latter was carried away in his youth as a slave and came into Muhammad's possession in Mecca. Some of his own tribesmen recognized Zaid, and told his father Haritha, who went to Mecca to offer a ransom for his son. Zaid, however, chose to remain with the Prophet, upon which the latter gave him his freedom and adopted him as his son, saying, 'He shall be my heir and I his.' Since that time he was called Zaid ibn Muhammad.

Many other instances of adoption are known in Arabic literature. But as a rule it does not appear that in Arabia adoption was practised exclusively for the purpose of saving the family from extinction. Often the idea apparently was merely to incorporate a certain person into a family, for one reason or another; as, e.g., when a man, on marrying a woman who already had children from a former marriage, adopted her children as his own.

Children of slave girls, begotten by the owner, were regarded as slaves, but it sometimes occurred that the father adopted them as his own children (as was the case with the famous poet Antara when he had given proof of ability). He who, having shed blood, fled from his tribe and found a protector in another tribe, was sometimes adopted by his protector as a son. Miqdad ibn al-Aswad, for example, who belonged to those who had accepted Islam in the very beginning of Muhammad's preaching, had fled originally from his tribe Bahra, and later on was adopted in Mecca by al-Aswad, his protector. His real name was Miqdad ibn' Amr.

It is to be understood that at that time an adopted son was regarded as in all respects the equal of a real son. The following event, however, caused Muhammad to abolish the old rule, and to declare that adoption was only a fiction and did not entail any consequences as regards rights. Zainab, the wife of the above-named Zaid, Muhammad's adopted son, had aroused the Prophet's passion to such a degree, that he persuaded Zaid to repudiate her, upon which he married her himself. This caused great scandal. It was objected that by the law laid down in the Qur'an (Sura, iv. 27) it was incest for a father to marry a woman who had been his son's wife. Then the verses of Qur'an xxxiii. 1-5 and 37 were revealed, in which it was expressly announced to the faithful, that an adopted son (Arab. da'i) was not a real son, so that to call an adopted son a real son was wrong, in as much as the process of adoption could never create any bonds of blood-relationship. Marriage with the repudiated wife of an adopted son was therefore not contrary to the will of Allah.

This passage in the Qur'an has been the accidental cause of adoption not being regarded in the canonical orthodoxy of Islam as a valid institution with binding legal consequences."

Source: '*Encyclopaedia of Religion and Ethics*' Vol.1. p110. T & T Clark NY 1908.

Islamic view of adoption

Identity retained

Adoption in the sense of changing one's identity and lineage for a false lineage is prohibited in Islam; but at the same time, it is allowed for Muslims to adopt a child in the sense of taking him/her under his/her wing for providing both physical and spiritual care for him/her. The Prophet said, "The best house of Muslims is one where an orphan is cared for." [The prophet Muhammad was an orphan.]

Biological parents remain real parents

Islam's stance on adoption rests on the necessity of keeping the biological parents of the child always in the picture. Keeping the original name of the child, and letting him know who are his real parents are some of the conditions stipulated by the Shari`ah when legalizing fostering. The reasons are; in Islam, children have automatic rights to inheritance, they can not marry their *Mahrams* (unmarriageable persons) and they can marry from their foster family if no suckling took place. The issue of *hijab* in the house is also given due regard between the non-related sisters and brothers, etc. All these rules have to be taken into consideration in this case.

Islam differs from Arab practice

Shedding light on the issue of adoption, we'd cite for you the following article: "Before Islam, the Arabs practiced adoption, naming the child after the person adopting him or her, as if the adoptive parents and the child were related by blood. Islam prohibits adoption but allows Muslims to raise children who are not theirs. Muslims can fully raise these children, look after them, and support them, but the children must be named after their real fathers. It is not a sin if a person is named after the wrong father by mistake."

Prohibition on artificial birth technology

For some of the same reasons, Islam prohibits any method of conceiving or delivering babies other than the traditional and natural method. Artificial insemination with sperm from a man the woman is not married to, surrogate mothers, the donation of sperm or eggs, and mothers' milk banks are all prohibited. These methods produce illegitimate children.

Children of unknown father 'Mawali'

In a case when the father is not known, as with abandoned babies, the child should still not be named after the person raising him or her. In a case such as this, the children may be called brethren in Islam (Mawali). Allah Almighty says: "Allah has not assigned unto any man two hearts within his body, nor has He made your wives who you declare (to be your mothers) your mothers, nor has He made those who you claim (to be your children) your children. This is but a saying of your mouths. But Allah says the truth and He shows the way. Proclaim their real parentage. That will be more equitable in the sight of Allah. And if you know not their fathers, then (they are) your brethren in the faith, and your clients. And there is no sin for you in the mistakes that you make unintentionally, but what your hearts purpose (that will be a sin for you). Al-

lah is Forgiving, Merciful." (Al-Ahzab: 4-5) [Note Islam does not call children of unknown origin orphans or bastards, but 'Mawali'- 'brethren'. KCG]

Explanation of Islamic change re adoption

In fact, Islam changed other pre-Islamic traditions related to this issue as well. The raised child cannot inherit from the people who raised him/her, and is not forbidden from marrying what used to be called relatives by the bond of adoption. Before adoption was prohibited, the Arabs had prohibited the man from marrying the divorcee of his adopted son. Islam prohibits a man marrying the divorcee of his son. However, in Islam, a man can marry the divorcee of the man he raised, who is not his son by blood; this is declared explicitly in the Qur'an. People would have felt uncomfortable in practicing this new permission, if Allah had not selected the Prophet to demonstrate its acceptability; it'd be a very heavy duty before people, even for the Prophet. Zayd Ibn Harithah was adopted by the Prophet before Islam prohibited adoption. He used to be called Zayd ibn Muhammad (son of Muhammad) until adoption was prohibited, when he was again called after his real father. Zayd married Zaynab bint Jahsh, the cousin of the Prophet.

Later on, he had problems in his relationship with her. Allah Almighty inspired to the heart of the Prophet that she would get divorced and he would marry her, something that was hard for him to face other people with.

Whenever Zayd complained to the Prophet that his marriage was going from bad to worse, the Prophet always told him to stay with his wife, which is a postponement of what the Prophet learned was going to happen.

The Prophet would not have tried to postpone such matter had it been explicitly said to him as an order from Allah Almighty or as a revelation from Him.

It was only an inspiration to his heart. He never hesitated in applying any command from Allah no matter what the issue was.

Zayd eventually divorced Zaynab, and neither one of them knew what Allah Almighty had inspired His Prophet to do.

After the waiting period (`*Iddah*) of Zaynab was over, the Prophet (peace and blessings be upon him) was told to marry her.

He sent Zayd himself to ask Zaynab to marry him. Zaynab said that she would not take such a step without a revelation from Allah Almighty.

When she went to the Mosque the verses that commanded the Prophet to marry her were revealed, and she married the Prophet. Allah Almighty says :

"And when you said unto him on whom Allah has conferred favor and you have conferred favor: Keep your wife to yourself, and fear Allah. And you did hide in your mind that which Allah was to bring to light, and you did fear people whereas Allah had a better right that you should fear Him. So when Zayd had performed the necessary formality (of divorce) from her, We gave her unto you in marriage, so that (henceforth) there may be no sin for believers in respect of wives of those they raised, when the latter have performed the necessary formality (of release) from them. The commandment of Allah must be fulfilled. There is no reproach for the Prophet in that which Allah makes his due. That was Allah's way with those who passed away of old - and the commandment of Allah is certain destiny. Who delivered the messages of Allah and feared Him, and feared none save Allah. Allah keeps good account. Muhammad is not the father of any man among you, but he is the Messenger and the Seal of the Prophets; and Allah is Aware of all things." (Al-Ahzab: 37-40)

Attack on Islam

The unbelievers and the hypocrites used this event to attack the Prophet and Islam, saying that the Prophet married the divorcee of his son. Even today, this incident is used by the unbelievers to misinform people about Islam and Muhammad. These people do not realize the importance of the rule introduced by Islam through this incident. For them adoption is acceptable, and so they find these revelations difficult to grasp or accept.

Criticism on Western adoption

Adoption is widely practiced in many non-Muslim western societies. Babies are taken from their parents and named after those adopting them.

1 <u>The children grow up having no idea who their real parents are</u>. In a mobile society like the U.S.A. for example, an adopted boy may end up marrying his sister from his original parents without knowing that she is his sister. These cases have actually happened. This harmful consequence is one of the reasons <u>that Islam places such importance on the use of the child's real name</u>. A person's name is important in Islam because many social rules like marriage, inheritance, custody, provision, and punishment, are contingent upon the blood relationship. This is a reason for women to retain their own names after marriage as well.

2 Adoption in non-Muslim societies is practiced for many reasons. (i) Non-Muslim societies have many illegitimate babies as a result of extramarital sexual relationships. Very young mothers of these babies do not keep them because they cannot support them and devote time to raising them. So these young women give the children to other parents who have no children, or abandon them in the streets where people can pick them up. Worse than that, some of these babies are killed, put in trash bags, and then thrown in garbage cans. In other cases, these children are sold to parents who cannot have children.

3 Another reason for adoption in these non-Muslim societies is that many women do not like or want to get pregnant, for fear of ruining their beauty. Many of these people claim that adoption is a humane service. They do not realize that Islam preserves the humane part of this practice by allowing people to raise children that are not theirs, while it prevents the negative consequences of adoption which can harm society by calling the child after the adoptive parents.

Source Excerpts from www.islamonline.net Date 20/8/2005
All Fatwas published on this website (Islamonline.net) represent the juristic views and opinions of eminent scholars and Muftis. They do not necessarily form a juristic approach upheld by this website

Care of orphans

Allah on many occasions calls for Muslims to take care of orphans:

"It is not piety that you turn your faces towards the east or west; but piety is the one who believes in Allah, the last day, the angels, the book, the Prophets, and gives his wealth, in spite of love for it, to the kinsfolk, to the orphans, and to the poor who beg, and to the wayfarer, and to those who ask..." (2:177)

"They ask you what they should spend. Say: whatever you spend of good must be for parents and kindred and orphans and the poor who beg and the wayfarers, and whatever you do of good deeds, truly Allah knows it well." (2:215)

"Worship Allah and join none with Him in worship, and do good to parents, kinsfolk, orphans, the poor who beg, the neighbor who is near of the kin, the neighbour who is a stranger, the companion by your side, the wayfarer, and those whom your right hand possess. Verily Allah does not like such as are proud and boastful" (4:36)

Prophet himself was an Orphan

"And did He (Allah) not find you (Muhammad) an orphan and gave you a refuge? And he found you unaware and guided you? And He found you poor and made you rich? Therefore treat not the orphan with oppression "(94:6-9)

Source www.angelfire.com/la/IslamicView/Adoption

God not fooled by adoption

Benet— "One of the salient characteristics of the transcendent desert God is omniscience and the notion that God will not be fooled by adoption or any other fiction is one argument against it. The Koran says, p27

'Allah has never put two hearts within one man's body. He does not regard the wives whom you divorce as your mothers, nor your adopted sons as your own sons. These are mere words which you utter with your mouths: but Allah declares the truth and guides to the right path. Name your adopted sons after their fathers; that is more just in the sight of Allah. If you do not know their fathers, regard them as your brothers in the faith and as your wards. Your unintentional mistakes shall be forgiven, but not your deliberate errors.' Koran xxxiii, 4-6

This passage shows that Islamic law, like that of most modern Muslim countries, allowed the rescue of abandoned children without permitting adoption. p27

Islamic opposition to adoption

"Islam is the religion that has remained most strongly opposed to adoption— modern Israel has an adoption law, as do most Christian countries. One of the first Muslim states to pass such a law, Tunisia, did so mainly to prevent non-Muslims from adopting Tunisian children out of the country and the faith— more as a defensive than a prescriptive measure. In part, this is because Islam also continued a tradition of polygamy and easy divorce; in all societies, adoption is in widespread use where alternatives to it are few, and vice versa.

The patriarchal nature of Islam also militates against adoption. A man can legitimate his own child simply by recognizing it; marriage with the mother is not strictly necessary. A man can also recognize any child of his wife, even if it is the product of adultery. The male need for an heir thus catered for, and the fact that there is no recourse for an infertile woman does not matter in such a male-dominated society. Infertility is never attributed to the male: it is believed that somewhere there is a woman by whom he can have children." pp27-28

Muslim opposition to inter-country adoption

"The 1972 Adoption Bill in India is running into opposition, partly because Muslims feel that it would impinge on their personal law, and partly because it contains provision for intercountry adoption. p133

Often, countries that allow adoption in fact refuse to call it by that name. Foreigners are allowed to take a child out of Colombia, Pakistan, or Libya, for example, 'to assure his education'; they may then apply to adopt under the laws of their own country. An official of the Embassy of Pakistan in London reports there is no law on the subject of adoption of children on the Statute Book of Pakistan. Neither is adoption recognized in the personal law of Muslims in Pakistan... p133

It is understood that 29 Pakistani children were adopted by the nationals of Sweden during the years 1972 and 1973. But this was never an adoption in the strict sense of the term. The Swedes might have got themselves appointed guardians of orphan children under the Guardians and Wards Act, 1890, and then sought permission of the Court to take the child outside the country. p133

"The compromises produced by this situation are still reflected in law. Sarawak, for example, requires (as does English law) that the adopter be at least 21, and 20 years older than the child he adopts, but: Before registering the adoption by a person of the Muslim faith the District Officer must draw his attention clearly and unmistakably to the fact that adoption is contrary to the Hukum Shara ..." p104

Source Mary K Benet 'The Character of Adoption' Jonathan Cape 1976

Fuzzy legal issue

In most Muslim countries, adoptions of children are a fuzzy legal issue. Some exceptions are Indonesia and Malaysia, which still retain a relatively adoption-friendly heritage from their pre-Islamic past. In Islamic law, children born of a Muslim marriage necessarily belong to the father. This fundamental principle makes it impossible for Muslim parents to adopt a child legally since adoption risks producing a fiction of paternity.

Source http://www.colorq.org/Articles/2003/adoptism.htm

INDIA - HINDU

Hindu - Indian—Adoption was essentially a religious act, as prescribed in Sanskrit law. There were twelve kinds of adoption, but the motive was always to insure heirs for the family. Adoption conferred spiritual benefits upon the adopter and their ancestors via ancestor worship. The degree of closeness to the adopter and adoptee was of great importance. Caste, kinship degree, and social level should be as close to the adopter as possible. Traditional Hindu adoption underwent significant changes as a result of English rule, and resulted in a mixture of Eastern and Western philosophy.

Hindu Law

Benet— Hindu India is famous for adoption- Mayne's *Treatise on Hindu Law**

Twelve types of adoption

devotes over a hundred pages to it, and traditional commentaries on the law have identified no fewer than twelve types of adoption. The degree of closeness of adopter and adoptee is thoroughly prescribed in Hindu law. It is an established principle that the adopted boy should be 'the reflection of a son'-as similar as possible to a natural child. It is preferable for him to be of the same family, but he must not be within the prohibited degrees of kinship. His mother must be someone the adopter could have married-i.e., not a sister or a daughter. He must be of the same caste as the adopter, even if he is unrelated. p35

Secular motives

Although funeral rites and ancestor worship are important to the Hindus, Mayne suggests that secular motives for adoption are perhaps the dominant ones. As in China, 'the funeral cake follows the family name and the estate'-in other words, funeral offerings are a return for an inheritance. But perhaps the whole debate over motives is unnecessary: 'adoption itself is in all cases for the continuance of the line and for the perpetuation of the family name, whether the motives are secular or religious.' [14]p35

Orphans cannot be adopted

Adoption, as a form of exchange, must be transacted between the adopter and the adoptee's parents. Hence the provision, so curious to Westerners, that an orphan cannot be adopted - there is no one to give him in adoption.p35

Hindu law of inheritance

One of the reasons for the desire for a personal heir is the immensely complicated Hindu law of inheritance. If a man dies intestate or without appointing an heir, all his property must be left, according to the rules, in decreasing percentages as the heirs get more distant. The property, especially if it is land, may be divided into parcels too small to be of use to anyone; an appointed heir will at least receive an intact estate. p36

The twelve sorts of sons identified by Hindu law can be reduced to two-natural and adopted. The legitimate son comes first in preference, and obviates the need for any other sort. But a man with nothing but daughters may appoint a daughter to have a son that he later claims as his own. Thus men are advised not to marry a girl without brothers, for their sons may be taken by the girl's father.

The wife may have a son by another man, and the child can then be legitimated by her husband. This can be done secretly, almost as a form of artificial insemination-but the legal commentaries advise that a man be careful that all forms and disclaimers are properly observed, or the genitor may have a claim to the child. This debate is presently going on in the West over the question of donor insemination -what is the legal status of the child?

The son of an unmarried daughter still living in her father's house can be adopted by the girl's father; in fact it seems that legally it is his child, since he is still the guardian of the girl. p36

Several types of son's

These are all, strictly speaking, types of natural son. There are also several different types of adopted son. Not only can a boy be given or sold by his parents; if he is old enough, he can give himself in adoption with his parents' consent. Only a man who has none of the types of natural son will adopt; but many of the Hindu 'natural' sons would be called adopted sons in other cultures. What degree of kinship determines whether a son is natural or adopted? If he has any of the adoptive father's blood at all, Hindu law would consider him a natural son. p36

Widow adoption

The levirate of ancient Hebrew law finds an interesting parallel in the Hindu custom of widow adoption, whereby a woman can be empowered by her husband to adopt sons after his death, who will then be legally considered his sons. p36

Only one way of adopting girls

There is only one way of adopting girls under Hindu law: the dancing girls of Madras and Pondicherry were allowed to adopt daughters to follow their profession and inherit their property. This is reminiscent of the adoption by Babylonian craftsmen (and European guildsmen) of their successors; but because it is the only instance in which women were their own masters and employers, it is the only case in which they could adopt as if they were heads of households. p37

Under Indian law, a man could not adopt his own illegitimate son; but this is clearly because the owner of the mother had the title to the child. A woman belonged first to her father and then to her husband; her lover had no legal claim on her, and thus none on the child. p37

Changes due to English rule

The big changes in Hindu law came about as a result of English rule. There were many provisions in the law of adoption that seemed curious, even ridiculous, to the English -such as the rule against the adoption of orphans, just the people who might be thought to need it most. The 'sale' of children is the aspect of adoption that the British found most shocking in many parts of their empire; but as in the case of the African bride-price (another parallel between marriage and adoption) they often misinterpreted the facts. p37

Adoption and status

The parents of the child given in adoption, in India as elsewhere, often have many children; they are seeking an opportunity for the child by allying him (and therefore themselves) with a richer or higher-status family. It is usual for them to receive something tangible in return; but this does not alter the fact that they are thinking primarily of the child when they arrange the adoption. They are trying to prevent too much division of the scarce resources they will be able to leave their children, and to give one at least of the children an opportunity to do better for himself. As Mayne remarks, 'Paupers have souls to be saved, but they are not in the habit of adopting.' p37

Western child-rescue aspect of adoption

Western insistence on the child-rescue aspect of adoption has led to hypocrisy: instead of giving the child in adoption to rich foreigners, an Asian mother may now use the subterfuge of abandoning it to an orphanage, so that it can be adopted as an 'orphan'. The open recognition that it is the rich who adopt the children of the poor may be distasteful to modern sensibilities but concealing the facts does not alter them. Benet p37

[*14 Mayne's *Treatise on Hindu Law and Usage* Higginbothams Ltd., Madras, 11th edition. 1953] **Source** MaryK Benet 'The Character of Adoption' Jonathan Cape 1976 pp35-36

Adoption essentially a religious act.

'Encyclopaedia of Religion and Ethics'—The adoption of a son (*putrasanqraha*) amongst the Aran Hindus, as observed by Sir R. West, is essentially a religious act. The ceremonies in an adoption, as described in the Sanskrit lawbooks, resemble the formalities at a wedding; adoption consisting, like marriage, in the transfer of paternal dominion over a child, which passes to the adopter in the one case and to the husband in the other. One desirous of adopting a son has to procure two garments, two earrings and a finger-ring, a learned priest, sacred grass, and fuel of sacred wood. He has next to give notice to the king (or to the king's representative in the village), and convene the kindred, no doubt for the purpose of giving publicity to the transaction, and of having the son acknowledged as their relative by the kindred. The adopter has to say to the natural father, 'Give me thy son.' The father replies, 'I give him'; whereupon the adopter declares, 'I accept thee for the fulfilment of religion, I take thee for the continuation of lineage.' After that, the adopter adorns the boy with the two garments, the two earrings, and the finger-ring, and performs the *Vyahrti-Homy* or *Datta-Homa*, i.e. a burnt-sacrifice coupled with certain invocations, apparently from the idea that the conversion of one man's child into the son of another cannot be effected without the intervention of the gods. The learned priest obtains the two garments, the earrings, and the finger-ring as his sacrificial fee. Where the ceremony of *tonsure* has already been performed for the boy in his natural family, a special ceremony called *putresti*, or sacrifice for male issue, has to be performed in addition to the burnt-sacrifice, in order to undo the effects of the *tonsure* rite. The motive for adoption assigned in the Sanskrit commentaries is a purely religious one, viz. The conferring of spiritual benefits upon the adopter and his ancestors by means of the ceremony of ancestor worship.

The Code of Manu (ix. 138) has a fanciful derivation of the word, *putra*, ' a son,' as denoting the deliverer from the infernal region called *put*.' In the same way, it is declared by Vasistha (xvii. 1) that 'if a father sees the face of a son born and living, he throws his debts on him and obtains immortality.' Another ancient text says, ' Heaven awaits not one who has no male issue. 'These and other texts, laudatory of the celestial bliss derived from the male issue, are cited by eminent commentators in support of the obligation to adopt on failure of male posterity. .

The importance of this practice was enhanced by writers on adoption, who declared as obsolete in the present age (*Kaliyuga*) the other ancient devices for obtaining a substitute for a legitimate son of the body, such as appointing a widow to raise issue to her deceased husband, or a daughter to her sonless father, or legitimatizing the illegitimate son of one's wife, etc. These writers are unanimous in declaring that none but the legitimate son of the body (*aurasa*) and the adopted son (*dattaka*) are sons in the proper sense of the term and entitled to inherit. Adoption, no doubt, has continued, down to the present day, one of the most important institutions of the Indian Family Law, and its leading principles, as developed in the writings of Indian commentators, are fully recognized by the British courts, and form the basis of the modem case law on the subject. On the other hand, it must not be supposed that the religious motive for adoption in India has ever in reality excluded or prevailed over the secular motive.

Secular motive- heirs

The existence of adoption among the Jainas and other Hindu dissenters, who do not offer the oblations to the dead that form the foundation of the spiritual benefit conferred by sons, proves that the custom of adoption did not arise from the religious belief that a son is necessary for the salvation of man. In the Panjab, adoption is common to the Jats, Sikhs, and even to the Muhammadans ; but with them the object is simply to make an heir."

Source 'Encyclopaedia of Religion and Ethics' Vol.1. p110. T & T Clark NY 1908.

History of Adoption in India

Kala Lilani—In India, the concept of adoption dates back to the scriptures of 5,000 years ago. According to the scriptures, one of the human incarnations of God was Lord Krishna, who was born to an imprisioned King and Queen. Krishna's parents arranged with the prison guards to transport the newborn, immediately following his birth, to another kingdom across the river. This was done in an attempt to save the newborn from being killed the next morning by his captors. Krishna was loved and accepted by his new parents immediately and was revered by both the kingdoms. Krishna grew up with the full knowledge of his biological parents and shared the love of both his biological and adoptive parents. p24

Prior to and during the British rule

In India, royal families and common citizens usually opted for adoption in order to have a male heir to carry on the

family name and legacy. Even now, current Hindu belief is that only a son can light the deceased parent's funeral pyre for the parent's soul to achieve salvation. Thus, traditionally, the primary purpose of adoption was to provide childless couples with a male heir. p24

Infamily adoptions

Sometimes the adoption arrangement was made between relatives and family members to give a childless couple the gift of a child, even though the adopted child may have had biological parents willing and able to rear him. It was (and still is) preferred that the child's birthparents be relatives of a known and respected bloodline. A child of an inferior or unknown bloodline was not acceptable. p24

Secrecy

There was much secrecy surrounding adoption, and it was a taboo to mark the child as an adopted child (much as it was in Western societies about fifteen years ago). The needs of the parents superseded the needs of the child. There was no legal provision, however, for formalizing this widespread, but secretive, practice of adoption. The adopted children received an inheritance and enjoyed other privileges, according to the individual adoptive family's desire, wishes, and circumstances. Subsequently, laws were passed to legally formalize the practice of adoption. p24

Overview of Laws Governing Adoptions in India
The Guardians and Wards Act of 1890

In the year 1890, while India was still under British rule, the Guardians and Wards Act was passed to formalize all adoptions in India. p25

Multi-religious and multi-ethnic society

India is a multi-religious and multi-ethnic society, composed of Hindus, Muslims, Khojas (a Muslim sect), Christians, Parsis (Zoroastrians), and Jews. The personal laws of these groups in India, with the exception of Hindus and Khojas, do not recognize a complete legal adoption. The status and legal rights of an adopted child are not the same as those of a biological child of the same adoptive parents.

Under the provision of the Guardians and Wards Act of 1890, adoptive couples and individuals become the permanent, legal guardians of the children they adopt. The basic rights of these adopted children for food, shelter, clothing, love, security, and permanency are guaranteed. However, the laws of inheritance, rights, and privileges are governed by the personal laws and customs of individual ethnic and religious groups. p25

Hindu Adoption and Maintenance Act of 1956

This law was passed in 1956, and later amended in 1960. Under this act, any child whose biological parents are believed to be Hindus, Jains, Buddhists, or Sikhs (the last three religious groups developed from Hinduism) has a right to be adopted by adults of Hindu, Jain, Buddhist, and Sikh faith. Children adopted under this law enjoy the same rights and have the same responsibilities as the adoptive couple's children by birth. These rights include the right to property and inheritance, unless otherwise specified by the parent in a legal will. Adoption under this act is irrevocable.

There are restrictions under the Hindu Adoption and Maintenance Act of 1956: a male child can be adopted only if the parent does not have a biological or adopted male child or male grandchild, and a female child can be adopted only if the parent does not have a biological or adopted female child or female grandchild. Because of these restrictions, Hindus adopting additional children of the same sex choose to adopt under the Guardians and Wards Act of 1890. A childless couple may adopt a child under the Hindu Adoption and Maintenance Act of 1956 and then, later on, have biological children of the same sex as their adopted child. A couple with only female biological children may choose to adopt a male child under the Hindu Adoption and Maintenance Act of 1956. p25

Juvenile Justice Act of 1986

This act is designed to replace the Children's Acts of the State and Union Territories. The purpose of the Juvenile Justice Act of 1986 is to provide care, protection, treatment, development, and rehabilitation for neglected and delinquent juveniles, and to provide for adjudication of matters relating to delinquent juveniles. This act extends to the whole of India, except the State of Jammu and Kashmire. This act recognizes adoption as a means of rehabilitation for an orphaned or neglected child, and also outlines categories under which children can be legally free for adoption. p26

Source Kala Lilani, M.S.W., is an Adoption Family Therapist. She was formerly the Director of Social Services at the Pearl S. Buck Foundation, specializing in international adoptions. Her address is: 4029 Penn Road, P.O. Box 768, Plymouth Meeting, PA. 19462, U.S.A.in book 'Intercountry Adoptions- Laws and Perspecives of Sending Countries' Edited Eliazer D Jaffe. Martinus Nijhoff Publishers London & Boston.

Indian opposition to Inter-country adoption

In-country adoption in India is lengthy and difficult, in spite of its long tradition-in a six-month period in 1973, the Indian Council for Child Welfare processed 188 adoptions. A report to 4th N.A.C.A.C. said:

It is estimated that there are between 1.05 million and 1 .15 million destitute children in India. Most of these children are not orphaned but abandoned ... Between 1963 and 1970 the Indian Council for Child Welfare helped some 88 children to be placed with foreign nationals. In 1970 a virtual ban on foreign adoptions was imposed. Nevertheless it is known that in Delhi there are several lawyers who, for a substantial fee, offer to procure children and ensure custody. Proceedings of 4th NACAC. Benet p133

Adoption policies and experiences in India

Ms J Jungalwalla—

Background and Legislation

Adoption in India is an age-old practice which finds a mention in ancient Hindu Scriptures. The practice was carried out to enable a man without a son to adopt one.

Normally the adopter and the adoptee were related. The importance attached to a son arose out the following main considerations:

a The son was expected to care for the parents in their old age, whereas a daughter after marriage became a member of her husband's household;

b Inheritance of the family property and perpetuation of the family name was ensured;

c Performing the last rites of a man to enable his soul to attain eternal bliss. The practice of giving and taking a child in adoption has been codified to form the Hindu Adoption and Maintenance Act 1956, now in force.

The main features of this law are

a Both the adopter and the adoptee must be Hindus;

b The adopter can only adopt a son if he/she has no son, grandson, or great grandson either natural or adopted. Consequently a daughter cannot be adopted if the adopter already has a daughter, granddaughter, or great granddaughter;

c The age limit for adoption of a child under this law is 15 years

While this law covers Hindus, Sikhs, and Jains, constituting nearly 80% of the population, there is currently no law applicable to the remaining 20% of the population which includes Muslims, Christians, Parsees, and Jews. Consequently persons from these communities, as foreign nationals, are required to take recourse to the provisions of the Guardians and Wards Act 1890. While no adoption is permissible under this act, the applicants are appointed guardians of the child/ children till such time as the child attains majority (21 years). Thereafter the legal relationship ceases. The child being merely a ward in this case is not entitled to the same rights as a natural born child. Consequently, he/she is not automatically entitled to either the family's name or property.

Efforts to enact a uniform civil law relating to adoption have been unsuccessful until now, considering the diversity of the Indian population's traditions and customs. This, however, does not impede the active role played by various voluntary organisations such as the ICSW, mobilizing support for this legislation considering that destitute children of all communities would be benefited.

Official Policy and Social Attitudes in India

The Government of India is a signatory to the Declaration of the Rights of the Child as enunciated by the U.N. General Assembly on 20th November 1959. It has also evolved policies from time to time which serve to strengthen the family unit. However, a conservative estimate puts the number of destitute children at 8.5% of the child population (children below 15 years constitute 15% of the Indian population).

Many of these destitute children find their way to institutions run by the Government or voluntary agencies. The latter are also provided government assistance. A great many of these institutions resort to adoption as a means of rehabilitating destitute children in India and abroad.

On the other hand, public opinion seems to range from those holding an extremely favourable opinion believing that existing procedures only serve to impede or delay a laudable programme, to those who feel that while adoption within India may be resorted to, intercountry adoption does in no way enhance Indian national prestige. However, the concept of adopting a destitute child by a childless couple in India is still not widely known. Consequently, compared to the number of destitute children in the country, the number of families desirous of adopting is small. There is also a traditional preference for a male child over a female child for reasons mentioned earlier in this paper. Added to that is the lack of available information for childless couples. Many childless couples wait for years in the hope of having their own natural child as they are unable to reconcile themselves to the thought of their childlessness. Thereafter some couples turn to their relatives for a child, as adopting a child of unknown parentage is still not looked upon favourably. However, a few enlightened couples do come forward to adopt an unrelated child.

It is found that the number of destitute children so adopted, particularly female children, is gradually on the increase. This indeed presents a happy augury and the theory that Indian parents are particular about sex, background and appearance is gradually fading.

At the same time, given the magnitude of destitution, greater efforts need to be made to mobilize public opinion and not least to back this effort by adequate legislation. pp93-95

Source 'Adoption Policies and Experiences in India by Ms. Avi J. Jungalwalla [Executive Secretary, Indian Council of Social Welfare (ICSW), 175 Dadabhai Naorij Rd Bombay 400 001] in book 'Adoption in Worldwide Perspective' R. Hoksbergen. Swets USA 1896 *See extra data* in Chapter headings re India includes- Procedures and Practices; Statistical data; Important issues that need addressing within the current context; Future orientation trends in plans and policy; Research in Adoption.

Statutes: See 'Extracts of the Guardians and Wards Act 1890 India' in 'World Perspective' in 'Statutes' folder this CD.

CHINA

Encyclopaedia of Religion and Ethics— Adoption is in China principally a religious institution, based upon ancestor-worship, which demands perpetuation of the family and the tribe.

Ancestor worship

The most sacred duty of a child, inculcated by the ancient classics, consists in absolute obedience and submission to the will of its parents, combined with the highest degree of affection and devotion. This duty, called *hiao,* naturally does not terminate with death. Father and mother, having entered the spiritual state, then become the patron divinities of their offspring. They reside in their tombs, and also at home on the altar, in wooden tablets inscribed with their names. The sons and their wives have to feed and clothe them by means of sacrifices prescribed with great precision by formal customary law, in order to protect them from hunger and cold, privation and misery, and themselves from punishment and misfortune. The hiao extends also to grandparents, and still more remote ancestors of the family, who likewise are tutelary divinities. Lest the sacrifices should cease, it is both a necessity and a duty for everybody to have sons, in order that they may continue the ancestor-worship. The saying of Mencius, 'Three things are unfilial, and the worst is to have no sons,' is a dogma of social and religious life to this day. Daughters are of no use in this respect; for, accordance with the peremptory law of exogamy dominating China's social life probably from the earliest times, a daughter leaves her paternal tribe to enter that of her husband, and this secession means the adoption of her husband's ancestors. p107

In-family adoption

A married man who has no son, either by his principal wife or by a concubine, is therefore bound to obtain one by adoption. According to ancient custom, confirmed by the laws of the State, he may adopt only a son of his brother, or a grandson of his father's brother, or a great-grandson of his paternal grand-uncle, and so on ; in other words, an adopted successor must be a member of the same tribe, and thus a bearer of the adopter's tribe-name ; and more over, he must be a member of the generation following that of the adopter.

An adopted successor holds the position of a genuine son: he possesses the same rights, and has the same duties to perform.

Adoption is unusual, and at any rate not necessary, for those who have sons of their own; and it is unlawful for any man who has only one son to give him away for adoption. p107

No authorities involved

The adoption of a son may, of course, be sealed by means of a written contract, but in most cases no such contract is made. It is an important event for the family, and, like all such events, is superintended by the elders of the family, whose tacit sanction is necessary. The intervention of the authorities is neither asked nor given, and so long as no glaring transgression of the laws of adoption is committed, and no complaints are lodged by the elders, they will not interfere. p107

Adoption ceremony

The consummation of the event is in the main religious, being solemnly announced to the soul-tablets in both homes by the respective fathers ; and the son has, with prostrations and incense-offering, to take leave of those in his father's house, and in the same way to introduce himself to those in the house of his adoptive father. Should his natural father and his adoptive father have the same family-altar, there is, of course, only the one announcement before it. p107

Source 'Encyclopaedia of Religion and Ethics' Vol.1. p107. T & T Clark NY 1908.

Adoption and ancestor worship link

Benet— " The country most widely known for its ancestor cult is China, and unsurprisingly, adoption flourished there too. Anthropologists have evolved plausible theories about the mechanism of Chinese ancestor worship, combining psychology and economics. p32

One recent hypothesis is that those who benefit from someone's death (i.e. receive an inheritance) are likely to feel guilty over the possibility that they wished for the death. To expiate this guilt, they perform rites of worship to the dead. The school of thought founded by Maurice Freedman takes this further in a practical direction. One of his students said of Taiwan, where the ancestor cult continues almost unchanged;

'In studying the reciprocity that is at the heart of ancestor worship, we shall find that the living are expected to care for the dead in payment of the debts they owe them. Beyond this, in the act of meeting this obligation, the living hope to inspire a further reciprocal response from the ancestors, to obtain through them the good life as they perceive it: wealth, rich harvests, and offspring who will ensure undying memory and sustenance in the afterlife.' [Source: Emily Ahern, The Cult of the Dead in a Chinese Village, Stanford University Press 1973.] p32

To have one's tablet placed in the hall of ancestors, one must have a descendant to place it there. Although it is possible to appoint a descendant, a nephew for example, or even to leave one's property to a complete stranger in, return for worship, the usual practice of the childless is adoption. p32

Rationale for sons preference

The Chinese preference for sons, whether natural or adopted, has often been misinterpreted. It is not that men have all the power in the family, or that they are considered the only useful members of it. Mothers and mothers-in-law have enormous power in traditional Chinese families, especially after they have borne sons. The problem with daughters is that they are only temporary members of the lineage into which they are born. p33

'A woman's stay in her natal home is usually temporary, ending when she marries out of it. From her birth it is expected that she will give the children she bears and her adult labour to the family of her husband ... She has no right at all to care or worship from the members of her natal lineage because she is not a permanently committed member of that lineage. She was born to

leave it.' Ibid Emily Ahern,

Since an unmarried woman, unless she has been betrothed, must have a tablet in the hall for unmarried girls, she may be posthumously married.

The adopted child in China is thus almost always a boy, and almost always goes to a childless (or at least sonless) family. But if his natural parents lose their other children after he is adopted, he may find that he has to worship both sets of parents. p33

There is one circumstance, however, in which girls are adopted—a girl may become a sim pua, or 'little daughter-in-law'. She is adopted in early childhood, and it is intended that she should marry her foster-brother, or at least some male member of the lineage into which she is adopted. One anthropologist in Shantung in the 1930s found that 35 per cent of the girls in the families he studied had been adopted in this way the poverty of the depression years had induced families to part early with daughters who would be leaving them anyway in due course." p33

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976 pp32-33

Modern China
Adoption meshed into communism

Benet— We have seen the state's ambivalence about adoption when it attempts to apply socialist principles to a country with no tradition of adoption. China is in a very different situation: what is perhaps the world's longest unbroken tradition of adoption has meshed into the Chinese version of agrarian communism. The *canard* that revolution means the abolition of the family receives its deathblow here. As recently as the 1940s, sections of Chinese society could be found in every stage of transition between the traditional family based society and the new forms brought about by the impact of capitalist imperialism and socialist revolution. Some aspects of the old system fitted quite well into the new, but others were radically changed. p111

Concubinage disapproved by Revolution

Concubinage was officially disapproved by the Revolution, but in any case it was only practised in some parts of China. Nowhere did concubines have status equal to that of wives, although the child of a concubine might be preferred as heir to a child from outside the clan. The system of relative adoption as practised in Shantung Province was described in 1948. p111

Adoption can replaced concubinage

Adoption, rather than concubinage, solves the problem of childless wives... Adoption is closely related to inheritance. As long as the deceased has a son, the problem of adoption does not arise, but if a man has no son, the adoption of an heir is imperative. The male line must be continued. The adopted heir is always the next of kin, or the father's brother's son ... When a brother's son is not available, the choice falls on the next nearest kin in the patrilineal line. Adopting a member from the matrilineal line, such as a wife's brother's son, is unknown, but custom allows a son-in-law to take a real son's place in continuing the family line. In such a case, the daughter of the family will marry her husband at her parents' home. The husband and their children will take her family's name. Martin C Yang *A Chinese Village* Kegan Paul London 1948

Analogy between marriage and adoption

Here is another analogy between marriage and adoption marrying into the family is sometimes exactly equivalent to being adopted into it.

In other parts of China, the practice of modern adoption - that is, the adoption of strangers -provided an alternative to concubinage. Olga Lang (1946) tells the story of a modern wife whose husband was urged by his mother to take a concubine, since his marriage was childless; rather than have this happen, the wife feigned pregnancy and went to another city to adopt a baby. In other cases, it is the wife herself who urges her husband to take a concubine; once he has a child, her own position is not so severely threatened.

But other forms of adoption existed in China before the revolution, although probably none were so widely practised as the adoption of a related heir. Lang reports that in the village she studied, the consent of the clan head (who officiated at ancestor worship) was necessary for the adoption of an heir:

'The difference between the status of boys adopted as legal heirs and adopted "out of charity" was abolished by the legal code but was still observed generally: the legal heir had to be a member of one's clan.'Olga Lang *Chinese Family and Society* Yale University Press 1946

Some charitable adoption

Obviously some charitable adoption was practised even in traditional China. The adoption of a daughter-in-law in her childhood has also been made illegal, but the desire to have many children in one's household meant that adoption was often practised even when one already had a son 'Maids sometimes became concubines, and young servants were even adopted into the family on account of exceptional talent or merit.' Marion Levy *The Family Revolution in Modern China* Oxford University Press 1946

This way, families with property acquired more children, while the landless tended to lose some of theirs.

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976 pp32-33

New Zealand adoption from China

As at 2005 New Zealand has a Government to Government agreement re adoption from China. Contact Child Youth and Family for details.

JAPAN

Adoption, now widely prevalent in Japan, Is not a native institution. It was first introduced from China for a political purpose during the rule of the Hojo Regents (1205-1333). Its importance is chiefly social and legal. The legal unit in Japan is, the family and not the individual; hence, when there is no natural-born heir, adoption becomes necessary in order to provide a representative in whose person it shall be continued. But the religious point of view is by no means overlooked. p110

The adopted son, on the death of his foster-father, takes charge of the family tombs and attends to the domestic religious observances, whether Shinto, Buddhist, or ancestral, just as if he were the real son. Their neglect, for want of an heir, would be considered a great calamity. There is no ceremony of adoption, but registration at the public office of the district is essential. p111

Source: 'Encyclopaedia of Religion and Ethics' Vol.1. p111. T & T Clark NY 1908. pp110-111

Modern Japan

Western influence v Japanese Buddhist tradition

Benet— Japan presents us with the third example for our Asian typology. The U.S.S.R. shows -us Westernization and socialism grafted on to a society with no previous tradition of adoption; China shows us what happens when a tradition of adoption becomes incorporated into socialism. Japan also had a Buddhist tradition of adoption, similar to that in China; but it met the impact of Western-style capitalism in the years before adoption was accepted in the West. The result has been a confusing and ambiguous blend of practices and attitudes, some operating for adoption and some against it. p114

Archaic Japanese feudalism

It is often said to have had a feudal system-but instead of taking the place of family relationships, including adoptive ones, as in Western Europe, Japanese feudalism seems to have intensified and even created family ties. As late as the sixteenth and seventeenth centuries in England, the prosperous rural household included many unrelated people. In Japan, the relationships created by this means often became adoptive ones. Yoshi is the Japanese term for adoption of a tenant or retainer -a practice that had a longstanding tradition behind it. In one community, Ishigami in northern Japan, 'Families which entered the community later were able to settle there only by entering into adoptive relationships with the wealthy Saito family.' In other words, an immigrant family had to give the local feudal lords children to increase their work-force, in ' return for feudal patronage. p115

Adoption of heir's

Adoption of an adult who had proven himself an appropriate heir, a practice we have noted in ancient Rome, also occurred in Japan: 'adoption was one important mode of ascent in Japan. A father might even disinherit a son in order to adopt a talented young man. However, the individual so chosen rose alone.' p115

Rapid industrialisation

In Japan as in England, feudalism and primogeniture helped to create the necessary conditions for rapid industrialization. The amassing of capital was facilitated by the social system, and those without land provided a mobile work-force.

Under European feudalism, work-mates and age-mates to some extent supplanted the family. In Japan to this day, age groups seem to take the place of family groups. Businessmen, schoolchildren, housewives spend much time in groups of their own kind. Factories and companies are notoriously paternalistic on every level: 'oyabun-kobun : a leader, such as a work-gang foreman, becomes a symbolic parent, "adopting" his adult followers ritually.'

As in China, heir adoption in Japan was preferably done within the kin group. The rapid changes wrought by industrialization produced in Japan, as elsewhere, broken families and unwanted children-but the children abandoned by one family were not necessarily adoptable by another. p115

Stigma of illegitimacy

The stigma of illegitimacy was (and still is) very strong, and any family who adopted an unknown child did their best to conceal his origins. The family register of an unmarried woman records the fact that she has had a child and given it up for adoption, thus jeopardizing her chances of marriage. Abortion is practised in Japan almost up to the end of pregnancy-few girls want to risk the ostracism of bearing the child, and the Government has encouraged abortion as a means of population control. The adoptive parents, too, consider adoption to be a shameful secret: there are up to 3,000 court cases every year involving foster parents who have falsely registered adopted children as born to them. pp115-116

When the deception is revealed, the fictive family tie is not preserved. In one recent case, two women learned that their 20-year-old sons had been inadvertently exchanged in the hospital nursery at birth. The grown-up boys were reunited with their original families, since: 'According to judicial precedents, once a child-parent relationship proves to be false, it should be dissolved despite the fact that the child and its parents have been living as real child and parents for many years.' pp115-116

Concealment of records

Changes in the adoption laws have been proposed to allow childless couples to register adopted children as their own and to expunge the name of the natural mother from the adoption records. Doctors believe that this will help to avert dangerously late abortions by making the mothers willing to carry their babies to term and place them for adoption...

Adoptive parents, too, consider adoption to be a shameful secret: there are up to 3,000 court cases every year involving foster parents who have falsely registered adopted children as born to them...

The professor of law who is campaigning for the changes says that: 'foster parents are haunted by the fear that their children might know the facts of their birth during their

formative years and be dealt a devastating psychological blow. In fact there are many cases in which such children have taken to juvenile delinquency or killed themselves in extreme cases after they came to know that they were adopted children' There can be no clearer statement than this of the lack of popular acceptance of non-relative adoptions in Japan. cf *Japan Times* Jan 4th 1974. 'Politics of Adoption' USA edition. p116

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976 pp114-117

Civil Code of Japan at 2005
G. Adoption (art. 21)

142 The Civil Code defines two types of adoption in Japan: ordinary adoption and special adoption.

(a) Ordinary Adoption

143 Ordinary adoption creates a legal parental relation between the adoptive parents and the adopted child who acquires the status of a legitimate child. If the child to be adopted is a minor, leave from the Family Court is a requirement in principle for the adoption to be effective, excluding cases described below, and the adoption comes into effect upon the acceptance of notification. As for adoption, *ex post facto* remedies are secured on the basis of dissolution be action (Article 814 of the said Code) and judgment on forfeiture of the parental power (Article 834 of the said Code). The Family Court determines the case on the basis of whether adoptions is consistent with the welfare of the minor, ensuring the child's best interest thereby.

144 Leave from the Family Court is not required in cases where a person is to adopt a minor who is a lineal descendant of him/herself spouse, because such adoption normally has little risk of impairing the welfare of the child. Even in these cases, however, officers in charge of the family register may only acknowledge the adoption after examining the essential conditions for the adoption. For example, if the child to be adopted is less than 15 years of age, they examine whether the adoption is accepted by the legal representative, whether it violates other laws and regulations, whether it amounts to adoption of a minor who is a lineal descendant of the adoptive parent or his/her spouse, etc.

(b) Special Adoption

145 Special adoption is effected, if a child is, in principle, under 6 years of age at the time of request, by the Family Court's judgment made upon request from the person intending to become an adoptive parent, rather than by agreement between the adoptive parents and the adopted child. In special adoption, the family relation between the adopted child and his/her natural parents in addition to his/her blood relatives is terminated. Therefore, the special adoption is effected only if the care and custody of a child by his/her natural parents is extremely difficult or if the parents are unfit and there is an extraordinary need in the interests of the child. In addition, consent of the child's parents is also required for the special adoption to take effect, excluding cases where his/her parents can not express their views or substantial injury is inflicted upon the interests of the child to be adopted (e.g. the child is abused by his/her parents). While an *ex post facto* remedy for special adoption is ensured by the forfeiture of parental power (Article 834 of the Civil Code), dissolution is basically not allowed. The Family Court may, nevertheless, have the concerned parties dissolve the special adoptive relation on application of the adopted child, his/her natural parents or the prosecutor in cases where his/her parents are acknowledged to be capable of taking care of the child to a considerable extent and special need in the interest of the adopted child is recognized, due to abuse by the adoptive parents or other cause that is seriously harmful to the child (paragraph 10 of Article 817 of the Civil Code).

(c) International Adoption

146 Japan recognizes both the adoption of foreign children by Japanese nationals and the adoption of Japanese children by foreign nationals.

(i) Adoption of Foreign Children by Japanese Nationals

147 As for substantial requirements for making an adoption effective, the Civil Code of Japan serves as the governing law. If the domestic law of the foreign adopted child's country prescribes requirements for the protection of adopted children (e.g. approval/consent of the adopted child or a third party, permission from public authorities, and other procedures), these requirements need to be satisfied (paragraph 1 of Article 20 of the Law concerning Application of Laws in General). As for formality requirements, laws of Japan serve as the governing laws (Article 22 of the said Law). Accordingly, ordinary adoption is effected upon acceptance of a notification submitted with annexed documents proving that these requirements are satisfied following the procedures prescribed by the Family Registration Law. In special adoption cases, the notification is to be submitted after the adoption is enforced by the adjudication of the Family Court.

(ii) Adoption of Japanese Children by Foreign Nationals

148 As for substantial requirements for making an adoption effective, the domestic laws of the country of the foreign adopter function as the governing laws. Nonetheless, requirements for the protection of children under the provisions of the Civil Code of Japan also need to be satisfied in that event (paragraph 1 of Article 20 of the Law concerning Application of Laws in General). With regard to formality requirements, either the law providing for the effectuation of adoption or the laws of Japan (law of the place of the act) become the governing laws (Article 22 of the Law concerning Application of Laws in General). If the laws of Japan are to be applicable, procedures prescribed by the Family Registration Law which we have referred to in (i) are to be followed.

Source 'Civil Code of Japan' Google websites

GREECE

Early Laws

After the Dark Ages - About 1200-900 BC - and beginning at about 900 BC, the Ancient Greeks had no official laws or punishments. Murders were settled by members of the victim's family, who would then go and kill the murderer. This often began endless blood feuds.

Draco 620 BC

It was not until the middle of the seventh century BC that the Greeks first began to establish official laws. Around 620 BC Draco, the lawgiver, set down the first known written law of Ancient Greece. These laws were so harsh that his name gave rise to our English word "Daconian" meaning an unreasonably harsh law.

Solon 594BC

Solon, an Athenian statesman and lawmaker, refined Draco's laws and is credited with "democratizing" justice by making the courts more accessible to citizens. Solon created many new laws that fit into the four basic categories of Ancient Greek law. The only one of Draco's laws that Solon kept when he was appointed law giver in about 594 BC was the law that established exile as the penalty for homicide.

Tort Laws

A tort occurs when someone does harm to you or to your property. Murder was a tort law, and the punishment was exile as set by Draco. Under Solon's laws, fine for rape was 100 drachmas, and the penalty for theft depended on the amount stolen. Other offenses and penalties were things like the offense of a dog bite, the penalty for which was to surrender the dog wearing a three-cubit-long wooden collar. Solon even made laws to serve as guidelines for the spacing and placement of houses, walls, ditches, wells, beehives, and certain types of trees.

Family Laws

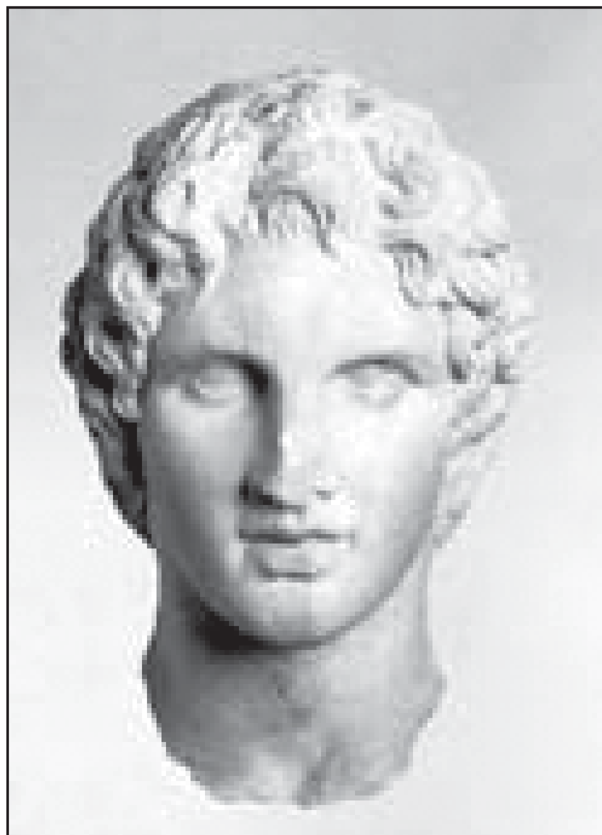
Solon also created many family laws, which were laws that regulated the behavior of men and women. He wrote laws on allowances in marriage and adoption, as well as laws concerning inheritances and supporting roles of parents. Penalties for these laws were not set, but were enforced by the head of the particular family.

Public Laws

Public laws dictated how public services were to be provided and how public functions should be conducted. Solon contributed some of these laws. He wrote laws that required that people who lived a certain distance from public wells needed to dig their own, laws that forbade the export of agricultural goods except olive oil, laws that restricted the amount of land a man could own, laws that allowed venders to charge any kind of interest rate they wanted to, and even laws that prohibited dealing in perfume.

Procedural Laws

Procedural laws were guidelines that told judges how to use other laws. These laws told in step-by-step detail how law should be enforced. Procedural laws even included such minute details as how many witnesses must be called forward for someone to be found guilty of homicide.



Alexander the Great 356-323BC adopted

Alexander was one of the greatest generals in history. His empire stretched from Greece to Egypt, Asia Minor and as far east as the River Ind in India...He was born the son of Philip II of Macedon, and Princess Olympia, daughter of King Neoptolemus of Epirus. As a youth his teacher was Aristotle, and Alexander's empire is one of the primary reasons why European culture is based largely on Greek civilization... He had a stormy home life... When he was about 25 he was adopted by Ada, widow and sister of Satrap Idrieus , and he appointed her satrap of Caria... Ada had supported Alexander since his arrival and the instant rapport between the two monarchs resulted in Ada's adoption of Alexander as her son. Thereafter he would always address her as "mother" and "to show her affection for him she sent him delicacies and sweetmeats every day", according to Plutarch.

Law Givers

Law givers were not rulers or kings, but appointed officials whose only job was to write laws. Most of the law-givers were middle class members of the aristocracy. The officials in the government wanted to make sure that law givers would not take sides or be a part of just one group, otherwise laws might be unfair. Because of this, law givers were not a part of normal government, and they were considered political outsiders.

Courts and the Judicial System

In order to have punishments carried out, the Ancient Greeks needed some sort of system to "try," "convict," and "sentence" guilty persons. To do this, they created a court system. Court officials were paid little, if anything, and most trials were completed in the same day, private cases even more quickly.

There were no "professional" court officials, no lawyers, and no official judges. A normal case consisted of two "litigants," one who argued that an unlawful act was committed, and the other argued his defense. The audience, or "jurors," would vote for one side or the other. The result was either a guilty or not guilty, after which another vote by the jury would decide the punishment.
Source www.canadianlawsite.com

Adoption for benefit of adopter
Adoption in Greece was for the benefit of the adopter, not the adoptee. A man without sons adopted in order to perpetuate his *oikos*. Consequently, one would normally not adopt until the likelihood of producing legitimate sons in marriage seemed small; moreover, one would often adopt a son who had survived the dangers of childhood and was therefore himself likely to carry on the *oikos* (although adoptions of children seem to be known)...

Three forms of adoption
We must keep in mind that there were three forms of adoption at Athens:
1 Adoption *inter vivos* such as we are familiar with today.
2 Testamentary adoption.
3 Posthumous adoption.
Source www.classics.ed

CLASSICAL GREEK ADOPTION 594BC
Solon's legislation dates from 594BC, but debates refer to legislation as early as 725BC.

In the minds of both Greeks and Romans there were three things closely and at first inseparably connected: family organization, family worship and family estate. In law, property could not be acquired without obligation to the cultus, nor cultus without property. It was imperative that the family did not die out, or its whole cultus would become extinct. To be neglected in the grave was a calamity, one's sustenance in the afterlife was largely dependent on spiritual offerings of kinfolks on earth. Cultus could be passed on only by the male line, hence a son was a prime object of marriage. The focus gradually shifted from adoption as a means of supplying what nature had denied and its spiritual dimension, to a means of testamentary bequest to overcome a legal disability. A shift from the religious to legal rationalization. There were three forms of Greek adoption:

1 Adoption during lifetime,

2 Adoption by will; taking effect only on the death of the testator,

3 Posthumous adoption; arranged after a testator's death. There were formal adoption ceremonies. Consent of the adoptee was required, if of age, and they retained their birth name. Adoptions were normally among relatives and open. Revoking an adoption required mutual consent.

1 Origin and meaning of the institution
In the minds of the Greeks and Romans there were three things closely, and at first inseparably, connected—

Family organization
Family worship (that is, the worship of the dead ancestors of the family back to the common ancestor of the group of families constituting the clan.

Family estate It was the rule in both Greek and Roman law that the property could not be acquired without the obligations of the cultus, nor the cultus without the property or some share in it (Plato, Laws, v. 740)

It was imperative that the family should not die out, and the family cultus thus become extinct. To ordinary Greek sentiment, neglect in the grave was a calamity almost as much to be dreaded as the total omission of sepulchral rites - to lie unburied. Hence the prayer of the pious for children, as a guarantee that the spirit should not be 'an unfed and famished citizen of the other world, for lack of friends or kinsmen on earth'. In the perpetuity of the family the corporation of the gens and the State itself were both directly interested...

It was, however, a principle equally fundamental that the family and the cult could be continued only through males; a daughter could not continue the cult, because on marriage she passed into her husband's family. A legitimate son was therefore the prime object of marriage. It was from these principles that the regulations concerning inheritance and the institution of adoption sprang.

2 Adoption a form of will
The primitive idea of the institution- that of an authorized fiction of direct descent, 'demanding of religion and law that which Nature had denied' is frequently expressed by the orators . Nevertheless, this idea became overlaid with others as rationalism prevailed. The Athenian of the days of Isaeus adopted a son, in very many cases at least, primarily in order to leave him property, or for other reasons. In other words, adoption, gradually losing to a large extent its early significance as a means of supplementing nature was used as a means of testamentary bequest, thereby overcoming a legal disability. For it must be remembered that 'Intestate Inheritance is a more ancient institution than Testamentary Succession' and that normally (i.e. if he had a legitimate son) an Athenian could not make a will so the law is usually stated, but it may be doubted whether it was strictly enforced, at least in the 4th cent. B. C. If he died without legitimate male issue, and without a will, the relatives of the deceased, in an order fixed by law, were his heirs. The Athenian will, therefore, though only an ' inchoate testament' together with adoption, which was the form in which testamentary disposition of property was as a rule made, interrupted the ordinary course of descent of family and property. In other words, an Athenian, availing himself of the right of adoption inter vivos or by testament, very often was actuated by the desire of disinheriting some one of his possible heirs-at-law. This fact explains not only the frequency of disputes over wills and inheritances at Athens, but also the method of handling such followed by the pleaders, e.g. Isaeus. The impression gathered from the speeches is that it was perhaps impossible for an Athenian to safeguard the heir of his choice against the assaults of disappointed relatives. And, herein a great contrast to the Ro-

man courts, the tendency of Athenian juries was to 'vote for the relatives rather than for the will'

3 Methods of adoption

In Athens there were three methods of adoption—

(i) Adoption *inter vivos,* i.e. during lifetime.

(ii) Adoption by will, taking effect only on death of the testator (see quotation above) ;

(iii) Posthumous adoption, by which if a man died without legitimate male issue, and without having adopted a son, the next-of-kin succeeding to the estate, or his issue, was adopted into the family of the deceased as his son. The rules of this mode of adoption are not known, and our evidence is meagre.

4 Conditions regulating adoption

The conditions under which adoption in Athens was possible were as follows. Since adoption was in reality a sort of willing, it could be performed only by him who was competent to make a will, that is, by a man only, not by a woman, nor by a minor- i.e. one under the age of eighteen. The adopter must be in full possession of his faculties, and not acting under undue influence (the vagueness of this last condition - afforded a loophole for litigation.). The proviso that the adopting citizen should have no legitimate son living, or, if he had, that he might then effect only a provisional adoption by will, followed directly from the underlying idea of the institution.

The adopted son must be a citizen of citizen parents, acting with his own consent, if of age, or that of his guardian if a minor. Neither party must stand under accountability to the State for conduct of office. Penal loss of civic rights on either side would practically prevent adoption, especially as certain forms of such disfranchisement (e.g. the disabilities of a debtor to the Treasury) were transmitted to children and heirs until their removal. Hence men who had reason to fear condemnation involving such were fain to secure previous adoption of their sons. The field of choice was legally unrestricted, at any rate after the time of Solon, though probably most men naturally looked for an adoptive son within the circle of their relatives.

5 The formalities of adoption

As regards the ceremonies of adoption, the following procedure is spoken of by the orators, but it was perhaps neither universal nor legally enjoined. The adoptive son was introduced to the members of his adoptive father's phratry- probably on the third and last day of the Apaturia (= October, roughly), as was the case with children of the body. The father offered the customary sacrifice , and took oath that his adoptive son was a genuine Athenian citizen; thereafter, with the consent of the assembled phratries, the son's name was enrolled on the register of the phratry. Subsequently (and if the adopted son was a minor, not until he came of age), and purely as a civic, not religious, act, the name was entered by the head of the father's deme on the deme roll with the consent of the members of the deme. These two enrolments, the one quasi-religious, the other purely political, gave the necessary opportunities for interference on the part of those who on public or private grounds had reason to oppose the adoption. The adopted son usually retained his old name, altering only the name of his father in writing his full signature, and if necessary that of his deme.

6 Rights and duties of an adopted son

The adopted son stepped at once from the family of his natural father into that of his adoptive father; he lost his relationship to his natural father, and all rights inherent therein; but he did not lose his relationship to his mother - which would seem to mean that an adopted son still retained his rights of next-of-kin so far as they belonged to him through his mother). He became the legal and necessary heir of his adoptive father, taking up and continuing the sacra of his new family, and possessing the right of burial in its sepulchre. Like a legitimate son of the body, he was entitled to enter without legal formalities into possession of his estate upon his adoptive father's death and testamentary heirs, on the other hand, were forbidden to enter on occupation before their claim had been established in a court of law. Like a son of the body, an adopted son had no option of refusal of the inheritance, as had heirs-at-law. Even if legitimate male children were born to his adoptive father subsequently to the adoption, the adopted son ranked with them for equal share of the property according to the law of inheritance.

The inheritance of a son adopted inter vivos could not be diminished, for after the act of adoption the father's limited power of testamentary disposition was, theoretically at least, ipso facto abrogated ; only in the case of a testamentary adoption could any control over the disposition of the property be exercised, and that only in a general way. If the adopted son left behind him a legitimate son of his body in the house of his adoptive father, thereby fulfilling the object of his adoption, he might return to his natural father's house, and there resume all the rights and duties of a son, relinquishing all such claims in respect of his adoptive father's estate. He could not, however, so leave behind him an adopted son; he had, in fact, no power himself of adoption, either in his lifetime or by will, so long as his own status was that of an adopted son; he transmitted the estate only to an heir of his body. Nor, on the other hand, could he restore the line of his natural father by putting back one of his own sons ; he must return himself if he wished to keep alive his father's house. In this way the law protected the rights of the next-of-kin. If the adopted son died without male issue, or by consent of his adoptive father returned to his natural family, the oikos of his adoptive father fell at the death of the latter to the heirs ab intestato, as before the adoption- provided that no new adoption had been made either inter vivos or by testament.

Apparently mutual consent was necessary for the repudiation of an adoption once made; it is doubtful how far an adoptive father could act alone herein, e.g. in case of unfilial conduct (in fact, a father's right of repudiation, either adoptive or child of his body, may be a pure fiction; in any case, it is certain that he could not disinherit him by testament). It seems that the Gortynian Code allowed one-sided repudiation of the bond; this is in accord with its whole treatment of the institution.

The law protected the rights not only of the next-of-kin, as above, but also of the female children of a father who adopted a son. The estate could not be willed away from a daughter, either by testament or by adoption; it must go 'with her'. On the other hand, a daughter was incapable of performing the worship which was a condition of tenure of the estate. From the conflict of these two principles sprang the strange regulations concerning heiresses- those on the estate'. He who took the estate took also the daughter who was 'on the estate'. A son, therefore, adopted during lifetime, generally espoused a daughter of his adoptive father, if there was one of marriageable age, even if it were not legally required of him to do so; a son adopted by will was legally bound to marry the testator's legitimate daughter, otherwise the will and the adoption became invalid, and a door was opened to the claim of the next-of-kin both to the daughter and the estate. We do not know what a father could lawfully do if, his daughters being already married, he wished to adopt a man who was not his son-in-law. The son, not the husband, of an heiress became heir to the estate of her father, but the husband enjoyed the usufruct until the son came of age.

Posthumous adoption of the heir into the house of his maternal grandfather as his son was probably usual, but cannot be proved to have been a legal obligation. It is obvious that by adopting a daughter's son a man could guard against contentions for the hand of his daughter, and defeat the designs of rapacious relatives; nevertheless, instances of adoption of a grandson (son of a daughter) on the part of a grandfather are rare.

7 Decay of the institution of adoption

Was it possible under Athenian law to adopt a daughter? A woman could not perpetuate in her own person the house and its cult, which was one of the main objects of adoption. Nevertheless, examples of the adoption of a daughter are found. Isaeus furnishes two examples of the adoption of a niece by will; but in the first case the niece was perhaps also heiress ab intestato, apart from the adoption, and it is also doubtful whether the adoption was not inter vivos. It is generally taken to mean that in his will Apollodoros adopted his half-sister, who was also his heiress ab intestato, thus acquiring the right of a father to dispose of his daughter in marriage . But Apollodoros had not become the adoptive father of the girl when he made his will and settled the marriage, since the adoption was only to take effect in the event of his death on foreign service (an event which did not occur).

The adoption of a daughter, certainly not contemplated in earlier times, but never expressly forbidden, probably grew to be practised (though to what extent we know not) largely as a family manoeuvre, as public sentiment became less strict, and the definitely religious aspect of the institution tended to fade from view. There are other traces of this change. Thus in the fragmentary speech of Isaeus in defence of Euphiletos there is a reference to the adoption of non-Athenians irregularly for personal reasons. Similarly, the necessity of providing a male descendant came to be felt less strongly. It is clear that many Athenians in the 4th cent. B.C., died unmarried and without troubling to adopt a son . The Code of Gortyna exhibits the same change. It is by no means certain that by it adoption was not permissible even when a man already had both sons and daughters. Its less stringent regulations concerning heiresses; the fact that the next-of-kin might, as at Athens, shirk his spiritual duties to the deceased if he cared to waive his claim to the estate; the ease with which the bond created by adoption could be broken (by simple announcement from the stone in the Agora before the assembled citizens); and, above all, the fact that the adopted son might eventually decline his inheritance (which was his only on the express condition that he took over all the spiritual and temporal obligations of the deceased)- all testify to the gradual transformation and decay of the old institution. **Source**: 'Encyclopaedia of Religion and Ethics' Vol.1. pp107-110. T & T Clark NY 1908. Extracts- See original article for full text and footnotes.

Law Code of Gortyn (Crete), c450 BCE

XVII. Adoption may take place whence one will; and the declaration shall be made in the market-place when the citizens are gathered. If there be no legitimate children, the adopted shall received all the property as for legitimates. If there be legitimate children, the adopted son shall receive with the males the adopted son shall have an equal share. If the adopted son shall die without legitimate children, the property shall return to the pertinent relatives of the adopter. A woman shall not adopt, nor a person under puberty. **Source** www.fordham.edu/halsall/ancient/450-gortyn.html

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Solon 630 BC to 560 BC. Greek (Athens) poet and statesman. To avoid a revolution, he was chosen by his peers to address serious difficulties which had developed amongst the classes of ancient Athens and given full authority for reforming Athenian law. He reformed Draco's laws which provided for death for even the most trivial of crimes. He canceled all debts and prohibited the practice whereby the penalty for defaulting on a loan was slavery of the borrower. He refused to redistribute the land as the poorest group was demanding. His laws facilitated the circulation of currency (coins). Most importantly, he abolished the system of government which allowed only those born into certain families to govern, replacing it with an annual assembly at which all male citizens of Athens were allowed one vote. A Council of Four Hundred was established to administer the annual assembly. His laws were inscribed on wooden tablets and circulated throughout Athens for all to see.

Greece Modern Law

"In Greece, adoption is governed by the Civil Code promulgated by the legislative- decree of 15 March 1940, which came into force on 23 February 1946. The relevant provisions show traces of Roman Law as preserved in Byzantine Law and modified by European influences. Adoption is still considered mainly as a means of satisfying the desire of childless persons and couples for children, without prejudice to the adoptee."

ROMAN

Ancient Roman Law

Roman law was one of the most original products of the Roman mind.

Law of the Twelve Tables,

From the Law of the Twelve Tables, the first Roman code of law developed during the early republic. The Roman legal system was characterized by a formalism that lasted for more than 1,000 years.

Basis for Roman law

Was the idea that the exact form, not the intention, of words or of actions produced legal consequences. To ignore intention may not seem fair from a modern perspective, but the Romans recognized that there are witnesses to actions and words, but not to intentions.

Roman civil law

Roman civil law allowed great flexibility in adopting new ideas or extending legal principles in the complex environment of the empire. Without replacing older laws, the Romans developed alternative procedures that allowed greater fairness. For example, a Roman was entitled by law to make a will as he wished, but, if he did not leave his children at least 25 percent of his property, the magistrate would grant them an action to have the will declared invalid as an "irresponsible testament." Instead of simply changing the law to avoid confusion, the Romans preferred to humanize a rigid system by flexible adaptation.

Custom, statutes but emperor supreme

Early Roman law derived from custom and statutes, but the emperor asserted his authority as the ultimate source of law. His edicts, judgments, administrative instructions, and responses to petitions were all collected with the comments of legal scholars. As one 3rd-century jurist said, "What pleases the emperor has the force of law." As the law and scholarly commentaries on it expanded, the need grew to codify and to regularize conflicting opinions.

Justinian Code 6th cent AD

It was not until much later in the 6th century AD that the emperor Justinian I, who ruled over the Byzantine Empire in the east, began to publish a comprehensive code of laws, collectively known as the Corpus Juris Civilis, but more familiarly as the Justinian Code.

Source www.canadianlawsite.com @15/8/2005

Emperor Justinian Civil Code 535AD included—

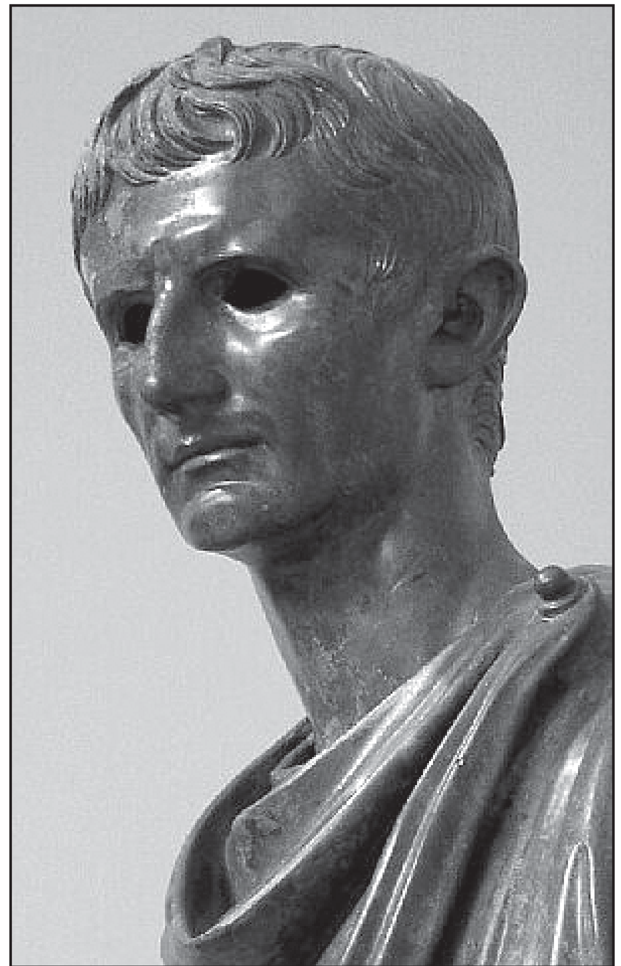
Children Adoption of a child [under the age of puberty] required investigation into whether the child would benefit from the adoption [best interest of the child].

Who could adopt Those who could adopt included the "impotent," but not those who had been castrated.

Women Women could adopt by special dispensation of the Emperor.

Age difference Adoptive parents were required to be at least eighteen years older than the adoptee(s).

Siblings Marriage was not allowed between adoptive siblings.



Caesar Augustus- adopted

Original name Gaius *Octavianus;* after his adoption by Julius Caesar (44 B.C.) known as Gaius *Julius* Caesar *Octavianus.* 63 B.C.-14 A.D.. Roman statesman, a member of the second triumvirate (43 B.C.). After defeating Mark Antony at Actium (31 B.C.), he became first emperor of Rome, adopting the title Augustus (27 B.C.).

Co-parenting In some instances, both birth and adoptive families had a responsibility to the adoptee.

Need a lawyer Adoption was clearly placed under the jurisdiction of the courts.

Source www.adoptioninformation.com

Adoption in Rome

In ancient Rome, adoption of boys was a fairly common procedure, particularly in the upper senatorial class. The need for a male heir and the expense of raising children were strong incentives to have at least one son, but not too many children. Adoption, the obvious solution, also served to cement ties between families, thus fostering and reinforcing alliances. In the Imperial period, the system also acted as a mechanism for ensuring a smooth succession, the emperor taking his chosen successor as his adopted son.

Causes

As Rome was ruled by a selected number of powerful families, every senator's duty was to produce sons to inherit the estate, family name and political tradition. But a large

family was an expensive luxury. Daughters had to be provided with a suitable dowry and sons had to be pushed through the political offices of the *cursus honorum*. The higher the political status of a family, the higher was the cost. Due to this, Roman families restricted the number of children, avoiding more than three. The six children of Appius Claudius Pulcher (lived 1st century BC) were considered at the time as political suicide. Sometimes, not having enough children proved to be a wrong choice. Infants could die and the lack of male births was always a risk. For families cursed with too many sons and the ones with no boys at all, adoption was the only solution. Even the wealthy Lucius Aemilius Paullus Macedonicus did not hesitate in giving his two oldest boys up for adoption, one to the Cornelii Scipiones (Scipio Aemilianus, the winner of the Third Punic War) the other to Quintus Fabius Maximus Cunctator.

Practice

In Roman law, the power to give children in adoption was one of the recognised powers of the *pater familias*. The adopted boy would usually be the oldest, the one with proved health and abilities. Adoption was an expensive agreement for the childless family and quality had to be ensured. Adoption was agreed between families of (for the most part) equal status, often political allies and/or with blood connections. A plebeian adopted by a patrician would become a patrician, and vice versa; however, at least in Republican times, this required the consent of the Senate (famously in the case of Publius Clodius Pulcher). A sum of money was exchanged between the parties and the boy assumed the adoptive father's name, plus a *cognomen* that indicated his original family (see Roman naming convention). Adoption was not secretive or considered shameful, nor was the adopted boy expected to cut ties to his original family. Like a marriage contract, adoption was a way to reinforce inter-family ties and political alliances. The adopted child was often in a privileged situation, enjoying both original and adoptive family connections. Almost every politically famous Roman family used it.

Probably the most famous adopted man in Republican times was Augustus Caesar. Born as Gaius Octavius, he was adopted by his great-uncle Julius Caesar and acquired the name of Gaius Julius Caesar Octavianus (hence his common name of Octavian). As in the case of Clodius, one could be adopted by a man younger than oneself; his sister Clodia is also the one known example of a Roman woman being adopted.

Although not technically adoption, it was common for a dying man to leave guardianship of his children to another man, thus granting him the power of a *paterfamilias* over what were now effectively his foster children. Examples include the Dictator Sulla leaving his children in the care of Lucullus, and Mark Antony's children being left in Augustus' care.

Imperial Succession

In the Roman Empire, adoption was the most common way of acceding to the throne without use of force. During the 2nd century, each of the successive Five Good Emperors (except the last, Marcus Aurelius) would adopt an heir from outside his family; the system produced such highly regarded emperors as Trajan and Hadrian. Adoption proved a more flexible and workable tool for orderly succession in the Roman Empire than natural succession did. It guaranteed that people of promise, and often of proven competence, were named as official successors to what was in effect a military dictatorship. By contrast, the succession of Marcus Aurelius' natural son Commodus to the throne proved to be a turning point, marking the beginning of the Empire's steady decline.

Source www.wikipwdia.org - free @20/8/2005

Roman Adoption detail

The Roman term was *adoptio* or *adoptatio* (Gell. v.19). The Roman relation of parent and child arose either from a lawful marriage or from adoption.

Adoptio was the general name which comprehended the two species, *adoptio* and *adrogatio*; and as the adopted person passed from his own familia into that of the person adopting, adoptio caused a *capitis diminutio*, and the lowest of the three kinds.

Adoption, in its specific sense, was the ceremony by which a person who was in the power of his parent (in potestate parentum), whether child or grandchild, male or female, was transferred to the power of the person adopting him. It was effected under the authority of a magistrate (magistratus), the praetor, for instance, at Rome, or a governor (*praeses*) in the provinces. The person to be adopted was mancipated [*Mancipatio*] by his natural father before the competent authority, and surrendered to the adoptive father by the legal form called *in jure cessio* (Gell. v.19; Suet. *Aug.* 64).

Adoption adrogatio

When a person was not in the power of his parent (*sui juris*), the ceremony of adoption was called *adrogatio*.

(a) Originally, it could only be effected at Rome, and only by a vote of the populus (*populi auctoritate*) in the comitia curiata (*lege curiata*); the reason of this being that the caput or status of a Roman citizen could not, according to the laws of the Twelve Tables, be affected except by a vote of the populus in the *comitia curiata*. Clodius, the enemy of Cicero, was adrogated into a plebeian family by a lex curiata, in order to qualify himself to be elected a tribunus plebis.

(b) Females could not be adopted by the adrogatio.

(c) Under the emperors it became the practice to effect the adrogatio by an imperial rescript (*principis auctoritate, ex rescripto principis)*; but this practice had not become established in the time of Gaius, or, as it appears, of Ulpian (compare Gaius, i.98, with Gaius as cited in Dig. 1 tit.7 s.2; and Ulpian, *Frag.* tit.8). It would seem, however, from a passage in Tacitus (*Hist.* i.15), that Galba adopted a successor without the ceremony of the *adrogatio*.

(d) By a rescript of the Emperor Antoninus Pius, addressed to the pontifices, those who were under age (*impuberes*), or wards (*pupilli*), could, with certain restrictions, be

adopted by the *adrogatio*.

(e) If a father who had children in his power consented to be adopted by another person, both himself and his children became in the power of the adoptive father.

(f) All the property of the adopted son became at once the property of the adoptive father (Gaius, ii.98).

(g) A person could not legally be adopted by the *adrogatio* until he had made out a satisfactory case (*justa, bona, causa*) to the pontifices, who had the right of insisting on certain preliminary conditions. This power of the pontifices was probably founded on their right to preserve the due observance of the sacra of each gens (Cic. *p. Dom.* 13, &c.). It would accordingly have been a good ground of refusing their consent to an *adrogatio*, if the person to be adopted were the only male of his gens, for the sacra in such case would be lost.

(h) It was required that the adoptive father also had no children, and no reasonable hopes of any; and that he should be older than the person to be adopted.

(i) It is generally assumed that all *adrogations* were made before the curiae. Gaius, however, and Ulpian use the expressions *per populum, auctoritate populi*, expressions of very doubtful import with reference to their period. After the *comitia curiata* fell into disuse, it is most probable that there was no formal assembly of the curiae, and that they were represented by the thirty *lictors*.

(j) A woman could not adopt a person, for even her own children were not in her power.

(k) The rules as to adoption which the legislation of Justinian established, are contained in the Institutes (i. tit.11).

Adoption legal relation of father and son

(a) The effect of adoption, as already stated, was to create the legal relation of father and son, just as if the adopted son were born of the blood of the adoptive father in lawful marriage.

(b) The adopted child was intitled to the name and sacra privata of the adopting parent, and it appears that the preservation of the *sacra privata*, which by the laws of the Twelve Tables were made perpetual, was frequently one of the reasons for a childless person adopting a son.

(c) In case of intestacy, the adopted child would be the *heres* of his adoptive father.

(d) He became the brother of his adoptive father's daughter, and therefore could not marry her; but he did not become the son of the adoptive father's wife, for adoption only gave to the adopted son the jura agnationis (Gaius, i.97107; Dig. 1 tit.7; Cic. *p. Domo*).

Adoption by testament

Phrase of "adoption by testament" (Cic. *Brut.* 58) seems to be rather a misapplication of the term; for though a man or woman might by testament name a *heres*, and impose the condition of the *heres* taking the name of the testator or testatrix.

(a) This so called adoption could not produce the effects of a proper adoption.

(b) It could give to the person so said to be adopted, the name or property of the testator or testatrix, but nothing more. Niebuhr (*Lectures,* vol. ii p100) speaks of the testamentary adoption of C. Octavius by C. Julius Caesar, as the first that he knew of; but the passage of Cicero in the *Brutus* and another passage (*Ad Hirt.* viii.8), show that other instances had occurred before.

(c) A person on passing from one gens into another, and taking the name of his new familia, generally retained the name of his old gens also, with the addition to it of the termination anus. (Cic. *ad Att.* iii.20, and the note of Victorius). Thus, C. Octavius, afterwards the Emperor Augustus, upon being adopted by the testament of his uncle the dictator, assumed the name of Caius Julius Caesar Octavianus; but he caused the adoption to be confirmed by the curiae. As to the testamentary adoption of C. Octavius, see Drumann, *Geschichte Roms,* vol. i p337, and the references there given. Livia was adopted into the Julia gens by the testament of Augustus (Tac. *Ann.* i.8); and it was not stated that this required any confirmation.

(d) But things were changed then. The *Lex Julia et Papia Poppaea* gave certain privileges to those who had children, among which privileges was a preference in being appointed to the praetorship and such offices.

(e) This led to an abuse of the practice of adoption; for childless persons adopted children in order to qualify themselves for such offices, and then emancipated their adopted children. This abuse was checked by a senatus consultum in the time of Nero. (Tac. *Ann.* xv.19; Cic. *de Off.* iii.18, *ad Att.* vii.8; Suet. *Jul. Caes.* 83, *Tib.* 2, &c.; Heinec.

Syntagma; Dig.36 tit.1 s.63).

Source George Long www.penelope.uchicago.edu

Emperor Justinian Civil Code AD 535AD

In February 528, The Emperor, Justinian appointed a commission, consisting of ten persons, to make a new collection of imperial constitutions. The result was to gather together Roman law into one code, known as the Justinian Code...

Sources and contents

Under the direction of Tribonian, the *Corpus lurus Civilis* [Body of Civil Law] was issued in three parts, in Latin, at the order of the Emperor Justinian.

The ***Codex Justinianus*** (529) compiled all of the extant (in Justinian's time) imperial *constitutiones* from the time of Hadrian. It used both the *Codex Theodosianus* and private collections such as the *Codex Gregorianus* and *Codex Hermogenianus.*

The ***Digest,*** or *Pandects,* was issued in 533, and was a greater achievement: it compiled the writings of the great Roman jurists such as Ulpian along with current edicts. It constituted both the current law of the time, and a turning point in Roman Law: from then on the sometimes contradictory case law of the past was subsumed into an ordered legal system.

The ***Institutes*** was intended as sort of legal textbook for law schools and included extracts from the two major works. Later, Justinian issued a number of other laws, mostly in Greek, which were called *Novels.*

Justinian Code divided into four parts

1 The Institutes served as a textbook in law for students and lawyers. 2 The Digest was a casebook covering many trials and decisions. 3 The Codex was a collection of statutes and principles, and 4 The Novels contained new proposed laws.

This legal code became the foundation of law in most western European countries. It was a compilation of early Roman laws and legal principles, illustrated by cases, and combined with an explanation of new laws and future legislation to be put into effect.

Section XI Adoption Justinian Civil Code 535AD

Not only are our natural children, as we have said, in our power, but those also whom we adopt.

1 Adoption takes place in two ways, either by imperial rescript, or by the authority of the magistrate. The imperial rescript gives power to adopt persons of either sex who are *sui juris*; and this species of adoption is called *arrogatio*. By the authority of the magistrate we adopt persons in the power of an ascendant, whether in the first degree, as sons and daughters, or in an inferior degree, as grandchildren or great-grandchildren.

2 But now, by our *constitutio*, when a *filiusfamilias* is given in adoption by his natural father to a stranger, the power of the natural father is not dissolved; no right passes to the adoptive father, nor is the adopted son in his power, although we allow such son the right of succession to his adoptive father dying intestate. But if a natural father should give his son in adoption, not to a stranger, but to the son's maternal grandfather; or, supposing the natural father has been emancipated, if he gives the son in adoption to the son's paternal grandfather, or to the son's maternal great-grandfather, in this case, as the rights of nature and adoption concur in the same person, the power of the adoptive father, knit by natural ties and strengthened by the legal bond of adoption, is preserved undiminished, so that the adopted son is not only in the family, but in the power of his adoptive father.

3 When any one, under the age of puberty, is *arrogated* by the imperial rescript, the *arrogatio* is only allowed when inquiry has been made into the circumstances of the case. It is asked what is the motive leading to the *arrogatio*, and whether the *arrogatio* is honorable and expedient for the pupil. And the *arrogatio* is always made under certain conditions: the *arrogator* is obliged to give security before a public person, that is, before a notary, that if the pupil should die within the age of puberty, he will restore all the property to those who would have succeeded him if no adoption had been made. Nor, again, can the *arrogator* emancipate the person arrogated, unless, on examination into the case, it appears that the latter is worthy of emancipation; and, even then, the *arrogator* must restore the property belonging to the person he emancipates. Also, even if the *arrogator*, on his death-bed, has disinherited his arrogated son, or, during his life, has emancipated him without just cause, he is obliged to leave him the fourth part of all his goods, besides what the son brought to him at the time of *arrogatio*, or acquired for him afterwards.

4 A younger person cannot adopt an older; for adoption imitates nature; and it seems unnatural that a son should be older than his father. Anyone, therefore, who wishes either to adopt or arrogate a son should be the elder by the term of complete puberty, that is, by eighteen years.

5 A person may adopt another as grandson or granddaughter, great-grandson or great-granddaughter, or any other descendant, although he has no son.

6 A man may adopt the son of another as his grandson, and the grandson of another as his son.

7 If a man adopts a grandson to be the son of a man already adopted, or of a natural son in his power, the consent of this son ought first to be obtained, that he may not have a *suus heres* given him against his will. But, on the contrary, if a grandfather gives his grandson by a son in adoption, the consent of the son is not necessary.

8 He who is either adopted or arrogated is assimilated, in many points, to a son born in lawful matrimony; and therefore, if any one adopts a person who is not a stranger by imperial rescript, or before the praetor, or the *praeses* of a province, he can afterwards give in adoption to another the person whom he has adopted.

9 It is a rule common to both kinds of adoption, that persons, although incapable of procreating, as, for instance, impotent persons, may, but those who are castrated cannot adopt.

10 Women, also, cannot adopt; for they have not even their own children in their power; but, by the indulgence of the emperor, as a comfort for the loss of their own chil-

dren, they are allowed to adopt.

11 Adoption by the rescript of the emperor has this peculiarity. If a person, having children under his power, should give himself in *arrogatio*, not only does he submit himself to the power of the *arrogator*, but his children are also in the *arrogator*'s power, being considered his grandchildren. It was for this reason that Augustus did not adopt Tiberius until Tiberius had adopted Germanicus; so that directly the adoption was made, Germanicus became the grandson of Augustus.

12 Cato, as we learn from the ancients, has with good reason written that slaves, when adopted by their masters, are thereby made free. In accordance with which opinion, we have decided by one of our *constitutiones* that a slave to whom his master by a solemn deed gives the title of son is thereby made free, although he does not require thereby the rights of a son.

Source Medieval Sourcebook: The Insitututes, 535 CE. www.adopting.org @22/8/2005

Roman adoption in Roman Catholic Church Canonical Adoption

Catholic Encyclopedia— In a legal sense, adoption is an act by which a person, with the cooperation of the public authority, selects for his child one who does not belong to him. In Roman law *adrogatio* was the name given to the adoption of one already of full age *(sui juris); datio in adoptionem,* when one was given in adoption by one having control or power over him. The adoption was full *(plena)* if the adopting father was a relative in an ascending scale of the one adopted; less full *(minus plena)* if there was no such natural tie. Perfect adoption placed the adopted under the control of the adopter, whose name was taken, and the adopted was made necessary heir. The adoption was less perfect which constituted the adopted necessary heir, in case the adopter should die without a will. The rule was that a man, not a woman, could adopt; that the adopter should be at least 18 years older than the adopted; that the adopter should be of full age, and older than 25 years. In Athens the power of adoption was allowed to all citizens of sound mind. Adoption was very frequent among the Greeks and Romans, and the custom was very strictly regulated in their laws.

Church Roman adoption law

The Church made its own the Roman law of adoption, with its legal consequences. Pope Nicholas I (858-867) spoke of this law as venerable, when inculcating its observance upon the Bulgarians. Hence adoption, under the title *cognatio legalis,* or "legal relationship", was recognized by the Church as a diriment impediment of marriage. This legal relationship sprang from its resemblance to the natural relationship (and made a bar to marriage):

1 Civil paternity between the adopter and the adopted, and the latter's legitimate natural children, even after the dissolution of the adoption;

2 Civil brotherhood between the adopted and the legitimate natural children of the adopter, until the adoption was dissolved, or the natural children were placed under their own control *(sui juris);*

3 Affinity arising from the tie of adoption between the adopted and the adopter's wife, and between the adopter and the adopted's wife. This was not removed by the dissolution of the adoption.

The Code of Justinian

The Church recognized in the intimacy consequent upon these legal relations ample grounds for placing a bar on the hope of marriage, out of respect for public propriety, and to safeguard the morals of those brought into such close relations. The Code of Justinian modified the older Roman law by determining that the rights derived from the natural parentage were not lost by adoption by a stranger. This gave rise to another distinction between perfect and imperfect adoption. But as the modification of Justinian made no change in the customary intimacy brought about by the adoption, so the Church at no time expressly recognized any distinction between the perfect and less perfect adoption as a bar to marriage. There arose, however, among canonists a controversy on this subject, some contending that only the perfect adoption was a diriment impediment to marriage. Benedict XIV (De Syn. Dioec., I, x, 5) tells of this discussion and, while giving no positive decision, lays down the principle that all controversies must be decided in this matter in accord with the substantial sanctions of the Roman law. This is a key to the practical question which today arises from the more or less serious modifications which the Roman, or Civil, law has undergone in almost all the countries where it held sway, and hence flows the consequent doubt, at times, whether this diriment impediment of legal relationship still exists in the eyes of the Church.

Wherever the substantial elements of the Roman law are retained in the new codes, the Church recognizes this relationship as a diriment impediment in accord with the principle laid down by Benedict XIV. This is thoroughly recognized by the Congregation of the Holy Office in its positive decision with regard to the Code of the Neapolitan Kingdom (23 February, 1853).

England and United States

In Great Britain and the United States legal adoption, in the sense of the Roman law, is not recognised. Adoption is regulated in the United States by State statutes; generally it is accomplished by mutual obligations assumed in the manner prescribed by law. It is usually brought before the county clerk, as in Texas, or before the probate judges, as in New Jersey. In such cases the relation of parent and child is established; but the main purpose is to entitle the adopted to the rights and privileges of a legal heir. Adoption, or contract by private authority, or under private arrangements, is not recognized by the Church as productive of this legal relationship. The Congregation of the Holy Office (16 April, 1761; had occasion to make this declaration with regard to it, as customary among the Bulgarians.

Hence, generally in the United States adoption is not a diriment impediment to marriage, nor in the eyes of the Church in any way preventive of it. A different view is

taken by the Roman Congregations of the Holy Office and of the Sacred Penitentiary of adoption as recognised in other countries which have retained the substantial elements of the Roman law establishing this relationship.

France

The French Code (art. 383) decides that the adopted will remain with his natural family and preserve all his rights, but it enforces the prohibitions of marriage as in the Roman law. Hence the Congregation of the Penitentiary decided (17 May, 1826) that if the adoption took place in accordance with the French law, it involved the canonical diriment impediment of marriage.

Germany

In Germany, by the new law taking effect in 1900, there is prescribed the procedure by which adoption is effected, and by which the adopted passes into the family of the adopter, losing the rights coming from his natural family. In Germany, however, many subtile distinctions have been engrafted upon this adoption. The restrictions of the relationship by the German law are not, however, accepted by the Church. When adoption is in accord with the substantial elements of the Roman law, as in the case of the German code, in the eyes of the Church it carries with it all the restrictions in the matter of marriage accepted by the Church from the Roman law. Thus, by the German law, the wife of the adopter is not united by affinity to the adopted, nor the adopter to the adopted's wife. But the Church still recognises this affinity to hold even in Germany. The Austrian Code has almost the same prescriptions as the German. When there is a reasonable doubt or difference of opinion among canonists or theologians upon the fact of legal relationship, the safe rule is to ask for a dispensation. **Source** Catholic Encyclopedia.
www.newavert.org/cathen/01147d.htm @22/8/2005

What is Roman Law?

Roman Law was the law that was in effect throughout the age of antiquity in the City of Rome and later in the Roman Empire. When Roman rule over Europe came to an end, Roman Law was largely—though not completely—forgotten.

In Medieval times

(from about the 11th century onward) there was a renewed interest in the law of the Romans. Initially, Roman Law was only studied by scholars and taught at the universities, Bologna being the first place where Roman Law was taught. Soon Roman Law came to be applied in legal practice—especially in the area of civil law. This process of (re-) adoption (reception) of Roman Law occurred at varied times and to various extents across all of Europe (England being the most important exception). Thus from about the 16th century onward, Roman Law was in force throughout most of Europe. However, in the process of adoption/reception many Roman rules were amalgamated with, or amended to suit, the legal norms of the various European nations. Thus, Roman rules, applied in Europe at this period, were by no means identical with Roman Law from antiquity. Nonetheless, because the law that had evolved was common to most European countries, it was called the *Ius Commune* (common law). In the form of the Ius Commune, Roman Law was in force in many jurisdictions until national codes superseded these rules in the 18th and 19th centuries. In many regions of the German Reich, Roman Law remained the primary source of legal rules until the introduction of the German Civil Code in 1900. Even today a special branch of the Ius Commune, known as Roman-Dutch Law, is the basis of the legal system in the Republic of South Africa.

England did not adopt Roman Law

To what extent did Roman Law influence the English legal system? England did not adopt Roman Law as the other countries in Europe had. In England, ancient Roman texts were never considered as rules having the force of law. Nonetheless, Roman Law was taught at the Universities of Oxford and Cambridge, just as it was taught at Bologna. Scholars, who had studied Roman Law on the Continent (the so-called Civilians), did have considerable influence on the development of certain areas of law. Some substantive rules, and more importantly concepts and ways of reasoning, developed by continental legal scientists, based on the Roman legal tradition, influenced the English legal system.

How do we know about Roman Law?

A rich variety of written documents concerning Roman Law during antiquity has come down to us including: statutes, deeds and the writings of legal scholars. The most important text among all these is the Corpus Iuris Civilis. In addition to the Corpus Iuris, the Institutes of Gaius from the middle of the second century of the Common Era must be mentioned; these Institutes constitute a beginners' textbook on Roman Law.

What is the Corpus Iuris Civilis?

In the sixth century A.D., the Eastern Roman Emperor, Justinian (Iustinianus), ordered the compilation of several law codes. These codes were based on much older sources of law, mostly statutes and legal writings from the classical period. They were:

1 The Institutes (*Institutiones*) a book largely copied from the Institutes of Gaius - written 300 years prior!—and like it may be considered a beginners' textbook. The rules contained in the Institutes were given legal force in many countries; consequently the work may be regarded as both a textbook and a statute.

2 The Digest (*Digesta* or Pandectae) a collection of fragments from scholarly writings. Like the rules contained in the Institutes, the legal opinions expressed in these fragments were often given legal force.

2 The Code (*Codex*) a collection of imperial statutes.

These form, together with the three codes, the Corpus Iuris Civilis. The Corpus Iuris is by far the most important written source of Roman Law that has come down to us. The texts transmitted therein constituted the basis of the revival of Roman Law in the Middle Ages. As well, most of the insights gained by modern research on Roman legal history are owed to the analysis of texts from the Corpus Iuris.

WESTERN ADOPTION

Marauding tribes of Europe

Benet— "Until they invaded the Roman Empire, the tribes of northern Europe were only vaguely known by the civilized Mediterranean peoples; and much about their early social organization is lost to us. The major difference between them and the other societies we have looked at seems to be that, like the similarly nomadic and warlike Zulus, they were organized by age-group rather than by family. Blood-brotherhood was the form of fictive kinship most practised by the Norsemen (interestingly, it is also mentioned as a form of adoption among the pre-Islamic Arabs). There is no evidence that the adoption of children was practised by these people-indeed, one suspects that if it had been, there would be some evidence of it in the traditions of their descendants. Chiefs were chosen by trials of strength, and the chief was thought of as a father to his people. The idea that the whole society formed a family influenced the development of European feudalism." p38

476AD Fall of Rome time of chaos

The collapse of the Roman Empire, and the collision between Nordic and Mediterranean culture, created such chaos that what social organization there was took primitive forms. Far from developing sophisticated notions like adoption, the product of long-settled societies with well-established means of preserving themselves, early Medieval Europe was a jungle of warring chiefs, whose legitimacy was established by conquest and perpetuated by force." p39

Dark Ages 476-1000AD no legal adoption

During this period the Anglo-Saxon world, and much of Western Europe, practised no form of legal adoption at all. The fall of Rome 476AD and the collapse of the Roman Empire caused a rapid demise of legal adoption. Until Nordic tribes invaded the Roman Empire, they were only vaguely known by the civilized Mediterranean people.

"The collapse of the Roman Empire made practices like adoption, very much the product of a coherent social order, give way to the supremacy of blood ties and feudal bonds. Not until industrial capitalism was well established, and had begun repairing the ravages of its early years, did adoption appear again on the European scene.

The 'dark ages' of adoption may have begun at the same time as the European Dark Ages, with the fall of Rome in 476. Although many ancient ideas were rediscovered by the Renaissance, adoption was not reinstated in continental Europe until the French Revolution, and in the English-speaking countries until about the end of the nineteenth century. Adoption may have occurred during this long 'dark age', but because it was de facto rather than de jure, we have no way of knowing its extent. Families had recourse to other ways of perpetuating themselves; and other provisions had to be made for children without families." p54

Slow reintroduction of adoption

Adoption may have occurred during the long 'dark age', but because it was *de facto* rather than *de jure,* we have no way of knowing its extent. Although many ancient ideas were rediscovered by the Reformation, adoption was not reinstated in continental Europe until the French Revolution and in England not until 1926. Legal adoption requires (a) A coherent social order that was conducive to adoption, and (b) A national legal system.

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976

Early Middle Ages 476-1000 AD

As the authority of the Roman Empire dwindled in Western Europe, its territories were entered and settled by succeeding waves of "barbarian" tribal confederations, some of whom distrusted and rejected the classical culture of Rome, while others, like the Goths admired it and considered themselves the legatees and heirs of Rome. Prominent among these peoples in the movement were the Huns and Avars and Magyars with the large number of Germanic and later Slavic peoples.

Migration Period *Dark Ages*

The era of the migrations is referred to as the Migration Period. It has historically been termed the "Dark Ages" by Western European historians, and as *Völkerwanderung* ("wandering of the peoples") by German historians. The term "Dark Ages" has now fallen from favor, partly to avoid the entrenched stereotypes associated with the phrase, but also partly because more recent research into the period has in fact revealed its surprising artistic sophistication, though its political and social senses were unevolved and its technologies undeveloped, compared to the preceding culture.

Break-down of economic-social-infrastructure

Although the settled population of the Roman period were not everywhere decimated, the new peoples greatly altered established society, and with it, law, culture and religion, and patterns of property ownership. The *Pax Romana,* with its accompanying benefits of safe conditions for trade and manufacture, and a unified cultural and educational milieu of far-ranging connections, had already been in decline for some time as the 5th century drew to a close. Now it was largely lost, to be replaced by the rule of local potentates, and the gradual break-down of economic and social linkages and infrastructure.

This break-down was often fast and dramatic as it became unsafe to travel or carry goods over any distance and there was a consequent collapse in trade and manufacture for export. Major industries that depended on trade, such as large-scale pottery manufacture, vanished almost overnight in places like Britain. The Islamic invasions of the 7th and 8th centuries, which conquered the Levant, North Africa, Spain, Portugal and some of the Mediterranean islands (including Sicily), increased localization by halting much of what remained of seaborne commerce. So where sites like Tintagel in Cornwall had managed to obtain supplies of Mediterranean luxury goods well into the 6th century, this connection too was lost. Administrative, educational and military infrastructure quickly vanished, leading to

the rise of illiteracy among leadership.

A new order 600-900AD

Until recently it has been common to speak of "barbarian invasions" sweeping in from beyond Imperial borders and bringing about the end of the Roman Empire. Modern historians now acknowledge that this presents an incomplete portrait of a complex time of migration. In some important cases, such as that of the Franks entering Gaul, settlement of the newcomers took place over many decades, as groups seeking new economic opportunities crossed into Roman territory, retaining their own tribal leadership, and acculturating to or displacing the Gallo-Roman society, often without widespread violence. Other outsiders, like Theodoric of the Ostrogoths, were civilized, though illiterate patrons, who saw themselves successors to the Roman tradition, employing cultured Roman ministers, like Cassiodorus. Like the Goths, many of the outsiders were foederati, military allies of the Empire, who had earned rights of settlement, including among others the Franks and the Burgundians.

Powerful regional nobles and small kingdoms

Between the 5th and 8th centuries a completely new political and social infrastructure developed across the lands of the former empire, based upon powerful regional noble families, and the newly established kingdoms of the Ostrogoths in Italy, Visigoths in Spain and Portugal, Franks and Burgundians in Gaul and western Germany, and Saxons in England. These lands remained Christian, and their Arian conquerors were soon converted, following the example of the pagan Frank Clovis I. The interaction between the culture of the newcomers, the remnants of classical culture, and Christian influences, produced a new model for society. The centralised administrative systems of the Romans did not withstand the changes, and the institutional support for large scale chattel slavery largely disappeared.

Christian church survived fall of Rome

However beyond these areas of Europe were many people with little or no contact with Christianity or with classic Roman culture. Warrior people such as the Avars and the Vikings were still capable of causing major disruption to the newly emerging societies of Western Europe. The Christian Church, the only centralised institution to survive the fall of the western Roman Empire intact, was the sole unifying cultural influence, preserving its selection from Latin learning, maintaining the art of writing, and a centralised administration through its network of bishops. The Early Middle Ages are characterized by the urban control of bishops and the territorial control exercised by dukes and counts. The rise of urban communes marked the beginning of the High Middle Ages.

Beginnings of the feudal system

Outside the de-urbanized remains of cities, the power of central government was greatly reduced. Consequently government authority, and responsibility for military organisation, taxation and law and order, was delegated to provincial and local lords, who supported themselves directly from the proceeds of the territories over which they held military, political and judicial power. In this lay the beginnings of the feudal system. The High Middle Ages would see the regrowth of centralized power, and the growth of new "national" identities, as strong rulers sought to eliminate competition (and potential threat to their rule) from powerful feudal nobles. Well known examples of such consolidation include the Albigensian Crusade and the Wars of the Roses.

Feudalism provided regional order and stability

This hierarchy of reciprocal obligations, known as feudalism or the feudal system, binding each man to serve his superior in return for the latter's protection, made for a confusion of territorial sovereignty (since allegiances were subject to change over time, and were sometimes mutually contradictory). The benefit of feudalism however, was its resiliency, and the ability of local arrangements to provide stable government in the absence of a strong royal power in a political order distinguished by its lack of uniformity. Territoriality was reduced to a network of personal allegiances.

Eastern Roman Empire

In the east, the Eastern Roman Empire ("Byzantine Empire"), maintained a form of Christianised Roman rule in the lands of Asia Minor, Greece and the Slavic territories bordering Greece, and in Sicily and southern Italy. The eastern emperors had maintained a nominal claim to rule over the west, reconquered by Belisarius, but this was a political fiction under Lombard rule and became strongly disputed from 800, with the creation of the so-called Holy Roman Empire, under Charlemagne, briefly uniting much of modern day France, western Germany and northern Italy. From now on, Europe was to be bi-polar, with east and west competing for power and influence in the largely un-christianised expanses of northern Europe.

Important role of Bishops

The spread of Christianity in the Migrations Period, both from the Mediterranean area and from Ireland, occasioned a pre-eminent cultural and ideological role for its abbots, and the collapse of a *res publica* meant that the bishops became identified with the remains of urban government. Christianity provided the basis for a first European "identity," Christendom, unified until the separation of Orthodox Churches from the Catholic Church in the Great Schism of 1054, one of the dates that marks the onset of the High Middle Ages.

High Middle Ages 1000 to 1500AD

From roughly the year 1000 onward, greater stability came to the lands of western Europe. With the brief exception of the Mongol incursions, major barbarian invasions had ceased. The advance of Christian kingdoms and military orders into previously pagan regions in the Baltic and Finnic northeast brought the forced assimilation of numerous native peoples to the European entity. In central and northern Italy and in Flanders the rise of towns that were self-governing to some degree within their territories marked a beginning for re-urbanization in Western Europe.

Source http://en.wikipedia.org/wiki/Middle_Ages

SPAIN

The thirteenth century was one of general advance for the Spanish Christian kingdoms and law shared in the results. The surrender of Sevilla to Fernando III in 1248 left that monarch leisure to consider the internal affairs of his dominions and among other evils which confronted him were the diversity and confusion of the laws. To remedy these he conceived a comprehensive scheme of codification of laws... The son and successor of San Fernando was Alfonso I, commonly known as "*el sabio*," because of his attainments in science and letters. Almost immediately upon his accession he took up his father's legal project and his reign was marked by a succession of works culminating in the *Partidas.*

First Western Code

Great Code of Alfonso X 1263AD

The Great Code of Alphonso X of Seville. Some writers say it was the first adoption code subjected to contemporary research. King Alfonso X 'The Wise'. Reigned 1252-84. Under his command the 'Great Legal Code' was compiled. Spanish title 'Las Siete Partidas' Eng Trans 'The Seven Divisions of the Law'

Las Siete Partidas "*Las Siete Partidas* constitute one of the outstanding landmarks of Spanish, and indeed of world law, and occupy a unique place in its evolution. For they stand midway between the Forum Judicum of the 7th century and the Civil Code of the 19th, being about six hundred years after the former and before the latter.

Content: Five Volumes:

1. The Medieval church.
2. Medieval government.
3. Medieval law.
4. *Family, commerce, and the sea.
5. Underworlds.

*Contains a comprehensive Adoption Code.

Paragraph headings adoption sections Part 4

Law VII What adoption is, how many kinds there are and how it prevents marriage...

Law VIII An adopted son cannot marry the wife of the party who adopted him, nor can the party who adopted another marry the wife of the latter...

Part 4 Title XVI

Law I What adoption is and in how many ways it is accomplished...

Law II What men have the power of adoption...

Law III What men can adopt others, although they cannot beget children...

Law IV What persons men can adopt...

Law V Men who were slaves and have been emancipated cannot be adopted...

Law VI No man has power to adopt a boy of whom he is the guardian...

Law VII What force adoption has, and for what reason a person who adopts another can liberate the latter from his control, and annul the adoption...

Law VIII. How much of the property of the party who adopted him the person adopted is entitled to...

Law IX. What portion of the property of his adoptive father the party who is adopted inherits...

Law X. What rights a Grandson, or Great-grandson acquires in the property of his Grandfather or Great-grandfather when he adopts him...

Background —

***Forum Judicum*— 600-950AD** For about three and a half centuries following its promulgation the *Forum Judicum* remained the sole compilation of general laws in Spain. There were, of courses, the local *fueros* and some of these afford great interest, notably those of Aragon whose *Fueros de Sobrarbe,* composed, supposedly, before the eleventh century, have been called the Magna Charta of the Aragonese nobles. The general opinion of modern historians, however, considers as purely fabulous [Probably a mistranslation more likely 'Fictitious' KCG] this pretended primitive political charter.

Toward end 10th century
The *Fuero Viejo*

The Conde de Castilla, Don Sancho Garcia, inaugurated the preparation of a new code which ultimately became known as the *Fuero Viejo*. Additions to it were made at the Cortes of Najera In 1176 and it continued to have a certain force until nearly the middle of the fourteenth century. It was probably composed in Latin and, in its final form, consisted of five books loosely arranged and without logical accumulation of contents. Book III contained some provisions regarding proof and procedure, but the work seems to have been designed primarily to meet the peculiar conditions prevailing in Castile and to adjust the relations between its king and the nobility; and its force appears never to have extended beyond the territory of that kingdom and Leon. This necessarily left the Forum Judicum operative in other parts of Spain with consequent lack of uniformity

Consolidation of Law 1248AD>
The Setenario

The thirteenth century was one of general advance for the Spanish Christian kingdoms and law shared in the reaulta. The surrender of Sevilla to Fernando III in 1248 left that monarch leisure to consider the internal affairs of his dominions and among other evils which confronted him were the diversity and confusion of the laws. To remedy these he conceived a comprehensive scheme of codification which was actually initiated by commencing in the preparation of a new work entitled the *Setenario*. But before this or any other part of his plan could be carried into effect he died.

The Las Siete Partidas— Alfonso X

The son and successor of San Fernando was Alfonso X, commonly known as "el sabio," because of his attainments in science and letters. Almost immediately upon his accession he took up his father's legal project and his reign was marked by a succession of works culmination in the *Partidas*. The work is supposed to have been completed in 1263- "seven books in seven years." At first it was known as *Libro* (or *Fuero*) *de las Leyes*, and it was not until the following century that it came to be called *Las Partidas* or *Leyes de Partidas.*

The compilers

With regard to the compilers of this famous work, the historian Altamira says: "The reduction of the *Partidas* was the work of several jurists whose names are not cited in the text, and was done under the supervision, and subject (how much cannot be determined) to the active intervention of Alfonso, who was himself an author of zeal." Alfonso's part seems to have been less perfunctory than Justinian's- more like that of Napoleon or possibly Hammurabi.

Partidas and Spanish colonies

The expansion of Spain in the sixteenth century had the effect of extending the *Partidas* to the Spanish colonies in the Western hemisphere as well as in Africa and Asia. Such extension gave the *Partidas the widest territorial force ever enjoyed by any law book.* For Justinian's Pandects were practically confined to the Eastern Empire, until long after Rome's rule ended in the west. But in Spanish America, as well as in the Philippines, the *Partidas* were and are the common basic law. Nor has their force been limited., in the Western hemisphere, to Spanish America.

In a considerable group of jurisdictions now under the sovereignty of the United Spates, civilized law began with the *Partidas*. In Louisiana, as late as 1924, the Supreme Court devoted the major part of an opinion to the law of the *Partidas*. Likewise in the territory acquired from Mexico, the Spanish law remained in force in Texas until 1840, and the *Partidas* are frequently cited in the early supreme court reports of that state. In California the Spanish law continued for a decade longer and there, too, the *Partidas* were often invoked by the early judges. That their extension to Spanish colonies was no mere formality will appear from even a casual inspection of the Supreme Court Reports of the Philippines. The series did not commence until 1902, yet in nearly every volume there are citations of the *Partidas*, while as regards at least one important subject-divorce-that collection long contained the only law in force.

Source 'Las Siete Partidas' of Alfonso X el Sabio. (Translated by Samuel P. Scott, introduction by Charles Lobingier, New York: Commerce Clearing House, 1931.) Published by Philadelphia: University of Pennsylvania Press c2001.

Las Siete Partidas 1263AD
English translation of sections re adoption

Part 4 Title VII
Law VII. What adoption is, how many kinds there are and how it prevents marriage.

Adoption is a kind of relationship established by the secular *fuero* which is an obstacle to marriage in addition to the other kinds of relationship, both carnal and spiritual, which we mentioned in the preceding law, by means of which impediments arise. A relationship of this kind is called, according to the laws, a legal bond of adoption, which men establish among themselves through the great desire which they have to leave some-one to inherit their property; and for this reason they accept as their son, grandson, or great-grandson a person who is not actually so. An adoption or relationship of this kind is established in two ways.

First, it is done by permission of the king *or by the ruling prince* of the country, and is called, in Latin, arrogatio, which means, in Castilian, the adoption of a man who is by himself, and has no carnal father, or if he has, has left his control and come under that of the party who adopts him. An adoption of this kind is established by the king or prince questioning the party who adopts the other: "Are you willing to accept this person as your legitimate son," and he should answer that he is, and he should also ask the party who is to be adopted, "Are you content to be the son of this man who adopts you;" and he should answer that he is. Then the king should say; "I grant my permission;" and then give his letter.

The second kind of adoption *is that which is established by the consent of some judge*. This is called in Latin, *adoptio*, which means, in Castilian, the adoption of a man who has a carnal father and who is under his control, and for this reason he does not come under that of the party who adopts him. We have thoroughly explained this kind of adoption, in the Title concerning Adoptions.[Part 4 Title XV1]. A relationship of this kind is an impediment to marriage, for a father who adopts some woman, or accepts her as his granddaughter or great-granddaughter, can never marry her, even though the adoption be annulled. The same rule applies where any woman adopts a man by order of the king, as stated in the Title already mentioned. Moreover, carnal children cannot marry those whom their fathers or mothers adopt, as long as the adoption lasts, *but if the adoption is annulled they have the right to marry*. Where, however, one person adopts many children, so that there are both males and females among them, these have the right to marry one another, whether the said adoption is annulled or not. p911

Law VIII. An adopted son cannot marry the wife of the party who adopted him, nor can the party who adopted another marry the wife of the latter.

Between a person who is adopted and the wife of the party who adopts him affinity arises which prevents marriage, as it also does between the wife of the person who was adopted and the party who adopts him. An affinity of this kind prevents an adopted person from marrying the wife of the party who adopts him, nor can the party who adopts said person marry his wife; whether the adoption is annulled or not, as stated in the preceding law explaining how it could be annulled. And this relationship or affinity, when established as the law directs, not only is an impediment to marriage, but annuls it where it has been contracted. Moreover, this relationship or affinity, arising from adoption and by reason of which marriages are prevented, is not considered to cause an impediment to arise between other persons mentioned in this law and in the preceding one. p912

Part 4 Title XVI.
Concerning adopted children

Adopted children are those called, in Latin, adoptivi, and are accepted by men as their, own, although they are not born in marriage, or in any other way. Wherefore, since in the preceding Titles we spoke of legitimate children, and

of all the others which men have naturally, we intend to speak here of those whom they obtain ‘by an agreement made with one another, in accordance with some law or fucro. In the first place, we shall show what this adoption is; in how many ways it is made; who has power to adopt; who can be adopted; what force adoption has, and for what reasons it can be set aside. p956

Law I. What adoption is and in how many ways it is accomplished.

Adoptio, in Latin, means adoption, in Castilian. This adoption is a way established by the laws by means of which some men can become the sons of others, without being so naturally. This can be accomplished in two ways, as stated in the Title concerning the office of godfather and of adoption, by means of which impediments arise to marriage, in the law which begins: “Adoption is a kind of relationship.” And, for the reason that men sometimes give their legitimate and natural sons to others to be adopted, in an adoption of this kind it is necessary for the person adopted to give his consent, either granting it by words, or by keeping silent and not offering opposition. However, when any one is adopted who has no father, or if he has any, is free from his control, in a case of this kind it is absolutely necessary that the said party publicly give his consent, doing so by words. When the adoption is affected, all those other matters should be observed which we mentioned in the Title concerning the office of the godfather, in the laws which treat of this subject, as well as those which we mention in the laws of this Title. p956

Law II. What men have the power of adoption.

Every freeman, who has left the control of his father, has the power of adoption. But he who desires to do this must have the following qualifications, namely; he must be eighteen years older than the party whom he desires to adopt, and he must have the natural capacity for procreation, being physically formed for that purpose, and not being of so cold a nature that he is prevented by it. Moreover, no woman has the power of adoption, except in one way, that is where she has lost a son in battle in the service of the king, or in some transaction in which he was connected with some Council; for if, on this account, she desires to adopt some one to take the place of the son she lost, she can do so with the consent of the king, and in no other way. If women could do this, of themselves, it might hap-pen that men would deceive them, or be deceived by them, so that great wrong would result. p956

Law III. What men can adopt others, although they cannot beget children.

Ill fortune and serious accident sometimes happen to men, so that they become physically incapable of procreation. This may occur from disease or violence inflicted upon them causing mutilation, or through witchcraft, or some other flagitious action committed against them, or try other casualties which befall men in various ways; and where persons of this kind are naturally capable of procreation, but have been afterwards pre-vented by some of the causes aforesaid, we do not think they should suffer loss on this account, but that they ought to have the power of adoption, since nature did not deprive them of virility, but it was the result of violence or accident. p956-7

Law IV. What persons men can adopt.

Every boy under seven years of age is called an infant, in Latin, and a child of this kind who has no father cannot be adopted by any one, because he has not sufficient intelligence to consent. A boy who is over seven years of age, and under fourteen, can, however, be adopted with the consent of the king, and in no other way. The reason for this is as follows, namely; a boy of this kind who is under fourteen years of age, and over seven, has no perfect mental capacity, and, on the other hand is not entirely lacking in it, and therefore it is necessary that an adoption of this kind should be perfected by permission of the king, in order that he may take care that the boy is not deceived. However, the king, before he grants permission for the adoption of such a boy, should take into consideration all that follows, namely; who the man is who wishes to adopt him; whether he is rich or poor; whether he is a relative or not; whether he has children who may inherit his property, or whether he is so old that he cannot have any; what kind of a life he leads; and what his reputation is; and he should also ascertain what property the child has. Where all these matters have been considered, and he thinks that the party who desires to adopt the child is influenced by good intentions in doing so, and that it will be for the advantage of the boy, he should grant permission for it to be done. The King, before he grants permission for the adoption of boys under these circumstances, should, however, provide that their prop-erty may not be impaired. This ought to be done in this way; he should cause such security to be given by the party who adopts the child that, if the latter dies before he is fourteen years old, he will surrender all his property to the person or persons who are lawfully entitled to it. This is understood to apply to such as would inherit them, or receive them by bequest, if the boy had not been adopted. Security of this kind should be given by a written instrument drawn up by a notary public. Although the king may not order such an instrument to be drawn, it is understood that the party who adopts the child is bound by law to have this done, as aforesaid. p957

Law V. Men who were slaves and have been emancipated cannot be adopted.

All men liberated from slavery by their masters are styled, in Latin, ***libertos,*** and, in this country, are called enfranchised persons. No one can adopt a person of this kind for the following reason, since, although a master may emancipate his slave, the former always retains an original natural duality, which is indicative of superiority; that is to say, the freedman is always bound to obey him, honour him, and avoid causing him sorrow, and if he violates this rule the master can reduce him to slavery, and therefore no one can adopt him. p957

Law VI. No man has power to adopt a boy of whom he is the guardian.

Every man who has charge of a boy and all his property until he reaches the age of fourteen years, is called ***tutor,*** in Latin. Such a person cannot adopt a boy of this kind, for the reason that he may be suspected of having done so

with evil intent, in order to avoid giving an account of his property of which he has charge, and if he did render him such an account, that he would not do so as faithfully, or in the way that he should. However, after the boy has reached the age of twenty-five years, he can be adopted by his guardian, with the consent of the king, and in no other way; and this is the rule in order to enable the king to provide against his being defrauded by such an adoption as this which we have mentioned. p957-8

Law VII. What force adoption has, and for what reason a person who adopts another can liberate the latter from his control, and annul the adoption.

When one man adopts another who has children and who is not under the control of his father, the adoption has such force that his children, as well as himself and all his property, pass under the control of the party who adopts him, just as if he was his legitimate son; and the party who adopts him cannot remove the latter from his control, except for some lawful reason which he must establish before a judge. This can be done for two reasons. **First**, when the person adopted is guilty of such wrong, or, of such an act that the party who adopts him is provoked to great rage thereby. **Second**,_where some one else by his will designates as his heir a person adopted in this way, under certain conditions, saying as follows; "I appoint So-and-So my heir, if the party who adopted him removes him from his control." For either of these two reasons the party who adopts can remove the one adopted from his control, but he is bound to restore to him all the property and effects which he had when he came into his power. p958

Law VIII. How much of the property of the party who adopted him the person adopted is entitled to.

No one should wrongfully, and without reason, remove from his control a person whom he has adopted, nor should he disinherit him. If, however, anyone should violate this rule he is bound to return to the party whom he adopted all the property he possessed when he came under his control, and all the increase which he subsequently obtained, excepting the usufruct which he received from the property of the said adopted person, while the latter was under his control. In addition to this, the person who adopted him should give him the fourth part of all he possesses.

What we have stated in this law and the preceding one, is understood to refer to an adoption made in the way called, in Latin, arrogatio, which means one effected by permission of the king; but where it is effected in the other way, called adoptio, which means an adoption made by per-mission of some other judge, the person who adopts the other can remove the latter from his control for any rea-son or without one, and he will not inherit any of the prop-erty of the party whom he adopted. This is the case be-cause the adoptive child in this way should not inherit the property of his adoptive father, even though the latter does not remove him from his control, except where the party adopting him dies intestate. p958

Law IX.What portion of the property of his adoptive father the party who is adopted inherits

We have explained in former laws the force of adoption effected by arrogation, and now we desire to show the force which it has when effected by adoption. We decree that where anyone gives his son to be adopted by a man who is not the grandfather, or great-grandfather of the boy on his father's or mother's side, the person adopted in this way shall not pass under the control of the party who adopted him. From an adoption of this kind the following advantage results to the person adopted, namely; he will inherit all the property of his adoptive father, if he dies intestate and has no other children; and if he has any he will share with them, and will have his portion as the rest of them do. Nevertheless, it is not understood that, for this reason, he can inherit the property of the children or of any other relatives of the person who adopted him. p959

Law X. What rights a Grandson, or Great-grandson acquires in the property of his Grandfather or Great-grandfather when he adopts him.

Every man who leaves the control of his father with his consent is said to be emancipated, and if a man of this kind gives his son, who is under his control, to the grand-father of the latter to be adopted, whether he be on the father's or mother's side of the person whom he adopts, the adoptive son will pass absolutely under the control of the party who adopts him, so as to possess all the rights that an actual child should have in the property of his father by whom he was begotten, not only to be brought up by means of said property, but also to inherit it. This is the case on account of two powers of the law which are united in an adoption of this kind; one on account of the descent and lineage by which the party adopted is connected with the one who adopted him; the other through the regulation of the law which conferred upon men the power of adoption. If, however, his father, or great-grand-father removes the boy aforesaid from his control, he will pass back subsequently under that of his father. p959

ILLEGITIMACY
PART 4 TITLE XV.
Concerning Children Who Are Not Legitimate.

Men sometimes have children who are not legitimate, for the reason that they are not born in wedlock, according to law. And, although the Holy Church does not consider, or accept, such as these as legitimate, nevertheless, since it happens that men beget them, and as, in the preceding Title we spoke of concubines, we desire in this one to speak of children who are born of them. We shall show, in the first place, what is meant by children who are not legitimate; for what reason they are not considered such; how many kinds there are; how children are injured by not being legitimate; how they can be legitimized; and what benefit and advantage results to children through being legitimate. p952

Law I. What is meant by illegitimate children, for what reasons they are considered such, and how many kinds there are.

The wise then of the ancients called children natural and illegitimate who are not born of a marriage according to

law; as, for instance, those born of concubines, and bastards born of adultery, or of a female relative, or of women belonging to religious orders. These are not called natural children, for the reason that they are begotten contrary to law, and in opposition to natural order. Moreover, there are children called in Latin, -*manzeres,* who derived their names from two Latin words, *Manna scelus,* which means infernal sin. For those called *manzeres,* are born of women who live in prostitution, and give themselves to all who visit them, and for this reason they can not know to whom the children born of them belong. There are men who state that manger means contaminated, because a person of this kind was wickedly begotten, and was born in some vile place.

There is another kind of children, called, in Latin, *spurii,* which means those born of women which men keep as concubines outside of their houses, and they are such as give themselves to other men, in addition to those who keep them, and, for this reason, it is not known who the father of a child born of such a woman is. There is still another kind of children called *notos*, and these are such as are born in adultery. They are called by this name because they appear to be the acknowledged children of the husband who has them in his house, when they are not so. p952

Law II. For what reasons children should not be considered legitimate, although they be born in marriage.

Some persons marry clandestinely and by stealth, and have children. Where, in the case of persons marrying in this way, any impediment is discovered by reason of which the marriage should he dissolved, the children be gotten by persons of this kind ought not to be considered legitimate; and they cannot excuse themselves by saying that one, or both of them, was not aware of the existence of said impediment. This is the case because the suspicion arises against them that they did not want to know whether an impediment existed which might prevent them from marrying, since they were married clandestinely. Moreover, the children of those who knew that an impediment of this kind existed between them on account of which they should not marry, will not be legitimate, although they may have married openly in the sight of the church, and no other person publicly announced the impediment, and no accusation was brought against them oil this account. This is understood to refer to cases where both husband and wife were aware of the existence of said impediment. Moreover, no child born of a father and mother who are not married as the Holy Church directs, are legitimate. Moreover, we decree that where a man has a lawful wife, and has children by a concubine while his wife is living, said children will not be legitimate, even though the lawful wife should die after this and her husband should marry the concubine, and this is the case because they were born in adultery. pp952-3

Law III. What injury results to children by their not being legitimate.

Great injury results to children through their not being legitimate. In the first place, they cannot share the honours of their fathers or grandfathers, and, also, when they are chosen for any high office or honour they may lose it for this reason, and, moreover, they cannot inherit the property of their fathers or grandfathers, or that of any other relatives from whom they are descended, as stated in the laws of the Title concerning Inheritances which treats of this subject.p953

Law IV. In what way Emperors, Kings, and Popes, can legitimize children that are not legitimate.

Men petition emperors and kings in whose dominions they live, as a favour, to make the children which they have by concubines, legitimate; and where they grant such a request, and legitimize such children, the latter are, from that time forth, legitimate, and can enjoy all the honours and advantages which children born in lawful marriage do. Moreover, the Pope can legitimize every free man, whether he is the son of a priest or a layman, so that those whom lie thus renders legitimate call become priests, and attain to, and hold offices of great dignity. And although the Pope may consent that some such persons be priests, it is not understood by this that he grants them permission to hold high ecclesiastical offices, unless he states this specifically in the dispensation; and, although he renders them legitimate, it is not to be presumed that, by the above mentioned proceedings, he grants them authority to hold bishoprics, except where he especially states this in the dispensation. And, although he may grant dispensations to some to have certain orders and the other offices above mentioned, he cannot grant them any with respect to temporal matters, except where they are under his temporal jurisdiction. The same rule applies where an emperor, or king, renders any person legitimate; for although he can exempt them from anything relating to his temporal jurisdiction, he cannot do this in spiritual matters, which priests or curates call do. p953

Law V. How a father may make his son legitimate by devoting him to the service of his Lord's court.

Where a man keeps a mistress who is not a slave, instead of a wife, by whom he has a natural son, and the father takes said son to the court of the emperor or the king or to the Council of the city or town where he is, or within whose district he dwells; or to any other city or town whatsoever, although he may not dwell there or within its district, and states publicly in the presence of all: "This is my son, that I have by Such-and-Such a woman, and I devote him to the service of this Council;" by these words alone he makes him legitimate; provided the son whom he disposes of in this manner gives his consent, and does not oppose him. What is mentioned with regard to a father being able to render a son of this kind legitimate, as above stated, is understood to be in his power to accomplish, whether he has other sons by a lawful wife or not; except where the mistress by whom he had the son is a slave. For he cannot render the son of a female slave legitimate in this way, if he has other legitimate sons, but, if he has none, he then can do this by previously enfranchising her. p953-4

Law VI. In what way a father can render his natural son Legitimate by his Will.

Where a man has natural children by a mistress, and has

no legitimate children, he can make the former legitimate by his will, in the following way, by saying: "I desire that So-and-So, or So-and-So, my children, whom I had by Such-and-Such a woman, be my lawful heirs." For if, after the death of their father, the children take this will and show it to the king, and petition him to confirm it, and to grant the favour their father desired to show them; the king, when he knows that the party who made the will had no other children who were legitimate, should give his consent. From that time forth the said children will inherit the property of their fattier, and will have the Honour of being legitimate. p954

Law VII. In what way fathers can render their children legitimate by a written instrument.

Where a man writes an instrument, or document with his own hand, or orders it to he drawn up by a notary public, and it is confirmed by the testimony of three reliable men, in which document he states that he recognizes a certain child, (mentioning him specifically), as his son, this constitutes a second way in which natural children are made legitimate. In an acknowledgment of this kind, however, he should not state that said child is a natural one, for, if he does, his act will not be valid. Moreover, when anyone has several natural children by one mistress, and recognizes only one of them as his child by means of a document of this kind, and in the way above stated in this law, the other children, by such an acknowledgment, became legitimate and entitled to inherit the property of their father to the same extent as the one in whose name the document is drawn tip, although they were not mentioned in the latter. What is stated in this law and in those which precede it is understood to mean that the children who are mentioned in said laws are rendered legitimate to inherit the property of their father and their other relatives, with the exception of any they may have rendered legitimate in the manner previously stated, in the law by which a child may be devoted to the service of the court, of the emperor, or of the king. A child of this kind can inherit the property of his father, but not that of his other relatives if they die intestate. p954

Law VIII. For what reason natural children can be rendered legitimate.

An official in any city or town, who is one of those who holds an important office for his entire lifetime, who marries a daughter of some person who has said daughter by a mistress, she, by the act of her father, who marries her to a man of this kind, becomes legitimate. Moreover, when the natural son of any man devotes himself to the service of the emperor or the king, or of any city or town, as stated in the fourth law preceding this one, stating publicly, in the presence of all, that he is the son of Such-and-Such a man (mentioning him by name), who had him by Such-and-Such a servant; and it is a fact that he is the son of the party whom he mentions, he becomes legitimate for this reason; that is, if his father did not have any legitimate children by another woman, for if he did have any, this one would not become legitimate, even if he devotes himself as aforesaid. p954-5

Law IX. What benefit and what advantage children derive by being legitimate.

Great advantage results to children from legitimacy granted them, for after they become legitimate in any of the ways aforesaid-except where they are made legitimate by the Pope, as stated in the sixth law preceding this one they can inherit all the property of their fathers, where their fathers have no legitimate children, and where they have any they will inherit their share, just as other issue born of lawful wives; except in the way mentioned in the preceding law, where the rule is established with regard to the son of any man who devotes himself to the service of the court of the emperor, or king, or the council of any city or town. They enjoy another advantage by being made legitimate, for they become eligible to all honours, just as other children who are born of lawful wives do.' p955

Source 'Las Siete Partidas' of Alfonso X el Sabio. (Translated by Samuel P. Scott, introduction by Charles Lobingier, New York: Commerce Clearing House, 1931.) Published by Philadelphia: University of Pennsylvania Press c2001.

Spain, Portugal and Italy

Benet— "The Roman-based adoption laws, which could not come into effect until the middle age of the parents and the majority of the child, could do little to help the childless woman, whose feelings of worth and position in the family were undermined by her condition. Nor could it help the child without a family, since he could not be adopted fully until he grew up.

Force of Roman law still strong

Spain, Portugal and Italy are the countries where the force of Roman law is still the strongest. All three still maintain the Roman distinction between 'full' and 'less full' adoption. So strong is this tradition that even though Portugal had no adoption law at all until 1967, it incorporated the two-tier system into its new law. In all these countries, however, 'less full' adoption may eventually become full adoption, so that it is possible to achieve a certain measure of security by adopting a child under the former law and then, when such requirements as the age and length of marriage of the adopters have been fulfilled, to complete the formalities.

Portugal

Limited adoption in Portugal is reversible 'for reasons of succession rights'-by this means the adopted child can be disinherited if the parents have their own natural child after adopting; or if the adopted child's natural parents are likely to die without an heir, they can reclaim the child.

Spain

In Spain, the rights of the natural parents are protected even more stringently. The only adoptable children are foundlings or abandoned children who have not been claimed within three years. The adoptee must consent to his own adoption if he is of age; otherwise, 'those who would be required to consent to his marriage must give their consent'- another parallel between marriage and adoption. The adoption is irrevocable, and the adoptee inherits from his new family in full: undoubtedly one reason why adoption is made so difficult. p86

Source MK Benet 'The Character of Adoption' Jonathan Cape

1976

FRANCE

FRENCH CIVIL CODE 1803

Adoption reintroduction to Europe

Benet— The 'dark ages' of adoption may have begun at the same time as the European Dark Ages, with the fall of Rome in 476. Although many ancient ideas were rediscovered by the Renaissance, adoption was not reinstated in continental Europe until the French Revolution, and in the English-speaking countries until about the end of the nineteenth century. Adoption may have occurred during this long 'dark age', but because it was *de facto* rather than *de jure*, we have no way of knowing its extent. Families had recourse to other ways of perpetuating themselves; and other provisions had to be made for children without families." Benet p54

Old Roman adoption statutes remained

Benet— Although adoption was known in England, it was hampered by the absence of legal status. The countries with a heritage of Roman law continued to have adoption statutes on the books, even if they were not very often used. Adoption was sometimes resorted to by the aristocracy as a way of perpetuating itself; although, as a commentary on the French law points out, it had almost disappeared...

'Under the double influence of Christianity and feudalism: to the Catholic Church, in fact, adoption was nothing but a rival, and therefore less preferable, alternative to marriage. Besides, it was contrary to the feudal principle of retaining property within the family.' p65

Adoption and aristocracy

Benet— The danger of extinction was always present to the aristocratic families, and some form of adoption continued to be an occasional necessity. Aristocratic lines on the point of becoming extinct were known to advertise for heirs...

Democracy revived adoption

Benet— But although it was the aristocracy who made most use of the archaic adoption laws that managed to survive, it was in fact the idea of democracy that paved the way for a revival of adoption as a popular institution. The importance of blood lines was challenged by the French revolutionaries... 'At the time of the Revolution, adoption had almost completely disappeared. The attitudes that characterized the revolutionary era were favourable to the restoration of this institution. Besides, the Roman republic and its institutions were enjoying great prestige in this period. This explains why adoption was introduced into French law by a decree of 18 January 1792...' p66

England- adoption stalled until 1920s

Benet— The spread of democracy on the continent of Europe, and the revival of laws from the Roman Republic, did not reach as far as England, where the importance of blood ties, primo-geniture, and inheritance through entail continued almost unabated. To bring about a revival of adoption required a more fluid social system, an under populated country, and a situation in which a man created his own place in the world and was not simply born into his rank. p66 **Source** MK Benet 'The Character of Adoption' Jonathan Cape 1976

FRENCH CIVIL CODE 1803

Napoleon—

Schwartz.— "On March 21st, 1804, there occurred one of the most notable events in all legal history. For it was on that day that the Code Napoleon was voted into law. The French Civil Code is the first great modern codification of the law. It abrogated the law of the *Ancien* Regime-based largely on local custom, and anything but the unified system demanded by a large national State-and substituted for it a coherent code, logically arranged and clear and precise in its terms.

It should be noted that the popular title of this monumental work, the *"Code Napoleon," is* no mere figure of speech. Attempts at codification had been made for many years, and even the Revolution had not seen them come to fruition. It was the all-powerful will of the First Consul that was the necessary catalyst. It was his energy that brought to completion the work so long awaited.

Napoleon himself realized from the beginning the monumental significance of the codification that bears his name. At Saint Helena, near the end of his life, he wrote: "My glory is not to have won forty battles, for Waterloo's defeat will destroy the memory of as many victories. But what nothing will destroy, what will live eternally, is my Civil Code."

The framers of the Code Napoleon were dominated by the de-sire to present the law in a form readily accessible to all. Like Jeremy Bentham, they sought to be able to say: "Citizen, what is your condition? Are you a farmer? Then consult the chapter on Agriculture."

Of course, they did not wholly succeed in their aim. But the instrument that they drew up as a codification of all of the private law is remarkable for its brevity and lucidity of style. The entire Code contains only 2,281 sections." **Source** 'The Code Napoleon & the Common Law World' B. Schwartz. NY University Press 1956 -Preface.

Historical Background

Crabb— The French Civil Code may be said to have initiated the contemporary system of the civil law as we know it with its codifications. But it did not result from a flash of inspiration or genius by Napoleon or anyone else. Rather was it the cumulation of centuries of legal history and the interaction of Roman law with the localized and customary laws that evolved in Europe after the fall of Rome.

The barbarian invaders who set up their kingdoms in the former territories of the Roman Empire by no means despised things Roman. On the contrary, they sought to emulate for themselves those aspects of the superior Roman civilization which they admired. This included Roman law, and some of them sought to adopt for themselves suitable parts of it, which came to be called the leges *romanorum barbarorum*. Other efforts did not seek to adopt Roman law as such, but with an awareness of Roman techniques, sought to cast Germanic tribal laws in

a similar manner, through what are% known as the *leges barbarorum*. However, such efforts at ordering legal systems did not thrive in the chaotic conditions that prevailed in the post-Roman period, and they faded into oblivion. Roman law generally ceased to be the law in practice, and was supplanted by localized laws of a customary nature upon which feudal laws became engrafted. Roman law represented a degree of sophistication not in keeping with the rude societies of the early Middle Ages. It became largely an academic kind of law, preserved mostly in monasteries which were the centers of scholarly activity. However, it had some survival in application in Italy and some other heavily Romanized parts of the former empire. ie,, Eastern Roman, or Byzantine centering on Constantinople vigorously continued Roman civilization.

Relationship of Codes and statutes

Crabb— Neither in France nor in the United States do codes have any special legal force or status beyond any other legislation. They can be amended, repealed or superseded as readily as any other statute, by the same or higher legislative authority which originally enacted them. But both cases represent an assessment that the subject-matters of their codes are in some degree especially important to society and of permanent or at least long enduring significance. While there are no inhibitions against making changes in the code as they may seem to be warranted, it is expected that the legislator should take particular care in doing so, in keeping with the seriousness of the original idea of a code and maintaining its internal consistency and cohesion and its rapport with the law and legislation generally. Thus the distinction between codes and statutes generally is a matter of attitude which expectably accords greater prestige and stability to legislation specially invested with the dignified title of "code." The degree to which such expectations are realized is indicative of the success or quality of a code.

Codes and Judicial interpretation

Crabb— "In the French system, as in the civil law generally, legislation is regarded as the primary and ultimate source of law. Given the attitudes and expectations regarding codes, they more than other legislation normally represent the most fundamental legal notions in terms of being the starting point for legal reasoning and setting the tone for the legal system. When articles of a code form the basis of a judicial decision, they are of course interpreted by the court to resolve the particular case at hand. However, such judicial interpretation does not become an authoritative precedent for subsequent interpretations of an article of the code. However persuasive such a judicial decision may be in effect, future decisions are in theory based on reference afresh to the text of the code itself without its being screened by prior judicial interpretations of it. The opposite is true in the American system, where the final word on the meaning of any legislative text is what the courts say it means." p9

Source 'The French Civil Code' (As amended to July 1, 1976) Translated by John H Crabb, published Fred B Rothamn & Co South Hackensack, New Jersey 1997. pp8-9

Code Napoleon - The French Civil Code 1803

Literally Translated from the Original and Official Edition, Published at Paris in 1804

TITLE VIII. Of Adoption and Friendly Guardianship. Decreed 23d March, 1303. Promulgated 2d of April.

Chapter 1. Of Adoption

Section 1 Of Adoption and its effects.

343 "Adoption is not permitted to persons of either sex, except to those above the age of fifty years, and who at the period of adoption shall have neither children nor legitimate descendants, and who shall be at the least fifteen years older than the individuals whom they propose to adopt.

344 No one can be adopted by more than one person, except by husband and wife. Except in the case in article 366, no married person can adopt without the consent of the other conjunct.

345 The faculty of adoption shall not be exercised except towards an individual, for whom, during minority, and for a period of at least six years, the party shall have supplied assistance, and employed uninterrupted care, or towards one who shall have saved the life of the party adopting, either in a fight, or in rescuing him from fire or water.

It shall suffice, in this latter case, that the adopter have attained majority, be older than the adopted, without children, or lawful descendants, and if married, that his conjunct consent to the adoption.

346 Adoption, shall not, in any case, take place before the majority of the adopted party. If the adopted having father and mother, or one of them, has not completed his twenty-fifth year, he shall be bound to produce the consent of his father and mother, or the survivor, to his adoption ; and if he is more than twenty-five years of age, to require their counsel.

347 The adoption shall confer the name of the adopter on the adopted, in addition to the proper name of the latter.

348 The adopted shall continue in his own family, and shall there retain all his rights : nevertheless, marriage is prohibited,

Between the adopter, the adopted, and his descendants;

Between adopted children of the same individual; Between the adopted, and the children who may be born to the adopter;

Between the adopted and the conjunct of the adopter, and reciprocally between the adopter and the conjunct of the adopted.

349 The natural obligation, which shall continue to exist between the adopted and his father and mother, to supply them with sustenance in cases determined by the law, shall be considered as common to the adopter and the adopted towards each other.

350 The adopted shall acquire no right of succession to the property of relations of the adopter ; but he shall enjoy the same rights with regard to succession to the adopter as are possessed by a child born in wedlock, even though there should be other children of this latter description,

born subsequently to the adoption.

351 If the adopted child die without lawful descendants, presents made by the adopter, or acquisitions by inheritance to him, and which shall actually exist at the decease of the adopted, shall return to the adopter or to his descendants, on condition of contributing to debts, without prejudice to third persons.

The surplus of the property of the adopted shall belong to his own relations; and these shall exclude always, for the same objects specified in the present article, all the heirs of the adopter other than his descendants.

352 If during the life of the adopter, and after the decease of the adopted, children or descendants left by the latter, shall themselves die without issue, the adopter shall succeed to donations made by him, as is directed in the preceding article ; but this right shall be inherent in the person of the adopter and not transmissible to his heirs, even in the descending line.

SECTION II. Of the Forms of Adoption.

353 The party who shall propose to adopt, with the one who shall be willing to be adopted, shall present themselves before the justice of the peace at the domicil of the adopter, there to pass an act of their mutual consent.

354 A copy of this act shall be transmitted, within ten days following, by the more diligent party, to the commissioner of government in- the court of first instance, within whose jurisdiction the domicil of the adopter shall be found, in order to be submitted to the approbation of that court.

355 The court, being assembled in the chamber of council, and having received suitable testimonials, shall certify, 1st, whether all the conditions of the law are complied with ; 2d, whether the party who proposes to adopt enjoys a good reputation.

356 After having heard the commissioner of gover-ment, and without any other form of proceeding, the court shall pronounce without giving its reasons, in these terms : "*There is ground;"* or, "*There* is *no ground for adoption."*

357 In the month succeeding the judgment of the court of first instance, this judgment shall, on the prosecution of the more diligent party, be submitted to the court of appeal, which shall deal with it in the same forms as the court of first instance, and shall pronounce without assigning reasons : "*The judgment is confirmed,"* or *"The judgment is reversed ; in consequence there is ground,"* or "*There is no ground for adoption."*

358 Every judgment of the courts of appeal, which shall establish an adoption, shall be pronounced at the hearing, and posted in such places and in such a number of copies as the court shall judge expedient.

359 Within three months after this judgment, the adoption shall be enrolled, on the requisition of one or other of the parties, on the register of the civil power of the place where the adopter shall be domiciled.

This enrolment shall not take place but upon view of a copy, in form, of the judgment of the court of appeal ; and the adoption shall remain without effect unless it be enrolled within this interval.

360 If the adopter happen to die after the act setting forth his inclination to form a contract of adoption has been received by the justice of peace and carried before the courts, and before these have finally pronounced, the procedure shall be continued and the adoption admitted if there be ground. The heirs of the adopter may, if they believe the adoption in-admissible, remit to the commissioner of government all memorials and observations on this subject."

Source 'Code Napoleon or The French Civil Code' by a Barrister of the Inner Temple. Literally Translated from the Original and Official Edition, Published at Paris in 1804. A Law Classic Reprint by Beard Books, Washington USA 1999.

Legal system from Roman Law / Code Napoleon

"In countries whose legal system derives more or less from Roman Law or the Code Napoleon, the adopted child's links with his own parents are not broken. He is not only entitled to inherit from them and their relatives, but may still be called upon to support them, and reciprocally they may have to support him if the adopter fails to do so. Some of these provisions can easily be explained when it is realized that the original pattern of adoption was a family one, i.e., when the few children adopted were either illegitimate children adopted by their own natural father, or orphans adopted by relatives. This is still the prevailing pattern in some instances, as in Latin America. This is why in France and Uruguay adoptive legitimation, which completely integrates the child into the adopter's family, is restricted to full orphans and children of unknown parentage. It exists side by side with so-called "regular adoption", where the natural links are not completely severed."

Source Comparative Analysis of Adoption Laws' UN, Department of Economic and Social Affairs, NY 1956 pp4-5

Code Napoleon - debate NZ Adoption Act 1881

Mr Tole— "Under the Code Napoleon adoption was precisely in accordance with the principle of this bill—that was, from benevolent and charitable motives. The adopting parent was, according to that code, to have no children, and must be fifteen years older than the adopted child. There was also a provision that the child was to be under the sustenance or in the household of the person adopting for six years previous to such adoption. Under the same code adoption could not take place earlier than twenty-one years, or later than twenty-five years; and the child could only succeed to the property of the adopting parent— they was to say, he could not succeed to any of the property of rest of the family. A similar provision would be seen in section 5 of the Bill. Consent— under the Code Napoleon was obtained by a Justice of the Peace going to the domicile of the consenting parent, and afterwards that consent was confirmed by application and order in the full Court. Under the same code there was an appeal granted to which he would refer presently..."

Source Mr Tole, MP Eden NZPD Vol.39 4/8/1881 p281.

French/ Roman Law link

CYPS—“The French family law was inspired by the Roman concept of ‘Adoptio plena’ and applied mainly to children who were abandoned by their biological parents. This was the base for the subsequent integration of adoption legislation in many other countries. In this century French law established the need to justify adequate reasons to adopt and adoption was made revokable. These conditions also appeared in Dutch, German and Swiss laws.” **Source** Adoptions Local Placements Manual 1.5. CYPS DSW 1995.

Blood Ties and Fictive Ties: Adoption and Family Life in Early Modern France

Kristin Elizabeth Gager— Book Review

Kristen Gager’s study of adoption in early modern France is a bold attempt to dispute the legal fiction that adoption was extremely rare in sixteenth- and seventeenth-century society. One can only admire Gager’s commitment to this exploration since she discloses that most historians of the family have accepted the writings of contemporary jurists who embraced the notion of family as based on blood and marriage and scorned adoption as damaging to property transfers and family lineages. The standard hypothesis asserts that adoption practices declined in late antiquity and were not revived until the modern era. Gager refutes this assumption, however, by unearthing notarial adoption contracts from Paris spanning the period 1545 to 1690. She shows that while nobles rejected adoption as a means of family construction, labourers, artisans, and merchants pursued both private adoptions arranged between two families as well as adoptions of abandoned children from foundling hospices. In developing a social and cultural history of adoption, Gager thus exposes a novel portrait of early modern family life in which people disregarded legal prejudices against adoption and implemented strategies to satisfy their personal and emotional needs.

The prime motivation for adoption, Gager acknowledges, was childlessness. Her evidence suggests that because artisanal families wanted non-biological offspring their desires to forge emotional bonds with children were strong. It does not appear children were sought for domestic labour. Rather Gager’s case studies show that adoptive parents wanted to love and nurture their adoptees. Good parenting as revealed in adoption contracts included parents promising to raise the adopted child “as their own child” and instruct her or him “in the love and fear of God.” Parents additionally agreed to apprentice their girl or boy in a trade at the proper time. Many contracts specified that daughters would be provided with dowries when they reached marriageable age.

Gager is at her best when she reveals how notaries acted as legal mediators to make adoptions possible. One problem prospective parents faced was that while Parisian customary law did not prohibit adoption, it did exclude adopted children from inheriting through intestate succession. As such, notaries used the legal mechanism of the donation entre vifs in adoption contracts if parents wished to pass on property to their adopted children. In this way parents could make a lifetime gift to their children of the totality of their property while retaining usufruct of the property during their own lifetimes. Notaries thus helped adoptive parents create legal heirs by circumventing legal prescriptions. By focusing on notaries and their key role in adoption proceedings, Gager convincingly interprets the law of adoption as a fluid construct that was manipulated and reinterpreted in popular practice.

Perhaps the most fascinating fact Gager uncovers demonstrates that in nearly one third of the contracts examined unmarried women, widows, and women who had separated their dotal property from their husbands’ command initiated adoptions of daughters and thus built families of their own. The practice was probably pursued by women as a means of passing on their property in legal arrangements as they saw fit. Gager’s discovery, nonetheless, strengthens the arguments of Barbara Diefendorf, Evelyne Berriot-Salvadore, Gayle Brunelle, and others who have also found examples of early modern women acting autonomously in property transactions and legal dealings. Unfortunately Gager does not linger over this information. She acknowledges that women adopting daughters as heirs created a kind of “matrilineal descent,” but fails to grapple with the fact that single women who established families of their own and passed on property challenged the very basis of patriarchy.

There are other problems. In the last chapter Gager turns to the French Revolution and argues that adoption practices in the early modern period established precedents for the projects of revolutionary legislators who hoped to make adoption an accepted practice in the 1790s. This seems odd since Gager never comes to terms with how the adoptions pursued by sixteenth- and seventeenth-century Parisian artisans might have influenced or undermined jurists in the early modem age. Perhaps there is not enough evidence for Gager to speculate. The study is based on an examination of only eighty-two contracts that were seldom over two pages in length. Gager is cautious and makes no assumptions about how widespread the practice of adoption was; however, the study of eightytwo cases in the French capital over one hundred and forty-five years has serious limitations. She makes comparisons with a published study from Lyons, but comparative archival data from other French towns would have greatly strengthened her work. Gager further limits her analysis by not providing examples of adoptees’ lives beyond the adoption contracts. Thus we do not know what kinds of legal technicalities may have confronted adopted children when claiming property through donations entre vifs.

These criticisms aside, Gager’s monograph is extremely well written, jargon free, and enjoyable to read. Blood Ties and Fictive Ties offers compelling insight into aspects of civil law, family life, adoption, parenting, fictive kinship, and poor relief in early modem France. The author deserves praise for carving out a new avenue of inquiry in the history of the early modem family.

Source Review *Canadian Journal of History,* Aug 1997 by S Annette Finley-Croswhite. Book: ‘ Blood Ties and Fictive Ties: Adoption and Family Life in Early Modern France’, by Kristin Elizabeth Gager. Princeton, New Jersey, Princeton University Press, 1996. 197 pp. $39.50 U.S.

Another Book: ‘Abandoned Children: Foundlings and Child Welfare in 19th Century France.’ Rachel G Fuchs. 1984. ISBN 0873957482, State University of New York Press. 357 pages

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ENGLAND

SOCIAL CONDITIONS and PLIGHT OF POOR

Quigley—After the fall of Rome 476AD and the collapse of the Roman Empire the Anglo/Saxons became the dominant force in England. The care of the poor and needy were ministered unto by the twin structures of Feudalism and the Church.

Feudalism and the Church

Feudalism and church institutions significantly influenced the development of the English poor laws and need to be briefly examined in order to understand the context out of which the poor laws grew.

A. Feudalism's Impact

In feudal times, work and poverty went hand in hand. Feudalism was based on a system of tillage, where landlords of large properties subdivided their land into small parcels which were then farmed by serfs or tenants. As de Schweinitz notes:

In theory, be no uncared-for-distress

Under feudalism there could, at least in theory, be no uncared-for-distress. The people who would today be in the most economic danger were, in the Middle Ages, presumably protected by their masters from the most acute suffering. They were serfs or villeins, who by virtue of their slavery or of what F.W. Maitland calls their "unfreedom," had coverage against disaster. Insurance against unemployment, sickness, old age was theirs in the protection of the liege lords.

600AD Feudalism began with Saxons

This system began in England with the Saxons and required every peasant who did not have a home to reside with someone who would care for them. The peasants lived in a virtual state of slavery; they worked for the lord and in return received support from the lord, but in effect they were the property of the lord, who could dispose of them by sale or gift. Prior to the Norman Conquest, as many as two-thirds of the population existed in a state of slavery, though even within the slave population there were class distinctions based on the value of service to the manor.

1066AD Norman Conquest

The Normans continued this practice for centuries, with evidence of the sale of servants even into the 14th Century. One authority observed, after the Norman Conquest:

> If we except the baronial proprietors of land, and their vassals, the free tenants and foremen, the rest of the nation, for a long time after this era, seems to have been involved in a state of servitude, which, though qualified as to its effects, was uniform in its principle, that none who had unhappily been born in, or fallen into, bondage, could acquire an absolute right to any species of property.

Slavery phased out

These aforementioned forms of slavery resulted from many causes. One primary cause was racism. Hence, as the races began to mix these forms of slavery also diminished. As slavery phased out, each serf developed an economic relationship with the landlord.

Lord of the Manor responsibility

The serf, in return for being able to farm the land gave the landlord a share of the crop harvested or the animals raised. Or the serf would perform services for the landlord. Common law recognized two classes of manorial tenants: freemen and villein, "with the villein having no ordinary recourse to the common law for protection against his lord."

As long as there were plenty of laborers, there was little need to regulate laborers or the poor. They remained the responsibility of their lord who had authority over them. As Professor Christopher Hill noted, helping out his servants made good sense for the lord: "It was good for his prestige; it was a form of social insurance; and, since he had no doubt whatever that his surplus came from the labours of his tenants, it was also sound economic sense to keep them alive in times of distress." Asking others to help the poor was seen as a way to relieve one lord of his duties to those whom he was charged with keeping.

Decline of Feudalism

"This system changed for many reasons including—

- **(a)** Phasing out of slavery and serfdom,
- **(b)** Black Plague,
- **(c)** Beginning of the Industrial Revolution,
- **(d)** Rise of Capitalism
- **(d)** Rise of factories, and
- **(e)** Growth of the wool industry.

This system changed for many reasons including the phasing out of slavery-serfdom, the Black Plague, the beginning of the Industrial Revolution, the rise of factories, and the growth of the wool industry. Factories were able to manufacture woolen products and drew large numbers of the poor into the cities. As the demand for wool increased, the landlords saw the villeinage as no longer necessary for their economic survival, they could make more by turning out many of their numerous small tenant farmers and combining the small farms into large pastures to raise sheep.

As Feudalism waned wage labour rose

Therefore, as feudalism waned, wage labor rose. There was increased freedom for the workers as they shrugged off the chains of serfdom. Yet, feudalism had offered a paternalistic system of economic security, and as feudalism disappeared that security also disappeared. In sum, the beginning of the breakdown of feudalism was an important trigger in the creation of the earliest poor laws.

B. The Church's Impact

Church relief in Anglo-Saxon times

"In Anglo-Saxon times, the administration of poor relief was almost entirely under the control of the church." Religion and the institutions of the organized church played a major role in early assistance to the poor. Some consider the early ecclesiastical system of poor relief as a primary source for the later Elizabethan poor laws and even more of a model for modern poor relief in the United States. These influences can be roughly divided into two areas: biblical-religious influences on the perception and treatment of poor people by individuals; and the manner

in which the church institutions ministered to the poor and how that ministry later influenced public assistance to the poor.

Biblical impact

Certainly the Bible influenced how the English people treated the poor, and to a lesser extent, how the poor laws developed. The Bible contributed many themes to English poor law, themes that continue to resonate even now in the American experience. Biblical texts of Old and New testament support special attention to the needs of the poor, a duty to give alms, and a directive that those able to work do so.

Saint Thomas Aquinas,

a noted religious scholar, also wrote extensively on the obligation of almsgiving to the poor. His writings reflect the church's teachings that the desperately needy were to be helped. There is a clear duty in charity to give alms to the needy, as there is to feed the hungry and to harbor the harborless. The mandate to give alms to the poor is clear when the poor are in extreme need or facing death. However, when the necessity for alms is not a life and death matter, almsgiving is a matter of judgment. As Aquinas notes in his teachings one must go beyond giving from their surplus in times of hardship because, "All things are common property in a case of extreme necessity." But for Aquinas almsgiving also has its limitations for satisfying the needs of individual poor people. He opined that it is not good to relieve a poor man's need more than necessary and it would be better to give to several that **are in need.**

Poverty not a moral failing

Poverty was not thought of as a moral failing or an indication of moral turpitude. It hardly ever occurred to the canonists that the law should seek to "deter" men from falling into poverty. They believed want was its own deterrent. It never occurred to them that poverty was a vice which could be stamped out by punitive measures. Canonists "no more thought of punishing a man for being afflicted with poverty than we would think of punishing a man for being afflicted with tuberculosis."

Giving relief to the poor a religious duty

Thus, giving relief to the poor was a clear religious duty for individuals. On an institutional level, the practices of charity and almsgiving by church institutions preceded and shaped later approaches to poor relief. As Sir Frederic Eden said, "The clergy, most assuredly, from the nature of their ecclesiastical establishment, and eleemosynary principles upon which every donation to religious bodies was conferred, were considered as the peculiar and official guardians of the Poor."

700-1536AD Ministry to the poor

There was general agreement that the Church had a special duty to protect widows, orphans, and all of the poor and oppressed. In the sixth century, for example, monasteries emerged as centers for the relief of the poor, particularly in rural areas. Some religious communities were formed for the primary purpose of helping care for the poor. Later, hospitals, which cared for not only the sick but the orphans and the aged, grew out of the monastery experiences and were built alongside or attached to many monasteries. Church authorities directed that each local parish, and each geographical collection of parishes called dioceses, take responsibility for assisting the poor in their area. This continued until 1536 when, after the Protestant Reformation, Henry VIII dissolved the monasteries forcing out the religious inhabitants and the poor who lived in their institutions.

Substance of relief

The theories of ecclesiastical poor relief were many: poor people should not be allowed to starve; there was a duty to tithe or give something to the institutional church so that the church may, after deducting for its own expenses, give a percentage of that to the poor; the poor were to be given charity, but no structural or economic changes in society were considered; there was a general obligation to work; and assistance to the poor could be categorized and prioritized.

Impact of overthrow of the Monasteries

The overthrow of the established church institutions like the monasteries "was felt in every nook and corner of the land; but by none perhaps so immediately, or so much, as by those persons who had been accustomed to rely upon alms for support." As de Schweinitz notes:

The church - by mandate, in principle, and often in fact - was outstanding as a means for the relief of economic distress. It occupied the field, both in its operation and in the place assigned to it in people's minds. It was a reason why for years government could take a wholly punitive and repressive attitude toward the problem of poverty.

Henry VIII expropriation of Monasteries

In 1536 and 1539 Henry VIII expropriated the monasteries and turned their properties over to his followers. This action, like the Black Death in the fourteenth century, gave dramatic point to an already bad situation. A social resource, inadequate at its best, was now substantially diminished.

Parish assumed civil functions 1500s

Key also to subsequent English poor law development was the local church institution of the parish. From around the fourteenth century, the English church parish essentially assumed many of the characteristics of a local governing body: a clear leader (the rector or vicar); officers (two or three householders of the parish); and responsibilities for raising funds for the upkeep and administration of the parish. So important was the parish that from the sixteenth century on the parish legally assumed civil functions such as provision for local troops, suppression of vagrancy, and agricultural works. There was no clear division between secular and ecclesiastical authority, each had parallel and overlapping jurisdictions, officers and even courts.

1600-1800sAD - 12,000 to 15,000 Parishes

The parishes were of no standard size. Between the seventeenth and the nineteenth centuries there were an estimated 12,000 to 15,000 separate parishes in England. Thousands of parishes ultimately became the basic gov-

ernmental unit of poor relief: raising taxes to pay for the services or assistance provided; determining who was worthy of assistance; caring for the poor; and creating and maintaining institutions like poorhouses, workhouses, and labor yards.

Source: William P Quigley '500 years of English Poor Laws, 1340-1834; Regulating the Working and Non-working Poor' http://www3.uakron.edu/lawrev/quigley 15/06/2004

Adoption in feudal England

Peach— "During the feudal era in Britain, orphans of the estate became the responsibility of the lord of the manor. This tradition continued legally until the late 19th century. While informal adoption did take place, these were chiefly confined to the lower classes and, in general, orphaned children were regarded as wards of the parish. This lack of legal status of parentless children and of adoption led to many social abuses. Unwanted children became wards of Chancery and were consigned to the workhouses while baby farming became profitable occupation." **Source** M M Peach. Thesis 'Family Environment Factors Influencing the Adjustment of Adopted Children' Auckland University 1991 p2

Feeling of belonging

Benet— Practical support of the kind now given by the family was, in Medieval times, the role of the age group (for example students and apprentices), the professional group (guilds), or the Church (religious orders). Families were extended not only to distant relatives, but by retainers of all kinds- nurses, vassals, pages, and so on." p40

Medieval Church

Benet— "Feudal society had ways of taking care of its own, but for those who fell through this rather loose net there was one other recourse: the Church. Religious orders were open to those who belonged nowhere else, and one of their historic functions was the rescue of fallen women and homeless children." p55

Monastic orders

Benet—"The monastic orders, being celibate, could only perpetuate themselves by adoption, so to speak-conversion to the religious 'family' was the recruiting method used by religious orders throughout their history." p55

Mirror of feudal society

Benet—"The Medieval Church was, in a way, the mirror of feudal society; the feudal lord had his 'family' and the abbot or bishop had his. Both were, of course, forms of fictive kinship; but instead of supplementing the natural family, they competed with it." p55

Adopted by church

Benet—"Becoming a monk, nun, or priest, in other words, being adopted by the Church has always had strict rules and initiation rituals; by contrast, the Church has throughout its history given few rules for the family conduct of its lay members. The sacraments are the points of contact between the ordinary Christian and dogmas of the Church; but they do not cover day-to-day experience." p55

Membership concern

Benet—"The Church has always been primarily concerned with maintaining and increasing its membership. The sacraments are designed to keep people in the Church and to ensure that the rest of the family joins them there. Communion is the reaffirmation of membership; marriage is only performed, ideally, between two Church members-if one of the partners is a nonmember, he is urged to convert, or at least promise to bring the children up in the faith. Wherever the Church touches family life, its main concern is its own survival, and everything it enjoins on its membership follows from this." p55

Church v Family

Benet—"This substitution of the religious family for the secular one has led to some conflicts, but it has also made the Church very flexible in its response to different ways of organizing society. The legitimation of bastards on the marriage of their parents was part of canon law long before it was part of the common law of England, because it was a way of obtaining new members (illegitimate people could not be Church members, because they were outside society altogether). The 'rescue' of fallen women was part of Church work long before the rest of society would have anything to do with them; again, this was to the Church's advantage, because it meant that they would stay within the Church's jurisdiction." p56

Orphans and abandoned children

Benet—'Naturally, orphans and abandoned children figured early and prominently in the history of the Church's social work. Today, they still fill Church orphanages and from there the religious orders-in many parts of the world."p56

Church equivocal re adoption

Benet—"Adoption has always been an equivocal act in the eyes of the Church. Although nowadays it is a recognized part of social welfare work, and as such accepted by the Church as well as by the secular agencies engaged in such work, it is hard to track down a specific Christian dictum on the subject. All that can be said with certainty is that when adoption was likely to bring new Church members, it was approved; when it was likely to lose potential recruits, it was disapproved. Today, Church adoption agencies, especially Catholic ones, are unwilling to let children go to adopters outside the faith." p56

Decline of church

Benet—"The decline of the power of the Church, and the growing involvement of the state in social welfare work, were the preconditions of modern adoption practice." p56

Tudor Poor Laws

An important background of English adoption law, and some myths that persist to this day. With modifications the poor laws existed for 350 years in an attempt to contain and suppress the problems of poverty arising from the social upheavals of the time. They were originally developed to protect the interests of the 'respectable' classes who, by their fortunate position, were unlikely to need help and

who believed poverty and social vulnerability sprang from innate defects in the needy.

After disintegration of feudal system

Benet— "under which everyone had a place somewhere in the hierarchy, and orphans were easily absorbed into aristocratic households, *there was an interim period during which parentless children were nobody's responsibility.* This was the period during which modern capitalism was establishing itself. In England the attack on the Roman Church helped to destroy the Medieval order, and social problems that had been solved by the Church and nobility were placed squarely at the door of the state." p58.

Short childhood

Benet— "The dangers of infant mortality induced Medieval parents to push their children into the adult world as soon as possible, usually between the ages of 7 and 9. Even before that age, children, particularly in the upper classes, were frequently fostered by relatives or by nurses. Wet-nursing was necessary for any child whose own mother could not feed it, but among the well-off it reached the status of an institution... Maternal deprivation during the nursing and fostering period is something we would be conscious of today, but it was not widely recognized at the time." p57

Source MK Benet 'The Character of Adoption' Jonathan Cape 1976

Apprenticeship system

Kennard— "Between 13th & 17th centuries the apprenticeship system grew until all classes were involved. This involved a child living as part of another family in order to receive training that their family of origin could not provide. Orphans were also apprenticed which placed them in a family and helped delay the need to legalise adoption. After the 17th century the apprenticeship system declined until only the working class were involved."

Source Jill Kennard. Thesis 'Adoption Information: The Repossession of Identity' 1991 Victoria University, Wellington. p7

Child Adoption in England and Scotland-

McWhinnie—Historical Review of Community Attitudes and Legislative Provision.

Feudal times

McWhinnie—In England in feudal times the bastard of lowly origin had no legal rights but under the feudal system there were no un-wanted children in the modern sense. The lord of the manor had obligations to all his people and this included legitimate, illegitimate and orphaned children. Furthermore, labour, together with land, were the two forms of wealth in those days and so future potential labour was valuable. A further factor was the universal influence at that time of the Roman Catholic Church which, although hierarchical and feudal in administrative structure, yet viewed all its members as having an equal right to the sacrament and to eternal salvation. p2

Tudor and Shakespearean England

In Tudor and Shakespearean England, bastardy was more or less socially acceptable. By this time, however, society in England was much less static and was also becoming much more secularised. With the decline of the influence of the Roman Catholic Church, and so of its charitable functions, Poor Law legislation was introduced, which could not be described either as charitable or as merciful. During the Puritan regime, with its strict adherence to a moral code, a social stigma began to be clearly attached to illegitimacy. Despite a less rigid attitude during the Restoration period, the general attitude in the centuries that followed was to view the illegitimate child, like the pauper child, as socially inferior. The community was critical and hostile towards such children throughout their lives, and stigma was attached both to the child and to the unmarried parent. p2

Industrial revolution

During the eighteenth and early nineteenth centuries, with the disrupting influences on society of the industrial revolution, and the resulting conditions of work, particularly as they affected women and children, there was no social conscience about the care of the illegitimate child, which was frequently abandoned by its mother and died. Anthony Trollope, who referred to such a child as a 'nameless child', illustrates the attitude of Victorian respectability. Charles Dickens, however, who stirred the public conscience about the plight of children in workhouses, in foundling hospitals and the like, clearly identified with the illegitimate child in making Esther Summerson his heroine in *Bleak House.* In the second half of the nineteenth century there was a growing concern for children, with the beginnings of such organisations as Dr Barnardo's Homes, the London Society for the Prevention of Cruelty to Children, the Waifs and Strays Society, and the Homes for Catholic Destitute children. Although, however, there was this growing concern for children, only very gradually did a more en-lightened attitude develop towards the problems of the ille-gitimate child, and infanticide was still common. p3

English Common Law rights

Regarding the adoption of children, another significant influence in England was that of the English Common Law with its emphasis on the rights of the natural parents. This tended to discourage the adoption of children, although in fact this was done in an informal way, as *de facto* adoptions and on the basis of wards in Chancery. This practice is reflected in literature by such examples as Little Effie in *Silas Marner,* Rose Maylie in *Oliver Twist* and Henry Fielding's *Tom Jones.* In Scotland there has for long been a tradition of fostering and *de facto* adoption. Child adoption on the whole, however, was viewed as rather unconventional and as appropriate only for the working classes until the First World War brought a change in many previously accepted social standards. Any adoption arrangements prior to this had been made informally and usually directly between the individuals concerned. There was no method of giving legal status to such arrangements and in fact the whole practice had been open to much abuse. p3

Source Alexina Mary McWhinnie 'Adopted Children How

POOR LAWS ENGLAND 1536-1948

Background

The tradition of the village supporting it's poor has been firmly established from Saxon times, in fact the term Lady is from the *old english hlafdige*, loaf maker and dole from the *old english dal* to distribute. This tradition was as much necessity as compassion, the open field system of farming was very much a communal way of life depending on mutual co-operation and the preservation of a labour force. This was a fact of life as much for the Lord of the Manor as for the ordinary village population as the villagers would work the manorial lands as part of their tenancy agreement.

Throughout the 14th to 16th centuries the wealth of Britain was underwritten by the wool trade and in the quest for this wealth large tracts of land were turned over to sheep farming. This eventually led to an underclass of dispossessed poor wandering the countryside seeking work, settlement and charity. Worse still, an Elizabethan population increase of 25% and a series of disastrous famines in the 1590's led to an increase in poverty which could not be alleviated under the old system of individual philanthropy. This posed a threat to the stability of the realm and with this view a series Elizabethan poor law acts were passed in 1563, 1572, 1576, 1597 and 1601.

In 1563 the poor were categorized for the first time into deserving, (*the elderly and the very young, the infirm, and families who occasionally found themselves in financial difficulties due to a change in circumstance*), they were considered deserving of social support and the undeserving, (*these were people who often turned to crime to make a living such as highwaymen or pickpockets, migrant workers who roamed the country looking for work, and individuals who begged for a living*), who were to be treated harshly. The act of 1572 introduced the first compulsory poor local poor law tax, an important step acknowledging that alleviating poverty was the responsibility of local communities, in 1576 the concept of the workhouse was born and in 1597 the post of overseer of the poor was created. The great act of 1601 consolidated all the previous acts and set the benchmark for the next 200+ years.

The Poor Laws passed during the reign of Elizabeth I played a critical role in the country's welfare. They signaled an important progression from private charity to welfare state, where the care and supervision of the poor was embodied in law and integral to the management of each town, village and hamlet. Another sign of their success was that the disorder and disturbance which had been feared by Parliament failed to materialize. But problems remained. There is no doubt that the laws helped the destitute by guaranteeing a minimum level of subsistence, but those who were scraping a living did not qualify for help and continued to struggle. And, as the years wore on and the population continued to increase, the provisions made to care for the poor became stretched to the limit. It is, however, a tribute to their lasting success that two of the Acts, from 1597 and 1601, endured until well into the nineteenth Century.

Poor Laws 1601-1834

The unit of local government was an always had been the parish but within an ecclesiastical parish there could be more than one poor law parish usually reflecting ancient Manors or Chapelries. *For example, in Leicestershire, Sheepy Magna had been a parish from at least the 12th century but encompassed the Chapelry of Ratcliffe Culey and the Hamlet of Sheepy Parva, each operated it's own poor law system*. Everyone would have a parish of legal settlement an if relief was required it would be the responsibility of that parish to provide it. The parish was required to elect each Easter two "

" who were responsible for setting the poor rate, it's collection and the relief of those in need, these overseers should ideally be, "*substantial householders*" but in small villages the only practical qualification was to be a rate payer. In rural England where 90% of the population lived this was a fair and equitable system run by local people and administered by the local Justices of the Peace who were likely to be the Rector and local landowners. Following 1834 all this changed as parliament denigrated the system bit by bit in response to the growth of the large industrial towns and their very different problems.

Legal settlement

Legal settlement was the overlying principle of poor relief, the qualifications for which were as follows :-

1 To be born in a parish of legally settled parent(s)

2 Up to 1662 by living there for 3 years . After 1662 you could be thrown out within 40 days and after 1691 you had to give 40 days notice before moving in.

3 Renting property worth more than £10 per annum in the parish or paying taxes on such a property.

4 Holding a Parish Office.

5 Being hired by a legally settled inhabitant for a continuous period of 365 days. (*most single labourers were hired from the end of Michaelmas week till the beginning of the next Michaelmas so avoiding the grant of legal settlement*). By the time you were married, had proved your worth and gained experience then longer hirings were possible therefore changing legal settlement.

6. Having served a full apprenticeship to a legally settled man for the full 7 years.

7 Having previously been granted poor relief. This condition implied that you had previously been accepted as being legally settled and was usually only referred to in **settlement examinations**.

8 Females changed their legal settlement on marriage, adopting their husbands legal place of settlement. (*If a girl married a certificate man in her own parish and he died, she would automatically be removed to his place of legal settlement along with any issue from the marriage*).

If you could not satisfy these requirements you could move into a new parish using a **settlement certificate** providing your home parish would issue one. This was virtually a form of indemnity issued by your home parish stating that you and your family and future issue belonged to them and they would take you all back at their

expense if you became chargeable to the parish. Because of the expense of removal it would be unlikely your home parish would issue a certificate for a parish a large distance away. A settlement certificate was only valid if it bore the seals of the overseers of both parishes and that of the local Justices and was not transferable.

Removal

If you or your family became or threatened to become reliant on parish relief and you could not satisfy the strict guidelines for legal settlement then you were liable to be removed to the place of your last legal settlement. If you were a certificate man the you would be carted back to your old parish at their expense but if no settlement certificate was in force then a **removal order** was applied for from the local Justices of the Peace. This would usually involve an **Examination as to Settlement** carried out before the local justice, overseers and another ratepayer in order to ascertain your place of last legal settlement. In tenuous cases others may have to be examined also, parents, grandparents and siblings, these examinations could run into many pages virtually the life story of the individuals family.

Parish apprentices

Children of poor families, orphans and widows children were often apprenticed at the parishes expense to masters in other parishes. This was a way of disposing of possible future problems by altering their legal settlement status. If they served their full term of seven years then their legal settlement would be at the place of their masters settlement. Girls were usually apprenticed until they attained 21 or got married, *problem solved*, and boys till they were 24. This extra three years gave the master a bit more cheap labour as an incentive. Although many of these apprenticeships were just an excuse for cheap labour some were meaningful, I have found many a parish apprentice prospering at his new home and in fact taking apprentices from his old parish later on. The **Parish Indentures** were important documents and sworn before the local Justice by the overseers and the churchwardens, Two copies were made one for the master and one for the parish. The master had a legal obligation to feed cloth and impart the *mysteries* of his trade for the duration of the contract.

Illegitimacy

Illegitimacy during this period was no big deal, it was accepted it happened and did not appear to be any bar to future marriage to the girl in question. Where it was a problem was with the poorer class of labourer who lived on the brink of poverty.

When a girl from this class reached 13 or even earlier she would be placed in service some ware, so decreasing the financial burden on the household, if she became pregnant she would invariably lose her job and be thrown back on her family for support. The home parish would naturally become concerned that this would force the family into relief and if she died in childbirth, a real risk, there would be an orphan to support. If she was working away from her own parish, at the first sign of her pregnancy, she would be removed as if the child was born there she could claim relief whilst the child was *at nurse*, defined as up to the age of 3 years. With this in mind there was a necessity to try to find out who the father was. The girl would be examined and if the father could be identified then an order for both maintenance and the cost of delivering the child would be issued. Issued by the church wardens and overseers of the poor this order would be implemented by the parish constable and in default a warrant was frequently issued and his possessions could be sold towards the debt. These orders were commonly called **filiation orders** or **bastardy bonds**. The maintenance order could be a lump sum paid to the parish, a minimum of £40, usually out of the question for most fathers or fixed sum for the *lying in* and a weekly allowance until the child was 14 years. A labourer would have a smaller sum fixed say 2s a week and a master or farmer up to 3s 6d.

Parish relief

The forms parish relief would take are varied. Where they survive, the overseers account books give a remarkable insight into village life, listing not only the rate payers but the recipients and the reasons for their relief. Money was not the only form of out relief, most parishes had houses set aside for the old or destitute. These could be either owned by the village, given as a charitable donation, (*alms houses*), or rented specifically for the purpose. Most charity almshouses were administered by the church and would appear in the church wardens account books; those specially purchased, built or rented by the poor rate were administered by the overseers. Orphans could be boarded out to local families and clothes or material to make clothes were provided as was the provision of medical care either by the local *nurse*! or in some cases doctor.

The money came from the **poor rate**, set annually by the overseers and various charities. The charities could be quite ancient and often held and administered by the Rector or Patron, these were often the source of litigation and to this end many churches had charity boards in the vestry or tower listing them. Other forms or charity could be land left by someone for the benefit of the poor, many villages had their *poor's piece* which was tendered for annually. Many other charities specified bread or ale on certain days or bibles for the poor children.

Other sources of income would come from ratepayers who were pressured into accepting those on relief as temporary labourers and the income from letting the lanes of the village for grazing and hay making. The poor would often be put to work by the parish surveyor repairing the roads and lanes. Details of these activities are usually found in the parish constables accounts book.

Rarely found but often intriguing are pauper's inventories. These list the property and possessions of someone receiving parish relief with a view to ascertaining his wealth.

After 1834

The poor law was radically following the great reform act of 1834. The main difference was that the relief of the

poor was changed from a local responsibility into a group one. Groups of parishes were consolidated into Poor Law Unions so removing the local community responsibility. Out relief was discouraged and the workhouses, which had been in existence for the previous two centuries, became the primary source of relief. Throughout the remainder of the 19th century the laws were tightened and modified until the administration was transferred to the Ministry of Health in 1918. It was not until 1930 that the poor laws were finally abolished. If you haven't already done so visit this site

Sourcewww.mdlp.co.uk/resources/general/poor_low. htm

English Poor Laws - Detail

George Boyer, Cornell University—A compulsory system of poor relief was instituted in England during the reign of Elizabeth I. Although the role played by poor relief was significantly modified by the Poor Law Amendment Act of 1834, the Crusade Against Outrelief of the 1870s, and the adoption of various social insurance programs in the early twentieth century, the Poor Law continued to assist the poor until it was replaced by the welfare state in 1948. For nearly three centuries, the Poor Law constituted "a welfare state in miniature," relieving the elderly, widows, children, the sick, the disabled, and the unemployed and underemployed (Blaug 1964). This essay will outline the changing role played by the Poor Law, focusing on the eighteenth and nineteenth centuries.

The origins of the Poor Law

While legislation dealing with vagrants and beggars dates back to the fourteenth century, perhaps the first English poor law legislation was enacted in 1536, instructing each parish to undertake voluntary weekly collections to assist the "impotent" poor. The parish had been the basic unit of local government since at least the fourteenth century, although Parliament imposed few if any civic functions on parishes before the sixteenth century. Parliament adopted several other statutes relating to the poor in the next sixty years, culminating with the Acts of 1597-98 and 1601 (43 Eliz. I c. 2), which established a compulsory system of poor relief that was administered and financed at the parish (local) level. These Acts laid the groundwork for the system of poor relief up to the adoption of the Poor Law Amendment Act in 1834. Relief was to be administered by a group of overseers, who were to assess a compulsory property tax, known as the poor rate, to assist those within the parish "having no means to maintain them." The poor were divided into three groups: able-bodied adults, children, and the old or non-able-bodied (impotent). The overseers were instructed to put the able-bodied to work, to give apprenticeships to poor children, and to provide "competent sums of money" to relieve the impotent.

Deteriorating economic conditions and loss of traditional forms of charity in the 1500s

The Elizabethan Poor Law was adopted largely in response to a serious deterioration in economic circumstances, combined with a decline in more traditional forms of charitable assistance. Sixteenth century England experienced rapid inflation, caused by rapid population growth, the debasement of the coinage in 1526 and 1544-46, and the inflow of American silver. Grain prices more than tripled from 1490-1509 to 1550-69, and then increased by an additional 73 percent from 1550-69 to 1590-1609. The prices of other commodities increased nearly as rapidly — the Phelps Brown and Hopkins price index rose by 391 percent from 1495-1504 to 1595-1604. Nominal wages increased at a much slower rate than did prices; as a result, real wages of agricultural and building laborers and of skilled craftsmen declined by about 60 percent over the course of the sixteenth century. This decline in purchasing power led to severe hardship for a large share of the population. Conditions were especially bad in 1595-98, when four consecutive poor harvests led to famine conditions. At the same time that the number of workers living in poverty increased, the supply of charitable assistance declined. The dissolution of the monasteries in 1536-40, followed by the dissolution of religious guilds, fraternities, almshouses, and hospitals in 1545-49, "destroyed much of the institutional fabric which had provided charity for the poor in the past" (Slack 1990). Given the circumstances, the Acts of 1597-98 and 1601 can be seen as an attempt by Parliament both to prevent starvation and to control public order.

The Poor Law, 1601-1750

It is difficult to determine how quickly parishes implemented the Poor Law. Paul Slack (1990) contends that in 1660 a third or more of parishes regularly were collecting poor rates, and that by 1700 poor rates were universal. The Board of Trade estimated that in 1696 expenditures on poor relief totaled £400,000 (see Table 1), slightly less than 1 percent of national income. No official statistics exist for this period concerning the number of persons relieved or the demographic characteristics of those relieved, but it is possible to get some idea of the makeup of the "pauper host" from local studies undertaken by historians. These suggest that, during the seventeenth century, the bulk of relief recipients were elderly, orphans, or widows with young children. In the first half of the century, orphans and lone-parent children made up a particularly large share of the relief rolls, while by the late seventeenth century in many parishes a majority of those collecting regular weekly "pensions" were aged sixty or older. Female pensioners outnumbered males by as much as three to one (Smith 1996). On average, the payment of weekly pensions made up about two-thirds of relief spending in the late seventeenth and early eighteenth centuries; the remainder went to casual benefits, often to able-bodied males in need of short-term relief because of sickness or unemployment.

Settlement Act of 1662

One of the issues that arose in the administration of relief was that of entitlement: did everyone within a parish have a legal right to relief? Parliament addressed this question in the Settlement Act of 1662, which formalized the notion that each person had a parish of settlement, and which gave parishes the right to remove within forty days of arrival any newcomer deemed "likely to be chargeable" as well as any non-settled applicant for relief. While Adam

Smith, and some historians, argued that the Settlement Law put a serious brake on labor mobility, available evidence suggests that parishes used it selectively, to keep out economically undesirable migrants such as single women, older workers, and men with large families.

Relief expenditures increased sharply in the first half of the eighteenth century, as can be seen in Table 1. Nominal expenditures increased by 72 percent from 1696 to 1748-50 despite the fact that prices were falling and population was growing slowly; real expenditures per capita increased by 84 percent. A large part of this rise was due to increasing pension benefits, especially for the elderly. Some areas also experienced an increase in the number of able-bodied relief recipients. In an attempt to deter some of the poor from applying for relief, Parliament in 1723 adopted the Workhouse Test Act, which empowered parishes to deny relief to any applicant who refused to enter a workhouse. While many parishes established workhouses as a result of the Act, these were often short-lived, and the vast majority of paupers continued to receive outdoor relief (that is, relief in their own homes).

The Poor Law, 1750-1834

The period from 1750 to 1820 witnessed an explosion in relief expenditures. Real per capita expenditures more than doubled from 1748-50 to 1803, and remained at a high level until the Poor Law was amended in 1834 (see Table 1). Relief expenditures increased from 1.0% of GDP in 1748-50 to a peak of 2.7% of GDP in 1818-20 (Lindert 1998). The demographic characteristics of the pauper host changed considerably in the late eighteenth and early nineteenth centuries, especially in the rural south and east of England. There was a sharp increase in numbers receiving casual benefits, as opposed to regular weekly pensions. The age distribution of those on relief became younger — the share of paupers who were prime-aged (20- 59) increased significantly, and the share aged 60 and over declined. Finally, the share of relief recipients in the south and east who were male increased from about a third in 1760 to nearly two-thirds in 1820. In the north and west there also were shifts toward prime-age males and casual relief, but the magnitude of these changes was far smaller than elsewhere (King 2000).

Gilbert's Act and the Removal Act

There were two major pieces of legislation during this period. Gilbert's Act (1782) empowered parishes to join together to form unions for the purpose of relieving their poor. The Act stated that only the impotent poor should be relieved in workhouses; the able-bodied should either be found work or granted outdoor relief. To a large extent, Gilbert's Act simply legitimized the policies of a large number of parishes that found outdoor relief both less and expensive and more humane that workhouse relief. The other major piece of legislation was the Removal Act of 1795, which amended the Settlement Law so that no non-settled person could be removed from a parish unless he or she applied for relief.

Speenhamland System and other forms of poor relief

During this period, relief for the able-bodied took various forms, the most important of which were: allowances-in-aid-of-wages (the so-called Speenhamland system), child allowances for laborers with large families, and payments to seasonally unemployed agricultural laborers. The system of allowances-in-aid-of-wages was adopted by magistrates and parish overseers throughout large parts of southern England to assist the poor during crisis periods. The most famous allowance scale, though by no means the first, was that adopted by Berkshire magistrates at Speenhamland on May 6, 1795. Under the allowance system, a household head (whether employed or unemployed) was guaranteed a minimum weekly income, the level of which was determined by the price of bread and by the size of his or her family. Such scales typically were instituted only during years of high food prices, such as 1795-96 and 1800-01, and removed when prices declined. Child allowance payments were widespread in the rural south and east, which suggests that laborers' wages were too low to support large families. The typical parish paid a small weekly sum to laborers with four or more children under age 10 or 12. Seasonal unemployment had been a problem for agricultural laborers long before 1750, but the extent of seasonality increased in the second half of the eighteenth century as farmers in southern and eastern England responded to the sharp increase in grain prices by increasing their specialization in grain production. The increase in seasonal unemployment, combined with the decline in other sources of income, forced many agricultural laborers to apply for poor relief during the winter.

Regional differences in relief expenditures and recipients Table 2 reports data for fifteen counties located throughout England on per capita relief expenditures for the years ending in March 1783-85, 1803, 1812, and 1831, and on relief recipients in 1802-03. Per capita expenditures were higher on average in agricultural counties than in more industrial counties, and were especially high in the grain-producing southern counties — Oxford, Berkshire, Essex, Suffolk, and Sussex. The share of the population receiving poor relief in 1802-03 varied significantly across counties, being 15 to 23 percent in the grain- producing south and less than 10 percent in the north. The demographic characteristics of those relieved also differed across regions. In particular, the share of relief recipients who were elderly or disabled was higher in the north and west than it was in the south; by implication, the share that were able-bodied was higher in the south and east than elsewhere. Economic historians typically have concluded that these regional differences in relief expenditures and numbers on relief were caused by differences in economic circumstances; that is, poverty was more of a problem in the agricultural south and east than it was in the pastoral southwest or in the more industrial north (Blaug 1963; Boyer 1990). More recently, King (2000) has argued that the regional differences in poor relief were determined not by economic structure but rather by "very different welfare cultures on the part of both the poor and the poor law administrators."

Causes of the Increase in relief to able-bodied males

What caused the increase in the number of able-

bodied males on relief? In the second half of the eighteenth century, a large share of rural households in southern England suffered significant declines in real income. County-level cross-sectional data suggest that, on average, real wages for day laborers in agriculture declined by 19 percent from 1767-70 to 1795 in fifteen southern grain-producing counties, then remained roughly constant from 1795 to 1824, before increasing to a level in 1832 about 10 percent above that of 1770 (Bowley 1898). Farm-level time-series data yield a similar result — real wages in the southeast declined by 13 percent from 1770-79 to 1800-09, and remained low until the 1820s (Clark 2001).

Enclosures

Some historians contend that the Parliamentary enclosure movement, and the plowing over of commons and waste land, reduced the access of rural households to land for growing food, grazing animals, and gathering fuel, and led to the immiseration of large numbers of agricultural laborers and their families (Hammond and Hammond 1911; Humphries 1990). More recent research, however, suggests that only a relatively small share of agricultural laborers had common rights, and that there was little open access common land in southeastern England by 1750 (Shaw-Taylor 2001; Clark and Clark 2001). Thus, the Hammonds and Humphries probably overstated the effect of late eighteenth-century enclosures on agricultural laborers' living standards, although those laborers who had common rights must have been hurt by enclosures.

Declining cottage industry

Finally, in some parts of the south and east, women and children were employed in wool spinning, lace making, straw plaiting, and other cottage industries. Employment opportunities in wool spinning, the largest cottage industry, declined in the late eighteenth century, and employment in the other cottage industries declined in the early nineteenth century (Pinchbeck 1930; Boyer 1990). The decline of cottage industry reduced the ability of women and children to contribute to household income. This, in combination with the decline in agricultural laborers' wage rates and, in some villages, the loss of common rights, caused many rural household's incomes in southern England to fall dangerously close to subsistence by 1795.

North and Midlands

The situation was different in the north and midlands. The real wages of day laborers in agriculture remained roughly constant from 1770 to 1810, and then increased sharply, so that by the 1820s wages were about 50 percent higher than they were in 1770 (Clark 2001). Moreover, while some parts of the north and midlands experienced a decline in cottage industry, in Lancashire and the West Riding of Yorkshire the concentration of textile production led to increased employment opportunities for women and children.

The political economy of the Poor Law, 1795-1834

A comparison of English poor relief with poor relief on the European continent reveals a puzzle: from 1795 to 1834 relief expenditures per capita, and expenditures as a share of national product, were significantly higher in England than on the continent. However, differences in spending between England and the continent were relatively small before 1795 and after 1834 (Lindert 1998). Simple economic explanations cannot account for the different patterns of English and continental relief.

Labour-hiring farmers take advantage of the poor relief system

The increase in relief spending in the late-eighteenth and early-nineteenth centuries was partly a result of politically-dominant farmers taking advantage of the poor relief system to shift some of their labor costs onto other taxpayers (Boyer 1990). Most rural parish vestries were dominated by labor-hiring farmers as a result of "the principle of weighting the right to vote according to the amount of property occupied," introduced by Gilbert's Act (1782), and extended in 1818 by the Parish Vestry Act (Brundage 1978). Relief expenditures were financed by a tax levied on all parishioners whose property value exceeded some minimum level. A typical rural parish's taxpayers can be divided into two groups: labor-hiring farmers and non-labor-hiring taxpayers (family farmers, shopkeepers, and artisans). In grain-producing areas, where there were large seasonal variations in the demand for labor, labor-hiring farmers anxious to secure an adequate peak season labor force were able to reduce costs by laying off unneeded workers during slack seasons and having them collect poor relief. Large farmers used their political power to tailor the administration of poor relief so as to lower their labor costs. Thus, some share of the increase in relief spending in the early nineteenth century represented a subsidy to labor-hiring farmers rather than a transfer from farmers and other taxpayers to agricultural laborers and their families. In pasture farming areas, where the demand for labor was fairly constant over the year, it was not in farmers' interests to shed labor during the winter, and the number of able-bodied laborers receiving casual relief was smaller. The Poor Law Amendment Act of 1834 reduced the political power of labor-hiring farmers, which helps to account for the decline in relief expenditures after that date.

The New Poor Law 1834-70

The increase in spending on poor relief in the late eighteenth and early nineteenth centuries, combined with the attacks on the Poor Laws by Thomas Malthus and other political economists and the agricultural laborers' revolt of 1830-31 (the Captain Swing riots), led the government in 1832 to appoint the Royal Commission to Investigate the Poor Laws. The Commission published its report, written by Nassau Senior and Edwin Chadwick, in March 1834. The report, described by historian R. H. Tawney (1926) as "brilliant, influential and wildly unhistorical," called for sweeping reforms of the Poor Law, including the grouping of parishes into Poor Law unions, the abolition of outdoor relief for the able-bodied and their families, and the appointment of a centralized Poor Law Commission to direct the administration of poor relief. Soon after the report was published Parliament adopted the Poor Law Amendment Act of 1834, which implemented some of the report's recommendations and left others, like the regulation of outdoor relief, to the three newly appointed Poor Law Commissioners.

By 1839 the vast majority of rural parishes had been grouped into poor law unions, and most of these had built or were building workhouses. On the other hand, the Commission met with strong opposition when it attempted in 1837 to set up unions in the industrial north, and the implementation of the New Poor Law was delayed in several industrial cities. In an attempt to regulate the granting of relief to able-bodied males, the Commission, and its replacement in 1847, the Poor Law Board, issued several orders to selected Poor Law Unions. The Outdoor Labour Test Order of 1842, sent to unions without workhouses or where the workhouse test was deemed unenforceable, stated that able-bodied males could be given outdoor relief only if they were set to work by the union. The Outdoor Relief Prohibitory Order of 1844 prohibited outdoor relief for both able-bodied males and females except on account of sickness or "sudden and urgent necessity." The Outdoor Relief Regulation Order of 1852 extended the labor test for those relieved outside of workhouses.

Historical debate- effect of the New Poor Law

Historians do not agree on the effect of the New Poor Law on the local administration of relief. Some contend that the orders regulating outdoor relief largely were evaded by both rural and urban unions, many of whom continued to grant outdoor relief to unemployed and underemployed males (Rose 1970; Digby 1975). Others point to the falling numbers of able- bodied males receiving relief in the national statistics and the widespread construction of union workhouses, and conclude that the New Poor Law succeeded in abolishing outdoor relief for the able-bodied by 1850 (Williams 1981). A recent study by Lees (1998) found that in three London parishes and six provincial towns in the years around 1850 large numbers of prime-age males continued to apply for relief, and that a majority of those assisted were granted outdoor relief. The Poor Law also played an important role in assisting the unemployed in industrial cities during the cyclical downturns of 1841-42 and 1847-48 and the Lancashire cotton famine of 1862-65 (Boot 1990; Boyer 1997). There is no doubt, however, that spending on poor relief declined after 1834 (see Table 1). Real per capita relief expenditures fell by 43 percent from 1831 to 1841, and increased slowly thereafter.

Beginning in 1840, data on the number of persons receiving poor relief are available for two days a year, January 1 and July 1; the "official" estimates in Table 1 of the annual number relieved were constructed as the average of the number relieved on these two dates. Studies conducted by Poor Law administrators indicate that the number recorded in the day counts was less than half the number assisted during the year. Lees's "revised" estimates of annual relief recipients (see Table 1) assumes that the ratio of actual to counted paupers was 2.24 for 1850- 1900 and 2.15 for 1905-14; these suggest that from 1850 to 1870 about 10 percent of the population was assisted by the Poor Law each year. Given the temporary nature of most spells of relief, over a three year period as much as 25 percent of the population made use of the Poor Law (Lees 1998).

The crusade against outrelief

In the 1870s Poor Law unions throughout England and Wales curtailed outdoor relief for all types of paupers. This change in policy, known as the Crusade Against Outrelief, was not a result of new government regulations, although it was encouraged by the newly formed Local Government Board (LGB). The Board was aided in convincing the public of the need for reform by the propaganda of the Charity Organization Society (COS), founded in 1869. The LGB and the COS maintained that the ready availability of outdoor relief destroyed the self-reliance of the poor. The COS went on to argue that the shift from outdoor to workhouse relief would significantly reduce the demand for assistance, since most applicants would refuse to enter workhouses, and therefore reduce Poor Law expenditures. A policy that promised to raise the morals of the poor *and* reduce taxes was hard for most Poor Law unions to resist (MacKinnon 1987).

The effect of the Crusade can be seen in Table 1. The deterrent effect associated with the workhouse led to a sharp fall in numbers on relief — from 1871 to 1876, the number of paupers receiving outdoor relief fell by 33 percent. The share of paupers relieved in workhouses increased from 12-15 percent in 1841-71 to 22 percent in 1880, and it continued to rise to 35 percent in 1911. The extent of the crusade varied considerably across poor law unions. Urban unions typically relieved a much larger share of their paupers in workhouses than did rural unions, but there were significant differences in practice across cities. In 1893, over 70 percent of the paupers in Liverpool, Manchester, Birmingham, and in many London Poor Law unions received indoor relief; however, in Leeds, Bradford, Newcastle, Nottingham and several other industrial and mining cities the majority of paupers continued to receive outdoor relief (Booth 1894).

Change in the attitude of the poor toward relief

The last third of the nineteenth century also witnessed a change in the attitude of the poor towards relief. Prior to 1870, a large share of the working class regarded access to public relief as an entitlement, although they rejected the workhouse as a form of relief. Their opinions changed over time, however, and by the end of the century most workers viewed poor relief as stigmatizing (Lees 1998). This change in perceptions led many poor people to go to great lengths to avoid applying for relief, and available evidence suggests that there were large differences between poverty rates and pauperism rates in late Victorian Britain. For example, in York in 1900, 3,451 persons received poor relief at some point during the year, less than half of the 7,230 persons estimated by Rowntree to be living in primary poverty.

The Declining Role of the Poor Law, 1870-1914

Increased availability of alternative sources of assistance

The share of the population on relief fell sharply from 1871 to 1876, and then continued to decline, at a much slower pace, until 1914. Real per capita relief expenditures increased from 1876 to 1914, largely because the Poor Law provided increasing amounts of medical care

for the poor. Otherwise, the role played by the Poor Law declined over this period, due in large part to an increase in the availability of alternative sources of assistance. There was a sharp increase in the second half of the nineteenth century in the membership of friendly societies — mutual help associations providing sickness, accident, and death benefits, and sometimes old age (superannuation) benefits — and of trade unions providing mutual insurance policies. The benefits provided workers and their families with some protection against income loss, and few who belonged to friendly societies or unions providing "friendly" benefits ever needed to apply to the Poor Law for assistance.

Work relief

Local governments continued to assist unemployed males after 1870, but typically not through the Poor Law. Beginning with the Chamberlain Circular in 1886 the Local Government Board encouraged cities to set up work relief projects when unemployment was high. The circular stated that "it is not desirable that the working classes should be familiarised with Poor Law relief," and that the work provided should "not involve the stigma of pauperism." In 1905 Parliament adopted the Unemployed Workman Act, which established in all large cities distress committees to provide temporary employment to workers who were unemployed because of a "dislocation of trade."

Liberal welfare reforms, 1906-1911

Between 1906 and 1911 Parliament passed several pieces of social welfare legislation collectively known as the Liberal welfare reforms. These laws provided free meals and medical inspections (later treatment) for needy school children (1906, 1907, 1912) and weekly pensions for poor persons over age 70 (1908), and established national sickness and unemployment insurance (1911). The Liberal reforms purposely reduced the role played by poor relief, and paved the way for the abolition of the Poor Law.

The last years of the Poor Law

During the interwar period the Poor Law served as a residual safety net, assisting those who fell through the cracks of the existing social insurance policies. The high unemployment of 1921-38 led to a sharp increase in numbers on relief. The official count of relief recipients rose from 748,000 in 1914 to 1,449,000 in 1922; the number relieved averaged 1,379,800 from 1922 to 1938. A large share of those on relief were unemployed workers and their dependents, especially in 1922-26. Despite the extension of unemployment insurance in 1920 to virtually all workers except the self-employed and those in agriculture or domestic service, there still were large numbers who either did not qualify for unemployment benefits or who had exhausted their benefits, and many of them turned to the Poor Law for assistance. The vast majority were given outdoor relief; from 1921 to 1923 the number of outdoor relief recipients increased by 1,051,000 while the number receiving indoor relieve increased by 21,000.

Poor Law becomes redundant and is repealed

Despite the important role played by poor relief during the interwar period, the government continued to adopt policies, which bypassed the Poor Law and left it "to die by attrition and surgical removals of essential organs" (Lees 1998). The Local Government Act of 1929 abolished the Poor Law unions, and transferred the administration of poor relief to the counties and county boroughs. In 1934 the responsibility for assisting those unemployed who were outside the unemployment insurance system was transferred from the Poor Law to the Unemployment Assistance Board. Finally, from 1945 to 1948, Parliament adopted a series of laws that together formed the basis for the welfare state, and made the Poor Law redundant. The National Assistance Act of 1948 officially repealed all existing Poor Law legislation, and replaced the Poor Law with the National Assistance Board to act as a residual relief agency.

See full article for Tables on Internet. Table 1. Relief Expenditures and Numbers on Relief 1696-1936. Table 2 County-level Poor Relief Data 1783-1831.

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Source Boyer, George. "English Poor Laws". EH.Net Encyclopedia, edited by Robert Whaples. May 8, 2002. URLhttp://eh.net/encyclopedia/?article=boyer.poor.laws. england

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Poor Laws began 1597

Kennard— **(a)** Continued in different forms for more than 350 years.

(b) Administered by each parish and intended to prevent destitute families from starving.

(c) Emphasis was more to discourage or punish parents who used them, rather than promote wellbeing of children.

(d) Believed poor parents were eager to get rid of their children and must be discouraged from doing so.

(e) Believed mothers of illegitimate children deserved to suffer for their sins.

(f) Therefore, conditions in workhouses were very severe with little chance of rehabilitation for parents or children.

These beliefs underpin some of the myths that still persist today. Adoption of these children was seen as only encouraging the parents and was therefore discouraged. Another factor that strengthened the British reluctance to adopt was the importance they placed on inheritance and the continuation of the bloodline, if necessary by a distant relative. Adoption was seen as threatening this foundation of their society. The possible crossing of class barriers by way of adoption was also seen as unacceptable. Kennard 1991 p7

Benet—"Among the indigent for whom it made provision, abandoned, orphaned, and destitute children figured prominently. In all sections of society...the common practice was for children to leave the family environment early in life. In this respect, therefore, poor children who came under the aegis of these Acts were originally not treated very differently from children in other sections of the community, although the pattern established by statute in the sixteenth century involved untold misery for the children of the poor in later centuries, by which time, in other classes, separation of persons and children had been largely abandoned." p58

Source J Kennard. Thesis 'Adoption Information' 1991

Administered by Parish

Benet—"Poor Laws were a legacy of Medieval concern for the people under one's protection; but the fact that they were administered by the parishes, rather than centrally, meant that every parish attempted to keep its poor rate down by harrying the beneficiaries out of the district. The use of the law to support indigent children was very strictly administered. Christian morality decreed, and rate payers agreed, that the parents should be held responsible for such children if at all possible; bearing an illegitimate child carried a criminal sentence, and the mother could not leave the child in the care of the authorities without coming under their jurisdiction herself. Even when this did not mean prison, it certainly meant the workhouse; a fate that became notorious in history. The basic idea was to keep the poor rate low, which resulted in a system based on deterring those in need from using it. Not only were food and lodging of the most meagre kind, but families were separated: children were often housed in separate institutions until they were old enough for the men's and women's houses." p59

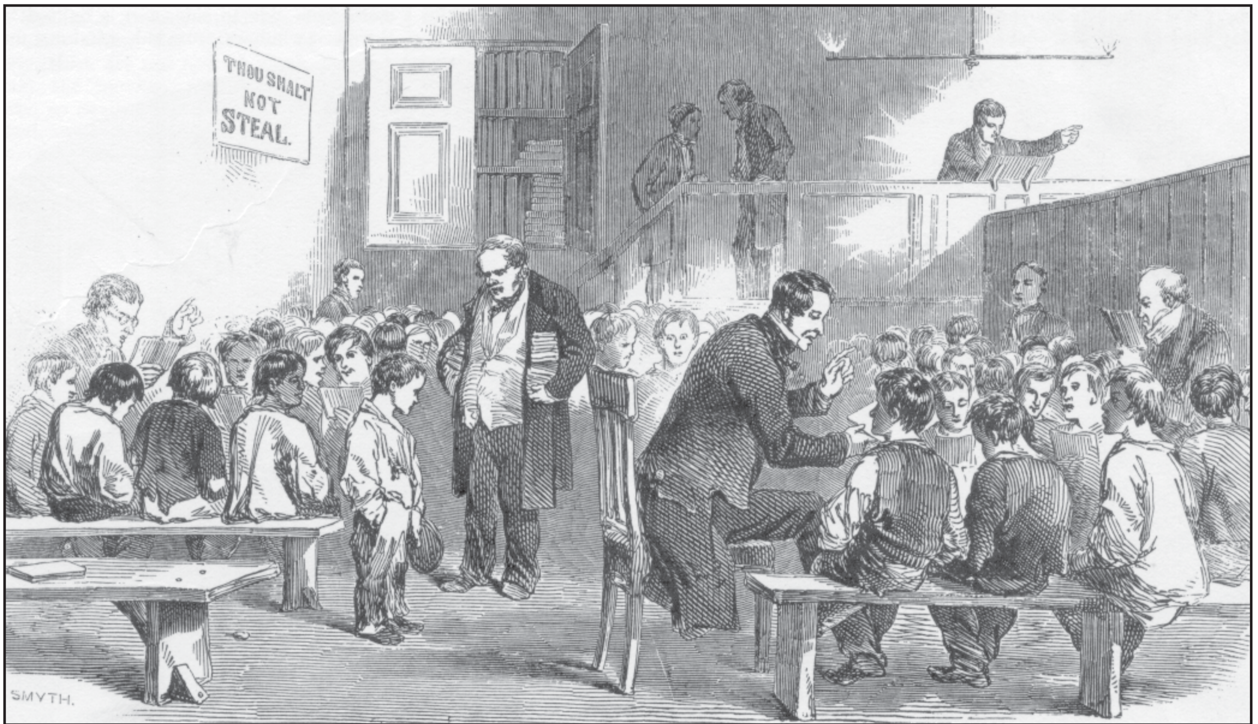
Poor laws and class warfare

"For 300 years, the Poor Laws were used as an instrument of class warfare. It was widely believed that the poor were eager to abandon their children and thus avoid responsibility for their support: thus the willingness of the authorities to care for them was hedged about with humiliating restrictions. As codified in 1834, the four principles of poor relief— which was only available to a man poorer that the poorest labourer, many of whom were themselves well below the 'poverty line') were—

1 The loss of personal reputation- stigma of pauperism.

2 The loss of personal freedom- detention in workhouse.

3 The loss of political freedom- disenfranchisement.



The Lambeth “Ragged School” for boys

The Lambeth “Ragged School” for Girls

“For children who are too ragged, wretched, filfthy and forlorn, to enter any other place: who could not gain admission into no charity school, and who would be driven from any churchdoor: are invited in here”

4 Tasks in workhouse were both irksome and unskilled."

Poverty trap

Benet—"The operation of the Poor Laws had the paradoxical effect of preventing anyone who once fell under their sway from ever again being financially independent. Children who grew up in these institutions were typically both emotionally and physically unfit to lead a normal life. Adoption was not encouraged, as it would have been seen as an incentive to the irresponsible poor to abandon their children even more readily. The unmarried mother must bear the consequences of her act— consequences which were visited even more heavily on her child." p60

Statutes of Labourers 1349-1350

Benet—The Statutes came about in response to several forces creating social upheaval in England in the 1300s—(a) The demise of feudalism which was being replaced by capitalism; (b) The Black Plague-1348-1349, killed almost a third of England's population and (c) Famine. These created an acute labour shortage. These forces were breaking down the feudal system and created economic dislocation as more people left the feudal manors and roamed the land looking for better work.

Source M K Benet 'The Character of Adoption' Johathan Cape 1976.

Poor Law Conclusions

Quigley— Out of 500 years of English Poor Laws grew many legislative principles regulating the working and nonworking poor...effectively created an English Code of Labour. *Free labour*, where workers could decide for themselves whom they wanted to work for and how long they wanted to work, was still relatively rare. *Unfree labour,* where the employer could enforce his will with criminal penalties including imprisonment, was the norm. While the old economic and social order was phasing out, the poor laws were, in large part, attempts to hold on to the economic relationships forged under feudalism.

For the poor who were unable to work, there was a growing acknowledgment that they were entitled to assistance. No longer tied to the feudal lord, or the ecclesiastical authorities, those poor unable to work turned to the civil government for help, and usually received it.

All the poor laws reflect one or more of the following seven major principles.

1 *The government has evolved into increasingly assuming the responsibility* for providing assistance for the poor that was provided by the feudal lord and the church in earlier times. The basic survival of the nonworking poor has become the responsibility of civil authority.

2 *Poverty is rarely treated as a consequence of economic or societal changes*; it is mostly treated as an individual failing. As a consequence the status quo, economic and societal, need not be disturbed in legislating regulations for working and nonworking poor people.

3 *Assistance to nonworking poor must not be generously given nor made too easy to accept.* Assistance will only be given to local, familiar poor who are unable to work; poor people from other places are unwelcome and will be made to feel that way.... Assistance must be provided in a manner that makes only the most desperate poor accept help and at a level below what the lowest-paid worker can earn. Working families of poor people must take responsibility for their poor; children of the poor can be taken from their families and put to work as apprentices.

4 *Society firmly needs to keep poor people labouring.* For two reasons: (a) someone is needed to perform low-paying, unpleasant tasks; (b) there are so many working poor people that the authorities deem it impossible to assist all of them. Therefore, everyone who can work, must. Nonworking poor people are, if unable to work, to be pitied; if able to work, to be set immediately to work, and, *if work is refused, severely and publicly punished.*

5 *The wages and freedom of poor people who do work must be tightly regulated* and if necessary coerced to keep them working at low wages. Refusal to work for regulated wages and conditions will be enforced by criminal penalties moderately imposed on the employer and, severely imposed on the worker.

6 There is an ongoing search for ways to reduce the costs of providing relief to the poor.

7 There is continual, cyclical dissatisfaction with all the methods of providing relief to poor people. Previous reforms will be criticized as either too harsh and punitive, or not tough enough to provide an incentive to work...

These seven principles create powerful forces for continual change in the regulation of the working and nonworking poor. This area of law is never be static.

While occasionally harsh and coercive and awkward by contemporary standards, the 500 years of English poor laws do represent clear progress over the feudal system of serfdom and show an evolution toward improved assistance for the nonworking poor. The labouring poor saw less progress, but ultimately they too were better off than under feudal times.

Although many historians are critical of this system it was in fact the first significant model that recognized that there was a problem with poverty and tried to remedy that through legislation.

Source William P Quigley '500 years of English Poor Laws, 1340-1834; Regulating the Working and Non-working Poor' http://www3.uakron.edu/lawrev/quigley 15/06/2004

Visit of Prince Albert to a soup kitchen, Leicester Square, London 1848

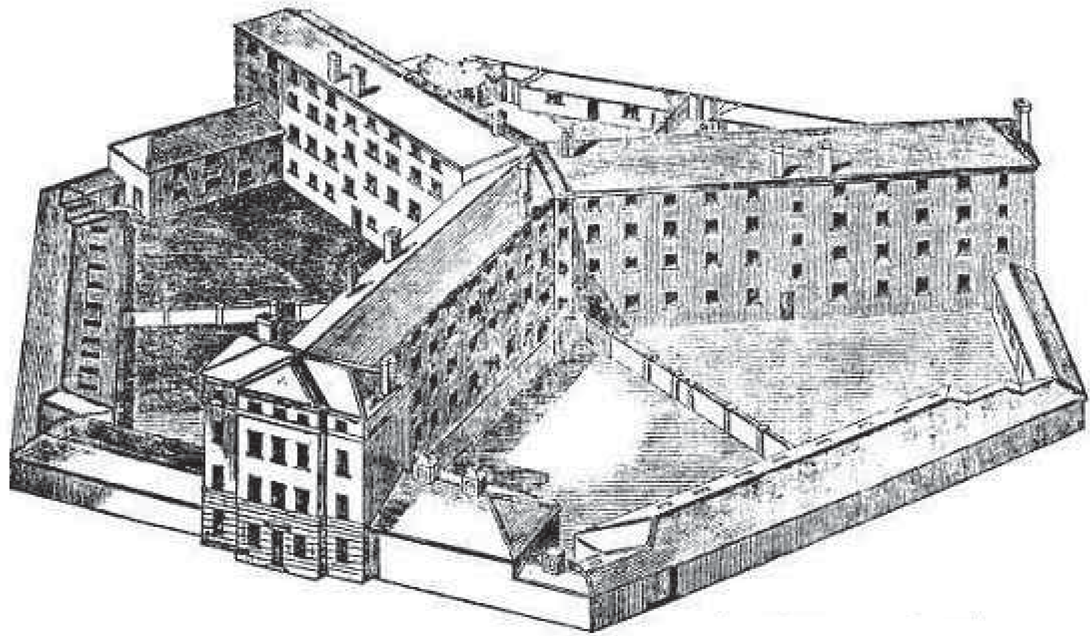
Social conditions for the poor, particularly the British unskilled, continued to be miserable in the mid nineteenth century. (This from Henry Maybew, London Labour and the London Poor 1861)

One of the more popular middle-class responses to working-class distress was the distribution of soup, as here in Litnehouse, one of London's poorest districts in 1868. *(Illustrated London News)*

Even for those with work the conditions were often appalling. Whole families, including children, were involved in scraping a living, as this depiction of matchmakers at Bow in 1871 illustrates. *(Illustrated London News)*

THE WORKHOUSE

Abingdon Workhouse



The Workhouse

Poor Relief Act 1722

Quigley— The Poor Relief Act of 1722, 9th George, Chapter 7, allowed parishes, either alone or with others, to provide houses for the indigent where they could be housed, supervised, and put to work. This act was a reform of the prior system of providing relief to the poor in their own homes. It also established workhouses, called "indoor relief", and allowed parishes to make living in the workhouse a mandatory alternative to the prior system of providing assistance to the poor who still lived in their own homes.

Outdoor relief

Inasmuch as the prior Elizabethan poor laws intended for the unemployed to work, the laws already allowed the justices to levy taxes on everyone and everything of value in order to provide materials for the poor to work on such as "flax, hemp, wool, thread, iron and other necessary ware and stuff." However, since there was no place for the poor to work, they worked on these materials in their own homes under little or no supervision . This system of providing assistance to the poor in their own homes was called "outdoor relief". This system was criticized, among other reasons, for being too easy on the poor and for its growing cost. Some turned to the idea of putting the able-bodied poor to work in supervised institutions, or workhouses.

Housing the poor was not a new idea

There had been poorhouses for some time but they were much different than workhouses. Poorhouses had been in existence since the sixteenth century. They were often nothing more than a few cottages owned by the parish and used to provide shelter for the aged, disabled and sick of the parish.

Parliament had already authorized individuals, but not towns or parishes to build hospitals and work housing for the poor. Other acts of parliament allowed specific locales to combine to build joint workhouses. Prior to this act, there had been no general legal authorization for all jurisdictions to create workhouses.

Reasons for creation

There were two main reasons for the creation of workhouses:

1 To find a way to reduce the costs of poor relief by having the poor perform work that would hopefully pay for their keep; and

2 To make public support for the poor less attractive in the hope that fewer people would apply.

Self supporting idea failed

The parishes were to have the "benefit of the labour" of those in the workhouses and this would allow the workhouse to support itself. The thinking was "that the paupers could be put to remunerative labor," a thinking that turned out to be "so plausible in itself, but so wrong in principle and disastrous in effects." While initially successful in reducing the cost of providing relief to people, the establishment of workhouses ultimately ended up using even more parish resources. The workhouse was in truth at that time kind of a manufactory, carried on at the risk and cost of the poor-rate, employing the worst description of the people, and helping to pauperise the best. For those who thought poverty was the result of idleness and vice, workhouses were the answer:

Provisions

The workhouse provided sufficient food, clothing and shelter but restricted socializing and family relations, movement, clothing, consumption of alcohol and tobacco, and so on. The purpose was to make the receipt of aid so psychologically devastating and so morally stigmatizing that only the truly needy would request it-thus prevent-

ing starvation and homelessness without creating work disincentives.

Test of destitution

Willingness to live in a workhouse effectively became the new test of destitution in every parish that instituted the workhouse. Relief provided to the poor in their homes was now prohibited. Persons who refused to go into the workhouse "shall not be entitled to ask or receive . . . relief from the Churchwardens and Overseers..."[2] Living in the workhouse became yet another stigma that repelled people from seeking assistance and penalized those who did.

Intentions

At first, the workhouses effected a reduction in parochial expenditures they deterred the Poor from making applications for relief. Workhouses were to be closely supervised and controlled and provide shelter and lodging in return for strict discipline and strenuous work. They differed from each other in how those in charge prioritized the various purposes for the workhouses, of which there were many: profitably employing the poor; penalizing the idle; deterring others from applying for relief; housing the impotent poor; and as an asylum for the insane and sick.

Kendal Workhouse 1795

The inmates in the workhouse in Kendall are described by Sir Frederick Eden:

The number of Paupers in the workhouse at present (4th April 1795) is 136; viz. 57 males, and 79 females; 8 are bastards. Of these 38 are under 10 years of age; 26 between 10 and 20; 12 between 20 and 30; 8 between 30 and 40; 15 between 40 and 50; 4 between 50 and 60; 17 between 60 and 70; 10 between 70 and 80; 6 between 80 and 90. Their employments are various: the men are generally employed out of the house; the women spin, and weave Kendall-cottons, & c. children are generally sent to the different manufactories; where they earn about 1s. a week each.

Failure of supervision

While in theory the justices of the peace were still responsible for supervising the poor, in practice those who ran the poorhouses were in control. [They] acted at their own discretion and without interference from the justices... The houses also proved to be breeding grounds for epidemics. They were unsanitary and lacking in accommodation. There was also much promiscuity and the houses were the scene of great cruelty by the contractors to whom they were farmed out and who underpaid those who worked for them.

Refusal to work meant the Workhouse.

Few developments of the poor laws more clearly demonstrate the interrelation of poverty and work than the workhouse. Refusal to work meant the workhouse. How to avoid the workhouse? Stay working for the master.[230] While subsequent laws aimed to make the parishes responsible for providing employment to those who could work, the only real alternative at this time was work at whatever wage could be found or face the workhouse.[231] The workhouse survived for decades despite their expense and administrative problems.

700 Workhouses1732

While there were as many as 700 workhouses by 1732 and probably as many as one out of every three parishes had a workhouse by 1782, outdoor relief slowly returned.

Criticisms of the Workhouse mounted:

One thing is too publicly known to admit of denial, that those workhouses are scenes of filthiness and confusion; that old and young, sick and healthy, are promiscuously crowded into ill-contrived apartments, not of sufficient capacity to contain with convenience half the number of miserable beings condemned to such deplorable inhabitation, and that speedy death is almost ever to the aged and infirm, and often to the youthful and robust, the consequence of removal from more salubrious air to such mansions of putridity.

Reform came slowly.

Reports documenting widespread deaths of infants in the workhouses, as many as 82% of those under one year of age, forced a law compelling the removal of all children under six from the houses.

One successful reformer was Thomas Gilbert, who after twenty years of trying finally persuaded Parliament to pass an act changing the workhouses back into poorhouses. Gilbert's Act of 1782 allowed parishes to only house orphans and the impotent stating that, "no person shall be sent to such poor house or houses, except as become indigent by old age, or infirmities, and are unable to acquire a maintenance by their labor . . . ."

The idle and dissolute were to be kept in houses of correction. The locality was directed to find outside employment for willing and able workers by hiring them out and making up any wage deficiency.[239] The reform of the workhouse was itself the subject of reform as dissatisfaction with current methods of providing assistance to the poor continued.

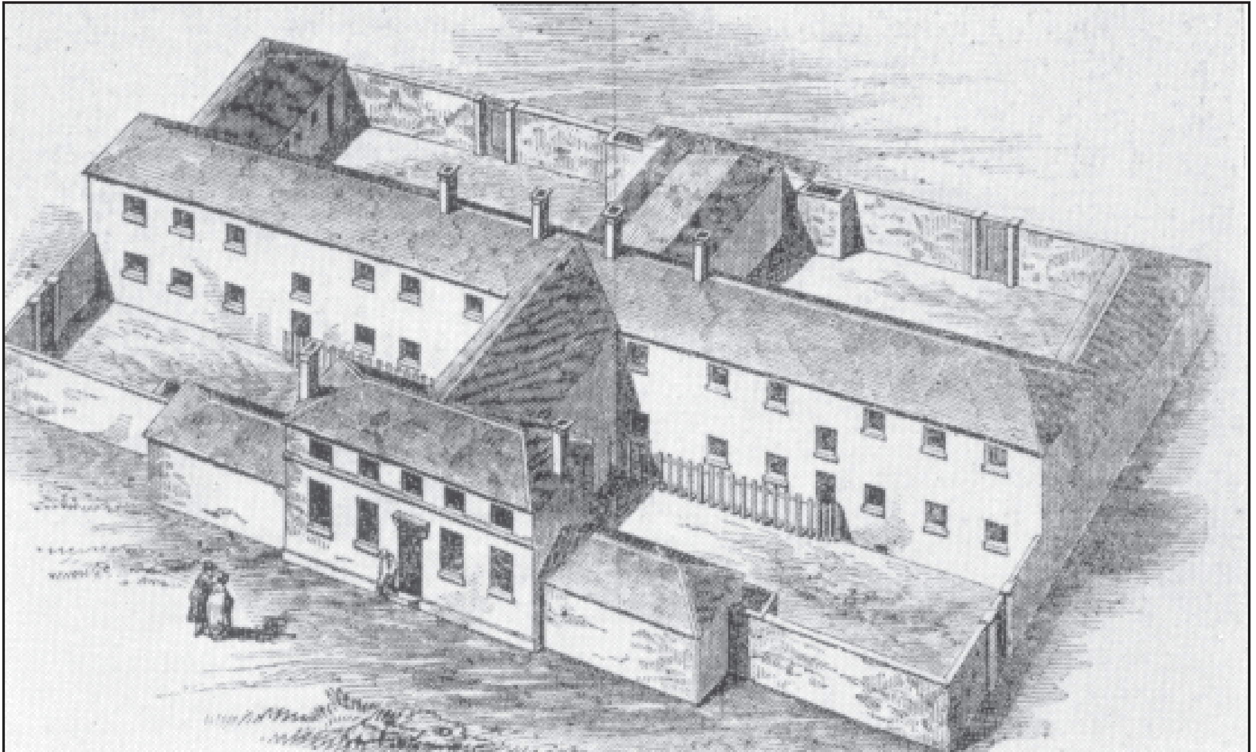
Children in the Workhouse
Institutionalized children

Under the Poor Laws, parents unable to care for themselves or their children were put in the workhouse. Any children over three years of age were separated from their parents and placed in institutions. Children who grew up in institutions were often emotionally and physically unfit. They received no training or education and little nurturing. They were fostered out in return for free labour, or apprenticed to artisans.

Source: William P Quigley '500 years of English Poor Laws, 1340-1834; Regulating the Working and Non-working Poor' Extracts http://www3.uakron.edu/lawrev/quigley 15/06/2004

Valuable resource

Benet—"There were times when children were a valuable resource in the workhouse itself as they grew up and could take on more of the domestic work of the place, the need for a large paid staff diminished. They were often used as unpaid labour in this way just as the children in the Church's care grew up to fill its need for manpower." p61



Andover Union Workhouse, showing division into two separate halves for men and women

Apprenticeship fostering out

Benet— “More often, in times of economic depression, there were too many children in the workhouse. Apprenticeships were used as a means of fostering out the older ones. The choice of work for children was limited by the fact that they usually received no training or education in the workhouse, but there were other factors to consider.”p61

Army- Navy and emigration

Benet— “To remove the children from the parish altogether, and avoid the risk of their coming back on the rates, there were even more drastic alternatives: the army, the navy, and the merchant marine. Emigration was a solution for both sexes: girls could go to the colonies as indentured domestic servants, contracted to work for an employer until they had paid off their fare. Boys were sent to dangerous jobs that no one else wanted to do, mining and fishing for example.” p61

80,000 children in poor law care

“In the years before the First World War, there were at any time perhaps 80,000 children dependent on Poor Law residential care.” p73

Imprisoning mothers

Benet— Until the passing of 1926 Adoption Act, in England, the mother could be imprisoned in the workhouse for two years as the price of having the child taken off her hands by the authorities. p76

Source M K Benet ‘The Character of Adoption’ Johathan Cape 1976.

Workhouse Life

Why did people enter the Workhouse?

Peter Higginbotham—People ended-up in the workhouse for a variety of reasons. Usually, it was because they were too poor, old or ill to support themselves. This may have resulted from such things as a lack of work during periods of high unemployment, or someone having no family willing or able to provide care for them when they became elderly or sick. Unmarried pregnant women were often disowned by their families and the workhouse was the only place they could go during and after the birth of their child. Prior to the establishment of public mental asylums in the mid-nineteenth century (and in some cases even after that), the mentally ill and mentally handicapped poor were often consigned to the workhouse. Workhouses, though, were never prisons, and entry into them was generally a voluntary although often painful decision. It also carried with it a change in legal status - until 1918, receipt of poor relief meant a loss of the right to vote.

The operation of workhouses, and life and conditions inside them, varied over the centuries in the light of current legislation and economic and social conditions. The aims of many pre-1834 workhouses are well expressed in this 1776 sign above the door of Rollesby workhouse in Norfolk: “For the instruction of Youth,
The Encouragement of Industry
The Relief of Want
The Support of Old Age
And the Comfort of Infirmity and Pain”

The emphasis in earlier times was more towards the relief of destitution rather than deterrence of idleness which characterized many of the institutions set up under the 1834 Poor Law Amendment Act.

Entering the Workhouse

Whatever the regime inside the workhouse, entering it would have been a distressing experience. New inmates would often have already been through a period of severe hardship. It was for good reason that the entrance to the Birmingham Union workhouse was through an arch locally known as the “Archway of Tears”.

Admission into the workhouse first required an interview to establish the applicant’s circumstances. This was most often undertaken by a Relieving Officer who would visit each part of the Union on a regular basis. However, the workhouse Master could also interview anyone in urgent need of admission. Formal admission into the workhouse proper was authorised by the Board of Guardians at their weekly meetings. In between times, new arrivals would be placed in a receiving or probationary ward. There the workhouse medical officer would examine them to check on their state of health. Those suffering from an illness would be placed in a sick ward.

Upon entering the workhouse, paupers were stripped, bathed (under supervision), and issued with a workhouse uniform. Their own clothes would be washed and disinfected and then put into store along with any other possessions they had and only returned to them when they left the workhouse...

Uniforms

were usually made from fairly coarse materials with the emphasis being on hard-wearing rather than on comfort and fitting... In later years, the uniform for able-bodied women was generally a shapeless, waistless, blue-and-white-striped frock reaching to the ankles, with a smock over. Old women wore a bonnet or mop-cap, shawl, and apron over.

Leeds Workhouse women uniform

For many years, certain categories of inmate were marked out by clothing or badges of a particular colour, for example, yellow for pregnant women who were unmarried. In 1839, the Poor Law Commissioners issued a minute entitled “Ignominious Dress for Unchaste Women in Workhouses” in which they deprecated these practices. However, more subtle forms of such identification often continued. At the Mitford and Launditch workhouse at Gressenhall, unmarried mothers were made to wear a ‘jacket’ of the same material used for other workhouse clothing. This practice, which resulted in their being referred to as ‘jacket women’, continued until 1866.

Classification and Segregation

After 1834, workhouse inmates were strictly segregated into seven classes:

1. Aged or infirm men.
2. Able bodied men, and youths above 13.
3. Youths and boys above seven years old and under 13.
4. Aged or infirm women
5. Able-bodied women and girls above 1.6.
6. Girls above seven years old and under 16.
7. Children under 7 seven years of age.

Each class had its own area of the workhouse. Husbands, wives and children were separated as soon as they entered the workhouse and could be punished if they even tried to speak to one another. From 1847, married couples over the age of sixty could request to share a separate bedroom. Children under seven could be placed (if the Guardians thought fit) in the female wards and, from 1842, their mothers could have access to them “at all reasonable times”. Parents could also have an “interview” with their children “at some time in each day”.

Inside the Workhouse

The workhouse was like a small self-contained village. Apart from the basic rooms such as a dining-hall for eating, and dormitories for sleeping, workhouses often had their own bakery, laundry, tailor’s and shoe-maker’s, vegetable gardens and orchards, and even a piggery for rearing pigs. There would also be school-rooms, nurseries, fever-wards for the sick, a chapel, and a dead-room or mortuary...

Once inside the workhouse, an inmate’s only possessions were their uniform and the bed they had in the large dormitory. Beds were simply constructed with an wooden or iron-frame, and could be as little as two feet across. Bedding, in the 1830s and 1840s at least, was generally a mattress and cover, both filled with straw, although blankets and sheets were later introduced. Bed-sharing, particularly amongst children, was common although it became prohibited for adult paupers.

For vagrants and casuals, the ‘bed’ could be a wooden box rather like a coffin, or even just be a raised wooden platform, or the bare floor. In some places, metal rails provided a support for low sling hammocks.

Irish workhouses were particularly cramped, with the narrow attic space pressed into service as sleeping space for children as shown here at Londonderry.

The inmates’ toilet facilities were often a simple privy - a cess-pit with a simple cover having a hole in it on which to sit - shared perhaps by as many as 100 inmates. Dormitories were usually provided with chamber pots or, after 1860, earth closets - boxes containing dry soil which could afterwards be used as fertiliser.

Attack on the Workhouse at Stockport. Chartest Movement- Plug riots 1842

Once a week, the inmates were bathed (superintended - another assault on their dignity) and the men shaved.

The daily routine

The daily routine for inmates proposed by the Poor Law Commissioners was as follows:

Time for Rising. 6am	Breakfast.6.30-7am.
Start work 7am	Dinner break 12 noon -1pm
Work 1-6pm.	Evening meal 6-7pm
Going to bed 8pm.	

Half an hour after the workhouse bell was rung for rising, the Master or Matron performed a roll-call in each section of the workhouse. The bell also announced meal breaks during which the rules required that "silence, order and decorum shall be maintained" although from 1842 the word "silence" was dropped.

Communal prayers were read before breakfast and after supper every day and Divine Service performed every Sunday, Good Friday and Christmas Day.

Rules and regulations

One source of insight into life in the workhouse comes from the lists of rules under which workhouse operated. These were often printed and prominently displayed in the workhouse, and also read out aloud each week so that the illiterate could have no excuse for disobeying them.

Misdemeanours and punishments

After 1834, the breaking of workhouse rules fell into two categories: Disorderly conduct, which could be punished by a withdrawal for food "luxuries" such as cheese or tea, or the more serious Refractory conduct, which could result in a period of solitary confinement. The workhouse dining hall was required to display a poster which spelt out these rules... Workhouse punishment books record the severity of punishments meted out to inmates. Some chilling examples of this can be seen in the "Pauper Offence Book" from Beaminster Union in Dorset. Offences against property, for example breaking a window, received particularly harsh punishment, two months in prison...

Workhouse diet

From 1835 onwards, the Poor Law Commissioners issued sample dietary tables for use in Union workhouses...

The main constituent of the workhouse diet was bread. — *Breakfast* it was supplemented by gruel or porridge - both made from water and oatmeal (or occasionally a mixture of flour and oatmeal). Workhouse broth was usually the water used for boiling the dinner meat, perhaps with a few onions or turnips added. Tea- often without

milk - was often provided for the aged and infirm at breakfast, together with a small amount of butter.

— *Supper (Evening meal)* usually similar to breakfast.

—*The mid-day dinner* was the meal that varied most, although on several days a week this could just be bread and cheese. Other dinner fare included:

— pudding - either rice-pudding or steamed suet pudding. These would be served plain. In later years, suet-pudding might be served with gravy, or sultanas added to make plum pudding particularly when served to children or the infirm.

—meat and potatoes - the potatoes might be grown in the workhouses own garden; the meat was usually cheap cuts of beef or mutton, with occasional pork or bacon. Meat was usually boiled, although by the 1880s, some workhouses served roast meat...

—soup - this would usually be broth, with a few vegetables added and thickened with barley, rice or oatmeal...

Milk was often diluted with water. Fruit was a rarely included.

Dining hall

Meals were usually eaten in a large communal dining-hall which often doubled-up as a chapel. In larger workhouses, inmates commonly sat in rows all facing the same way, with separate men's and women's dining halls...

Work

Inmates were given a variety of work to perform, much of which was involved in running the workhouse. The women mostly did domestic jobs such as cleaning, or helping in the kitchen or laundry. Some workhouses had workshops for sewing, spinning and weaving or other local trades. Others had their own vegetable gardens where the inmates worked to provide food for the work-

Oakum-picking

Wood chopping

house.

In 1888, a report on the Macclesfield workhouse found that amongst the able-bodied females there were 21 washers, 22 sewers and knitters, 12 scrubbers, 12 assisting women, 4 in the kitchen, 4 in the nursery, and 4 stocking darners. On the men's side were 2 joiners, 1 slater, 1 upholsterer, 1 blacksmith, 3 assisting the porter the tramps, 6 men attending the boilers, 3 attending the stone-shed men, 4 whitewashers, 4 attending the pigs, 2 looking after sanitary matters, 1 regulating the coal supply, 18 potato peelers, 1 messenger, 26 ward men, 2 doorkeepers. There were also 12 boys at work in the tailor's shop.

In rural areas, inmates were sometimes used for agricultural labour. Other more menial work included:

— Stone-breaking - stones sold for road-making
— Corn-grinding - heavy mill-stones were rotated by four or more men turning a capstan
— Bone-crushing to dust - for fertlizers.
— Gypsum-crushing - for use in plaster-making
— Oakum-picking- teasing out fibres from old hemp ropes - was sold to the navy or other ship-builders - it was mixed with tar and used to seal the lining of wooden ships.
— Wood-chopping - firewood

No work, except necessary household work and cooking, was performed by inmates on Sunday, Good Friday, and Christmas day.

Florence Nightingale

Leaving the Workhouse

Any pauper could, on giving three hours notice, leave the workhouse. In the case of a man with a family, the whole family would have to leave if he left. Short-term absence could also be granted to an able-bodied pauper seeking work.

It was not unknown for a pauper to discharge himself in the morning and then return demanding re-admission the same evening, possibly the worse for wear from drink. Various attempts were made to deal with these "ins and outs", for example by lengthening the amount of notice required. There was actually little to prevent a pauper from walking out of the workhouse, although delaying the return of his own clothes could be used to achieve this - if he left wearing workhouse clothes, he could be charged with theft of workhouse property and brought before the magistrates.

Many inmates were, however, to become long-term residents of the workhouse. A Parliamentary report of 1861 found that, nation-wide, over 20 percent of inmates had been in the workhouse for more than five years. These were mostly consisted of elderly, chronically sick, and mentally ill paupers.

Medical care

Virtually all workhouses had at least a small infirmary block for the care of sick inmates. However, with the exception of the medical officer, early nursing care in the workhouse was invariably in the hands of female inmates who would often not be able to read - a serious problem when dealing with labels on medicine bottles. *Before 1863, not a single trained nurse existed in any workhouse infirmary outside London.*

In the 1860s, pressure began for improvements in workhouse medical care. Some of the most notable campaigners were Louisa Twining, a prominent figure in the Workhouse Visiting Society, *Florence Nightingale,* and the medical journal *The Lancet.* In 1865, *The Lancet* began a serious of detailed reports about conditions in London's workhouse infirmaries...

As a result of such reports, the government was forced into action and in 1867 the *Metropolitan Poor Act* was passed, requiring London workhouses to locate their hospital facilities on separate sites from the workhouse. The Act also led to the creation of the Metropolitan Asylums Board which took over the provision of care for the sick poor across the whole of the capital. It set up its own institutions for the treatment of smallpox, fever, tuberculosis, and venereal diseases, effectively laying the foundations for the National Health Service.

Florence Nightingale's campaigning also led to improvements in the standard of nursing care, particularly with the founding in 1860 of the Nightingale Fund School at St Thomas's Hospital.

Liverpool pioneered the use of trained nurses through an experiment in 1865 funded by local philanthropist William Rathbone... Eventually a skilled nursing system spread to all Union infirmaries in the country.

One particular burden that workhouse infirmaries had to bear was that of patients with venereal diseases. Such cases were often refused admission to charitable and subscription hospitals, or would be offered only one course of treatment. Many workhouse infirmaries had special sections - the foul wards - set aside for this type of patient.

Death in the Workhouse

If an inmate died in the workhouse, the death was notified to their family who could, if they wished, organize the funeral themselves. If this did not happen, the Guardians arranged a burial which usually took place in a local cemetery or burial ground. The burial would be in the cheapest possible coffin and in an unmarked grave, into which several coffins might be placed on the same occasion. Unclaimed bodies could also be disposed of by donating them for use in medical research and training. In some places, the workhouse had a special coffin for transporting bodies to the cemetery.

Changing times?

Life in the workhouse was not entirely bad, however, and slowly got more tolerable as time went on. Some of the changes were brought about by the efforts of organsiations such as the Workhouse Visiting Society and the election of female and working-class members to the Boards of Guardians which ran each union.

Relaxations very gradually began to creep in from the 1870s including the allowance of books, newspapers and snuff for the elderly, toys for the children, and tea-brewing facilities for deserving inmates. Living conditions were often healthier than existed in much poor housing of the time. Although monotonous, the food was regular and reasonably wholesome. The staff in many institutions were kindly, and the brutal treatment that was sensationalized in the press was probably much the exception.

By 1930, when workhouses were officially abolished, conditions in some places had become much more re-

laxed. **Source** Peter Higginbotham— Updated 2004 http://users.ox.uk/~peter/workhouse

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Children in the Workhouse

Peter Higginbotham— "The care and training of children are matters which should receive the anxious attention of Guardians. Pauperism is in the blood, and there is no more effectual means of checking its hereditary nature than by doing all in our power to bring up our pauper children in such a manner as to make them God-fearing, useful and healthy members of society." So intoned the *Poor Law Handbook of the Poor Law Officers' Journal* in 1901 in sentiments that presumably echoed the attitudes of many of those then working in the Poor Law system.

Number of children in Workhouse

Children featured relatively little in the 1834 Poor Law Amendment Act or in the rules and regulations for its implementation issued by the Poor Law Commissioners. The original scheme of classification of inmates categorized females under 16 as 'girls' and males under 13 as 'boys', with those aged under seven forming a separate class. It probably came as a surprise to the Commissioners that, by **1839, almost half of the workhouse population (42,767 out of 97,510) were children**.

Reasons for children in Workhouse

Children arrived in the workhouse for a number of reasons. If an able-bodied man was admitted to (or departed from) the workhouse, his whole family had to accompany him. Once inside, the family was split up, with each going to their own section. A child under seven could, if deemed 'expedient', be accommodated with its mother in the female section of the workhouse and even share her bed. She was supposed to have access to the child 'at all reasonable times'. Parents were allowed a daily 'interview' with a child living in the with same workhouse, or an 'occasional' interview if the child was in a different workhouse or school. Much of this depended on the discretion of the Guardians — for example, a minimum length of the 'interview' was not laid down.

In 1838, Assistant Commissioner Dr James Phillips Kay noted that children who ended up in the workhouse included 'orphans, or deserted children, or bastards, or children of idiots, or of cripples, or of felons'. Such children were not in the minority: according to the 1909 Royal Commission, around half the children under the care of Boards of Guardians in the nineteenth century were without parents or close relatives. From as early as 1842, the Poor Law Commissioners advised Boards of Guardians that they might detain any orphan child under the age of 16 in receipt of relief if they believed it might suffer injurious consequences by leaving the workhouse. The Poor Law Acts of 1889 and 1899 gave them similar powers in respect of children of parents who were either dead, or "unfit" to control them, for example because they were in prison, convicted of an offence against the child, mentally deficient, in detention under the 1898 Inebriates Act, or permanently disabled and in the workhouse.

Physical conditions of children

The physical conditions in which workhouse children ended up were often appalling. The Poor Law Commissioners' Fourth Annual Report in 1838 recorded a visit by a physician to the Whitechapel workhouse who witnessed: ...the pale and unhealthy appearance of a number of children in the workhouse, in a room called the Infant Nursery. These children appear to be from two to three years of age; they are 23 in number; they all sleep in one room, and they seldom or never go out of this room, either for air or for exercise.

In another part of the same workhouse, 104 girls slept four or more to a bed in a room 88 feet long, 16½ feet wide and 7 feet high. 89 of the 104 had, perhaps unsurprisingly, recently been attacked with fever.

Education of children

The Poor Law Commissioners' orders relating to the operation of workhouses contained a single regulation relating to their education: The boys and girls who are inmates of the Workhouse shall, for three of the working hours, at least, every day, be instructed in reading, writing, arithmetic, and the principles of the Christian religion, and such other instruction shall be imparted to them as may fit them for service, and train them to habits of usefulness, industry, and virtue.

The education of pauper children came to be provided for in a number of different ways including workhouse schools, separate and district schools, cottage homes, training ships, and the use of local National Schools and Board Schools. Further information on each of these is provided on separate pages.

Corporal punishment rules

The use of corporal punishment was one area where strict rules did exist relating to the treatment of children. The regulations issued by the Poor Law Commissioners required that:

1 No child under twelve years of age shall be punished by confinement in a dark room or during the night.

2 No corporal punishment shall be inflicted on any male child, except by the Schoolmaster or Master.

3 No corporal punishment shall be inflicted on any female child.

4 No corporal punishment shall be inflicted on any male child, except with a rod or other instrument, such as may have been approved of by the Guardians or the Visiting Committee.

5 No corporal punishment shall be inflicted on any male child until two hours shall have elapsed from the commission of the offence for which such punishment is inflicted.

6 Whenever any male child is punished by corporal correction, the Master and Schoolmaster shall (if possible) be both present.

7 No male child shall be punished by flogging whose age may be reasonably supposed to exceed fourteen years. *As suggested by the last item in the above list, "flogging" could be administered to boys under 14.*

Henry Morton Stanley

A case of physical abuse — In 1847, the five-year old orphan John Rowlands became an inmate of the St Asaph workhouse. In later life, Rowlands [who was adopted] became better known as Henry Morton Stanley and tracked down the missing explorer Dr David Livingstone, greeting him with the famous words "Dr Livingstone, I presume?" Stanley's autobiography vividly recalls his memories of St Asaph workhouse which he described as a "house of torture". The scourge of the

workhouse was a one-handed schoolmaster called James Francis whose cruelty seemed to know no bounds.

In May, 1856, a new deal table had been ordered for the school, and some heedless urchin had dented its surface by standing on it, which so provoked Francis that he fell into a furious rage, and uttered terrific threats with the air of one resolved on massacre. He seized a birch which, as yet, had not been bloodied, and, striding furiously up to the first class, he demanded to know the culprit... but we were all absolutely ignorant that any damage had been made...

Very well, then,' said he, 'the entire class will be flogged, and, if confession is not made, I will proceed with the second, and afterwards with the third. Unbutton.' He commenced at the foot of the class, and there was the usual yelling, and writhing, and shedding of showers of tears... now it was fast approaching my turn; but instead of the old timidity and other symptoms of terror, I felt myself hardening for resistance. He stood before me vindictively glaring, his spectacles intensifying the gleam of his eyes. 'How is this?' he cried savagely. 'Not ready yet? Strip, sir, this minute; I mean to stop this abominable and barefaced lying.' ' I did not lie, sir. I know nothing of it.' 'Silence, sir. Down with your clothes.'' Never again,' I shouted, marvelling at my own audacity. The words had scarcely escaped me and I found myself swung upward into the air by the collar of my jacket, and flung into a nerveless heap on the bench. Then the passionate brute pummelled me in the stomach until I fell backward, gasping for breath. Again I was lifted, and dashed on the bench with a shock that almost broke my spine. What little sense was left in me after these repeated shocks made me aware that I was smitten on the checks, right and left, and that soon nothing would be left of me but a mass of shattered nerves and bruised muscles.

Recovering my breath, finally, from the pounding in the stomach, I aimed a vigorous kick at the cruel Master as he stooped to me, and, by chance, the booted foot smashed his glasses, and almost blinded him with their splinters. Starting backward with the excruciating pain, he contrived to stumble over a bench, and the back of his head struck the stone floor; but, as he was in the act of falling, I had bounded to my feat, and possessed myself of his blackthorn. Armed with this, I rushed at the prostrate form, and struck him at random over his body, until I was called to a sense of what I was doing by the stirless way he received the thrashing...Henry Morton Stanley's autobiography.

Workhouse birth stigma

In 1904, in an effort to remove the stigma of having being born in a workhouse, the Registrar General instructed local registrars that birth certificates of such children should carry no indication of this. As a result, such births were then registered with a (sometimes fictitious) street address. For example, births in the Liverpool Workhouse were recorded as having taken place at 144A Brownlow Hill — no such address actually existed.

Source Peter Higginbotham— Updated 2005 http://users.ox.uk/~peter/workhouse

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Criticisms of Workhouse mounted

Quigley— That workhouses are scenes of filthiness and confusion; that old and young, sick and healthy, are promiscuously crowded into ill-contrived apartments, not of sufficient capacity to contain with convenience half the number of miserable beings condemned to such deplorable inhabitation, and speedy death awaits the aged and

Workhouse children & child apprentice

infirm.

Reform came slowly. Reports documenting widespread deaths of infants in the workhouses, as many as 82% of those under one year of age, forced a law compelling the removal of all children under six from the houses.

1795 Speenhamland, Berkshire, was the site of a substantial reform of the English poor law system, a change which provided relief for the working poor through the supplementation of wages. The cause for the change was substantial worsening of the economic situation for workers and farmers of small plots, and changeover from an agricultural to an industrial economy...

Enclosures

From 1760 to 1800 more than 3,000,000 acres were enclosed by acts of Parliament, depriving workers and small farmers of land that was previously used as a means for survival.

Source: William P Quigley '500 years of English Poor Laws, 1340-1834; Regulating the Working and Non-working Poor' http://www3.uakron.edu/lawrev/quigley 15/06/2004

Workhouse cheap child labour apprenticeships

Many parents were unwilling to allow their children to work in these new textile factories. To overcome this labour shortage factory owners had to find other ways of obtaining workers. One solution to the problem was to buy children from orphanages and workhouses. The children became known as pauper apprentices. This involved the children signing contracts that virtually made them the property of the factory owner.Pauper apprentices were cheaper to house than adult workers. It cost Samuel

Greg who owned the large Quarry Bank Mill at Styal, a £100 to build a cottage for a family, whereas his apprentice house, that cost £300, provided living accommodation for over 90 children. The same approach was taken by the owners of silk mills. George Courtauld, who owned a silk mill in Braintree, Essex, took children from workhouses in London. Although offered children of all ages he usually took them from "within the age of 10 and 13". Courtauld insisted that each child arrived "with a complete change of common clothing". A contract was signed with the workhouse that stated that Courtauld would be paid £5 for each child taken. Another £5 was paid after the child's first year. The children also signed a contract with Courtauld that bound them to the mill until the age of 21. This helped to reduce Courtauld's labour costs. Whereas adult males at Courtauld's mills earned 7s. 2d., children under 11 received only 1s. 5d. a week. Owners of large textile mills purchased large numbers of children from workhouses in all the large towns and cities. By the late 1790s about a third of the workers in the cotton industry were pauper apprentices. Child workers were especially predominant in large factories in rural areas. For example, in 1797, of the 310 wortkers employed by Birch Robinson & Co in the village of Backbarrow, 210 were parish apprentices. However, in the major textile towns, such as Manchester and Oldham, parish apprenticeships was fairly uncommon.

Source www.spartacus.schoolnet.co.uk/IRworkhouse.children

Children and unmarried mothers in England
Baby farming

McWhinnie—In the second half of the nineteenth century the evils of 'baby farming', the caring of babies for a premium, became recognised; it was estimated that 60% to 90% of all such babies died. A famous cases in 1870, brought this practice to the public notice. Publicity was then also given to the fact that babies were offered with a premium for adoption through public advertisement. p3

Infant Life Protection Act 1872

Child welfare legislation as such can be said to have begun in 1872 with the first Infant Life Protection Act by which all those receiving two or more infants under one year 'for hire or reward', had to register with the local authority. Although this 1872 Act was widely evaded, the passing of the Births and Deaths Registration Act of 1874. was the 'first step in eradicating the anonymous destruction of infants born in unregistered maternity homes. These homes, however, were not compulsorily registered by local authorities until 1927. p4

Infant Life Protection Act 1897 and Children Act 1908

A further Infant Life Protection Act was passed in 1897 and incorporated in the amending Children Act, 1908, or the 'Children's Charter'. From 1908, the age of supervision for children kept for hire or reward was now raised to 7, and life insurance of the child was prohibited. In 1932 the age of supervision was raised to 9, and in 1948 to cover all of compulsory school age. The 1908 Act was important in that through its operation, baby-farming was gradually eradicated. This was confirmed by the Tomlin Committee's third report in 1926, which stated that the Committee was satisfied that the legislation, introduced largely as a police measure, had eradicated the mischief and, as this had diminished, the value of the legislation as a welfare measure became apparent. This indicates the growing emphasis in legislation on the welfare of the child. p4

Penitentiaries for unmarried mothers

Coinciding with this growing concern for the welfare of children, there was a changing attitude towards the illegitimate child and its mother. In Victorian times the emphasis in social work with unmarried mothers was in providing penitentiaries. The first two of these appears to have been the Dalston Refuge and the London Female Penitentiary, opened in 1805 and 1807 respectively. Others followed and their names show the same emphasis, for example, The School of Discipline for Destitute Girls (1825), The Oxford Penitentiary (1839), and The British Penitent Female Refuge (1840). p4

Birth mother's can't regain status with child

In the 1870s and 1880s it was viewed as not respectable to know anything of immorality, nor was it considered possible for an unmarried mother to regain social status if she kept her child. Such children went into an institution or to a 'baby farm'.

First mother and baby home 1871

In 1871 the first home" was opened which would accept a mother with her child. In the 1880s, Josephine Butler was agitating for reformed legislation, and by 1912, the first hostel, the Day Servants' Hostel in Chelsea, was opened which enabled a mother to retain and care for her child. Many other mother and baby homes opened after this, until now at least one is to be found in nearly every area of the country. p4

Keep mother with baby to avoid repeat

The theory behind such new emphasis in keeping mother and child together was that in this way the unmarried mother was likely to become more responsible and less likely to have a second illegitimate child. Reinforcing this argument was the discovery, after the provision of maternity services, that the infant mortality rate was lower amongst breast-fed compared with bottle-fed babies. It was argued then that the unmarried mother should be encouraged to keep her child both on moral or religious grounds, and on such grounds of health. This was in fact the official policy of the National Council for the Un-married Mother and her Child. This Council was founded in 1918, largely out of concern to improve provisions for the un-married mother and the illegitimate child, as the infant mortality rate amongst illegitimate children was twice that amongst legitimate children. It also became the policy of most moral welfare organisations. These, because they were usually affiliated to religious denominations, have also commonly approached the problem of the unmarried mother and her child from a religious point of view. p5

Source Alexina Mary McWhinnie 'Adopted Children How They Grow Up' Routledge & Kegan Paul 1967 pp4-5

Boarding out Poor Law children and Adoption 1870s

George K Behlmer— "To Poor Law children, fostering meant boarding out in humble homes. Although boarding out had taken root in Scotland as early as 1843, [14] not until 1870 did England's Poor Law Board authorize guardians to place selected children with foster parents. This liberalization of policy stemmed largely from the pressure of middle-class women concerned about the plight of girls in workhouses and the "barracks schools" associated with them. One can identify less high-minded concerns here as well, the most evident of which was worry about the future supply of reliable servants. Writing from her Wiltshire home in 1861, Hannah Archer, the wife of a guardian, warned that a "race" of shameless workhouse girls was unleashing a "torrent of sin" that threatened not only to pollute other child minds but also to render all paupers unfit for domestic service. By boarding out the younger workhouse girls with "trustworthy cottagers" and allowing ladies to supervise them, Archer believed, guardians might salvage some productive citizens. More immediately influential were the women who met G. J. Goschen, president of the Poor Law Board, in early 1870. This deputation was the idea of Miss Preusser, a German-born activist whose attempts to transplant children from London's East End to cottages near her Lake District home had run afoul of Poor Law regulations. [15] Preusser's group argued successfully that guardians should have the option of sending orphaned and deserted young to foster homes, even when these homes lay outside local Union boundaries. [16] p85

Initial skepticism overcome - led to adoptions

Behlmer— Although initially skeptical, Poor Law officials resorted to boarding out with increasing frequency. As a leading London philanthropist explained in 1883, "notwithstanding much prejudice and obstruction," the new system was gaining ground not only because it cost less to board out a child than to maintain it in a workhouse or Poor Law school but also because kindly folk were awakening to the fact that by opening their homes, they could revive boys and girls so emotionally stunted that some "*actually did not know how to kiss!*" [17] Two administrative reforms helped to popularize boarding out. <u>The Poor Law Acts of 1889 and 1899 effectively permitted guardians to "adopt" certain boys and girls</u>. [18] By the start of the twentieth century, guardians could assume legal custody over workhouse children under the age of eighteen whose parents had died, deserted the home, gone to prison for offenses against their young, been judged morally or mentally unfit, or become permanently disabled while in receipt of Poor Law aid. Where guardians chose to exercise these prerogatives, a child's parent retained the right of appeal to a police court. But judging from the fact that in 1908 alone guardians adopted 12,417 such children, these appeals must have been either few in number or singularly ineffective. [19] p85

Poor Law adoption to break viscious cycle

Behlmer— A Poor Law adoption did not necessarily end in foster care. And Poor Law foster care-that is, boarding-out arrangements-affected just 3.7 percent of all English and Welsh children receiving public relief of some kind in the early twentieth century. [20] However, guardians began wielding their new power as a way to reconfigure working-class families. In Edwardian Essex, Poor Law authorities at Braintree used adoption to "break the family tradition" of "viscious habits" that poisoned some rural homes. [21] At about the same time guardians elsewhere started trying to protect abused children through adoption. Prewar evidence drawn from the minute books of Poor Law Unions in the north of England suggests that guardians there most often resorted to adoption where gross "neglect by parents" was at issue: *less than 10 percent of the children adopted in Carlisle were either orphans or illegitimate.* [22] Curiously, in at least two northern Unions, children who had already been adopted by the guardians were sometimes readopted by local citizens. Darlington's Boarding-Out Committee felt no qualms about allowing respectable folk to tour the workhouse so that they might handpick promising youngsters.[23]p85-6

Volunteer committees controlled boarding out

Behlmer— The volunteer committees that oversaw such strange placements naturally tended to be middle-class in composition, with "ladies" shouldering much of the visiting work. Ideally at least, "the relationship between the foster-parents and the committee lady ... becomes one of real friendship, both being deeply interested in the welfare of a little child. If misfortune falls upon the family, the lady is at hand to assist; but if wrong-doing takes place, undesirable lodgers be admitted... it is the duty of the lady to inform the committee, so that they may remove the child to a more desirable home. [25] By 1909, however, it was clear to the Royal Commission on the Poor Laws that children boarded out within a Union's boundaries usually received less attentive supervision than those placed with foster parents living "without" the Union. The reason seemed obvious: whereas within Union boundaries boarding-out committees remained optional and unregulated, outside the Union these bodies were compulsory and, after 1884, the objects of Local Government Board scrutiny. Miss M. H. Mason, who became the board's first inspector of foster children in 1885, was nothing if not earnest about her job: "If the boarding-out system spreads widely," she believed, "only strict rules can save it from degenerating into baby-farming." Thus, Mason gave short shrift to lady visitors whose investigative protocol differed from her own. All too often, she assured a parliamentary committee in 1896, these volunteers failed to check for signs of mistreatment "hidden under tidy clothes" yet tended to be unrealistically demanding about the housekeeping habits of foster mothers . [26] p86

Notes

14. William Anderson, *Children Rescued from Pauperism; or, The Boarding-out System in Scotland* (Edinburgh, 1871), 98.

15. Louisa Twining, *Recollections of Workhouse Visiting and Management* (London, 1880), 196-99; Florence Davenport-Hill, Children of the State, 2d ed. (London, 1889), 183-84.

16. The boarding out of pauper children within Union boundaries was already taking place at Bath (C. W. Grant, *The Advantages of the Boarding out System* [London, (1869)1), 2-3, 33-34

17. Francis Peek, *Social Wreckage: A Review of the Laws of England as They Affect the Poor* 3d ed. London 1888, 58, 43-44

18. Even before 1889, Guardians in some Poor Law Unions had encouraged foster parents to "adopt" boarded-out children in the sense of offering them permanent homes to which they could return at any age (Report from the Select Committee of the House of Lords on Poor Law Relief, PP, 1888, XV, QQ. 3,939-42).

19. Report of the Departmental Committee on the Treatment of Young Offenders, PP, 1927, XII: 116.

20. Royal Commission on the Poor Laws and Relief of Distress, PP, 1909, XVIII, app., 2. As of Jan. 1, 1907, 234,004 persons under sixteen years of age were receiving Poor Law relief in England and Wales. The number of boys and girls boarded out was 8,659.

21. George Cuttle, *The Legacy of the Rural Guardians: A Study of Conditions in Mid-Essex* (Cambridge, 1934), 116.

22. Cumbria County Record Office: Carlisle Poor Law Union, Register of Children under Control, 1912-55, SPU/Ca/5/11.

23. Darlington Branch Library, Local Studies Department: Darlington Poor Law Union, Minutes of the Boarding-Out Committee July 8, 1889-Nov. 25, 1897) U/Da 720 entry Jan 14, 1892

24. Durham County Record Office: Chester-le-Street Poor Law Union, Minutes of the Workhouse Visiting Committee, 1913-15, U/CS 27, entries for Jan. 23, July 24, 1913, Mar. 5, 1914. Joseph Brown, president of the Association of Poor Law Unions, testified that workhouse adoption was in "too many instances" a kind of forced labor, with strangers taking away children between the ages of nine and thirteen to use as "little house slaves and nurses" before and after school (Royal Commission on the Poor Laws and Relief of Distress, PP 1909, XL, QQ. 24,790-92

25. Henrietta Barnett, *Matters That Matter* London 1930, 170-1

26. Royal Commission on the Poor Laws and Relief of Distress, PP, 1909, LXVIII [Lords]: 183-85; *Hospital,* Aug. 31, 1889, 340-41; Report of the Departmental Committee [on] the Maintenance and Education of Children under the Charge of... Boards of Guardians, PP, 1896, XLIII, Q. 14,326. The much-publicized death of Dennis O'Neill at the hands of his Shropshire foster parents in 1945 would recall Mason's plea for vigilance. See R. A. Parker, "The Gestation of Reform: The Children Act of 1948," in *Approaches to Welfare*, ed. Philip Bean and Stewart MacPherson (London: Routledge and Kegan Paul 1983), 203-4

Source George K. Behlmer 'What's Love Got to Do with It? "Adoption" in Victorian and Edwardian England' in book 'Adoption in America' University of Michigan Press 2004 pp85-86.

Private agencies // Poor Law's foster care

Behlmer— Running parallel to the Poor Law's foster care system was a dense if uncoordinated complex of private agencies specializing in virtually the same work. By the end of the nineteenth century, several hundred of these bodies operated throughout England and Wales, although three of them-the Barnardo group, the Children's Home and Orphanage, and the Church of England Waifs and Strays Society-together accounted for as much as half the voluntary effort in this field. p87

Dr. Barnardo's Homes,

Behlmer— expanding rapidly from their base in London's East End, was the oldest (1866) and largest of the triumvirate. Thomas John Barnardo, an Irish Protestant zealot whose philanthropic style is best described as martial, proclaimed "the ever-open door" for young outcasts. Barnardo's policy of admitting ragged boys and girls to his homes before investigating their personal circumstances followed naturally from his belief that successful reclamation work often came down to a race against time. "If the children of the slums can be removed from their surroundings early enough, and can be kept sufficiently long under training," he averred, "heredity counts for little, environment counts for everything.' p87

A sense of urgency therefore pervaded Barnardo's work and sometimes drove him to take rash action. Early enemies had lobbed into the Barnardo camp several incendiary charges, the best documented of which centered on his resort to posed photographs of "street arabs." Partly no doubt as a fund-raising ploy but partly also because he deemed divine command superior to human law, Barnardo later confessed to kidnapping in 1885. This confession was shrewdly timed. W. T. Stead, editor of the Pall Mall Gazette and a crusader against child prostitution, was then England's most famous prisoner, having been convicted of buying thirteen-year-old Eliza Armstrong as part of a campaign to expose the white slave trade. Not to be outdone, Barnardo revealed that by kidnapping no fewer than forty-seven homeless children, he had elevated "philanthropic abduction" to a "fine art." Although no legal challenges followed this announcement, the combative "doctor" ran out of luck four years later. In 1889, the parents of three children admitted to his homes demanded their return. Subsequent litigation showed that Barnardo had acted irresponsibly, hustling two of these children out of the country in such a way that they could not be traced. Some of Barnardo's well-placed supporters tried to shield him from future legal liability by urging Parliament to limit the rights of parents who had permitted charities to "adopt" their young. The resulting 1891 Custody of Children Act did at least allow courts to prevent the return of children to parents judged unfit. But this was too little too late. Not until the mid-1890s could the Barnardo group once more devote its full attention to the fostering and vocational training of slum children, 4,357 of whom were boarded out by 1906. p88

Dr. Stephenson's Children's Home

Behlmer— and the Church of England Waifs and Strays Society also emerged as leading providers of foster care. As was true of Barnardo's work, the line between fostering and adoption could easily become blurred in these organizations. Thomas Bowman Stephenson, a Methodist minister, had launched his rescue mission on the mean streets of South London in 1869. Although best known during the late-Victorian period as an orphanage, Stephenson's society actually admitted few total orphans. His charges tended rather to be the offspring of widows, deserted wives, and prostitutes, precisely the sort of children who needed saving from the "workhouse system." During their first quarter century the Stephenson institutions helped about half their children to find unskilled employment abroad, principally in Canada, where economic opportunity and a better moral climate appeared to exist . Most of those who remained in England found jobs in domestic service and agriculture. But roughly 2% of the Stephenson children are listed in annual reports as

"adopted." We are assured that "homes of comfort and happiness" had been located for these fortunate few, although published material sheds no real light on the nature of such adoptions p88

Church of England Waifs and Strays Society

Behlmer— The experience of the Church of England Waifs and Strays Society (CEWSS) is more revealing. The CEWSS owed its founding in 1881 to Edward de Montjoie Rudolf, a young civil servant. Like the charities of Barnardo and Stephenson, the Waifs and Strays began work in London, sometimes "hunted" its outcast "quarry" at night inside dustbins and under tarpaulins, and later turned to emigration as one outlet for the children under its care." But whereas the older charities tended to ignore sectarian distinctions, Rudolf from the first ran his agency for the benefit of Anglican young. Moreover, unlike the Barnardo group, which remained the fiefdom of its founder until his death in 1905, the CEWSS adhered closely to a constitution, thereby earning full support-financial as well as spiritual-from the established Church. p89

Boarding out children in foster homes

Behlmer— soon became a key feature of the Waifs and Strays' mission. By 1896 the Society had 2,300 boys and girls on its books, 700 of them in foster homes; and the proportion of CEWSS children boarded out would remain in the range of 20 to 30 percent for several more years. The large majority (69 percent) of children under CEWSS care received no financial support from their relatives. Contributions from Poor Law Unions, other charities, and individuals who sponsored particular boys and girls helped to offset the considerable cost of fostering. But such assistance never fully covered boarding-out bills, with the result that CEWSS administrators were always eager to economize. One way to cut costs was to engineer the adoption of the Society's children... For children who had been admitted to CEWSS care as "free cases" or whose sources of outside support had dried up, the prospect of adoption must have been very attractive... p89

Quite apart from the baby-farming trade there existed a market for adoption in late-Victorian England, and CEWSS officials were more than willing to supply it...p90

.. An analysis of nineteen cases involving children born between 1877 and 1909 shows that adoption most commonly took place when the Society's foster parents volunteered to give up their weekly boarding-out fees in return for the right to keep a child . The Society's only detailed information about would-be adopters often came from "ladies" and "gentlemen" who had agreed to sponsor individual children...

Formal legalistic adoption agreements 1890s

Behlmer— The *Waifs and Strays* worked hard to discourage relatives from disrupting an adoption. To protect adopting parents as well as its own financial interests, the Society began in the late 1890s to use a typed and formidably legalistic "adoption agreement" in these cases. All known relatives were asked to sign the document, which enjoined kinfolk from interfering "in any way with any arrangement that may be made in regard to [an adopted child's] future." In the event that relatives later tried to remove a child from its adoptive home, they would be liable, under this agreement, to reimburse the CEWSS for its "expenses" at a rate of between ten and thirteen pounds per year of care."

How often such coercion served its intended purpose is impossible to know, since the CEWSS did not routinely continue to supervise an adoption, as modern social work aftercare is designed to do. Some of the middle-class men and women who ran the Society's receiving centers clearly believed that poor people could be intimidated. As one Lady Superintendent observed about the adoption agreement that she hoped Kathleen H. 's servant mother would sign in 1915: "I know it is just paper, but she would not."54 Still, there was no real security for the kind of ad hoc adoption work carried on by the CEWSS and similar children's charities. p92

By the outbreak of war in 1914

Behlmer— By the outbreak of war in 1914 both charitable institutions and Poor Law authorities had been arranging adoptions of English children for a generation, despite the legally suspect nature of this work. Adoptions of a less formal sort must have been even more common during these years. In mid-Victorian Lancashire and in East London at the turn of the century, 29 percent of all children could expect to lose one parent and 8 percent both before reaching the age of fifteen." Desertion and judicial separation would have created additional one-parent households. Under these demographic conditions, it seems remarkable that more children did not end up in public or private institutions. A large but unknowable proportion of orphans and children from troubled homes must have been taken in by other families. Unlike nineteenth-century France, where the adoption of orphan young was often arranged through a council of relatives, *kinfolk in English working-class districts tended to open their doors spontaneously.* Anecdotal evidence suggests that adoption was also undertaken as a neighborly act . p93

The "articulated notions of community obligation" accounted for many, but not all, working-class adoptions. Some stemmed from the same sense of maternal deprivation that features so prominently in late-twentieth-century discussions of the subject. Childlessness was a source of regret but not "passionate sorrow"....p93

Source George K. Behlmer 'What's Love Got to Do with It? "Adoption" in Victorian and Edwardian England' in book 'Adoption in America' University of Michigan Press 2004 pp94-93.

England exports surplus children 1816-1982

From 1816 on England had a history of ridding itself of surplus population—including children—by shipping them from the streets, workhouses or estates to plantations in the New World and by sending them to penal colonies for misdemeanours. The Industrial Revolution and the Great Famine that swept all of Europe but was particularly severe in Ireland exacerbated matters. Hundreds of thousands flocked to England's industrial centres which were ill-prepared to accommodate them. Slums and their attendant problems grew at a rapid rate.

Who are the Home Children?

One government official noted that the problem was "that there were too many children in the streets of London" and elsewhere. In the absence of meaningful intervention by the government of the day to assist the poor, well-intentioned philanthropists in Britain literally exported as many as 100,000 Home Children to Canada between 1869 and the Great Depression to serve as cheap farm labour. Most were between seven and 14; many were younger, some older.

Background of children

Contrary to popular belief they were not all orphans; they were not all "Barnardo Children", nor were they all the children of paupers. To be sure, many were *rescued* from evil surroundings but not a few were *"philanthropically abducted"* by zealots who wanted to save them from the wrong religion. Many were put in *"homes"* abroad simply because they were sick and the homes offered medical care. Others were put in by widowed or sick parents or by families who had fallen on hard times because there was no state social net to assists them. Some (labelled "*non-paupers*" in the records) were sent over by parents who saw no hope for their offspring in Britain or simply could find no room for them at home. Some homeless street children gave themselves up to the security of the "*homes*".Children from the "*homes"*—which were operated by as many as 50 agencies—were generally sent to Canada without the knowledge or permission of their parents, a move made legal by the British Parliament's "Barnardo Act" ca 1890. Boys came as *farm labourers*, the girls as *mother's helpers*. While it is true that many were treated well.

Most children were cut off

Home Children were generally denied affection because they were "just hired hands". Studies show that over two-thirds were abused by their patrons in Canada.In the child migration process, Home Children were separated from family and friends and effectively cut out of wills and denied even photographs, family mementos and medical histories as well as legal papers, such as birth certificates. Some were sent to homes where no English was spoken. Few got the schooling promised them and many were even denied the pittance they were to receive for their labour.

And when the movement ended and the agencies closed their distribution homes in Canada they took their records back to England and the Home Children were left with no one to champion their cause. Canadian authorities seem not to have been informed or given any responsibility for them; the children simply fell through the cracks of our social system. It is a wonder that so many survived. Yet survive they did and many are still with us today! It has been estimated that Home Children and their descendants make up 11 per cent of Canada's population.

The Stigma-
Overcoming a silent shame and trauma

Home Children share one common trait. Traditionally they have not (until recently) talked of their past, even to family, because of the stigma that most felt was attached to them "in the old country" and in Canada. It is sad, but perhaps inevitable, that some Home Children should have perceived themselves as "discards" or "rejects" from the British Isles. It is sadder still that this feeling was seldom erased in Canada; indeed, it was reinforced by proponents of the then-fashionable belief in eugenics. This pseudo-science equated mental, physical and moral deficiencies or aberrations with certain races and occupations, as well as with the lower classes of society (Home Children?) and held that the defects would be passed on through heredity. Scholars only now are revealing that when "do-gooders"—including Charlotte Whitton—urged Canada to pass a law in 1924 to stop the importing of Home Children under age 14, their main motives were not so much to prevent the abuses to which such children had been subjected, but rather to ensure that the children did not further "contaminate good Canadian blood lines".

The Child Migration Movement to Canada petered out during the Great Depression. Agencies continued to send children over age 14 until 1939 when the last Distribution Home in Toronto was closed and the children's records were taken back to England. Ironically, that same year, *child evacuees* started to arrive as British children were placed in the countryside and abroad to escape the anticipated Nazi bombing. *It is a paradox that these children were welcomed with open arms.*

100,000 Home Children sent to Canada

That virtually all of the 100,000 Home Children sent to Canada—alone and separated from others, as they were—should have reacted to their fate the same way, withdrawing into themselves, and remaining silent about their past, is bitter and conclusive proof of the severity of their trauma and proof that the Child Migration Scheme, however well-intentioned, was seriously flawed.Kubler-Ross and other experts have identified thirteen emotional phases through which children suffering "normal" loss or separation might pass. Home Children also had to contend with the phases inflicted by the stigma attached to them, and by the physical, mental and psychological abuse to which so many of them were exposed.It should not surprise that some Home Children should have fallen by the wayside or sought the assistance of social workers in Canada. In the 1970s it was they who brought the story of all Home Children to the attention of Phyllis Harrison, a social worker and author of 'The Home Children, Their Personal Stories'. Yet most Home Children lived the quiet lives of unsung heroes; they triumphed over adversity, raised loving families, and contributed to the stability of their communities. Some became professionals. Many served in two World Wars for their adopted country, and hundreds gave their lives for it. Home Children and their descendants have good reason to be proud.

Child migration from Britian ends

Child Migration to Canada continued for seven decades. From the beginning the system was criticized. It was found severely wanting by British government official Andrew Doyle who submitted his report to parliament in the early 1870s. Sad to say, the validity of his findings were not recognized until 50 years later.It boggles the mind to know that Child Migration was allowed to continue to Australia

and South Africa until 1967 and that in post-war years alone 10,000 records were deliberately falsified. The children were told both parents were dead; the parents were told that the children had been placed in good British Homes.One questions too the validity of the reasons leading to child migration and the way in which it was carried out. And if the rationale seemed legitimate in 1869, surely it was not acceptable in more *modern and enlightened times* (?) a century later. Nor does the duplicity involved stand scrutiny.One last historical note: The British Government finally closed the loophole that permitted child migration in January 1982. (That is not a typo! The date really is nineteen hundred and eight-two—just 15 short years ago!)

Source www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/emhealth/7

Background of England Adoption Act 1926

Behlmer— Prior to winning legal recognition in 1926, "adoption" for the English conjured up at least—

Three competing family narratives.

1 Adoption as a gesture of working-class mutuality spoke of hope-hope not only for the needy children taken in but also for the future of a "respectable," self-regulating majority.

2 In stark contrast, adoption as a cynical front for the disposal of unwanted babies testified to the desperate lot of some unmarried mothers. That poverty and social ostracism might override maternal feeling cast doubt on the taxonomy of instinct that helped mainstream English society make sense of human behavior.

3 Third, adoption could signify the gamble that some well-off citizens felt compelled to accept. The greatest risk, they believed, was not that love would fail to flourish in artificial families but rather that working-class kin would one day materialize and, taking advantage of the legal lacunae surrounding adoption, repossess blood relatives. This fear ultimately paved the way for legalization after the Great War.

Tremendous loss by war and flue

Behlmer— The war itself served to intensify middle-class concerns about adoption. Nearly three-quarters of a million British soldiers died during World War I; in England and Wales, combat deaths took nearly 7 percent of all males between the ages of fifteen and forty-nine. An estimated 150,000 more citizens, many of them young adults, perished during the lethal influenza outbreak of 1918-19. [67] An alarming number of "war orphans" therefore lost at least one parent during a brief, five-year period. Swelling these ranks were the "war babies," the illegitimate issue of wartime liaisons, whose numbers temporarily reversed a long-term decline in bastardy rates: whereas 4.29 percent of all live births had been illegitimate in 1913, by 1918 the figure stood at 6.26 percent. Not all contemporaries believed that "dead heroes" had fathered these babies or that the "girls" who conceived such children should be praised. Yet never in living memory had there been so many children who needed new homes or so many grieving parents ready to provide them . [68]

Epidemic of adoption and legal uncertainty

As the *Times's* "personal" columns began to suggest, especially after the start of the Somme offensive in July 1916, more well-off adults were now prepared to overlook eugenic fears about the underclass to bring up others' children as their own. These advertisements often demanded "absolute surrender," however." [69] If the *Spectator* was right that an "epidemic of adoption" had broken out, it was spreading among those who "lived in constant dread" that their new sons and daughters might be "snatched away." [70] Catherine Hartley, the author of two well-received books on woman's nature, typified the sort of middle-class parent for whom adoption entailed terrifying uncertainty. Late in 1917 she implored the home secretary to provide legal relief:

> I myself have an adopted son now at a public school, & dearer to me than anyone in the world. [H]e was deserted by his mother under peculiarly painful circumstances in early childhood, but for the last few years I have had terrible trouble, anxiety, & expense as the mother though she had signed a deed giving him up to me, said she wished to have him back. I need not trouble you with further details, which I mention only to show you how earnestly I care. I ask you, in the name of these little ones, to do something to help & protect them . [71]

The legal limbo

Behlmer— The legal limbo in which parents such as Hartley lived drove another advocate of reform to declare, "The law has gone so far in the direction of restricting the exercise of parental rights that it might [as] well go a little further" and recognize the validity of these new family configurations. Without law's blessing, genteel adopters would be forced to dodge a child's birth parents by ever more devious means. [72]

Such anxiety would eventually fuel two Home Office investigations into the demand for adopted children. When legalization finally came to England in 1926, some people chose to regard this historic step as "a sacramental ministry of reconstruction," the nation's most poignant effort to heal the wounds of war. [73] More broadly conceived, legalization made possible a new narrative of English family life. Although tinged with anxieties of its own, it was a narrative from which fears about blackmail over the adoption process began to recede.

The legal limbo

Behlmer— Historians are often surprised to learn how long the gulf between customary adoption and common law endured in England. Still less appreciated-and perhaps more surprising-is the speed with which the dislocations of world war served to harmonize theory and practice.

NOTES

65. *New York Times Magazine*, October 13, 1915, p. 9. Wealthy childless couples in the United States did on occasion insist that children's charities administer the Simon-Binet intelligence test to prospective adoptees, along with the more routine tuberculosis test, but well into the twentieth century American social workers remained skeptical of adoption, particularly for illegitimate

children. See E. Wayne Carp, *Family Matters: Secrecy and Disclosure in the History of Adoption* (Cambridge, Mass.: Harvard University Press, 1998).

66. Howard Carrington, "Adoption By Advertisement," *The Survey* 35 (Dec. 11, 1915): 285-86.

67. John Stevenson, *British Society*, 1914-45 (London: A. Lane, 1984), 94, 210.

68. Eighty-second Annual Report of the Registrar General, PP, 1920, XI: xxxiv-xxxv; Lettice Fisher, "The Unmarried Mother and Her Child," *Contemporary Review* 156 (Oct. 1939): 485-86; *Times* (London), Apr. 19, 1915; Mary J. H. Skrine, "The Little Black Lamb," Spectator 119 (Aug. 11, 1917): 137. The newly patriotic Women's Social and Political Union was the first major feminist group to advocate adoption as a remedy for the "war babies" problem (*Times* [London], May 6, 1915).

69. See, for example, the *Times's* front pages for Aug.-Nov. 1916. Since the minimum charge for a small "personal" advertisement was then five shillings, those seeking to adopt children most likely enjoyed a degree of financial comfort.

70. "The Epidemic of Adoption," *Spectator* 119 (July 28,1917): 79; British Agencies for Adoption and Fostering, London, typescript "History of the [Lancashire and Cheshire Child] Adoption Council," [1977].

71. Public Record Office, HO45/11540/354040, Hartley to the home secretary, Dec. 6, 1917. Hartley also advocated "free divorce" and argued that where divorced parents could not amicably share child-care duties, the state might award custody of their children to childless couples (Catherine Gasquoine Hartley, *The Truth about Woman* [London, 1913], 358).

72. Norman Croom-Johnson, "The Adoption of Children," *Englishwoman* 116 (Aug. 1918): 53-54.

73. Parliamentary Debates, 5th ser., 182 (Apr. 3, 1925), 1708-9.

Source George K. Behlmer 'What's Love Got to Do with It? "Adoption" in Victorian and Edwardian England' in book 'Adoption in America' University of Michigan Press 2004 pp94-95.

History ex-nuptial maintenance and custody

Gamble— "At common law the ex-nuptial child was *filius nullius*, the child of no one or *filius populi*, the child of the people. The child had no legal guardians, neither mother nor father, and the duty to maintain and care for the child fell on the parish. In 1576 when the burden of maintenance was transferred from the parish to the parents by statute. 18Eliz 1c3(1576) imposed the duty on both mother and father. Rights of custody were also conferred, primarily on the mother and then, increasingly, on the father. It is the history of this conferral of the rights to custody which of interest.

The shift in the law of custody apparently followed the shift in the burden of maintenance. Originally, it was the mother's parish which bore the burden of maintenance. When the duty to maintain was transferred to the parents primary responsibility was cast on the mother, the aim being to relieve her parish of the burden. Once she was fixed with the statutory duty to reimburse the parish for maintenance, the mother was also granted the right to custody, but this was granted very much as an adjunct to the duty to maintain...The father could claim custody on the same basis: that the statutory obligation to maintain the child conferred a right to custody. Such and argument appears to have been successful in several reported cases when used as a defence to a parish's claim for maintenance payments...It could be said with some measure of assurance by late last century 1880-90s, that as she had primary duty to maintain the child the mother also had the right to custody.

Interests of child- common law origin

Gamble— The rights and obligations of custody were assigned by the common law. 'That right [to custody] is given to the mother, *not for the benefit or gratification of the mother, still less as part of her property*, but in order to enable her to discharge the duties which the law imposes on her in respect of the infant, and for its benefit' *Humphrys v Polak* [1901] 2KB 385at389-390. It is not true to say the father was denied custody. The courts of *equity* accorded him the right to apply and would grant custody to him if it was in the interests of the child to do so. It is the *principles of equity* which have been adopted by modern courts..

Analysis of history

Gamble— of the case law up to this century shows no consistent policy to either allow the father of an ex-nuptial child custody or to deny it. It is probably fair to say that the common law developed in a pragmatic way alongside statutory provisions which were designed to protect state revenue. Custody went to the person who paid. The courts of equity took more positive steps to protect and awarded custody to the person who could best secure its interests. Circumstances usually dictated that the mother should have custody because she was better placed to secure the interests of the child. Thus, the father was not denied a right to custody, but on most occasions he was unable to persuade the court that the child would be as well cared for in his custody as it would be in the custody of the mother."

Source Helen Gamble 'Fathers and the New Reproductive Technologies: Recognition of the Donor as Parent' in *Australian Journal of Family Law* (1990) Vol.4.pp131-134. *Professor of Law University of Wollongong.

Church of Scotland— bastard mothers

Hood— "The Church of Scotland recognised many sins: greed, pride, untruthfulness, self-righteousness, hypocrisy, blasphemy, idolatry, drunkenness, Sabbath-breaking, adultery and fornication: and the greatest of these were adultery and fornication. There may have been an element of convenience in this unscriptural emphasis on sexual offences: while irrefutable evidence of most forms of sinning was difficult to obtain, the birth of an illegitimate child was proof positive that an offence had occurred. p59

To avoid the wrath of the Kirk many Scottish women attempted to hide their ex-nuptial pregnancies, but in the eyes of the Calvinistic authorities this was the greatest sin of all. In 1690 a law was passed that made it a capital offence for a women to conceal her pregnancy, should the baby be subsequently found dead or missing. The last hanging under the Act was carried out in 1776; thereafter, under the peculiar Scottish procedure, an accused woman could avoid trial by electing to be 'banished' in-

stead. p59

Hood— When the bastard was neither dead nor missing the mother could not be charged with infanticide, so the kirk authorities satisfied their misanthropy by charging her with fornication instead. Until the end of the eighteenth century any women found guilty of fornication was required to sit before her congregation on a 'stool of repentance'...p59

Hood— Married couples who's first child was born less than nine months from their wedding date were not exempt from this humiliation; in such cases their sin was 'antenuptial fornication'. Both the established and dissenting Scottish Presbyterian churches poured more than 350 years of impassioned energy into the suppression of fornication, but studies of Scottish baptism records over that period show that the incidence of babies conceived out of wedlock remained unchanged. According to historian T.C. Smouth, the only lasting effect of the crusade was that it transformed the outward attitude of Scottish society towards sex from one of great permissiveness before 1560, to one of rigorous and inquisitorial disapproval by the seventeenth century. Fornication still occurred, but after Calvinism came to Scotland those who fornicated, especially in urban areas*, did so a great deal more furtively and guiltily than before. And when the private act brought forth public issue some young women were driven by terror and shame to kill their babies. Several commentators believed that infanticide increased as a result of Kirk discipline. p60

*In some rural areas where determining a women's fer tility before marriage was a matter of common sense agricultural economics, community attitudes were more relaxed."p60

Source '*Minnie Dean her Life and Crimes*' Lynley Hood 1994 pp59-60.

Many obstacles to adoption law

Benet— "In spite of the widespread practice of adoption, there were many obstacles to the passage of an adoption law. To this day, most orphans are cared for by relatives, as are many children whose mothers must earn their living. The child whose parents cannot provide for it, whose mother is unmarried, or who through some other accident of fate comes into public care, has always been the 'adoptable' child. But when adoption was seen as one way of condoning immorality, and when just those people who could have encouraged it-the Church and the Poor Law authorities-did not do so, there was no pressure for it to achieve legal status. Add to this the fact that adoption interfered with the English law of inheritance, and the cards were heavily stacked against it." 1976 p62

Victorian fiction

Benet— "Two major themes of Victorian fiction can be seen as bearing on the matter of adoption (a) the rescue of an orphan child, and (b) the story of the changeling, or the child whose real parentage is suddenly and dramatically revealed. Along with these themes goes the overriding obsession with inheritance: the one accident, almost an act of God, that could suddenly change the social status of a person in a class-bound very unequal society." 1976 p62

Plight of poor

Benet—"Genuine adoption was considered a moral and practical impossibility. This was a society where the adoption of an heir made no difference to the descent of property; where money had largely taken the place of land, and more mouths to feed were a liability, not an asset. The countryside was becoming depopulated and enclosed; the crowded cities were sinks of unemployment." p64

Poor practised *de facto* adoption

Benet— "Even in the Dark Ages, adoption did not die out completely in Europe. In England, the poor practised de facto adoption— often under pressure from the Poor Law authorities... The numbers involved increased from early Tudor times to the end of the nineteenth century, as industrialization affected more and more families and other systems of relief gradually disintegrated. Thus although adoption was known in England, it was hampered by the absence of legal status." Benet 1976 p65

Democracy late in England

Benet— "The spread of democracy on the continent of Europe, and the revival of laws from the Roman Republic, did not reach as far as England, where the importance of blood ties, primogeniture, and inheritance through entail continued almost unabated. To bring about a revival of adoption required a more fluid social system, an under-populated country, and a situation in which a man created his own place in the world and was not simply born into his rank." 1976 p66

Colonies first with adoption

Benet— "The above conditions obtained in the colonies of North America and the antipodes, most of which passed adoption laws seventy five years before England." 1976 p66

England / US social contrast

Benet— "The amazement of English visitors at how easily families absorbed indigent relatives, let alone totally unrelated children, shows how very unresponsive to this need the social structure of England had become. The visitors attributed the popularity of adoption to the abundance of food on a farm, but in fact the abundance was related to the amount of labour available: a situation no longer strictly true in manufacturing England. The increasing efficiency of machinery in factories and in agriculture meant that fewer hands were needed to produce the same amount. The United States still had vast tracts of wilderness to settle, and there were few substitutes for human labour on the frontier farms." 1976 p67

Adoption variant of Poor Law

Benet— "Adoption was for long only a variant on the traditional Poor Law system of lodging indigent children in exchange for their labour. When it became more than that, and the passage of laws attempted to ensure that adopted children were well-treated, the whole process still faced a great deal of opposition. Most of this was of a

class nature: adopted children were likely to be of a social origin quite different from that of the adopters, who, as a result, tended to expect the kind of behaviour they attributed to the local lower class." 1976 p68

US Protestant adoption societies

Benet—"Protestant sects founded the early adoption societies in the U.S -their notions of Christian charity involved them in many kinds of social work, and they were not committed, as the Catholics were, to the idea that the religious life involved seceding from the secular world."p68

State slow to see benefit of adoption

Benet— "The state itself was much slower to recognize the benefits it could derive from the practice of adoption. Opposition came from several sources—

(a) Moralists continued to think that adoption enabled unmarried mothers to 'get away with it' and avoid the lasting stigma and punishment of having to raise their own children.

(b) Belief that adopting families only wanted the children in order to exploit them was slow to die.

(c) Provision of comprehensive social services, including adoption, seemed unjustifiably expensive, especially when Church social agencies were willing to do it themselves." 1976 p69

US adoption by white ruling class

Benet—"Although adoption early became law in U.S, it was only practised by the white ruling group; the agencies were created by and intended to serve, this group. Other castes practised de facto adoption on a much wider scale, as a means of family survival in times of poverty and dislocation, but they did it without benefit of law."p70

Adoption confuses class system

Benet— "The English problem was that once adoption became law, confusion might arise in the class system. The punishing of poverty might have to stop; the poor might begin to use the alleviating mechanisms intended for their betters." Benet 1976 p70

Adoption cost State nothing

Benet— "Much of the modern history of social welfare is concerned with the resistance of the Poor Law-based system to the introduction of liberal measures influenced by modern psychology. Modern psychology had a friend at court in the form of the growing realization that fostering cost the state less than keeping children in institutions; and that adoption, after the formalities were completed, cost nothing at all." Benet 1976 p70

Distrust of fostering

Benet— "Foster parents were suspect for many years simply because they were paid: there was an abiding suspicion that they were doing it only for money, and periodic scandals about the 'baby-farming' methods of private fostering added to public mistrust." Benet 1976 p71

Diminished adoption obstacles

Benet— "Obstacles to adoption gradually diminished. The feudal system of landholding became less significant as property was converted into money. The Poor Law system of relief, when faced with the vast slums created by industrialism, became increasingly unworkable." p72

English racial superiority

Benet— During the rise of the British Empire, the English came to see themselves as a precious few surrounded by hostile tribes; in this situation, home-grown slum children were acceptable as never before. Attributing undesirable traits to genes rather than to social deprivation is a widespread habit of mind-as the controversy over the innate intelligence of black people is a the vexed issues in American adoption today. But this problem can be seen in perspective when we note that every proletarian class was popularly supposed to be stupider, less moral, and less trustworthy than its superiors; and that the 'stupid' class in one country may become the masters in another, and thus begin to attribute stupidity to someone else..Thus any Englishman could claim superiority to the 'natives' ruled by the mother country. ." 1976 p72

World War made England legalise adoption

Benet— "First World War finally pushed England into legislating. The war orphans made a more sentimental appeal to the conscience than did the waifs of the 'undeserving poor' or the bastards of 'immoral' women. When middle classes in Belgium took in victims of the war, it set an example.. Adoption after the First World War had a, patriotic tinge: often the goal was to replace a child killed in the war, or for a widow to find a new interest in life." cf p72 **Source** M K Benet 'The Character of Adoption' Johathan Cape 1976.

First World War triggered adoption changes

UN Department of Economic & Social Affairs— "Civil adoption as an institution has existed from time immemorial, but both the nature of the proceeding and its purpose have varied widely from time to time and from place to place. The practice of adopting children was never very widespread. Adoptions were relatively few and far between and, in some countries, were even prohibited by legislation. But, at the beginning of the twentieth century, and *particularly since the First World War, adoption took a surprising bound forward,* a movement which can be traced primarily to the desire to provide new homes for war orphans and homeless children. The same motive has influenced many people since the Second World War, and the progress of scientific knowledge of child development has contributed to this movement by revealing the importance for the growth of the child of, stable emotional ties with parents or substitute parents from an early age.

It was only after the First World War that, under pressure of public opinion and with a view to regularizing numerous de facto situations, several countries promulgated their first adoption laws or revised existing ones which had become incompatible with modern ideas. Whereas, originally, the aim of adoption was essentially to provide the adopters with direct heirs, it is now increasingly considered as a unique means of providing a permanent parental relationship for children deprived of their natural par-

ents."

Source 'Comparative Analysis of Adoption Laws' UN Department of Economic & Social Affairs 1956 p2

Class matching

Benet— "If charity was one motive for adoption, adopters still hoped for a result satisfactory to themselves, and it was the self-imposed duty of the agencies to be stringent in selecting the children they placed. In 1929-30, the National Children Adoption Association arranged 255 adoptions-and turned away 550." Benet 1976 p73

England resisted legal adoption

Benet— While *de facto* adoption was permitted, the two main obstacles to legal adoption were

1 It was seen as a way of condoning immorality by allowing people to escape the consequences.

2 Adoption interfered with English law of inheritance.

The cards were heavily stacked against legal adoption. Prior to 1926 six Private Members' Bills to provide legal adoption had been defeated. The revival of legal adoption required a more fluid social system, an under-populated country where man created his own place in the world and was not simply born into his rank. Thus the colonies of North America and New Zealand passed adoption laws seventy five years before England. p73

1926 Parliament reluctant

Benet— "In spite of all these reasons for the necessity of legal adoption, Parliament was remarkably reluctant to legislate. Not personally concerned with children in need, most of the legislators feared the effect of adoption on the country's morality and on the laws of inheritance...p73

The debate in the House of Commons neatly encapsulated many of the issues that are still being argued over in connection with adoption; it also typified the debates held in other legislatures, in other Western countries, when they came to face the same problem. The political implications of adoption legislation were brought out more clearly than at any time before or since... p74

The barriers of conventional morality and inheritance were so strong that even after a favourable report by a Parliamentary committee, the question had to be presented in the guise of patriotism. Six Private Members' Bills were introduced, and failed, before the 1926 session that saw the success of the measure... p74

All in all, it was necessary to legislate for the soundest of reasons: 'We must realize that adoption de facto is taking place all the time and that it is right that what is de facto should be made de jure, so that people may know precisely where they are...p75

When it came to details, many things were debated that have not been solved to this day—

(a) The question of secrecy was seen to involve several paradoxes. If adoption were secret, and the identity of natural parents and adopters unknown to each other, how could incest (which would be illegal in both families) be avoided? p75

(b) More pertinent still, how could the adopted child inherit on the intestacy of his natural parent, a right it was decided he should still have, if he and the parent lost sight of each other's whereabouts? p75

(c) The proponents of secrecy pointed out that because most adopted children were illegitimate, they should have their origins buried in their own interests. p76

(d) To be adopted would brand them in the public mind as illegitimate, even after the technical change of status brought about by adoption. But even this point of view was challenged on the grounds that it made adoption itself seem shameful: 'In the public mind there ought to be a feeling that it is a perfectly honourable relationship between the child and the adopted parents."1976 pp73-76

Penalties on birth mothers continued

Benet— "Even after the 1926 law was passed, its implementation depended to a large extent on agency practice. And the agencies showed the influence of Poor Law legislation that made the unwed mother a criminal. Until the passing of the Adoption Act, the mother could be imprisoned in the workhouse for two years as the price of having the child taken off her hands by the authorities—and when the Church of England and local councils began opening shelters for unmarried mothers, they often exchanged care and lodging for 2 yrs' unpaid labour." p76

Adoption - young children preferred

Benet— "The adoption of infants at this time was the exception rather than the rule; adopters often wanted a child past the nappy stage, to make things easier for themselves; and some wanted even older children, and were suspected of using them as cheap domestic labour" Benet 1976 p77

State as intermediary in England

Benet— "English adoption law, because it was first promulgated for children already in the care of the state, always involved the state as an intermediary. Ancient adoption law was a contract between two parties, legalized before a judge. But in England, it was a transaction between the child's previous caretaker —the state—and the adopters. Thus the 'guardian ad litem', 'next friend', and other representatives of the 'best interest of the child' were mentioned in the laws. Such a representative is meant to be disinterested: that is, he cannot be one of the people actually arranging the adoption. Their role was to investigate the adopters and give them the child if they were found satisfactory. This made it easier to provide adoption services as part of the state's total social welfare effort: officialdom was already on the scene. 1976 p78

English adoption law - world impact

Benet— "The English and colonial laws were expressly formulated to deal with a new situation: the break-up of extended families in the industrial cities. It was better suited to solving these problems than was the cumbrous Roman law. Thus the provisions of English law began to have an impact everywhere in the world -a process that was hastened by colonialism." 1976 p78

International adoption standards 1976

Benet— "In adoption as in so many other areas, the cultural and legal norm... is coming to be that of the Anglo-

Saxon countries. The wide variety of attitudes and practices once found throughout the world is gradually becoming standardized—and this standardization is reflected in Geneva conventions, Hague conventions, international concords of all kinds." p79

Advantage of standards

Benet— "There are obvious advantages in a mobile society. Disputes about the legal status of a child adopted in another country can be sorted out; an adopted child can be assured of his inheritance; adoptive parents do not risk losing the child. Uniformity ensures that adoption is understood by everyone in the same way." 1976 p79

Main influence of Anglo-Saxon law

Benet— "Stems from its intolerance of any kind of semi-adopted status. If adoption is to exist at all in a society where possession, ownership, and materialism hold sway it must be made absolutely total and watertight. This has been the nature of the laws in England, U.S, and their colonies throughout this century. Inheritance from the natural family has gradually been replaced by inheritance from the adopters, and the obligation to support natural parents, where it existed, has largely been done away with. The impetus behind many of these changes has been that the only way parental rights could be transferred was through adoption. Either the adopters became the parents, and thus had total legal jurisdiction over the child, or they did not, and the natural parents could claim it." 1976 p79

Sharing parental rights

Benet— "The sharing of parental rights, rather than their total investment in one set of parents, is an idea much talked about today. But at a time when the family itself seems to be disintegrating, rather than assimilating new members, what sort of group is going to share these rights and obligations? The kibbutz, the commune, the 'group home' ...have been put forward. But all of them so far have suffered from the fact they are running counter to prevailing trend, which is for the family group to become ever smaller and thus more intensely bound together." 1976 p80 **Source** MK Benet 'The Character of Adoption' Jonathan Cape 1976

Children and unmarried mothers
Gradual changes from 1930s

McWhinnie— Gradually, however, there has been a change in attitude to social work with the unmarried mother. Annual reports in 1900 described some unmarried mothers as unruly and it was commented that it was no wonder that parents would not have such girls at home. By 1930, however, some reports emphasised how unhappy she was and how little understood. There was evidence that a change was gradually occurring, since there was less emphasis on sins to be erased and more on good qualities to be developed. The policy, however, of most moral welfare organisations is still to have a bias towards encouraging an unmarried mother to keep her child rather than insist on an attempt at an objective appraisal of each case and each situation. The objects of the National Council for the Unmarried Mother and her Child are stated in approximately the same terms in 1963 as they were in 1918.

The development of child welfare legislation in the pre-1914 era had helped to emphasise the importance and value of the child. The earlier legislation, however, derived its motive from pity for the helpless and innocent. p5

Impact of Boer War & 1914-18 war

The Boer War with its revelation about the nation's poor health produced a crop of legislation aimed to improve the future health and fitness of the nation. The School Medical Service was inaugurated at this time and systematic medical inspection of children at elementary schools was followed by provision for certain forms of treatment. The 1914-18 war with its heavy loss of life, gave further impetus to child welfare legislation, which now began to focus much more on the value of the child as such. p6

Welfare of child gains traction

Although opposition to legislation for the welfare of children still came from those who felt it would detract from parental responsibility. This community attitude coincides with the emphasis of English Common Law, already mentioned, where the rights of the natural parents are stressed. Thus under an Act of 1886, dealing with the guardianship of infants, it was stated that, in cases of divorce and where there was a dispute about the custody of the child, regard was to be paid to the welfare of the child and also to the conduct of both parents. p6

Child paramount consideration 1925

By 1925, however, in the Guardianship of Infants Act of that year, the courts were given a clear directive. A court in deciding about the custody of a child... 'shall regard the welfare of the child as the first and paramount consideration'. Reinforcing this growing concern for the health and welfare of children was the rapidly falling birth-rate. This fell in England and Wales from 29·9 in the last decade of the nineteenth century to 14·8 by 1939. The equivalent figures for Scotland were 31·4 to 17·3. p6

Background to child adoption

It is against this general background of community attitudes to the illegitimate child, of social work attitudes to the un-married mother, and of developing legislation for child welfare, that the developments in child adoption in the twentieth century in this country must be viewed. Previously, many *de facto* adoptions were arranged but these placements were made informally and directly between the parties concerned. The growth of adoption societies under-taking to place children in adoptive homes dates from the 1914-18 World War, and the legalisation of adoption placements became possible in England and Wales only in 1926 and in Scotland in 1930. p6

The organisations which pioneered adoption work in this country were all voluntary societies. The National Children's Home and Orphanage, was making such placements as early as the 1890s. The real impetus, however, to adoption work came from the need for homes for many children, orphaned or born out of wedlock, during the First World War. This led to the setting-up of two large national adoption societies in London, The National Adoption Society and the National Children Adoption Association...

UNITED STATES OF AMERICA

Wayne Carp— Adoption touches almost every conceivable aspect of American society and culture. Adoption commands our attention because of the enormous number of people who have a direct, intimate connection to it-some experts put the number as high as six out of every ten Americans.' Others estimate that about one million children in the United States live with adoptive parents and that 2 to 4 percent of American families include an adopted child .2 According to incomplete 1992 estimates, a total of 126,951 domestic adoptions occurred, 53,525 of them (42 percent) kinship or stepparent adoptions.' Because of the dearth of healthy white infants for adoption, 18,477 adoptions in 2000 were intercountry adoptions, with slightly more than half of those children coming from Russia and China. In short, adoption is a ubiquitous social institution in American society, creating invisible relationships with biological and adoptive kin that touch far more people than we imagine. p1.

Overview US adoption history

Carp—Throughout American history, adoption-generally viewed as an inferior type of kinship relation-has been shaped by the nation's waxing and waning attachment to biological kinship and by demographic trends, consequences of primitive legal and environmental circumstances during the seventeenth and eighteenth centuries; of disease, civil war, industrialization, urbanization, and immigration in the nineteenth century; and of the Great Depression, World War II, and changes in sexual mores during the twentieth century. These up-heavals in American history have resulted in the growth of child-centered state and federal laws governing adoption, the standardization and professionalization of adoption practices, the increasing trend away from strict matching criteria, the broadening definition of "adoptable" children, and the emergence of protest movements against sealed adoption records. p3

American departure from English practices

Carp—Although colonial Americans derived their culture and laws from England, they departed from English practices in the area of adoption. English common law did not recognize adoption. English legal opposition to adoption stemmed from a desire to protect the property rights of blood relatives in cases of inheritance, a moral dislike of illegitimacy, and the availability of other quasi-adoptive devices such as apprenticeship and voluntary transfers. Consequently, England did not enact its first adoption statute until 1926. In contrast, what is noteworthy about the history of adoption in America is that at its inception, colonists were less preoccupied with the primacy of biological kinship, practicing adoption on a limited scale and frequently placing children out as apprentices in what would today be called foster care. The fluid boundaries between consanguine and nonconsanguine families in colonial America led in some cases to the informal adoption of children, particularly in Puritan Massachusetts and Dutch New York. 14 p3

Adoption became more common early 1800s

Carp—Historian Susan L. Porter's.... focuses on four private nonsectarian Protestant orphan asylums between 1800 and 1820 and discovers that the female managers "embraced adoption as one means of solving their difficulties with the indenture system. But adoption did not emerge as the preferred system of child care in the early nineteenth century because elite families with whom the children were placed often treated them as servants rather than family members. This experience led the female managers to favor blood relatives when considering child placement. Porter also sheds light on the demographics of adopted children and adoptive parents. She finds that few of the children were very young and that most parents were middle class rather than wealthy, did not have biological children, and generally preferred girls. pp3-4

Adoptive outcomes 20% negative

Carp—Most significantly, Porter finds that rather than the happy, successful adoption outcomes often portrayed by those favoring adoption, 20 percent of adopted children had negative family experiences. Asylum managers' experience with adoption led them to conclude that it "could never replace the natural home." Like early-twentieth-century professional social workers, these nineteenth-century orphan managers came to view adoption in casework terms. The best solution for the orphanage was to place the child with blood relatives, but when that was not possible, adoption was considered. p4

1850s> formal legal adoptions increased

Carp—In the mid-nineteenth century, the number of formal legal adoptions increased, though it is impossible to know precisely by how much. Many of these adoptions were enacted by state legislatures by means of private bills passed at the request of parents who desired name changes for their children. In Massachusetts between 1781 and 1851, the General Court enacted 101 private name-change acts, a dramatic rise from the 4 that took place during the previous century.

Profound changes in US society

Carp—The increased incidence of private legislation legalizing informal adoptions reflected profound changes occurring in U.S. Society, especially in the North. By the mid-nineteenth century, large-scale immigration, urbanization, and the advent of the factory system and wage labor had led colonial America's compact, stable, agricultural communities to give way to crowded, sprawling, coastal cities. One effect of these wrenching economic and social transformations was that urban and rural poverty became major problems. Consequently, humanitarian and religious child welfare reformers all over the United States turned to large-scale institutions such as public almshouses and private orphanages to reduce the expense of poor relief and, with utopian expectations, to reform, rehabilitate, and educate paupers. The adoption of children increased slightly with the founding of these institutions. In the first forty-five years of its existence, for example, the Boston Female Asylum adopted out 4.9 percent of its children. p4

Reformers advocate Family over Institutions

Carp—In the decades that followed, child welfare reformers severely criticized alms-houses and orphanages for their expensiveness, rigid routines, harsh discipline, and failure to produce independent and hard working children. Influenced by the child-development theories of John Locke and Horace Bushnell, these reformers extolled "God's orphanage" the family-over the institution's artificial environment and attributed to the family the ability to produce at little expense sociable, independent, and industrious citizens." The most influential institution in the new movement toward home placement was the New York's Children's Aid Society (CAS), founded in 1853 by the Reverend Charles Loring Brace, a transplanted New Englander and graduate of Yale Divinity School. p4

Orphan Trains 84,000 children

Carp—During the following forty years, 1853-1890s the CAS placed out eighty-four thousand eastern children on "orphan trains" in the western states of Michigan, Ohio, Indiana, Iowa, Missouri, and Kansas. Some of these children were adopted, though exact numbers are unknown.p5

Demand for general adoption statutes

Carp—The large-scale placing-out movement inaugurated by the widely imitated CAS had enormous consequences for the history of adoption. The origins of America's first adoption laws can be traced to the increase in the number of middle-class farmers desiring to legalize the addition of children to their families." By the mid-nineteenth century, state legislatures began enacting the first general adoption statutes, designed to ease the legislative burden caused by private adoption acts and to clarify inheritance rights. These general adoption statutes, first passed in Mississippi in 1846 and Texas in 1850 (both states that had once been subject to France or Spain), were influenced by the civil law tradition embodied in the Napoleonic Code. However, these statutes merely provided a legal procedure "to authenticate and make a public record of private adoption agreements; analogous to recording a deed for a piece of land." p5

Profound changes in child custody law

Carp—In addition to adoption by deed, state legislatures began to enact a second type of general adoption statute. Lawmakers were influenced by profound changes in domestic-relations law, particularly child custody law.

1 Post revolutionary republican sentiment of equality toward the family coupled with judicial discretion destroyed traditional paternalistic custody rules, grounded in Anglo-American law, that granted fathers an almost unlimited right to their minor legitimate children.

2 Increasingly, the primacy of paternal custody rights was undermined by a judicial disposition to view women with a special capacity for moral and religious leadership and child rearing. This resulted in one of the two most important elements in the development of the modern law of child custody,

(i) The introduction of maternal-paternal equality.

(ii) 1840s Codification best interests of the child.

1840s Codification best interests of the child

Carp—The second important doctrinal development was the codification by the 1840s of the "best interests of the child" standard, which state judges increasingly used to settle custody disputes. Four principles were associated with this child welfare doctrine.

1 Stipulated that children of "tender age" or delicate health ought to be placed in the woman's custody.

2 Older boys should be placed in the care of the father.

3 The court should respect the child's formed attachments and ties of affection.

4 Fourth, the court should be guided by the child's wishes if he or she were capable of exercising a "reasonable discretion." p5

Massachusetts Adoption Act 1851

Carp—The new ideas about child custody were embedded in the most important of these new general adoption statutes, "An Act to Provide for the Adoption of Children," passed in 1851 by the Massachusetts legislature. This statute, a mile-stone in the history of adoption, reflected Americans' new conceptions of childhood and parenthood by emphasizing the welfare of the child and establishing the principle (if not the practice) that judges were to determine whether prospective adoptive parents were "fit and proper." In addition, the act severed the legal bonds between biological parents and their children, thus freeing the child from all legal obligations to their parents of origin. The Massachusetts Adoption Act, as it was commonly called, marked a watershed in the history of the American family and society. Instead of defining the parent-child relationship exclusively in terms of blood kinship, it was now legally possible to create a family by assuming the responsibility and emotional outlook of a biological parent." pp5-6

Pennsylvania, 1853

Carp—Became the second state to enact such a child-centered adoption law, mandated that "the courts were to be satisfied that the welfare of such child will be promoted by such an adoption: In the next quarter century, the Massachusetts Adoption Act came to be regarded as a model, and twenty-four states enacted similar laws. p6

Source Wayne Carp. 'A Historical Overview of American Adoption' 'Introduction. in book 'Adoption in America Historical Perspectives' University of Michigan Press 2004 pp1-6.

1851 Massachusetts Adoption of Children Act

Naomi Cahn— In 1851, Massachusetts enacted what is generally characterized as the "first modern adoption statute." The act was not, however, widely noted at the time, and, what recognition it did garner, appears not to have focused on its authorization of adoption...

(a) Some form of adoption was recognized by various types of statutes prior to 1851.

(b) Modern adoption did not emerge, full-formed as a result of this statute. While the 1851 statute was a significant advance over prior statutes, the story of adoption has far more layers and texture and a much more complex historical pedigree— p19

Massachusetts Adoption of Children Act 1851

"An Act to provide for the Adoption of Children," Acts and Resolves passed by the General Court of Massachusetts, Chap. 324, (1851).

"BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

Sec 1 Any inhabitant of this Commonwealth may petition the judge of probate, in the county wherein he or she may reside, for leave to adopt a child not his or her own by birth.

Sec 2 If both or either of the parents of such child shall be living, they or the survivor of them, as the case may be, shall consent in writing to such adoption: if neither parent be living, such consent may be given by the legal guardian of such child; if there be no legal guardian, no father nor mother, the next of kin of such child within the State may give such consent; and if there be no such next of kin, the judge of probate may appoint some discreet and suitable person to act in the proceedings as the next friend of such child, and give or withhold such consent.

Sec 3 If the child be of the age of fourteen years or upwards, the adoption shall not be made without his or her consent.

Sec 4 No petition by a person having a lawful wife shall be allowed unless such wife shall join therein, and no woman having a lawful husband shall be competent to present and prosecute such petition.

Sec 5 If, upon such petition, so presented and con sented to as aforesaid, the judge of probate shall be satisfied of the identity and relations of the persons, and that the petitioner, or, in case of husband and wife, the petitioners, are of sufficient ability to bring up the child, and furnish suitable nurture and education, having reference to the degree and condition of its parents, and that it is fit and proper that such adoption should take effect, he shall make a decree setting forth the said facts, and ordering that, from and after the date of the decree, such child should be deemed and taken, to all legal intents and purposes, the child of the petitioner or petitioners.

Sec 6 A child so adopted, as aforesaid, shall be deemed, for the purposes of inheritance and succession by such child, custody of the person and right of obedience by such parent or parents by adoption, and all other legal consequences and incidents of the natural relation of parents and children, the same to all intents and purposes as if such child had been born in lawful wedlock of such parents or parent by adoption, saving only that such child shall not be deemed capable of taking property expressly limited to the heirs of the body or bodies of such petitioner or petitioners.

Sec 7 The natural parent or parents of such child shall be deprived, by such decree of adoption, of all legal rights whatsoever as respects such child; and such child shall be freed from all legal obligations of maintenance and obedience, as respects such natural parent or parents.

Sec 8 Any petitioner, or any child which is the subject of such a petition, by any next friend, may claim and prosecute an appeal to the supreme judicial court from such decree of the judge of probate, in like manner and with the like effect as such appeals may now be claimed and prosecuted in cases of wills, saying only that in no case shall any bond be required of, nor any costs awarded against, such child or its next friend so appealing." *Approved by the Governor, May 24, 1851.*
Source Adoption History Project University of Oregon.

1 Adoption petitions

Cahn— Earlier statutes concerning adoption had been enacted in many states, although they differed from the 1851 Massachusetts act in that they were focused on individual adoptions in response to specific legislative petitions. The right to petition for individual redress was deeply rooted in early American law, and families used this action in order to effect legal recognition of a child's changed status. This individually-focused legislation authorized name changes or other methods to ensure that children were able to inherit from their adoptive parents. Although these acts centered on inheritance rights, the underlying relationships were generally familial, rather than mercenary...

A 1850 Texas statute was designed to protect the inheritance rights of adopted children by allowing any individual to file a statement with the court to adopt another person. In other states, the legislatures authorized individuals to change their names, acts that carried with them full inheritance rights...pp19-20

2 Charitable adoptions

Cahn— These statutes typically envisioned that parents would surrender custody to the charitable organization, which would then place the child in an appropriate family subject to various safeguards... p21

In 1849, New York allowed the incorporation of the American Female Moral Reform and Guardian Society. Once parents had relinquished their children to the organization, the legislation authorized the Society to: "place such child by adoption or at service in some suitable employment and with some proper person or persons ... in every such case the requisite provisions shall be inserted in the indenture or contract of binding to secure the child so bound such treatment, education, or instruction as shall be suitable and useful to its situation and circumstances in life." Moreover, the New York statute provided for oversight of the child's treatment, requiring the approval of either the commissioners of the alms house or the surrogate of New York...p21 1849 act of incorporation for Worcester Children's Friends Society allowed for placement of "children in the families of virtuous and respectable citizens, to be brought up in such families as adopted children and members thereof."... The 1849 Massachusetts statute even specified that the adopted children should become "members" of their new families. p21

All of the statutes required some public oversight to finalize a placement. Unlike the more general 1851 stat-

ute, however, the 1849 statute did not specify a precise interpretation of the effect of adoption...p21

3 Informal adoption

Cahn— The final form of adoption that existed was more informal, and did not become legal-or at least public-until judicially disputed.... European visitors to the United States frequently commented on the ease with which children were adopted into new families, although such adoptions typically occurred by relatives upon the death of a family member... This type of informal adoption was fairly widespread.... In her study of the *Boston Female Asylum,* Professor Susan Porter observes that some children were never formally admitted to the orphanage because, although known to the orphanage, the children had already been placed through informal adoptions. p21

Although there is little documentation of this practice, informal forms of adoption provided parents for children within the African-American community. Foster parents and "fictive kin" expanded the familial support available to children both during and after slavery. p21

A final form of informal adoption was through deed, in which children (like chattel) were deeded as property from their biological parents to their adoptive parents... The practice of deeding continued until at least the early twentieth century. p21

4 Indenture

Cahn— Indenture performed a variety of functions in nineteenth century America, ranging from the provision of hired help to apprenticeship within the same social class to adoption. Masters owed the indentured children for whom they were responsible many of the same duties that a parent owed a child; correspondingly, the children owed the personal services otherwise due their parents to their masters. Indenture thus served to alienate and divide parental responsibility between the biological parents and the master. p21

Cahn— Orphaned and poor children were frequently placed out pursuant to indenture contracts, and courts typically supervised the indenture relationships. For children of wealthier families, indentureship helped inculcate cultural values appropriate to their class. Colonial wills occasionally referred to non-biological children who had been placed as servants or apprentices, and with whom the testator had developed a relationship akin to that of parent-child. Although indenture continued throughout the nineteenth century for apprenticing poor children, wealthier families abandoned the practice, in part because of the developing ideology of middle-class motherhood which required the mother to become intensively involved in raising her children. p22

Cahn— Nonetheless, throughout the nineteenth century, indenture contracts served as a method for transferring custody of children from an orphanage or other institution to foster parents, and the early charitable adoption legislation frequently authorized the organizations to engage in both indenture and adoption. Until the adoption process became more formalized, indenture contracts were used as one of the means for transferring custody of children to a foster family for a virtual adoption. The statutes regulating placing out and indentures disrupted both the indivisibility and the inalienability of parental rights prior to the enactment of adoption laws by, for example, allowing parents to retain some rights to receive economic compensation while sharing custody with someone else. Indenture contracts clearly exemplified the possibility of dividing child custody and of allowing non-biological parents to have the same obligations as biological parents. By the early twentieth century, however, indenture had been displaced as formal adoption became more widely available and accepted. p22

Development of General Adoption Legislation

Cahn— The 1851 statute allowed Massachusetts residents to petition the probate judge for permission to adopt a child, and required written consent to the adoption from the child's parents or guardian. The statute then provided that an adoption would be allowed if the judge was satisfied that the potential adopting parents: "are of sufficient ability to bring up the child, and furnish suitable nurture and education, having reference to the degree and condition of its parents and that it is fit and proper that such adoption should take place." p23

Cahn— Nowhere does the statute mention the child's best interests, nor does it specify procedures for evaluating the fitness of the adoption. Indeed, it was probably the 1855 Pennsylvania adoption statute which first mentioned promoting "the welfare of the child" as a concern in allowing an adoption. And, not until the late nineteenth and early twentieth centuries did statutes begin to establish procedures for evaluating the appropriateness of the adoption. p23

Cahn— Instead, there is a focus in the original Massachusetts legislation on the ability of the adoptive parents to provide "suitable" nurture for the child, with the suitability explicitly varying on the "degree and condition of its [sic] parents." The appropriateness of the placement thus varied according to the class and condition of the adoptee's parents... this provision suggested that some children were simply not suitable, by virtue of their background, for adoption...Given the strong belief in heredity throughout the nineteenth and early twentieth century, that the child would turn out like her biological parents, issues surrounding the child's background were particular significant in the adoption process. p23

Cahn— The requirement that the adopting family act suitably towards the child is also reminiscent of the much earlier laws regulating the treatment of apprenticed and indentured children. In addition, it contains overtones of class, of providing middle-class nurture and culture to a poor child. Finally, the statute specified that the adopted child would, for purposes of inheritance, custody, and "all other legal consequences and incidents of the natural relation of parents and children" be deemed to be the legitimate child of her parents. p23

Explanations for early adoption legislation

Cahn— The 1851 statute was certainly a significant step in the development of United States law on adoption. But

it cannot be seen in isolation from other legal and cultural developments occurring mid-century, nor from later adoption reforms. Indeed, there are several explanations for the development of general adoption legislation. p24

1 Need for standards and regulation

Cahn— As private child welfare system developed the practice of placing out children, it needed some method to regularize the children's situations. Not only were they placing out children in increasingly large numbers, they also sought, and were granted, legislative authority to do so. The need to specify the terms on which they could operate may have been responsible for the early legislation. p24

2 Evolutionary process

Cahn— Early adoption Acts served merely to recognize the gradual evolution in formation of families that was already occurring through other legal mechanisms. Parents could create a status equivalent to adoption through indenture contracts, which served as a means for transferring parental responsibilities, through wills, which ensured appropriate inheritance rights, and through private petitions to change a child's name. The existence of these legal means "made adoption a part of the legal process under the law of the Commonwealth:" and "that made it possible for the General Court to enact the Adoption of Children Act of 1851." p24

3 Provided stability to adoptive families

Cahn— Provided stability to ensuring that the biological parents would not seek the return of their children. Adoptive parents may have wanted a procedure to ensure that an adoption was final, not a temporary expedient- that all of the effort invested in their adopted child (and all of the labor provided by the child) guaranteed a legally binding parent/child relationship that could not be undone. p24

4 Protection of children

Cahn— Adoption may have developed to protect the expectations of children that they could stay in their new families, and inherit property from their new parents. p24

5 Developing norms of motherhood

Cahn— Norms which became even more defined during the first half of the twentieth century, certainly influenced the creation of legislation which provided legal recognition of new parent-child relationships. p24

6 Judicial importance in family law

Cahn— The development of general adoption statutes may itself represent the move towards judicial, rather than legislative, action in family law cases. Prior to the 1851 statute, the Massachusetts legislature had been frequently presented with petitions for name changes which it labeled as adoptions. As the legislature was confronted with increasing numbers of these petitions, a more general adoption statute may have seemed an appropriate method for handling these cases. Indeed, the movement away from private petitions towards more generally applicable legislation, shifting direct responsibility away from the legislature, as happened in adoption, was typical of nineteenth century law... p24

Source Naomi Cahn 'Perfect Substitutes of the Real Thing?' 2003 *Duke Law Journal*. Extracts from *'Families by Law'* Ed Cahn and Hollinger 2004 NY pp19-24

Progressive Era 1900-1917

Wayne Carp— The child welfare reform movement that featured the growth of sectarian child welfare institutions, the professionalization of social workers, the standardization of adoption procedures, and an expanded state role in regulating adoptions. The implementation of this movement's goals-keeping families of origin together, ensuring biological parents' consent to the severing of kinship ties, thorough investigation of adoptive parents and homes before placement, and preventing third-party or independent adoptions (the practice by which doctors and lawyers placed children for adoption) -became the raison d'etre of professional social workers. p7

Adoption in popular discussion

Carp— A popular women's magazine, the *Delineator,* ran its very successful Child-Rescue Campaign, which popularized adoption and expanded the definition of adoptive motherhood. The *Delineator* series, which ran from 1907 to 1911, elevated motherhood by emphasizing the power of "mother love" to overcome a child's hereditary deficits and urged readers to fulfill their civic duty by adopting children. In its literary conventions, the *Delineator* series differed from other adoptive novels and stories in that the endings to the Delineator stories were not always happy. Although the Child-Rescue Campaign resulted in numerous adoptions, Progressive reformers were more interested in advancing the cause of children in general than in appealing only to prospective adoptive mothers. p7

1917 Children's Code of Minnesota

Carp- Became model for state laws over next two decades

(a) Minnesota became the first state to require an investigation to determine whether a proposed adoptive home was suitable for a child.

(b) The state's Board of Control was responsible for examining adoption petitions and offering written advice to the court in all adoption cases.

(c) The statute also provided for children to have six-month probationary residence periods in adopting parents' homes.

(d) Moreover, the law closed adoption records to public inspection, although those directly involved in the adoption-adopted persons, adoptive parents, and birth parents-could access the record. This point is important because of the common belief that throughout the history of American adoption, state laws denied triad members access to their adoption records. pp7-8

Other important reforms

Carp— Other important reforms in adoption practice and law mark the Progressive Era as a watershed in history of adoption. p8

1 Word illegitimate removed

Child welfare advocates persuaded many states to remove the word illegitimate from birth certificates and devised the amended birth certificate to shield children from the opprobrium surrounding their adoptions. In 1933 - the

clerk of the court would forward the adoption decree to the state registrar of vital statistics, who would "make a new record of the birth in the new name, and with the name or names of the adopting parent or parents " Like other adoption records, the amended and original birth certificates were to be sealed from the public but not from members of the adoption triad and the courts. p8

2 Family preservation

Child welfare reformers also successfully argued that children should not be separated from their families of origin for light and transient reasons. As early as 1900, breaking up families had become practically taboo, at least in theory, and family preservation had become a fundamental principle among all child savers. Professional social workers made it a point of pride to rarely recommend that children be adopted. This ideal would remain axiomatic among professional social workers until after World War II. p8

2 Family preservation

Social workers institutionalized their reform efforts in universities and national organizations, both public and private. Graduate schools of social service administration were established at a number of institutions of higher learning, including the University of Chicago, thereby helping to professionalize social workers. p8

4 U.S. Children's Bureau

Established in 1912 and quickly became the leading institution for providing the public with information about adoption. Through World War II, the bureau was instrumental in setting standards for adoption agencies and guiding state legislatures, social workers, researchers, and the public on every aspect of adoption. In 1921 the private, nonprofit Child Welfare League of America (CWLA) was founded. It would become increasingly important in setting adoption standards for both public and private agencies." p9

Resistance to reform

Carp— Acting as a counterweight to the reform of adoption practices, however, was—

(a) Americans' cultural definition of kinship as based on blood, which stigmatized adoption as socially unacceptable.

(b) Social workers had to overcome widespread popular prejudice against adoption to convince would-be adopters that taking a child into the home was not abnormal.

(c) During the late nineteenth and early twentieth centuries, a broad segment of the American public believed that adoption was an unnatural action that created ersatz or second-rate families.

(d) The language used underscored the inferior nature of adoption: in popular discourse, adoptive parents were always juxtaposed with "natural" or "normal" ones.

(e) Discriminatory laws reinforced the notion that the adoptive relationship was inherently flawed. **(i)** In inheritance cases, for example, jurists regularly ruled that adoption violated the legal principal of consanguinity, or blood ties. **(ii)** Thus, adopted children did not in practice have the same inheritance rights as birth children. **(iii)** In other cases dealing with disputed custody over adopted children, both courts and legislatures favored birth parents' appeals to restore guardianship of their children. p9

(f) Medical science contributed to popular cultural prejudices against adopting a child by coupling the stigma of illegitimacy with adoption. The post-1910 rise of the eugenics movement led adopted children to be linked to inherited mental defects..particularly criminality and feeblemindedness...The purported link between feebleminded unwed mothers and their illegitimate children cast a pall over all adoptions, and even popular magazines warned adoptive parents against the risk of "bad heredity." Adopted children were thus doubly burdened: they were assumed to be illegitimate and thus tainted medically, and they were adopted and consequently lacked the all-important blood link to their adoptive parents . p9

Search for the ideal families 1918-1965

Carp— Another important method that twentieth-century adoption agencies employed to provide for the best in-terests of the child and make adoption respectable and culturally acceptable. Agencies attempted to match the physical, ethnic, racial, religious, and intellectual characteristics of prospective adoptive parents and children, thereby creating units that resembled biological families. One consequence of this policy of matching was that disabled children were automatically excluded from adoption. Adoption workers also began to probe the inner lives of would-be adoptive parents in an effort to discover which ones were psychologically healthy. Gill believes that adoption workers' pursuit of this aesthetic ideal of the family "was perhaps the most ambitious program of social engineering seen in twentieth-century America... p10

Great Depressions 1930 impact

Carp— Unprecedented levels of adult unemployment, homelessness, hunger, and misery provided additional impetus for legislation applying to children, as local governments and private agencies were unable to cope with massive suffering and unemployment. President Franklin Roosevelt's Federal Emergency Relief Act (1933) and the Social Security Act (1935) provided much-needed federal funding for child welfare services. The resulting influx of federal financial support strengthened and expanded existing adoption programs while creating new state welfare departments where none had existed previously. <u>By the end of 1937, forty-four states had enacted new adoption laws or revised old ones</u>. pp10-11

CWLA set standards 1930s

Carp— In the late 1930s, CWLA began to address the issue of adoption standards as a result of member societies' complaints about the practices of commercial adoption agencies and maternity homes... In 1938 CWLA published its first set of adoption standards ...p11

1938 CWLA published standards

Carp— Responding to the widespread deviations from sound adoption casework principles and increasing number of independent adoptions, the CWLA in 1938 published its first set of adoption standards, which fit on a single page... The standards were grouped into safeguards

for children, for adoptive parents, and for the state. p11

1 The first safeguard for the child could also be considered one for the biological parents: the child was not to be unnecessarily deprived of kinship ties. Professional social workers still considered maintaining the family of origin to be the most desirable course of action regarding chil-dren threatened by dependency.

2-3 The second and third safeguards for the child revolved around the adoptive parents' motivation and suitability for the adoption. The adopters must desire the child "for the purpose of completing an otherwise incomplete family group," have "a good home and good family life ... and be well adjusted to each other," and promise to love, support, and educate the child. Adoptive parents should expect that a reputable child-placing institution would keep their identities from the biological parents, physically and mentally match the child in accord with the adoptive parents' expectations, and complete the adoption proceedings "without unnecessary publicity. p11

After 1940, demographic changes,

Carp— such as an increase in the number and availability of adoptable children, accelerated the change in adoption practices. In addition to the continued high numbers of homes broken by death, divorce, and desertion, the number of children born out of wedlock grew drastically. With social bonds loosened by wartime, illegitimacy rates began to soar, espe-cially among nonwhites, continuing their upward flight for the next forty years...

These factors, combined with wartime prosperity, produced a remarkable increase in the number of applications to adopt a child. Between 1937 and 1945, adoptions had increased threefold, from about 16,000 to 50,000 annually. A decade later, the number of adoptions had nearly doubled again, to 93,000, and by 1965 it climbed to 142,000, of which one-third to half were adoptions by relatives.50 In less than thirty years, the number of adoptions had grown nearly ninefold. Overwhelmed by the number of applications and constricted by inflexible rules, adoption agencies aroused much ill will and resentment among childless couples." p12

World Wars

Carp— Adoption was transformed by a series of external circumstances-wartime necessity, economic changes, new ideas in social work, postwar affluence, an increase in the number of children available for adoption...The changes of the war years affected birth parents' age, education, occupation, and marital status; adopted children's age and birth status; and adoptive parents' child preferences and motivations for adopting. p12

Move to shroud adoption in secrecy

Carp— Social workers' and state bureaucrats' gradual postwar move toward shrouding adoption in secrecy. They acted for many reasons, including desires to defend the adoptive process, to protect the privacy of unwed mothers, to increase the workers' influence and power, and to bolster the professionalization of social work by treating clients with psychoanalytic theory. As a result, secrecy became pervasive after World War II, preventing those directly involved in adoption from gaining access to information about their lives." p12

Baby boom era 1945-1950s

Carp— Beginning in the mid-1940s and reaching its peak in the late 1950s, the baby boom era's dramatic rise in marriages and births was largely responsible for the increased demand for children to adopt and resulted in adoption agencies being inundated with requests for children. Parenthood became a patriotic necessity... Uncomfortable at being childless and the subject of public opprobrium, an unprecedented number of these childless couples sought to adopt as one solution to their "shame" of infertility. p13

Between 1937 and 1945, adoptions had increased threefold, from about 16,000 to 50,000 annually. A decade later, the number of adoptions had nearly doubled again, to 93,000, and by 1965 it climbed to 142,000, of which one-third to half were adoptions by relatives.50 In less than thirty years, the number of adoptions had grown nearly ninefold. Overwhelmed by the number of applications and constricted by inflexible rules, adoption agencies aroused much ill will and resentment among childless couples. p13

Experience of U.S.A.

From the 1970s to the 1990s which was marked by open adoption and the adoption rights movement.

Placement of special-needs children

Carp— One trend that continued with renewed energy was the placement of special-needs children, especially African Americans, in adoptive homes...In 1971, transracial adoptions reached their peak, with 468 agencies reporting 2,574 such placements.66 p15

While professional adoption workers went far in overhauling inflexible practices and liberalizing the definition of adoptability, the tumultuous events of the 1960s overtook such efforts in ways of which such professionals did not always approve.

Reform movement shock to social workers

Carp— Essentially liberal in its political and social beliefs, the social work profession did not anticipate that 1960s radicalism would substantively affect adoption policies or practices. Officials and caseworkers were caught by surprise when dissidents from both within and without the profession began to challenge some of its basic tenets in the early 1970s. p15

(a) Black social workers revolt The first manifestation of discontent emerged in 1972, when black social workers, influenced by the black power movement and its emphasis on racial separatism, revolutionary violence, and black nationalism, began denouncing transracial adoption as cultural genocide. p15

(b) Radical decline in available childen. Social workers failed to foresee the radical decline in the availability for adoption of healthy white infants, which resulted in some of the most important changes in adoption policy. A number of factors were responsible, including the 1960s sexual revolution, access to birth control, the Supreme Court's legalization of abortion in *Roe v. Wade* (1973), and unwed mothers' increasing unwillingness to relinquish

their babies for adoption...Nonrelative adoptions in the United States fell from a record high of 89,200 in 1970 to 47,700 in 1975. The number rose slightly, to 50,720 in 1982, and remained at about this level for the rest of the decade...p16

(c) Redefinition of adoptable children,
Making it more inclusive and less concerned with matching children's physical, mental, racial, and religious characteristics with those of parents. The adoptable population increasingly comprised older children, members of minority groups, and special-needs children. In the 1990s, drug-exposed infants, children with AIDS, and infants born HIV positive were added to special-needs category. p16

(d) Intercountry adoption
(i) A consequence of the dearth of white, U.S.-born infants was an in-crease in intercountry adoptions, with the main source of children shifting from Korea in the 1950s to Latin America in the 1970s and 1980s and more recently to Russia, Romania, and China. Intercountry adoptions in 2000 constituted 14.5 percent of U.S. adoptions, or 18,477. p17

(ii) Although intercountry adoptions are popular among private agencies and prospective parents, numerous critics denounce such adoptions for failing to protect the rights of birth parents, encouraging trafficking in children for financial gain, and resulting in cultural genocide . p17

(iii) As a result of such objections, the United States has recently signed the Hague Convention, which regulates intercountry adoptions by plac-ing adoption agencies under international scrutiny. p17

(e) Open adoption
A consequence of the decline in adoptable infants was open adoption, a major and controversial innovation. In an effort to encourage birth mothers to relinquish their babies, case workers began experimenting with allowing pregnant women to decide who would parent their children. The result was open adoption, where the identities of birth and adoptive parents were exchanged and ongoing contact between the parties was encouraged.

(i) By the mid-1980s, open adoption had evolved into a continuum of interactions between birth mothers and adoptive parents, ranging from annual updates on children's welfare to active involvement by both parties in raising the child. p17

(ii) Open adoptions have become increasing popular, commanding center stage in adoption practice. In the two years following placement, an estimated 55 percent of adoptive families in California during 1988-89 had contact with their children's birth families.

(iii) Ideological warfare has marked the debut of open adoption. Such proponents of open adoption as Reuben Pannor and Annette Baran have argued that adoptees have had psychological problems caused by traditional, closed adoptions, where birth and adoptive parents' identities were kept secret from each other. These adoption rights proponents advocate an end to all closed adoptions. p17

Opponents of open adoption
Carp— Argued that there is no way to know its effects on children, making them guinea pigs in a social experiment for ideological reasons. Others have argued that continued contact with birth parents could disrupt children's relationships with their adoptive parents and make it difficult for adolescents to form cohesive identities." Recent research suggests that only a small percentage of open adoptions feature both families in constant contact and that open adoption consequently does not appear to cause much disruption to children's healthy psychological development. p18

Birth of adoption rights movement
Carp— Though the movement's roots lay in the 1950s, when twice-adopted former social worker Jean M. Paton began her lifelong crusade to provide adopted persons with a voice and a cause, adoption rights did not become a major social issue until two decades later. The movement's most vocal and visible leader, Florence Fisher, an adoptee founded the Adoptees' Liberty Movement Association (ALMA) in 1971... the nation's largest and most influential adoption search group. ALMA's example sparked the creation of hundreds of other such groups across the United States, Canada, and the United Kingdom. p18

American Adoption Congress. By 1978, the multiplicity of adoptee search groups led to the formation of a national umbrella organization, the American Adoption Congress. p18

Adoption rights activists
Carp—Are primarily adult adoptees and birth mothers, contend that they are entitled to identifying information in the adoption record. They have pursued their agenda-repealing laws that sealed adoption records-through court challenges, reform of state legislation, state initiatives. p18

Results have been mixed. States have tried to accommodate the potentially clashing rights of birth parents, some of whom have been promised confidentiality, and of adopted adults who want unrestricted access to the information in their records. Consequently, by the mid-1990s seventeen states permitted court-appointed intermediaries to read adoption files, locate birth parents, and inquire whether they were interested in meeting children relinquished for adoption... 19 states have established formal mutual-consent adoption registries. 6 states have authorized the re-lease of identifying information with the consent of both the adopted person and the birth mother, without a formal registry. p18

Momentum appears recently to have shifted, favoring adoptees' access to records. Oregon, Tennessee, Delaware, and Alabama have joined Kansas and Alaska in permitting adopted persons access to their original birth certificates, and the CWLA's 2000 adoption standards advise member agencies "to support efforts to ensure that adults who were adopted have direct access to identifying information about themselves and their birth mothers. pp18-19

Summary
Carp— American adoption practices have changed radically over the past two and a half centuries. Originally an

informal, spontaneous occurrence comparable to apprenticeship, adoption has become a formalized legal institution governed by statute in fifty separate state jurisdictions with increasing federal involvement. During the past century, social workers have become professionalized, and the U.S. Children's Bureau and the CWLA have developed uniform standards for regulating adoptions. Since World War II, adoption has changed from an elitist institution that restricted the children available to a practice that includes for-eign, minority, older, physically and mentally disabled, and HIV-positive children. Moreover, the past fifty years have seen a movement away from secrecy to an embrace of open adoption and legislative mechanisms for uniting adopted adults with their biological parents. More recently, the Internet has played an important role in facilitating adoptions and reunions between adopted and bi-ological family members. In spite of all these changes, however, the United States has retained a pervasive cultural bias toward blood ties, and many people still view adoption as a second-rate form of kinship. These trends-federal statutes; special-needs, transracial, and intercountry adoptions; openness in the adoption process; conflict over the opening of adoption records; and the stigma of adoptive kinship-show no signs of abating and will remain powerful factors in future controversies affecting adoption in the United States. pp18-19

Source Wayne Carp 'Introduction' to Book 'Adoption in America- Historical Perspectives' University of Michigan Press' 2004 pp

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Indenture and Adoption in 19th Century Orphanages U.S.A.

Susan L Porter— Adoption in the nineteenth century occurred at the nexus of new attitudes about the family, women's roles, childhood, and class. Today, adoption is generally seen as a means by which middle-class infertile couples can establish families by relieving young unmarried women of their unwanted babies, and the ideal adoptee is a newborn.

200 yrs ago USA had no tradition of adopting non-relatives

Porter— Theywere reluctant to admit babies from different class and ethnic backgrounds into their homes. Infant mortality, especially among bottle-fed babies, was very high and illegitimacy was seen as a "blood taint." However, as families in this period became increasingly conceptualized as emotional rather than economic units, and as a developing ideology of separate spheres named women as the guardians of the home, motherhood took on new importance and status. Thus, although adoption was considered perilous, middle-class families began to express interest in taking in children to raise as their own. p27

Apprentices or indentured servants 19th-cent

Porter— Unrelated children could commonly be found as apprentices or indentured servants in nineteenth-century households. In the colonial period, children of all classes generally spent a number of years in homes other than their own learning the skills that would make them productive members of a family economy. But, after the American Revolution, the U.S. economy diversified, and middle-class couples, at least in urban centers on the eastern seaboard, began to conceive of their children more as objects of devotion and sentimental attachment than as potential labor. Working-class children, however, still spent much of their youths in other people's homes, working as domestic servants or trade apprentices. Indenture remained common because poor and working-class parents needed to provide their children with occupational skills and reduce house-hold expenses at a time when economic changes were making it more difficult for working-class families to survive. Adoption, therefore, may have been understood more as an offshoot of indenture (an economic and conditional contract based on the exchange of labor) rather than as a legal arrangement based on mutual sentiment. p27

Adoption as offshoot of indenture Legal Historian view

Porter— Massachusetts passed the country's first adoption law in 1851. This wa-tershed event has led legal historians, for example, to frame the history of adoption in terms of the development of family law and the interests of the state. As these scholars observe, the legal practice of adoption became customary in countries that adopted Roman law, but, in the United States, which followed English jurisprudence, American common law prohibited adop-tion, emphasizing the inviolability of (legitimate) blood claims. Adoption issues reached the courts in regard to dynastic issues about inheritance and the preservation of family names in families that had money and estates but lacked legitimate offspring, even though adoption was undoubtedly more common as a way of providing for the orphaned offspring of relatives and other close connections. In these cases, however, policies were established primarily through legislation. p28

Social welfare historians view

Porter— Have regarded adoption, like other child welfare issues, from the perspective of its relationship to apprenticeship and other forms of indentured labor, the traditional means of handling children whose parents were unable to care for them. Orphaned children without estates were also informally adopted by relatives and close connections when possible, but families on the margins of survival often could not afford to permanently provide for extra children. Like legal historians, social welfare historians have framed their concerns in terms of the interests of the state and the elite classes that maintain it. In this formulation, adoption was either a means of moving children from unhealthy environments into families that would train them to be productive citizens of the modern state or a means of providing innocent vic-tims of misfortune with the advantages of middle-class family life and a secure future . p28

Women's and family historians view

Porter— Most recently, women's and family historians have begun to study adoption from the perspective of sentiment, marking legal issues and the interests of the state as secondary. As motherhood became increasingly val-

ued in the nine-teenth century, these scholars argue, families became willing to go to ever greater lengths to fill their "empty cradles "As a result, poor or illegitimate children whose parents could not maintain them now had the opportunity to grow up in a complete family where they would be loved and provided for. p28

Best interests of the child became dominate

Porter— All of these perspectives are based on the assumption that as childhood came to be seen as a particular stage of life, public child welfare policies and case law came to be dominated by the perceived best interests of the child rather than those of adults.

(i) Thus, for example, children were for the first time removed from the family or a family replacement into institutional or other settings that meant to improve on rather than replicate the family structure.

(ii) Boarding schools, academies, and orphan asylums came to be seen as places where the future stakeholders of a new republic based on independence rather than deference and class hierarchy would acquire the book learning and habits of industry and order they needed to function as virtuous citizens.

(iii) Because the United States was seen as rich in resources and scarce in labor, all young men and women were believed to have the capacity to succeed if they could learn to function in socially productive ways.

(iv) The fact that poverty continued to exist in American society could be explained only by defects in character that were generally seen as environmental rather than inherited. p29

Institutions remove children from unfit families

Porter— Thus, institutions were designed to remove children from unfit families or disrupted households and place them in environments where they could learn moral and occupational skills. Middle-class and elite policymakers had a bi-furcated social vision: children belonged in good families, but poor families were by definition defective, even when their heads were "deserving" men and women whose suffering was brought on by tragedy rather than incapacity or deviant behavior. Consequently, children were placed in institutions that would serve as home and school and then indentured into families during adolescence to learn the skills and moral lessons that would lead to success in life. p29

Integrating Institutions into adoption triad a transitional phase 19th Cent

Porter— The managers of private, nonsectarian Protestant orphan asylums established by women between 1800 and 1820 were primarily concerned about the welfare of the children who became their wards and used whatever options they had to further that welfare as they perceived it. As early as the 1820s, adoption was one of those options. Managers embraced adoption as one means of solving their difficulties with the indenture system. p29

Managers found adoption was not the panacea

Porter— However, because the managers found that adoptive parents did not make as clear a distinction between indenture and adoption,

(i) in the end they decided that adoption was not the panacea for which they had hoped.

(ii) In addition, they were not convinced that adoption was a better alternative to returning children to their relations when possible.

(iii) Many mothers, fathers, and other relatives who relinquished their children to institutions did not see themselves as permanently giving up their parental roles.

(iv) Most chose to place their children in orphan asylums as part of their own survival strategies, expecting to maintain contact with their offspring at the orphanages, after indenture, and into adulthood.

(v) When able, these parents asked to have their children returned to them for indenture.

(vi) Although asylum managers were at first reluctant to comply with such requests, eventually they recognized that returning children to blood relatives was the best placement alternative because they were the parties most invested in the children's welfare. p29

Managers promoted a family model

Porter— The managers of orphan asylums saw their work as promoting rather than rejecting a family model. In the first two decades of the 1800s, the women who ran asylums believed that they were encouraging better futures for the children by indenturing them in families like their own. By the 1830s, difficulties with indenture and a burgeoning domestic ideology led asylum managers to try a variety of means of reestablishing homes for their inmates, including return-ing them to their relations when feasible and allowing increasing numbers to be adopted by middle-class couples who wished to raise children as their own. Thus, institutions came to use adoption as one alternative to an indenture system that the managers saw as problematic. p30

Establisment of orphanages

Porter— American women established more than a dozen orphan asylums between 1800 and 1820... Their founders created these associations out of sympathy for dependent children and their determination that vulnerable young children should grow up independent and self-reliant... Because the early officers needed to demonstrate that women could be efficient managers, they were careful to balance their compassion with prudence, but they held firm to their belief that asylums should be well-ordered families rather than rigid institutions. The managers attempted to hire matrons and teachers who would provide love and warmth as well as the training and education required for the orphans' future success, and the highest compliment an employee could receive was that she performed her role "with the fidelity of a mother. p30

Personal attention and loving care

Porter— Still, orphanage managers worried that the children did not receive enough personal attention and loving care. The managers attempted to fill such gaps by taking children home for holidays and on outings with their families or by assigning each board member personal respon-

sibility for a few children. Managers felt confident that the children's experience in the asylums was positive, especially as the institutions gained confidence and status in their communi-ties from their work and the new moral authority women were achieving as mothers. p30

Protection from the poor law system

Porter— Early orphan asylums were designed to protect young boys and girls from the evils of a public poor law system that apprenticed even very young impoverished children through work contracts designed for older children.

(i) While in-denture was the traditional means of providing children with artisan skills, contracts offered few protections against neglect and abuse and provided virtually no guarantees that the children would be educated above and beyond their trade provisions, many of which were minimal for girls and irrelevant for younger apprentices.

(ii) The orphanages generally admitted children who were under ten and educated them in the institution until they reached the traditional apprenticeship age (eleven to fourteen), when they were indentured to families in the usual manner.

(iii) The orphanages retained the idea of apprenticeship because boys needed to learn trades and because the managers believed that adolescent children should be part of families where they would have "the advantages of a permanent home...

(iv) Orphanage managers hoped to protect young children from be-coming "hewers of wood and drawers of water" and expected that the children would be treated well in their receiving families. p31

Asylum founders sought long-term solutions

Porter— To the problem of children who were too young to be a financial help to either their families of origin or their families of indenture; in fact, most children stayed in the institutions for several years.

(i) One of the founders' primary tasks was to create a stable environment for the children, a physical setting in which the children could devote themselves to educational achievement and character devel-opment. Another goal was to find secure placements when the children were ready to leave. Both tasks turned out to be more complicated than anticipated. p31

(ii) At the beginning of the process, the founders saw both the children and their relatives as the blameless victims of misfortune and were sympathetic rather than judgmental. But conflicts quickly arose with particularly difficult, interfering, or untruthful relatives. p31

(iii) Over time, more and more orphans were returned to relatives perceived as financially secure and morally responsible. As a result, by the 1840s, almost half of the BFA orphans were indentured to family members p34

Most children did not return to family of origin.

Porter— However, although asylum managers wished every orphan to experience both economic security and a loving home, the majority of the children could not return to their families of origin. Thus, in the 1820s, when asylum managers began to be approached by families who wished to adopt children to bring up as their own, the officials saw these placements as ideal opportunities... Informal adoptions often took place outside the formal structure of the asylum, and many may have gone unrecorded. p35

Asylum adoptions only part of a larger trend,

Porter— As children became a valued emotional commodity in a culture that revered the family...In this period, however, the meanings of adoption, whether legal or through indenture, are complex. Although the sentimental representation of the adoption story emphasizing the heartwarming match between the childless couple and the adorable toddler appealed to both the Fellows sisters and asylum managers, it is not clear that most people who adopted either fit this pattern or shared these expectations... real adoption stories rarely match this idealized image. p37

Few children were adopted very young

Porter— Only about a quarter were adopted before they were six years old, and another quarter were adopted at the time of indenture. Thus, the typical child left the asylum at the age of seven or eight, too old to be an adorable toddler but old enough to have a known character, young enough to benefit from a middle-class education but not too young to be helpful in the household. p37

Not all children went to childless couples

Porter— In the fifteen cases for which information about offspring is available, seven had living birth children. In addition, three children were taken by single women "to be brought up as a sister" and a number of others may have been adopted by widows. p38

Not all adopted went to wealthy homes.

Porter— Although couples who adopted children not connected to them by blood or friendship were able to offer significant economic and social advantages...others were adopted by family friends, relatives to homes that were economically quite similar to those of the orphans' parents. p38

Adoption got mixed results

Porter— Only a minority of the adoptions led to the outcomes the managers envisioned. The success stories were proudly recorded... Others achieved emotional attachment but not upward mobility... eleven of the fifty-five adopted children (20 percent) who survived to the age of eighteen had negative experiences with their new families. These figures demonstrate a side of the adoption experience rarely discussed in literature on the subject... Adoption did not necessarily imply a permanent commitment on the part of the adoptive parents or a guarantee for the child's future security. p39

Managers were responsible for adopted children

Porter— Because the legal document for all placements was an indenture contract, the managers retained the same responsibility for adopted children as for the rest of their wards' welfare and attempted to oversee all placements. The man-agers understood that adoptions could be as problematic as regular placements... Families were used to tak-

ing in children as servants or apprentices and sometimes developed close personal attachments to them. When this happened, the families remained the children's patrons throughout life and even occasionally left them legacies. However, although close, these were generally not relationships between equals. p40

Patronage was not parentage

Porter— In an environment with no tradition of nonblood adoptions, adoptive parents may have questioned their ability to develop truly parental attachments. Even indenture, a contract based on obligations, could have seemed onerous when an adolescent child was sick, unruly, or unproductive. Adoption implied permanent emotional as well as economic responsibilities and adoptive parents must have sometimes questioned the balance between their desire to have heirs and the extent of their duty. p40

Infant adoption hard to sell

Porter— While the *Fellowses* published relentlessly promoted infant adoption and emotional family bonds, the data demonstrate that infant adoption was a hard sell. Although the sisters succeeded over time in convincing families to adopt younger children (the median age of children requested declined from eleven in 1843 to three in 1854), even in 1854 only slightly over one-quarter (twenty-six of ninety-nine, or 26.3 percent) of the families expressed interest in taking infants. p41

Adoptions were not closed

Porter— Both groups understood that adopted children, like indentured ones, remained part of a larger community that could include their relatives.

(i) Adoptions were not closed, as they would be in the twentieth century: when children were adopted, their relatives were consulted and were expected to know the children's whereabouts.

(ii) While the level of contact between those relatives and the child varied with the preferences of the adoptive family and the age of the child, the expectation was that the children would know that they had been adopted... It also approvingly reported an 1848 Philadelphia court case in which the judge ruled that while a four-year-old should stay with her adoptive parents because they could provide for her better than her mother, the mother "could visit her child whenever she pleased," to which the adoptive mother, who deeply commisserated her situation, readily assented. pp43-44

Adoption was a minority practice

Porter— In the orphan asylums, in every cohort more children were returned to their relatives than were adopted, and until the 1880s, significantly more were indentured than were adopted... The managers remarked, "we believe that often, when children of a younger age are taken to be adopted, the adoption is only another name for service. Their experience had led them to distrust the motives of people who stated their wish to bring children up as their own but did not treat their wards as full family membersp45

Asylum managers- adoption was not panacea

Porter— From the perspective of the welfare of the child, then, asylum managers did not see adoption as a panacea. Having determined that adolescent children should live in homes rather than institutions, managers never outright rejected adoption, just as they continued to indenture approximately half the children throughout the century, well after apprenticeship had become virtually obsolete. If the asylum programs were successful in teaching the children moral rectitude, basic skills, and self-reliance, then the orphans could be offered various futures with mistresses, relatives, or adoptive families that might lead not only to independence but also to personal happiness. p45

Managers maintained family ideal

Porter—

(i) The managers maintained the family ideal as they searched for placements.

(ii) Because officials saw themselves as "moral mothers," they perceived the children as blameless victims in need of sympathy and protection as well as education; as prosperous but dependent women, the managers recognized their wards' need for economic security.

(iii) After years of coping with the daily operations and frustrations of the social work experience, they developed a professional stance that judged individuals rather than classes.

(iv) Thus, orphanage managers continued to experiment with a variety of placements, depending on the current options at their disposal and the particular pool of children and relatives.

(v) But because these women believed that the asylum could approximate the family and that they and the matrons could serve as surrogate mothers, the managers remained convinced that orphanages served children better than temporary institutions or adoption agencies.

(vi) Orphan asylums would prepare children for life by

USA ADOPTION STATISTICS CENSUS 2000

281,421,906 Americans.
1.6-million "adopted children" are under age 18.
7.073,555 million adopted persons= 2.5% of population

[The 2000 Census tells us there are 281,421,906 Americans; it was the first Census to count "adopted children in the household." However, until mid-2003, the Census withheld that data for 3 years. It was then finally estimated, for 1 out of every 6 households counted, that 1.6-million "adopted children" are under age 18, or "born since the 1980s"; 1.4-million were domestic adoptions;

200,000 (13%) of the adopted children were foreign-born;

- 47,555 - from Korea
- 21,053 - from China
- 19,631 - from Russia
- 18,000 - from Mexico
- 7,793 - from India

2.5% of the U.S. population is estimate to be adopted children; 2.5% are estimated to be age 18 or over;
4.4-million step-kids are under 18, or
5% of the population is estimated to be step-children

Source 2000 U.S.A. Census

Historical Study 1895-1973

Carp & Guerrero— Study sampled 1 out of every 10 case records of the Children's Home Society of Washington State 1895-1973 a database of 2,150 adoption files.

Historical Background of CHSW

Carp & Guerrero— The Childrens Home Society of Washington is a private, statewide, voluntary, nonprofit organization founded in 1895... Its mission was to seek out homeless, neglected, or destitute children and place them in families for adoption... During the first seventy-eight years of its existence, the CHSW oversaw more than 94,000 adoptions. p182

Birth Parents See Tables 1,3,4,5

Carp & Guerrero— Before World War II, the age, education, occupation, and marital status of the birth parents who relinquished children for adoption are pretty much a mystery to historians. Poorly kept records...the social stigma surrounding illegitimacy, and the inability of researchers to access adoption case records have drawn a veil over the social characteristics of birth parents...If there is a stereotype regarding birth mothers, it is one of poor, uneducated, working-class, unwed, very young women... CHSW records provide enough data to draw a more concise and significantly different portrait. p183

Age See Table 1

Birth mothers From 1895 to 1973, the average age of birth mothers who relinquished children to CHSW was 23...Except for the decade of the Great Depression, the age of CHSW birth mothers steadily declined... p184

Birth fathers Throughout the CHSW's existence, birth fathers were older than birth mothers. Whereas birth mothers' average age was 23, that of birth fathers was 27. p184

Employment See Tables 3-4

Between 1900 and 1973, women's participation in the workforce was severely limited by age, marital status, class, race, gender, and sexual discrimination. See Table 3

Marital status See Table 5

Carp & Guerrero— of CHSW birth parents varied over time. Between 1895 and 1973, 62% of CHSW birth mothers identified themselves as unmarried. Married couples averaged 13% of birth parents, and separated and divorced couples averaged 8% and 7%, respectively. As unemployment skyrocketed during the Depression, families found themselves unable to support their children, and the number of married couples relinquishing children jumped from 17% during 1930-34 to 25% during the next 5 years. p190 Before World War II, single parents averaged 41% of all CHSW birth parents. During the war, single parents increased to 65%... reflecting the significant increase in out-of-wedlock pregnancies nationwide. p190

Reasons for relinquishment See Table 6

1930-1940, *Carp & Guerrero*— 22% of birth parents relinquished their children because they had been born out of wedlock. 55% for reasons that could have been mitigated by social intervention-family breakup, poverty, temporary boarding, abandonment, illness, parental refusal to accept responsibility, or behavior problems. p190

1945>*Carp & Guerrero*—After World War II, out-of-wedlock births soon eclipsed all other reasons for the relinquishment of children. The largest increase occurred during the 1940s, the percentage more than doubled. p193

1970s out-of-wedlock births accounted for 89% of all children surrendered to CHSW. Aid to Dependent Children had created a safety net for families, mitigating the importance of the various factors that had been responsible for more than half of the CHSW's children before World War II. By 1970s children were relinquished because of family breakup in only 1% of cases and for reasons of poverty 3%. No children were relinquished because of parental abandonment, neglect or unfitness. p193

Adopted Children See Tables 9-12

Carp & Guerrero— The Aid to Dependent Children program, wartime prosperity, and the pronatalism of the baby boom era undoubtedly contributed to the ability and desire of single mothers and married couples to avoid separation from their children p196

Move to early placements- bonding

Carp & Guerrero— As early as 1940, a few professional adoption workers, convinced by psychologists and psychiatrists of the crucial importance of the infant-mother relationship, questioned delaying placement of babies p198

John Bowlby

Carp & Guerrero— Studies by Anna Freud and Dorothy Burl-ingham showed separation's devastating psychological effects on English children removed from their parents during World War II, thereby encouraging other adoption workers to make early placements...Adoption workers were much reassured in their practice of early placements by the 1951 publication of British psychiatrist John Bowlby's *Maternal Care and Mental Health.* Citing a mass of clinical evidence, Bowlby demonstrated the adverse effects of "maternal deprivation" on the development of infants' character and mental health. He recommended strongly that "the baby should be adopted as early in his life as possible," specifying that "the first two months should become the rule." p198

Adoption a stigmatized institution before 1940

Adoption faced an up-hill battle for acceptance among Americans, who generally valued blood over adoptive kinship. America's cultural bias against adoptive kinship was reinforced by the general belief that the progeny of out-of-wedlock mothers carried such genetic defects as feeblemindedness or were criminally inclined. p200

High infant mortality

Carp & Guerrero— Between 1895-1910 mortality rates were high: sickly infants, overcrowding, and a lack of medical attention resulted in the death of 13% of the CHSW's children before they could be adopted. p200

Importance of blood kin

Carp & Guerrero— Professional adoption workers believed in the importance of blood kinship and adhered to a social work ideal mandating that children not be removed from home for reasons of poverty. Consequently, social workers preferred to return children to their parents if

Childrens Home Society of Washington

TABLE 1 Average Age of CHSW Birth Parents, 1900-1973

	1900-1904	1905-1909	1910-14	1915-19	1920-24	1925-29	1930-34	1935-39	1940-44	1945-49	1950-54	1955-59	1960-64	1965-69	1970-73	Overall
Birth motherAge	29	27	25	26	23	24	26	28	21	25	23	23	22	21	19	23
Total Number	1	18	61	43	44	52	95	85	43	80	91	158	206	233	157	1,367
Birth father age	0	30	31	38	28	30	33	33	27	28	26	27	25	23	22	27
Total Numbers	0	18	59	44	37	43	98	88	37	73	74	141	195	224	150	1,281

TABLE 3 Occupations of CHSW Birth Mothers, 1905-73 (in percentages)

	1905-1909	1910-14	1915-19	1920-24	1925-29	1930-34	1935-39	1940-44	1945-49	1950-54	1955-59	1960-64	1965-69	1970-73	Overall
Professional or self-employed	0	3	0	0	2	0	2	0	2	3	1	2	2	1	1
Nursing	10	0	8	3	2	0	0	0	2	11	7	6	4	4	4
Skilled laborer	0	3	0	0	2	3	0	3	2	4	1	2	2	2	2
Domestic service	70	70	50	40	32	34	43	48	49	28	21	15	8	11	24
Unskilled laborer	10	9	4		8	7	18	0	7	3	7	2	3	1	5
Clerical	0	9	21	11	11	12	18	10	15	11	26	20	32	17	20
High school student	0	0	0	29	9	6	7	23	13	21	17	23	22	43	20
College student	0	0	4	3	2	0	0	0	2	7	4	16	20	13	10
Homemaker	10	6	13	14	32	37	12	13	10	11	14	14	7	8	13
Military	0	0	0	0	0	0	0	3	0	0	1	1	0	1	1
Total Numbers	**10**	**33**	**24**	**35**	**47**	**67**	**56**	**31**	**61**	**71**	**141**	**184**	**226**	**145**	**1,131**

TABLE 4 Occupations of CHSW Birth Fathers 1895-1973 (in percentages)

	1905-1909	1910-14	1915-19	1920-24	1925-29	1930-34	1935-39	1940-44	1945-49	1950-54	1955-59	1960-64	1965-69	1970-73	Overall
Professional	20	6	5	3	8	0	4	3	5	5	10	5	7	4	6
Unskilled or farm laborer	53	45	43	53	57	54	56	19	32	38	35	30	22	16	35
Military	0	4	10	6	4	3	1	36	39	34	23	16	10	16	15
Foreman or skilled laborer	0	14	20	19	4	8	7	17	8	8	9	15	14	14	12
Salesman	0	2	0	3	8	11	5	6	3	3	5	2	6	2	4
Proprietor or owner	0	2	3	3	4	2	0	3	0	1	1	0	1	0	1
Clerical	20	0	8	3	0	5	4	0	1	0	1	1	1	2	2
Service	7	10	0	3	0	3	5	3	3	0	1	2	1	2	2
Farmer or rancher	0	16	12	6	4	1	3	6	3	0	0	0	1	0	2
Civil service	0	0	0	0	0	1	1	0	1	1	2	2	2	1	1
Unemployed	0	0	0	0	0	7	8	23	2	0	3	2	4	6	3
College student	0	0	0	3	6	0	3	3	2	5	4	18	17	17	9
High school student	0	0	0	0	4	3	0	3	2	4	6	8	13	20	7
Total Numbers	15	49	40	36	49	87	75	36	65	74	142	173	202	128	1,171

TABLE 5 Marital Status of CHSW Birth Parents, 1895-1973 (in percentages)

	1895-1899	1900-1904	1905-1909	1910-14	1915-19	1920-24	1925-29	1930-34	1935-39	1940-44	1945-49	1950-54	1955-59	1960-64	1965-69	1970-73	Overall
Single	29	27	42	52	42	57	46	42	36	65	55	61	64	67	79	85	62
Married	29	23	12	10	7	10	14	17	25	13	18	15	14	14	9	8	13
Separated	1	19	11	6	3	6	15	9	12	11	7	14	8	10	5	2	8
Divorced	0	0	3	6	5	6	5	1	11	7	10	8	13	9	7	5	7
Widowed	21	12	11	4	15	10	14	14	4	0	5	2	1	1	1	1	4
Widower	14	19	21	23	27	12	7	17	12	4	5	0	1	0	0	0	6
Total Num	14	26	38	84	59	51	59	88	92	54	83	100	162	218	242	163	1,533

TABLE 6 Causes of Children's Relinquishment, 1895-1973 (in percentages)

	1895-99	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Illegitimacy	28	21	34	31	22	48	62	75	89	53
Family breakup	0	4	29	26	19	11	4	3	1	11
Poverty	33	18	6	5	13	6	14	12	3	10
Neglect	0	9	4	1	2	2	2	0	0	2
Abandoned	22	20	13	11	7	4	3	1	0	5
Orphaned	17	10	5	7	2	1	1	0	0	2
Illness	0	8	2	3	6	2	1	1	0	2
Insane	0	3	3	5	2	2	1	1	0	2
Unfit parent(s)	0	6	4	8	11	5	1	1	0	4
Unwanted	0	3	0	1	1	2	1	3	3	2
Temporary boarding	0	0	0	0	10	15	4	1	0	4
Behavior problem	0	0	1	1	3	1	4	6	4	3
Mother raped/incest	0	0	0	3	2	1	1	1	0	1
Total Numbers	18	80	195	153	252	168	293	482	168	1,809

TABLE 9 Average Age of Children Admitted to CHSW, 1895-1973 (in months)

	1895-09	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Age in Months	57	53	54	48	59	27	19	13	4	31
Total Numbers	21	112	191	149	239	161	289	480	162	1,804

TABLE 10 Legitimate Births of Children Admitted to CHSW, 1895-1973 (in percentages)

	1895-99	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Legitimate births	71	63	59	55	63	37	18	10	4	32
Total Numbers	21	67	181	139	231	150	275	467	162	1,693

TABLE 11 Length of Stay of Children in CHSW, 1895-1973 (in months)

	1895-99	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Stay	8	4	6	4	6	7	4	2	1	3
Total Numbers	15	78	92	58	42	101	232	431	153	1,202

TABLE 12 Final Outcome of Children Admitted to CHSW, 1895-1973 (in percentages)

	1895-99	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Adopted	27	37	54	74	33	67	73	73	90	65
Returned to CHSW num times	9	2	3	3	2	0	1	1	0	1
Placed with family,not adopted	5	0	7	3	4	1	1	0	1	2
Contract	18	13	0	0	0	0	0	0	0	1
Death	9	17	3	4	3	1	1	1	1	3
Placed with relatives	0	1	4	2	3	2	0	1	0	1
Returned to parents	14	10	7	3	40	24	7	4	2	11
Institutionalized	5	2	3	4	6	2	2	1	0	2
Returned to juvenile/superior court	0	2	5	1	2	1	2	2		
Mother kept child	0	0	0	0	1	0	10	19	5	8
Outcome missing	14	19	19	7	4	1	3	1	0	5
Total Numbers	22	125	205	137	252	164	335	643	179	2,062

TABLE 13 Occupation of Adoptive Father, 1895-1973 (in percentages)

	1895-99	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Professional	14	9	24	19	22	28	34	37	42	32
Foreman or skilled laborer	14	18	12	21	18	21	15	16	19	17
Salesman	27	3	5	14	14	9	8	8	9	9
Farmer or rancher	14	32	28	13	8	11	6	3	4	9
Proprietor or owner	14	3	14	10	14	8	9	5	5	7
Civil service	14	0	2	2	6	7	6	8	11	7
Unskilled or farm laborer	0	27	9	16	8	10	13	11	4	11
Clerical	0	3	5	2	6	1	1	1	1	1
Service,	0	0	0	1	0	0	1	1	0	0
Military	0	3	1	0	2	4	6	12	4	7
High school student	0	3	0	0	0	0	0	0	0	0
College student	0	0	0	0	0	1	0	1	0	0
Total Numbers	7	34	94	84	49	106	214	394	137	1,119

TABLE 19 CHSW Adoptive Parents' Motivations for Adoption, 1910-1973 (in percentages)

	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Chores	0	1	0	0	0	0	0	0
Inheritance	2	1	0	0	0	0	0	0
Companionship for self	22	47	5	1	1	0	0	7
Desire for family	36	12	36	6	1	1	1	6
Adoption	12	14	9	0	0	0	0	3
Love of children	14	12	11	2	0	0	0	3
Altruism	5	2	11	1	1	2	5	2
Physically unable to have children	0	4	7	84	97	93	93	74
Companionship for siblings	7	5	14	6	1	4	2	4
Replacement for dead child	3	2	7	1	0	0	1	1
Total Numbers	59	106	44	91	198	349	133	980

TABLE 19 CHSW Adoptive Parents' Motivations for Adoption, 1910-1973 (in percentages)

	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-73	Overall
Newborn	0	5	20	21	48	70	85	98	55
1-6 months	16	42	19	28	19	19	2	0	16
7-11 months	0	0	3	0	2	0	0	0	1
12-18 months	21	16	24	7	13	6	9	0	10
2 years	16	11	7	21	10	5	3	2	7
3 years	5	18	12	10	2	0	0	0	4
4 years	11	3	3	3	6	1	2	0	3
5 or more years	32	5	12	10	0	0	0	0	4
Total Numbers	19	38	59	29	48	100	66	64	423

Source E Wayne Carp & Anna Leon-Guerrero 'When in Doubt Count- World War II as a Watershed in History of Adoption" in book 'Adoption in America' Editor E Wayne Carp University of Michigan Press 2004 pp181-127 **Note:** In addition to the above 12 tables there are another 8 tables in this book section- also additional data on tables such as numerical as well as percentage data.

possible. p200

Popularity of adoption 1930-1940s

Carp & Guerrero—The percentage of CHSW children adopted grew dramatically. Various prewar factors that accounted for the relatively low percentage of adoptees became attenuated or disappeared completely. In particular, Americans' belief that adoption was a second-rate kinship system weakened. Although adoption would still carry with it a stigma (as it does today), the Holocaust and Hitler's eugenics program made any claim based on the superiority of blood and genes unacceptable. In the place of heredity, Americans embraced the power of the environment and parental love-nurture was believed to be more powerful than nature. In an era of pronatalism, optimism, and prosperity, the stigma of adoption waned as tens of thousands of couples looked favourably on adoption as a solution to childlessness. p200

Psychodynamic theory re birth mothers

Carp & Guerrero—After World War II, adoption workers embraced strands of psychoanalytic theory that labeled unmarried mothers mentally unstable and, for the first time, vigorously advocated the separation of mother and child. As a result of popular demand and encouragement from social workers, adoption became the first choice for all concerned. p201

Adoptive Parents See Tables 13,19,20

In 1910, CHSW asked adopters to provide reasons for hoping to adopt. Their motivations varied and changed over time, but for the most part, sentimental rather than instrumental reasons dominate. The CHSW's applicants did not want to adopt children for work or chores or even to provide heirs... 82% sought children for sentimental reasons, including a desire for companionship, a desire to start a family, a willingness to adopt (in contrast to indenture), a love of children, and a wish to act altruistically. p208

Older children preferred before 1930

Carp & Guerrero—Every modern historical study on adoption assumes that pre-World War II adoptive parents desired infants, but a majority of the CHSW's applicants sought older children. Before 1930, only 19% of adoptive parents preferred infants, and 41% sought children between one and three years of age...Before the war roughly 50% of prospective adopters preferred children over age three, and 15% over age five. These numbers strongly suggest a definite preference for older children, for reasons that included fear of newborns' vulnerability to sudden death, concern about the genetic makeup of prospective adopted children feeble-mindedness, and apprehension about the difficulty of caring for an infant...p209

New borns preferred option

Carp & Guerrero—The turning point in CHSW's adoptive parents' preferences and, by extension, the complete sentimentalization of adoption occurred not in the first quarter of the twentieth century but in 1940s and 1950s...The percentage of adoptive parents who preferred newborns more than doubled between 1930s and 1940s and reached 70% in 1950s. By 1970s, 98% of prospective adopted parents requested new-borns. At the other end of the spectrum, would-be adoptive parents' desire for children five years of age or older vanished after the Great Depression. The sentimentalization of adoption during the 1940s was the result of numerous factors, including the low depression birthrate, wartime prosperity, and the baby boom pronatalism that put a premium on family and home life . p210

New medical discoveries re infertility

Carp & Guerrero—World War II was also a watershed in adoptive parents' motivations to adopt a child, but the war itself had little to do with changing their attitudes. Instead, medical discoveries between the 1920s and 1940s concerning infertility and its treatment radically transformed the nature of both prospective adoptive parents' motivations and the CHSW's policy toward choosing adopters. Before World War II, medical experts were unable to identify conclusively the causes of infertility. Consequently, only 2.5 percent of adoptive parents gave involuntary childlessness as a reason for adopting. During the same period of time, however, scientists were making great strides in understanding women's reproductive endocrinology-estrogen was discovered, nonsurgical methods were devised for determining whether the fallopian tubes were open, details of ovarian function were explicated, and hormones were synthesized. In addition, mass-market magazines propagated the false idea that adoption enhanced the chances of pregnancy... All this resulting in the dramatic increase between the 1930s and 1940s in the number of adoptive parents who gave physical inability to conceive as their reason for adopting a child...When these infertility treatments failed, as was frequently the case, childless couples came in droves to the CHSW...p211

Conclusion

Carp & Guerrero—In many ways, World War II was a watershed in the lives of adoption triad members and, to a lesser degree, in the CHSW's adoption policies. Shifts in the demographic composition of the CHSW's clientele, new ideas in social work, wartime necessity, pronatalism, and prosperity were mostly responsible for these profound changes. As a result, the age at which birth parents relinquished their children declined radically, and birth parents became better educated and employed in higher-prestige occupations. Birth parents' marital status also underwent major changes during the war years, shifting from married couples who relinquished children for adoption for a multitude of preventable reasons such as poverty and family breakup to single mothers who relinquished their children so that they could escape the stigma of illegitimacy and start life anew. World War II also marked a watershed in children's ages of adoption, which steeply declined...Adoptive parents' preferences also changed from older children to newborns, thereby marking the complete sentimentalization of adoption. This essay, while relying almost exclusively on the CHSW's adoption case records, attempts to make its findings representative by incorporating all past studies relevant to the topics investigated. p211

Source E Wayne Carp & Anna Leon-Guerrero 'When in Doubt Count- World War II as a Watershed in History of Adoption' in book 'Adoption in America-Historical Perspectives' Ed E Wayne

Rescue a Child and Save the Nation
The Social Construction of Adoption
Delineator, 1907-1911

Julie Berebitsky— The Child-Rescue Campaign in the *Delineator,* the country's third-largest women's magazine, with close to a million subscribers. The campaign hoped to match up the nation's childless homes and homeless children and end the practice of caring for dependent children in institutions...The campaign marked the first time adoption was discussed in an ongoing public and popular forum; it gave a voice to the experience, demystified it, made it visible...The series ultimately played an important role in popularizing adoption and promoting an expanded definition of motherhood. p124

The campaign begins

In November 1907, *Delineator* published "The Home without a Child," which urged the nation's women, especially childless married women, to adopt homeless children... Each month the campaign featured the photos and life stories of dependent children who were available to any interested reader who wanted to take them out of an institution and into her home...Although the initial issue stated that the children could be taken by the placing-out system, indenture, or adoption, readers showed an overwhelming willingness to adopt the children legally, and subsequent children profiled were offered for adoption. The series was an immediate success...well over 300 readers wrote in requesting the first two children profiled.p125

Appealing Mother's Instinct, a Citizen's Duty

Berebitsky— The Child-Rescue Campaign generated a tremendous amount of reader response, 20% of all the correspondence. The first letters the *Delineator* published expressed an intense longing for children felt by childless women and women whose children had died who all hoped to adopt the children to "fill the vacancy in [their] home[s] and still the ache in [their] heart[s]." The *Delineator* had urged women to adopt by appealing to their sense of patriotic and civic duty in addition to their motherly instinct. Yet these letters suggest women responded on a personal level; <u>they needed the children as much as the children needed them</u>...p127 Articles suggested that mother love was higher and purer than marital love and that only through the self-sacrifice and devotion of motherhood could a woman reach her full potential or explore the "depths and heights" of her "nature." All agreed that a child's "touch" was "absolutely necessary" for women's "highest development." The series also articulated a definition of motherhood based on a woman's capacity to love and nurture a child, not on blood ties...p127

Birth Mothers

Berebitsky— Women who adopted had a "mother consciousness"; women who abandoned their infants and children to the mercy of the city lacked such a consciousness. The fact that a woman might give up her child to an institution did not necessarily mean she lacked a maternal instinct: women who acknowledged they could no longer care for their children and consciously surrendered them for their best interest were portrayed as heroes, having made the supreme maternal sacrifice...Adoptive mothers were mothers by choice. p127

Environment can overcome heredity

Berebitsky— The *Delineator* emphasized the importance of environment to a child's ultimate development, thereby helping women overcome any lingering fears about taking a child with a questionable background. The Child-Rescue Campaign coincided with a strong eugenics movement that warned of the evils of the hereditary taint. The *Delineator* countered by offering the opinions of adoptive mothers and reformers...that they had witnessed first-hand that "heredity is much, but environment is more " The *Delineator* maintained that "an atmosphere of mother-love" could overcome any child's "evil heredity" and result in "manly and womanly, honorable citizens...The *Delineator* believed, they could at least raise the masses of dependent, largely immigrant children into solid U.S. citizens. p128

Adoption as Rescue

Berebitsky— The rescue of a child appeared regularly in domestic novels of the nineteenth and early twentieth centuries. p129

1 The rescue plot gave readers the thrills of a tragedy with the comfort of a happy ending.

2 A rescue changed the destiny of the rescued and made a hero of the rescuer, embodying the American ideal of individual action.

3 It also involved risk: would the rescuer be rewarded for her fateful intervention or would she ultimately regret it?
4 In rescue fiction, the rescuer never repented her action because saved children always grew up to be responsible, moral adults and often made exceptional contributions to society.

5 The rescued always paid back the rescuer. In addition, these stories reflected two basic beliefs: humane, caring action was rewarded, and a child could overcome initial adversity and rise to success through hard work and personal integrity." their rescue. p130

A New Definition of Motherhood

Berebitsky— Fears aside, the primary motivation for the majority of women who adopted was the genuine desire to mother, to give care and love to a child-an understandable desire given the culture's glorification of mothers and valuation of women primarily as mothers... The Child-Rescue Campaign made adoption publicly visible in a way it had never been before. This exposure made it easier for women to adopt for a number of reasons: p131

1 Eased their fears about the mysteries of adoption.

2 Provided them with the practical information necessary to find a child with whom to ease maternal longings.

3 Supported their desire to adopt by giving them a reason-civic duty-for taking a child into their home.

4 Made adoption seem less alien, both to them and to nosy neighbors or prying relatives.

5 Provided adoptive mothers or prospective adoptive mothers with a virtual community of other women like themselves.

6 The *Delineator* gave women a context within which to understand their experiences and explain them to others.

7 These narratives allowed adoptive mothers to present their experiences in such a way that the decision to adopt could not be challenged: they were fulfilling their civic duty and expressing their sincere desire for a child and genuine mother's love.

8 "*Sentimental adoptions*"-that is, taking a child solely to create a family-was still a few years away. p132

Abandoning Readers, Embracing Reformers

Berebitsky— From the beginning, the series had advocated home-placing over institutional care for dependent children in addition to the more immediate goal of matching children with mothers. It was, however, becoming more and more difficult to balance the personal side of the campaign with the national reform work geared toward abolishing institutional care. p132

The *Delineator's* desire to lead the battle "for the best interests of the child," thereby gaining national influence, respect, and probably more subscribers, caused the magazine to neglect-even abuse-readers' interests... The constant parade of adoptable children misled readers: there was not an overabundance of children eagerly waiting to be adopted. In fact, there was already something of a shortage of children available for adoption. As reformers of the time knew and as historians have shown again and again, the overwhelming number of children in institutions were there only temporarily and could not be adopted because one or both of their parents were still alive. p133

....by all accounts, the *Delineator* had played a vital role. The victory, however, left the magazine with an extremely popular campaign but no cause...p134

Birth mother pensions

Berebitsky— After the White House conference, the *Delineator's* monthly series began to stress the need for mothers' pensions, a significant shift in focus. Now the emphasis was not solely on how to save the dependent child from a life of degradation but also on how to ward off dependency. This change reflected the larger movement among reformers from a "save the child" philosophy that had prevailed in the nineteenth century to a "save the family" perspective in the twentieth. Whereas nineteenth-century reformers had quickly removed children from the corrupting influence of their immoral and/or poor families, reformers now believed both that poor families needed the civilizing influence of their children to keep them from falling further from grace and that nothing could replace a birth mother's love. p134

The series reappeared once in January 1912...William Hard, the *Delineator* launched a campaign for mothers' pensions. Whereas the Child-Rescue Campaign had called on women to open their mothers' hearts wide enough to take in children not of their flesh, the new campaign urged women to spread their mother love by working to help other mothers keep their children. Women who took in dependent children were no longer cheered as the possessors of a strong mother consciousness; now they were the strangers who received the children torn from poor mothers. p135

Conclusion

Berebitsky— The Child-Rescue Campaign began as a solution to a distinct problem as identified and understood by one man. Wilder's construction of the problem reflected his (and much of the larger society's) fears about immigration, race suicide, and the social threat posed by uncontrolled, undisciplined, un-American youth... Implicit in his solution of matching up childless homes and homeless children was the belief that native-born, middle-class homes were superior not only to institutions but also to the children's natural families...p136

Adoption includes judgment as to best parent

Berebitsky— It is nothing new to state that adoption always includes a judgment about who is a better parent for a child and that this assessment necessarily reflects the culture's beliefs at that moment in time about what qualities make a good parent. Whats fascinating , is that this judgment shifted as the series moved away from attempts to match poor, dependent children with more prosperous stable homes and toward embracing reformers' efforts to keep birth mothers and children together. .p136

Shift to birth mother concerns

Over time the discourse shifted in favor of birth mothers. In July 1908 the *Delineator* acknowledged that separating a birth mother from her child was sad. But the magazine also believed that a birth mother, "however low her lot has fallen, surrenders her baby willingly, feeling, with the remnant of mother-love that lives within her, that her child must have a better chance in life than that which has come to her. As the *Delineator's* craving for more national influence grew and the staff's involvement with child-saving reformers who now favored keeping families together increased, the editors' understanding of the problem-and hence their solution to it-changed. By October 1909 the *Delineator* stated that surrendering a child was a "frightful sacrifice" and that providing a child with another home was only "the best we can do. What once was a heroic sacrifice was now horrific. .p136

Popularizing and destigmatizing adoption

Berebitsky—The series was nonetheless instrumental in popularizing and destigmatizing adoption...Adoptions had been on the increase since 1851, when Massachusetts passed the country's first adoption law...But despite its growing popularity, adoption was still not publicly or candidly discussed. Although articles on adoption had previously appeared in popular magazines on a few occasions, the Child-Rescue Campaign was the first time the spotlight focused on adoption for an extended period of time. In addition to allowing women to work out some of their fears about adoption and address some of the issues adoptive parents faced, the series also served a practical purpose by showing interested parties where and how to adopt children. The campaign's overwhelming success showed that women were ready to adopt and believed that adoption created a real family in which children were treated not as workers but as family members and mothers felt the same love and devotion as if they had given birth..p137 **Source** Julie Berebitsky 'Rescue a Child and Save

A Nation's Need for Adoption- Competing Realities Washington Children's Home Soc.1895-1915

Importance of case histories

Patricia S. Hart— Perceived as a problem solver for more than a century, adoption has always been a politically charged subject that can never be experienced by participants in complete isolation from social expectations, both positive and negative. Now, as the history of adoption and its role in society is being written, evidence from case records shows that participant experience is invaluable in balancing historical analysis based primarily on what contemporary reformers and others had to say about adoption. Case histories show that participants sought to fulfill their own desires through adoption and did not always act in accord with social expectations. Furthermore, often overdrawn social theory about nineteenth-century class relations and nationhood might also be profitably tested against evidence provided by case histories. The subjective experience of participants, which is-essentially ignored by much postmodern theory as irrelevant, contests broad and inclusive theories about social intent with evidence to the contrary. p140

Adoption in the Nineteenth Century

Best interests of the child 1830s-1840s

Hart— The sentimental family ideal, including a nurturing approach to children, had become the predominant white middle-class American model in the 1830s and 1840s. The belief that children depended on the tender quality of their nurturing families influenced judges to consider the best interest of the child when deciding custody and to increase maternal preference in child-custody cases. p141

1850s As the century progressed, the "best interest of the child" doctrine helped set legal precedence for biological bonds of parenthood (not just paternity) to be severed when the interests of the child were ill served, although entrenched resistance to doing so persisted. The first adoption law, passed in Massachusetts in 1851, made adoption a statutory procedure executable in state probate courts. Home placements, some leading to adoptions, were being made by charitable institutions even before 1851, and by serving as a model for most other states, the Massachusetts law legitimized and facilitated the practice. Early home placements, however, did not usually lead to formal adoption. p141

Orphan trains

Hart— Beginning in the latter half of the nineteenth century, the New York Children's Aid Society...placed tens of thousands of children from the urban East into mostly rural Midwestern families from orphan trains, yet few of these home placements led to legal adoption, which required legal relinquishment...p142

1900 Impact of Progressive Era

Hart— By the turn of the century, "best interest of the child" policies were increasingly reflected in the state's participation in deciding when children needed protection. p142

1 The resulting Progressive Era legislation helped adoption gain a foothold as a component of social welfare policy by tying adoption to child protection, although severance of blood ties did not become the preferred method of dealing with child dependency. p142

2 Progressive Era values defined parental worthiness and children's fitness for adoption, shaping and pervading adoption practice and affecting all those in its orbit (the adopted child, the biological parents, and the adoptive family) until the child was an adult. p142

3 Under the direction of mostly Protestant ministers in private, independent but federated NCHS societies, adoption practice during this period tended to suppress a child's recollection of or connections to his or her past, until the child was grown, and to reinforce paths to Christian salvation and U.S. citizenship. p142

4 Adoption as a method of child saving came into first flower during a period of Progressive reform when the poor, particularly immigrants, were undergoing intense scrutiny. The constitution of the family was considered a bellwether of how the nation would be able to cope with industrialization, an immense wave of immigration, expansion, and westward migration...p142

5 The nineteenth-century "discovery" of the child actually represented a distinct historical moment when the social agendas of reformers brought children temporarily into political focus. Middle-class children were the subject of a sustained, loving gaze, while poor children came and went from view, according to political winds. Yet by all accounts, late-19th and early-20th -century reformers were particularly focused on incorporating children in a nationalistic project founded on useful citizenship. The preferred method of incorporation was the family. p142

1910 *Hart*—Theodore Roosevelt had proclaimed the American family the highest achievement of civilization for its allegedly unique capacity to mold citizens. Both the future of the nation and the future of the species seemed to balance on the ability of native-born white women to raise children with middle-class standards of self-sufficiency, moral uprightness, and Protestant sobriety. p142

A home for every child, a child for every home

Hart— W. D. Wood, president of the WCHS in 1906, understood that the incorporation of homeless children into middle-class families was not a simple matter. When Wood said... "The greatest event in modern times is the discovery of the child," he was strumming rhetorical chords already well rehearsed by Progressive Era reformers. But in his address, Wood was appealing in particular for a "discovery" of the homeless child because he believed that "even mother-love looks with small sympathy upon the homeless chick of another brood. p143

Environment will prevail over heredity

Hart— Wood, staunchly maintained that Christian faith and a family environment would prevail over heredity and adversity...Heredity has to do with the physical instrumentalities, but not with the soul. That comes direct from God to every child. It is always pure, always ready to co-operate with uplifting environment to control and subdue physi-

cal heredity.... We may therefore safely count that the pure soul, helped by a good environment of ten or fifteen years in the life of a child, beginning at a tender age, will, under normal physical and mental facilities, always triumph over heredity.... adoption would provide a path for the personal salvation of the homeless child, for the "normalization" of the "unnatural" condition of childlessness, for the assimilation of dependent children living at the margins of society, and for exercise of the social gospel movement of the period, particularly in its faith that within every child lay a perfect soul, not a bad seed. p144

Formal documentation of adoption

Hart— What set NCHS adoption policy off from existing home placement practice, such as orphan trains or temporary foster placement, was that they required legal relinquishment and formal, legal documentation of adoption after placement.

Foucault's assertion that the poor only became visible to the middle class when needed for labor suggests, by extension, that the middle class became interested in homeless children only when it had a need for their labor or desire for them to complete childless families. But legal adoption was in fact a move away from the exploitation of children as laborers...Furthermore, adoption workers of this period did not "steal" the children of the poor to raise in middle-class families...On the contrary, removing children from their parents' care was offensive to most sensibilities and done only as a last resort. p144

Motivation of relinquishing parents

1 *Hart*— Women relinquished to spare children abuse and provide them protection.

2 Men and women relinquished when adoption seemed the only way for their children to have decent lives.

3 Men relinquished so their children could receive consistent, caring female nurturing.

4 Young women relinquished to avoid social sanctions against illegitimacy and hopeless poverty.

Of course, the defeat embodied in the use of such strategies can scarcely describe the despair and diminished hopes experienced by those exhausted lives. Therefore, there are many limits to what a historian can justifiably call agency when parents voluntarily placed their children. For example, adoption workers encountered relinquishing parents in interviews or in court, where the legal basis of relinquishment could be established. In a process that required the relinquishing parents to acknowledge and confess to their misfortunes and shortcomings, complex situations tended to be reduced to moral transgressions. In addition, the terms of relinquishment starkly delineate the societal limits of the incorporation of the poor: children were considered redeemable; parents usually were not. In separating children from the conditions contributing to their misery, relinquishment masked the underlying causes of that misery in a cloak of morality... p145

Hart— Adoption existed within a range of child welfare arrangements, and poor families used relatives, friends, churches, orphanages, and other temporary boarding arrangements that accommodated more children in need than can ever be known. But when poverty combined with death or devastating illness of a supporting parent; the delinquency of a dependent child; or neglect, abuse, or alcoholism, relinquishment ceased to be a choice and was frequently mandated by the court. pp147-148

Save a child or retrain a criminal

Hart— A connection exists between the spiritualized, sentimentalized, and idealized childhood of the late Victorian middle class and the idea that children, once severed from their biologic families, would be successfully reborn in better homes. The optimism of the social gospel mission saw a potential for redemption in the poor, neglected, or abused child. That optimism influenced attempts to reform and remake the real, physical child to redeem the ideal, spiritual child. WCHS workers often perceived children as malleable and their affections transferable (a graft on a tree). The result may have been a tendency to suppress the real, material, and temporal in favor of the potential and ideal. p148

Children experienced losses

Hart— Children entering the receiving home had of course recently experienced separations and losses. At relinquishment, children were separated from their parents. Excluding illegitimate babies, as many as 70% of the children were subsequently separated from siblings...p149

Receiving-home matrons and caseworkers certainly were not blind to children's feelings. These administrators often pleaded for sensitivity and patience for children at placement, but the adults also tended to see children's suffering as temporary and liminal, remediable by caring people with the right motives: The child's past became a temporary illness to be cured. At worst, the receiving home was a site of separation, grief, and reform. At the same time, the receiving home, with its concerned maternal figures, was a place of comparative comfort, shared experience, occasional reunions, special celebrations, and material well-being. p150

Civic duty versus other desires

Hart— Civic motherhood, within the context of the political urging for the native-born, white middle class to reproduce itself, seems to point toward adoption as a "cure" for the reproductive and civic "failure" of infertile couples. But in fact, civics seems to have had little measurable effect on prospective parents' desire for children. p151

25% sought birth information

Hart— Considering the lack of secrecy around the topic of adoption in adoptive homes, the age of children adopted, and the fact that many children had living family residing in the same state, it is not surprising that as adults, almost one quarter of the children in the sample contacted the WCHS with requests for documentation of their birth or queries about their birth relatives. The information was generally freely given until about the mid- 1960s, when secrecy became policy. Until that time, the WCHS provided an institutional source of personal information that was useful to adults adopted as children. p152

Source Patricia S Hart 'A Nation's Need for Adoption and Com-

Adoption Agencies and the Search for the Ideal Family, 1918-1965

New selectivity in adoption practice

1900 *Brian Paul Gill*— Around the turn of the century, a new generation of agencies sought to avoid tragedies by establishing systematic screening processes for prospective foster/adoptive parents. These agencies aimed to select parents who would not abuse children, who had the material means to support children, and who would provide a minimal level of schooling and religious observance. The standards were not rigorous, but they were adopted with the clear aim of preventing harm to children. p160

1914 Around World War I, however, children were increasingly desired for reasons more sentimental than economic, generally by adults who were otherwise childless. These prospective parents wanted children who would be as fully as possible their own, beginning in infancy. p160

1920-1945 *Gill*— The demand for babies to adopt began climbing in 1920s and exploded with the culture of domesticity after World War II. Excess demand for young children gave adoption agencies a new opportunity, beginning in the 1920s, to be selective in choice of adoptive parents. Selectivity was consistent with the interests of agency workers, who hoped to raise their professional status by demonstrating particular expertise in the creation of adoptive families. Indeed, the professional expertise of the social worker in was the foundation of the worker's right to choose adoptive parents. p161

Create the "best" adoptive families.

Gill— To demonstrate competence, the agencies moved away from the turn-of-the-century emphasis on preventing harm to children, instead aiming higher: *they* began to claim a unique ability to create the "best" adoptive families. In 1951, there was ten to one ratio of supply and demand in applicants and babies for adoption... By 1960... the adoption agencies came to believe that they had a responsibility to use their professional expertise not merely to screen out bad applicants but also to create only the "best" adoptive families. p161

The normal as normative

Gill— Agencies assumed that the "best" families were those who were most "normal" A 1933 U.S. Children's Bureau pamphlet declared that all children should have "a chance to live in a normal family group". p161

1943 *Gill*— Dorothy Hutchinson, an adoption worker 1943 *In Quest of Foster Parents,* maintained that the "selection of foster homes has at best been based on the assumption that although there is no such thing as a perfect home there is such thing as a normal family. She added, "Normality is something that is hard to define, yet easy to feel and see. In it is assumed a wide range of behavior and attitude, not a narrowly fixed concept." Although Hutchinson typified the common agency position that normality was "the crux of the matter" in selecting applicants for parenthood, her assertion that it defined "a wide range of behavior and attitude" was misleading. Hutchinson and many other agency workers devoted considerable effort to defining normality narrowly. p162

Between 1920s 1960s *Gill*— adoption agencies employed three principles in the service of creating the "best"- and most "normal"-adoptive families.

1 Agencies sought to create adoptive families that resembled biological families as closely as possible.
2 Agencies excluded disabled children from adoption.
3 Agencies took a new interest in the inner lives of prospective parents, aiming to choose only those who were psychologically ideal.

In concert, these three principles involved the pursuit of an aesthetic ideal of the family, a pursuit that was perhaps the most ambitious program of social engineering (in its perfectionism, if not its scale) seen in twentieth-century America. p162

Simulating the biological family

Gill— The quest for normality that followed the new selectivity on the part of adoption agencies involved,

1 A systematic effort to create adoptive families on the model of the biological family.

2 During the Progressive era, by contrast, agencies had sought to place children in homes that met uniform and relatively objective standards of quality, regardless of whether the merged family looked like a "normal" biological family.

3 The notion that adoptive families ought to be as much like biological families as possible was rapidly assimilated by adoption professionals after World War I and went largely unchallenged until the *1950s.*

4 The agencies' efforts to simulate the biological family went unexamined and unexplained. The presumption in favor of the biological model was so pervasive that an explanation was thought unnecessary... The goodness of the biological family required no explanation because it was "natural," apparently ordained by God. When adoption workers talked about the challenges of "playing God," they assumed that their role in adoptive families resembled God's role in biological families...and they had the power to enforce it. p163

Matching

Gill— In practice, the pursuit of the biological family model involved an attempt to match children's characteristics to those of the adoptive parents. Between World War I and the mid-1950s, adoption agencies sought to create families in which parents and child were physically, ethnically, racially, religiously, and intellectually alike. In 1910 one agency director provided the definitive statement of the more general matching philosophy that would prevail in later decades, declaring that "there are first-class, second-class and third-class children, and there are first-class, second-class and third-class homes. p163

Matching policies and child welfare

Gill— Policies requiring racial and religious matching, which prevailed for most of the century, delayed or prevented the placement of many children. To be sure, the agencies tried to justify matching in terms of child welfare, arguing that dark-skinned children would be out of place in fair-skinned families and that Catholic children

belonged in Catholic homes. To the extent that matching was intended simply to recognize the individual needs of individual children, such arguments made sense. But the agencies were obsessed with matching for its own sake. p166

Excluding "Defective" children

Gill— Adoption agencies were strongly influenced by hereditarian notions of child development. In early-twentieth-century America, the "nature versus nurture" debate was especially heated: an optimistic reform movement aimed at improving social environments coexisted uneasily with an intense public interest in eugenics. Many social workers resolved the tension between these two competing ideological views by concluding that although "normal" people could be affected by positive environmental influences, genetics determined the fate of "defectives." This resolution had implications for professional adoption practice that would endure for half a century. p166

Before an infant became eligible for adoptive placement, the agency determined whether the child was adoptable. Not only would-be adopters but also would-be adoptees had to meet agency approval. The agencies regarded children with disabilities as "defective" and, according to eugenic theory, beyond help. Prospective adopters, by contrast, had proven themselves-by meeting agency screening standards-to be nondefective. In the view of the agencies, these prospective parents were therefore entitled to nondefective children. p167

Good parenting as psychology

Gill— Beginning in the late 1920s, the intensification of agency efforts to create "normal" families involved increased attention not only to the biological family model and to the characteristics of prospective adoptees but also to the psychological makeup of prospective parents. For the agencies, normality meant that applicants had to fit a psychological model defined in terms strongly reflecting the prevailing ideology of the family. As discussed subsequently, applicants were expected to be "normal" in age, in motivation to adopt, and in gender roles. p168

Parental motives

Gill— Agencies generally assumed that the particular (and "normal") reason a couple would choose adoption as the method of acquiring a child was their inability to bear children biologically. But following the views of Freudian theorists, agencies worried that unconscious fears might cause "psychogenic" infertility. Psychogenic infertility, the agencies believed, signaled deep emotional conflicts and implied that some of the couples who applied for adoption unconsciously rejected parenting. In the 1940s and 1950s, agencies commonly imposed a requirement of infertility as a prerequisite for adoption, increasingly, they demanded a medical investigation of infertility. In 1951 one professional source reported that "most agencies have ruled out couples where no organic reason for sterility can be found. p169

Psychological normality: Age limits

Gill— In the 1940s, 1950s, and 1960s, agencies reduced maximum age limits for adoptive parents, so that applicants who were much beyond their mid-thirties had little chance of adopting a child through an agency. Life expectancy was not the primary reason for excluding older applicants. In 1942... Elderly couples who have waited years in the hope of having a child of their own, and who finally accept it as inevitable that they cannot, must be considered carefully before they are given a child. Their routine of a well-ordered life will be interrupted, and rigid personalities, traveling in deep grooves, cannot accept a rude upheaval with complacency...Elderly couples who have longed for many years for a baby may, when *they* receive one, cling to it as an infant. They may limit its capacity for development by an oversolicitous, over-protective attitude. p170

Normality: married life and gender roles

Gill— Adoption professionals insisted that adoptive parents be married couples because marriage indicated normality, and normality was regarded as synonymous with psychological health. In 1939, "Normality in family life and training is the aim of placing in a family, and a home cannot be considered complete or able to give entirely normal experience where one parent is missing...Adoption workers between the 1940s and 1960s regarded conformity to accepted gender roles as an essential ingredient of psychological health...Short of homosexuality and divorce, perhaps the gravest sin a mother could commit against gender norms during this period was to venture into the working world...they expected adoptive mothers to stay at home. p170

Conclusion: Family values and child welfare

Gill— Because biological children resembled biological parents, agencies assumed that adopted children should resemble adoptive parents. Because most children were not disabled, agencies assumed that disabled children should not be adopted. p172

The typical couple adopting through an agency was married, in their mid-thirties, childless, and infertile for a clear physical reason. Neither parent had been previously married. Both parents practiced the same religion and were active in their local church. Both were on friendly terms with their families, and both remembered happy childhoods.

Gill— To be sure, this vision of the ideal family was not an original invention of the adoption agencies. Indeed, their obsession with normality suggests exactly the opposite: rather than constructing a new ideal of family, their goal was to reflect and reinforce an existing ideal. A narrow vision of the family, derived from psychoanalytic theory and strongly imbued with traditional gender roles, permeated the academy, the professions, and popular culture alike. Adoption agencies were acolytes of a widely shared cult of normality. But if adoption agencies merely borrowed their image of the ideal family, they were unique in having the power to enforce such a vision. p174

Source Brian Paul Gill "Adoption Agencies and the Search for the Ideal Family, 1918-1965 in book 'Adoption in America,- Historical Perspectives' University of Michigan Press 2004 pp160 -180

Adoption Reform in U.S.A.

Extracts: from Prof E Wayne Carp 'Adoption Politics-Bastard Nation and Ballot Initiative 58' 2004 Ch One 'The Problem'

Adoption Reform Movement in USA

Annetta Louise Maples was adopted in 1946. She applied to inspect her adoption records...The Supreme Court of Missouri, ruled against her and upheld the state's sealed adoption records statute. p5

1946-56 Search and activist groups formed

The Maples case was the first of many failed attempts by adopted adults during the ensuing twenty years... Adoptees organized themselves into adoptee search groups, which evolved into lobbying organizations working to change the laws governing sealed adoption statutes. p5

1851-1950 Adoption records open to triad

Fore nearly 100 years..since the Massachusetts Adoption Act of 1851, adoption records, with few exceptions, were open to inspection by members of the adoption triad. p6

Story of sealed records

The story of how they were sealed is a complicated one. ...Because of the stigma of shame and scandal that surrounded adoption and illegitimacy during the first quarter of the twentieth century, Minnesota lawmakers wished to prevent access to adoption records by potential blackmailers, who might threaten adoptive parents with telling the public about the child's adoption, or nosy neighbors, who might discover the child's illegitimacy. Sealing court and adoption agency records was never meant to exclude members of the adoption triad from examining their adoption records. In fact, with a few exceptions, the confidentiality clauses in the 24 states that had enacted them by 1941 specifically exempted from the law "parties in interest" (birth parents) and "parties of record" (adoptive parents and adopted persons). Thus, on the whole, during this time adopted adults had no difficulty accessing their records. In addition, there were 24 states that had not enacted adoption laws with confidentiality clauses. In those states, court records were easily available to the public...p6

Before 1950s adoptees accessed agency records

1 Before the 1950s, adopted adults had little difficulty in accessing their records from adoption agencies.

2 In the early twentieth century, social workers began keeping detailed records of adopted children for the sole reason that these adopted persons might return one day to the agency to recover their social history and make contact with their family of origin....

3 Good intentions led to amending and sealing the birth certificates of adopted persons. Progressive-era child welfare reformers vigorously lobbied state legislatures to remove the stigma of illegitimacy from both the unwed mother and the child....

4 Dual birth certificates. Two registrars- came up with the idea of issuing new birth certificates to adopted children... Sheldon L. Howard, Illinois State Registrar of Vital Statistics, and Henry B. Hemenway, proposed that the Model Law be amended so that when the name of the child was changed the clerk of the court would forward the adoption decree to the state registrar of vital statistics. The registrar would "make a new record of the birth in the new name, and with the name or names of the adopting parent or parents." The registrar would then "cause to be sealed and filed the original certificate of birth with the decree of the court." The birth records were to be sealed from the prying eyes of the public, not from those directly involved in the adoption, who were to be permitted to view them.

By 1941, 35 States had dual birth certificate

By 1941, 35 states had enacted legislation instructing the registrar of vital statistics to issue a new birth certificate using the new name of the child and those of the adopting parents in place of the original one.... The legislators had no intention to keep adult adopted persons from gaining access to their birth certificates. The law stated that the original birth certificate, though sealed, could be opened by the state registrar "upon the demand of the adopted person if of legal age or by order of a court of competent jurisdiction. By 1948, nearly every state had embraced Hemenway and Howard's recommendation of issuing a new birth certificate upon receiving a court-ordered decree of adoption, the records being open to adopted adults.

1950s second movement to seal records

A second movement to seal the records *from* adoption triad members slowly gained momentum... With the tremendous increase in illegitimate births during World War II and the pronatalism and baby boom of the postwar years, adoptions soared, and so did the number of states passing laws sealing adoption court records. p9

1948 majority of states had sealed court records.

Why? at this time is difficult to say.—

(a) One legal historian has suggested that the sole reason lawmakers sealed adoption court records was to protect "adoptive parents and their adoptive children from being interfered with or harassed by birth parents?

(b) Preventing gossips and blackmailers from gaining access to the records was another?

Adoption agencies followed a similar path
Birth mothers shut out 1950s >

1 The relationship between birth mothers and adoptive parents had always been suspect. Progressive-era social workers incorporated secrecy between birth and adoptive parents into the adoption case records they created...

2 The changing demographics of adoption agencies' clientele: postwar unwed mothers were younger as were the children they were relinquishing (four days old rather than four years). Secrecy was much easier to impose...

3 The uncritical acceptance by the social work profession of psychoanalytic theory, tenets of which by 1958 had been incorporated into the CWLA's influential *Standards for Adoption Service.* It stated that unwed mothers "have serious personality disturbances [and] need help with their emotional problems. The solution to this supposed problem was to separate the unwed mother from her child, place the child for adoption, and make sure that if the mother ever returned to the agency for information, she be denied access . By the end of the 1950s, birth mothers were shut out. p10

Adopted persons shut out 1950s>

But beginning in the 1950s social workers began to stonewall adopted adults when they returned to the agency.

1 Freudian psychology was popularized by Florence Clothier, a prolific and influential psychiatric social worker at the New England Home for Little Wanderers...

2 By the late 1950s adopted adults who returned to an adoption agency searching for original family members were perceived as pathological and, by extension, represented a failure of the adoptive process... p11

Sealing of birth records

After World War II, enjoying prosperity and a baby boom, Americans moved to suburbia and created a family-centered culture that stressed early marriage, large families.

1 Responding to the pronatalism of the age, Children's Bureau officials began to justify keeping birth records secret by invoking the need to protect adoptive parents from the possible interference of the birth parents.

2 In 1949 they recommended that both sets of parents should remain unknown to each other. Such a concern reflected a long-standing fear of social workers. But in the context of birth certificates, this was the first time that Children's Bureau officials acted on this fear, the first time they had justified confidentiality for reasons other than the welfare of the adopted child. State legislatures began following the Children's Bureau's advice.

3 By 1960, in 29 states, adoptees could access their original birth certificates only by petitioning a court. But in 20 others, adopted adults were still free to inspect their records. Four more states closed their birth records in the 1960s, 6 in the 1970s, and 7 after 1979. Only Alaska and Kansas, never closed their birth records to adopted adults

Jean M Paton - search movement pioneer 1953

In response to these developments, Jean M. Paton, a middle-aged, twice-adopted ex-social worker, single-handedly pioneered the adoptee search movement. In 1953 Paton founded the first adoptee search organization—**Orphan Voyage**. The initial goals were to make adoptees visible, give them a social identity, and overturn the belief that "the adult adopted [person] had nothing to say." In 1954 Paton published *The Adopted Break Silence.* For the first time, a book recorded verbatim the thoughts of adopted adults on a multitude of subjects ranging from their attitudes toward being adopted to their attempts to locate their original family members.... p13

Failure to gain public traction

Paton's plea for creating a national adoption registry was greeted by silence. Her one-woman crusade garnered no national media attention, caused no adoption agencies to liberalize their records disclosure policy, and impelled no state legislatures to repeal their sealed adoption records statutes...By not politicizing the closure of adoption records-a public issue-but instead focusing steadfastly on search and reunion-a private issue-Paton had inadvertantly isolated the movement from public opinion and the political process...As Paton herself later admitted, "I realized that I was going one way and the culture the other-toward sealed records". p13

New search movement 1970s

By the early 1970s, demographics, attitudes, and leadership had changed. Three developments were responsible for the new adoptee search movement to emerge.—

1 The long-term precondition: the buildup of a critical mass of adopted adults in the 25 years after World War II who had grown up in a world of sealed adoption records.

2 Unlike their pre-World War II counterparts, this group had been denied easy access to their adoption records.

3 Their thwarted desire to view their records provided the tinder from which the new search movement ignited. p13

The Civil Rights Movement 1960s

A precipitant of the new search movement...charaterized by grassroots protest movements, sexual experimentation and freedom, and rise of rights consciousness.

1 The era began with civil rights movement, the campaign against poverty, the Vietnam War, campus unrest and New Left student protesters, growth of a "counterculture".

2 By late 1960*s* and early 1970s "identity politics" overshadowed earlier liberal movements as ethnic and racial self-interest groups organized to gain political legitimacy, economic power, and cultural authority in Black Power, feminist, Native rights, and gay liberation movements.

3 The movements were grounded in a vision of egalitarian, participatory democracy that questioned existing systems of authority based on hierarchy, expertise, or wealth.

4 The movements' democratic ethos sought to include all people in society, empower individuals through social participation, and create a loving community...

4 Outrageous, exasperating, and heroic, they fundamentally challenged and transformed the nation's political and social institutions, and racial and sexual mores. pp13-14

Sexual revolution

Of particular importance to the origins of the new adoptee search movement was the sexual revolution, which successfully challenged many of the sexual taboos of the 1950s including the stigma of illegitimacy. p14

1 By late 1960s, the stigma of having a child out of wedlock or being born out of wedlock had greatly lessened.

2 By 1970s many adopted adults viewed their adoptive status in terms of liberation and rights, not shame and fear.

ALMA Adoption search movement 1971

Florence Ladden Fisher, was adopted as an infant and was denied knowledge about the identity and finally located her mother after twenty years of searching. p14

Adoptees Liberty Movement Association

Fisher founded the Adoptees Liberty Movement Association (ALMA). Along with aiding adopted adults searching for their birth parents, a principal goals was "to abolish the practice of 'sealed records' " and to secure the "opening of records to any adopted person over 18. p14

Militant- angry- demand for adoptee rights

1 Fisher added a completely different tone... The emphasis on adopted adults' rights and the demand to repeal

sealed adoption records statutes were unprecedented... p14

2 1973 Fisher published *The Search for Anna Fisher.*

3 By 1974, Fisher was undisputed leader of the adoption search movement and head of the nation's largest activist group . ALMA's spread like wildfire, creating hundreds of other adoptee search groups across USA, Canada...p15

Before 1977 took no court action

ALMA had *"never* advocated any legislative change" to state laws because if they tried "to change the law State by State the adoptees who are being hurt by the present laws would all be dead and buried before the States would open up unconditionally." Instead ALMA favored challenging the constitutionality of the sealed adoption law in the U.S. Supreme Court.... p15

1978 ALMA court action

ALMA filed a classaction federal lawsuit in the U.S. District Court against New York's sealed adoption records law. The District Court dismissed ALMA's suit on the merits. On appeal, in *ALMA Soc'y, Inc.v. Mellon (1979),* the United States Court of Appeals...considered for the first time the constitutional arguments of adopted adults and dismissed the case on its merits...The decision in ALMA stood unchallenged by other federal appeals courts and US Supreme Court for next twenty years. p17

2nd Adoption search movement 1978 American Adoption Congress (AAC)

Jean Paton founded a national umbrella organization, the American Adoption Congress (AAC). Paton, despairing over the multiplicity of adoptee search groups and the ineffectiveness of the movement in changing adoptee records laws, hoped that a large, centralized organization composed of adopted adults would be more effective. She was wrong... Within three years, Paton was denouncing the AAC for commercialism and for admitting professional social workers into what she had envisioned as an all-adopted-adult organization...In addition to adopted adults, the AAC admitted to membership social workers, educators, birth mothers, and adoptive parents. It was dedicated to educating the public about sealed adoption records and lobbying legislators to repeal sealed records laws...During the late 1970s, the inability to gain access to adoption records by claiming constitutional rights led AAC leaders to emphasize arguments based on psychological needs rather than rights. p17

Psychological needs rather than rights

As adoptee rights rhetoric declined, a second ideology arose that soon dominated and legitimized the movement ...the psychological argument that knowledge of one's birth parents was crucial to the adopted person's self-identity. In contrast to the red-hot rhetoric of "adoptee *rights"* that militant activists like Florence Fisher used, the public was presented with the cool, objective, pseudoscientific discourse of social-science research supporting the thesis that searching for one's biological family was of great therapeutic value and of little risk or harm to the participants... These ideas were widely disseminated in the mid- and late 1970s by three Los Angeles professionals: a child psychiatrist, Arthur D. Sorosky, and two social workers, Annette Baran and Reuben Pannor. They quickly became the intellectual leaders of the search movement... p18

Sorosky, Baran, and Pannor

Between 1974 and 1978, published eleven articles and a book...Single-handedly, these researchers provided proponents of open adoption records with language and arguments that bore the incontestable cachet of social science and medical authority...p18

They removed the stigma from searching..Those who searched did so "simply because they have bright, curious minds and approach all of life's mysteries in the same manner. Searching was also triggered by life-cycle events, such as marriage, the birth of the adopted adult's first child, or the death of an adoptive parent, that produced a feeling of "genealogical bewilderment"-a psychological disturbance afflicting adopted adults. p19

In their articles in professional psychiatric journals Sorosky and his team painted adopted persons as psychologically damaged by the very fact of being adopted...uniquely prone to develop symptoms of an "adoption syndrome,".... Sorosky, Baran, and Pannor providing the search movement with its most prominent psychological rationale: adopted persons searched because adoption itself had damaged them... However, they ignored a mountain of data indicating that 95 percent of adopted children were never referred to professionals for therapeutic help of any sort. .

1980s and 1990s, psychological approach

The psychological approach of the adoption reform movement became dominant. Sorosky, Baran, and Pannor were repeatedly cited uncritically by experts in professional journals of education, pediatrics, psychiatry, social work, child welfare, and law and in the news media. p20

Betty Jean Lifton 1975

A professional writer well connected to the intelligentsia through her husband, author and psychiatrist Robert Jay Lifton. Lifton became a leader in the adoptee search movement in 1975 with her book *Twice Born: Memoirs of an Adopted Daughter*. p21

Lifton, encouraged adoptees to search for their biological parents, denounced adoption agency secrecy, and advocated opening sealed adoption records. Lifton cited the work of several psychiatrists, including the research of Sorosky and associates, and repeated their claims that "virtually all adoptees feel a sense of 'genealogical bewilderment' which expresses itself in a need to search"... Lifton's writings, however, profoundly stigmatized adoptees and contributed ammunition to a growing faction within the adoptee search movement that was anti-adoption. p21

Adopted child syndrome

Lifton also gave credence to the idea of "adopted child syndrome," David Kirschner, a clinical psychiatrist who coined the term in 1978, claimed that adopted child syndrome was marked by a cluster of behaviors such as theft, pathological lying, learning disabilities, fire setting, promiscuity, defiance of authority, preoccupation with excessive fantasy, lack of impulse control, and running away

from home... But it was Lifton who popularized the concept by asserting that "most adoptees exhibit" some of the traits of the adopted child syndrome "as a result of their confusion of their heritage." p21

Nancy Newton Verrier's 1990

The dominance of this psychological ideology culminated in the early 1990s in therapeutic advice and self-help adoption publications that were profoundly anti-adoption. One of the most popular, Nancy Newton Verrier's *The Primal Wound: Understanding the Adopted Child,* also rested on pseudo-scientific psychoanalytic theories, claiming that adoption was a traumatic experience for the adoptee. According to Verrier, the trauma began with the child's separation from the birth mother and ended "with his living with strangers." As a result, "the primal experience for the adopted child [is] abandonment," a form of post-traumatic stress disorder characterized by depression, anxiety, helplessness, numbness, and loss of control. Although Verrier suggested some ways of healing this "wound," she pessimistically concluded that adoptees would live out the rest of their lives with "a perpetual feeling of being a victim, of being powerless, of being helpless to help one-self. p22

Adoption Therapist 1990

The idea that traditional adoption was by definition dysfunctional was also the basic assumption behind the launching in 1990 of the journal *Adoption Therapist,* which contained such articles as "The Adult Adoptee: The Biological Alien" and "The Orphaned Element of the Adoptive Experience." ...As a result of the adoption reform movement's reliance on an ideology that labeled adoptees psychologically damaged as a result of secrecy in adoption (and birth mothers experiencing relinquishment of their infants as a profound loss), a growing faction within the adoptive reform movement...called for the end of adoption as it had been practiced for a century and half... p22

Applications for Court Records

Armed with the psychological need arguments of Sorosky and his associates, Lifton, Verrier, and a host of others, adopted adults began individually to challenge laws that sealed adoption records in state courts. Almost without exception, access to these records may be obtained only by court order that requires a showing of "good cause" or a "compelling reason." However, what constitutes "good cause" is nowhere defined by statute and thus is largely a matter of judicial discretion... p23

1980s and 1990s, some social workers, adoption agencies, and state legislatures come aboard

Thwarted in both state and federal courts in their effort to gain adoptee rights, second-generation search leaders began converting social workers to their point of view and lobbying state lawmakers to pass legislation to unseal adoption records based on the idea that all adoptees were psychologically damaged and needed to find their roots. Consequently, during the 1980s and 1990s, a small revolution occurred among social workers, adoption agencies, and state legislatures.

(a) Adopted adults increasingly encountered sympathetic attitudes from these institutional representatives.

(b) Individual adoption agencies as well as the Child Welfare League of America established more liberal disclosure policies and standards."

(c) State lawmakers also began to pass statutes that both facilitated searches and preserved the privacy of triad members. Mutual contact registers were introduce but proved very ineffectual. p23-24

Bastard Nation Third generation reform-

many adopted adults remained frustrated by what they considered "conditional access" or "compromise" legislation-voluntary adoption registries and confidential intermediary systems-and by the ineffectiveness of adoption activism. Thus was the third generation of the adoption reform movement-and Bastard Nation-born. p25

Bastard Nation (BN) took its name from the e-mail signature line of one of its founders: "Marley Elizabeth Greiner, Citizen, Bastard Nation."... Greiner believed that adoptees had been bastardized by a society and an adoption system that "refused to recognize our full humanity and citizenship simply because of the dirty little secret of our birth. Our invisible, yet very real community, was bonded by the legal denial of identities, our birth records, our heritage, and our genetic histories. Bastard Nation was our native land." p25

Bastard Nation had "reclaimed the badge of bastardy" from those who had attempted "to shame us for our parents' marital status at the time of our births." Defiantly it continued: "We see nothing shameful in being adopted, nor in being born out of wedlock, and thus we see no reason for adoption to continue to be veiled in secrecy through the use of the sealed record system and the pejorative use of the term *bastard.* p25

By 1996, its Website had more than a thousand hits a month. Bastard Nation differentiated itself from mainstream adoption groups by its style, radicalism, and refusal to compromise. BN's leadership was technologically savvy, light years ahead of other adoption reform groups. Its members were comfortable using e-mail and deployed a sophisticated Website that would be central to the campaign for the Oregon State Measure 58. p26

BN was also young at heart...had a dark sense of humor, which embraced the ribald or scandalous. Every aspect of adult adoptee life, including the very fact of being adopted, was fair game for black humor, satire, or irony.

Bastard Nation held more radical goals.... "the opening of all adoption records, uncensored and unaltered, to an adoptee upon request, at age of majority." p27

Bastard Nation emphatically denied the ideology of adoptee psychopathology. BN ridiculed the "woundies" and from their own personal experience, pointed out that many adoptees were happy to have been adopted; some did not desire to search.

As a third-generation adoption activist group, Bastard Nation had an organizational structure totally new to the adoption reform movement: it was neither charismatic, bureaucratic, nor democratic. The Internet was the glue that held Bastard Nation together. p28

Bastard Nation leaders chose protest as one primary strategy to mobilize public opinion in support of adoptee rights. p29

State of Oregon Measure 58

Oregon has provisions for holding a binding referendum. A campaign was instituted by local high profile activists supported by Bastard Nation. A heavy legal battle took place, but the people voted for the measure and it became State law. It granted unimpeded access by adult adoptees to their original birth certificate. A birth mother could lodge her preference re contact but could not stop the access.
E Wayne Carp devotes over 200 pages of his book to the subject

Final Text: "Chapter 604 An Act HB 3194

Relating to adoption rights; amending chapter 2, Oregon Laws 1999. Be It Enacted by the People of the State of Oregon:
SECTION 1. Chapter 2. Oregon Laws 1999 (Ballot Measure 58, 1998), amended to read:

(1) Upon receipt of a written application to the state registrar, any adopted person 21 years of age and older born in the state of Oregon shall be issued a certified copy of his/her unaltered, original and unamended certificate of birth in the custody of the state registrar, with procedures, filing fees, and waiting periods identical to those imposed upon nonadopted citizens of the State of Oregon pursuant to ORS [143.120] 432.121 and 432.146. Contains no exceptions.

(2) A birth parent may at any time request from the State Registrar of the Center for Health Statistics or from a voluntary adoption registry a Contact Preference Form that shall accompany a birth certificate issued under subsection (11) of this section. The Contact Preference Form shall provide the following information to be completed at the option of the birth parent:

(a) I would like to be contacted;

(b) I would prefer to be contacted only through an intermediary; or

(c) I prefer not to be contacted at this time. If I decide later that I would like to be contacted, I will register with the voluntary adoption registry. I have completed an updated medical history and have filed it with the voluntary adoption registry. Attached is a certificate from the voluntary adoption registry verifying receipt of the updated medical history.

(3) The certificate from the voluntary adoption registry verifying receipt of an updated medical history under subsection (2) of this section shall be in a form prescribed by the State Office for Services to Children and Families and shall be supplied upon request of the birth parent by the voluntary adoption registry.

(4) When the State Registrar of the Center for Health Statistics receives a completed Contact Preference Form from a birth parent, the state registrar shall match the Contact Preference Form with the adopted person's sealed file. The Contact Preference Form shall be placed in the adopted person's sealed file when a match is made.

(5) A completed Contact Preference Form shall be confidential and shall be placed in a secure file until a match with the adopted person's sealed file is made and the Contact Preference Form is placed in the adopted person's file.

(6) Only those persons who are authorized to process applications made under subsection (1) of this section may process Contact Preference Forms.

Approved by the Governor July 12, 1999
Filed in the Office of Secretary of State July 12, 1999"

Orphan Trains

Going west on an orphan train, 1904

PLEASE POST

WANTED

Homes For Orphan Children

A Company of Orphan Children, under the auspices of the Children's Aid Society of New York, will be in

SCHUYLER, FRIDAY, MAY 22

Committee

Orphan Trains

The orphan trains are among the most famous episodes in adoption history. Between 1854 and 1929, as many as 250,000 children from New York and other Eastern cities were sent by train to towns in midwestern and western states, as well as Canada and Mexico. Families interested in the orphans showed up to look them over when they were placed on display in local train stations, and placements were frequently made with little or no investigation or oversight.

This ambitious and controversial project in the relocation of a massive child population was emblematic of the move toward placing-out. Organized by the New York Children's Aid Society and directed by well known reformer Charles Loring Brace, the orphan trains were based on the theory that the innocent children of poor Catholic and Jewish immigrants could be rescued and Americanized if they were permanently removed from depraved urban surroundings and placed with upstanding Anglo-Protestant farming families. This evangelical humanitarianism echoed more than a century later, after World War II, when people like Bertha and Harry Holt made international adoptions more visible and common.

In spite of the trains' stated intention, they did not permanently separate most children, geographically or culturally, from their parents and communities of origin. Well into the twentieth century, impoverished but resourceful parents took advantage of the services of middle-class child-savers for their own purposes, including temporary caretaking during periods of economic crisis and apprenticeships that helped children enter the labor market. Reformers like Brace were determined to salvage the civic potential of poor immigrant children by placing them in culturally "worthy" families while simultaneously reducing urban poverty and crime and supplying some of the workers that western development required. But poor parents had no intention of losing track of their children, and they usually did not, even in the case of very young children placed permanently for "adoption." Historians who have studied the records of the Children's Aid Society closely have concluded that the largest number of orphan train children were temporarily transferred or shared, not given up.

Source http://darkwing.uoregon.edu/~adoption/topics/orhan.html

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Between 1854 and 1930 between 150,000 and 200,000 children were shipped from the eastern USA to western states and territories. The operation was in some respects similar to that involved in the Child Migrants movement, but seems to have been more humane.

The children were not necessarily orphans: there were also children of single parents, street children, runaways, prostitutes, etc. Efforts were made to get parental consent where relevant, and the children were sent to individual foster and adoptive families, not to institutions.

The motivation was three-fold: to help populate the West by strong white people, to provide a better future for the children, and to rid eastern city streets of beggars and urchins. In some cases children were sent in batches, collected in a local opera house or similar large venue, and prospective parents (usually informally vetted beforehand by town worthies) would come and pick the child they wanted, just as one would chose a dog at an animal shelter, or the way slaves were sold.

The train would start out full, make a number of stops along its chosen route (advertised in the local newspapers in advance), gradually discharging its human cargo. This degrading treatment was avoided in other cases by attempting to match adopters' wishes with children selected by social welfare workers prior to shipment, so that each child was sent to a previously identified family.

Children were sometimes sent as indentured servants, little better than slaves, but most were destined for fostering and adoption, with the intention that they be fully absorbed into their new families. At least two children who were sent West under the scheme became successful, influential adults. Coincidentally they were sent to the same town in Indiana and were boyhood friends: Andrew Burke, later governor of North Dakota, and John Brady, later territorial governor of Alaska.

MODERN WESTERN ADOPTION

A neat sensible solution

Benet— "In the West today, adoption is accepted as the neat and sensible solution to the problems of two groups of people childless couples and children without families. It is easy for people to begin by assuming that their own attitudes and practices are the norm- the natural, common sensical way to behave. But the fact is that adoption has taken utterly different forms throughout history and around the world- at some times all but disappearing, at others becoming almost universal. And our muddled, ambivalent attitudes are the result of an uneasy mingling of different traditions. p11

Benet— In many ways, we are still unsure whether children can be fully transplanted into another family, or whether the ties of blood will prove ineradicable. Adoption is a recent addition to the legal codes of the English-speaking countries, and it has made its way against a belief in the absolute primacy of the biological link between parents and children. In English common law, parental rights and duties were traditionally inalienable the first Adoption Act was passed only in 1926. p11

Led by the United States, the Western countries have passed ever more comprehensive adoption laws, severing the child's links with his original family and giving him equal status with the biological children of his new parents. Adoption has grown in popularity since the Second World War, and most people now believe that it has shown itself to be a viable institution." p11

Source Mary K Benet. *'The Character of Adoption'* 1976 p11

European grafting adoption laws

Benet— "In Europe, modern adoption laws have usually been grafted on to existing laws, with results that often make adoption more difficult than the legislators intended it to be. Not every country is willing to jettison such legal traditions as the obligation of children and parents to support each other; or the right of natural parents to know the identity of the adopters and to keep up relations with the child.

The European Convention on the Adoption of Children, completed in April 1967, has attempted to influence member countries of the Council of Europe to modernize their adoption laws. As at 1976 the Convention has only been ratified by Ireland, Malta, Norway, Sweden, Switzerland, and the U.K., but its influence can be seen in recent legal changes in a number of other countries." Benet 1976 p80

European movements

Benet— " The Mediterranean countries are just beginning the debate; in Italy, for example, it is now said that the battle of divorce is won: that of abortion is about to begin. France, Switzerland and Germany form another group, where the principles of individual choice are widely accepted but still face legal barriers. In England and Scandinavia, the debate has entered another stage- the movement towards adoption and abortion is largely completed, and new doubts are arising about the universal applicability and exportability-of these solutions."

First Modern Adoption Statutes

Year	Jurisdiction	Year	Jurisdiction
1851	Massachusetts	1918	Sweden
1855	Pennsylvania	1920	British Columbia
1855	Indiana	1920	Tasmania
1856	Georgia	1921	Ontario
1858	Wisconsin	1922	Manitoba
1859	Ohio	1922	Saskatchewan
1861	Michigan	1923	New South Wales
1862	New Hampshire	1923	Denmark
1864	Oregon	1924	Quebec
1864	Connecticut	1925	Finland
1867	Illinois	1925	South Australia
1868	Kansas	1926	England
1870	California	1927	Alberta
1871	Maine	1928	Victoria Australia
1872	Rhode Island	1930	Aust Capital Territory
1873	North Carolina	1930	Scotland
1873	New York	1930	Prince Edward Island
1881	New Zealand	1935	Queensland
1890	New Brunswick	1940	Greece
1896	Western Australia	1935	Thailand
1896	Nova Scotia	1952	Eire
1915	Cook Islands		

Waterhouse based his **New Zealand** Adoption of Children Act 1881 on American and German Law NZPD Vol.39 22/7/1881 p7. **USA** in earliest adoption statutes, adoption was made by a deed, without any court proceedings- Kansas 1846. The first adoption statute that required a judicial court procedure was Massachusetts 1851. By 1931 all US States required a court adoption order.

Australia, early NSW, Tasmania, South and Western Australia, Statutes were copied almost verbatim from NZ Statutes. *See* Comparative statute tables in Campbell 1952 xxi-xxiv.

Benet 1976 p83

Infertility-donor insemination

Benet—"The French are also turning to another means of alleviating infertility-donor insemination. Perhaps a thousand babies a year are now born in France by this means, in spite of official Catholic and Jewish opposition to what they call 'mechanical adultery' which introduces a third party into the conjugal relationship." Benet 1976 p91

Scandinavia

Benet— Has the advantage that when the time came to frame a modern adoption law, there was no tradition of Roman law to dictate its provisions. It could be fully responsive to modern needs. Obligations of mutual support between natural parents and children, and rigid restrictions on the ages of both parties to an adoption, have never been part of the Scandinavian laws. Central Europe-Switzerland, Austria and Luxembourgh as had, in contrast, exceptionally conservative adoption legislation." Benet 1976 p93

European trends

Benet—"There are certain trends to be discerned in the European adoption picture. Everywhere, privileged women are moving from adoption to abortion as a way to avoid raising unwanted children. This is one reason for the dramatic fall in the birth rates of almost all the countries of western Europe. It is rare for a woman to consent to the adoption of her illegitimate child, even if she will have difficulty in raising it; on the other hand, abortion is becoming commonplace. The women who choose abor-

tion are not letting religion, law, or moral sanctions stand in their way-they are massively declaring that this is their preferred solution to the problem." Benet 1976 p95

European adoption laws via colonialism

Benet—"The most obvious means by which European ideas about adoption have been disseminated is colonialism. United States, Australia, and Canada were the direct inheritors of English traditions of social welfare, and how the imported ideas were modified to suit different conditions. In these colonies, it was an abundance of land and a scarcity of population that led to greater acceptance of adoption. There was no conflict between imported and native values, because contact between the settlers and the indigenous population was minimal and hostile. This was not true of the English colonies in Asia and Africa, where the new lawmakers could not entirely modify the traditional way of life of the peoples they were governing. Imperialism then has been one major way of bringing the laws and customs of very disparate areas into line with the ideas of the dominant Western countries." Benet 1976 pp105

Communism- impact on adoption

Benet—But it has not been the only modernizing influence on traditional patterns. Communist revolution, in Eastern Europe and Asia, has been perhaps the most dramatic means of social change the world has seen in this century. Its effect on law and on social organization has been, in intention at least, very nearly total...Benet 1976 p105

Marx and Engels—

Benet—Believed the family was counter-revolutionary, produced by capitalism and reinforcing it. Weakening of the blood tie might in theory pave the way for adoption, but not if adoption itself simply tried to reproduce the family it had replaced. The Soviet state attempted to substitute itself for the family in many areas... Early socialist thought was unfavourable to adoption. The first Soviet legal code, in 1918 abolished it, it was not legalized again until 1926...Adoption, reasserted itself, although there are other reasons for its comparative lack of popularity. " Benet 1976 p106

Soviet family

Benet—"Was under such strain from a variety of sources that adoption, even when possible, was not always attractive. Soviet women did two jobs: the care of the household (still not shared by men) and outside employment, which was both an ideological and a practical necessity. Many families lived in one-room quarters, and most shared cooking facilities. Such arrangements made one child, or no children, the preferred family size... Strain on the family has been alleviated by communal arrangements like factory and neighbourhood canteens, by extended day and boarding schools and moving much of social life outside the home...The family has much help in performing these complex tasks. Communal responsibility for children has always been a feature of Russian life, and its institutionalization has thus built on a feeling that was already powerful." Benet 1976 p107

Children abandoned 12mths may be adopted

Benet—"Parents may lose their rights in a child if it has been in the care of the state for a year, during which they have shown no interest in it. Parental rights may be vested in the child care agency, which then transfers them to the adopting parents." Benet 1976 p109

Legitimation issue

Benet—"Adoption also suffers from the misunderstandings that arise from its being a legal creation, rather than a part of Russian tradition accepted and understood by all. Legitimation by adoption, in particular, seems an absurdity -a view that, as we have seen, Western legislators are taking more seriously these days." Benet 1976 p110

Secrecy maintained

"The Soviet adoption law, although very advanced in many respects, still shows its doubts about adoption in its insistence on secrecy. The birthplace of the child, and even the date of birth, can be changed on the new birth certificate to make tracing of the natural parents more difficult. It is illegal to disclose the fact of an adoption against the wishes of the adopters." Benet p110

Warsaw Pact countries

Benet—"The adoption legislation in Eastern Europe is almost entirely a mirror of Soviet law, with some differences that reflect various countries' legal traditions. In Romania, the only Warsaw Pact country to have inherited the legal traditions of the Roman Empire, the child's rights of inheritance in his natural family have been retained." Benet 1976 p110

China very different situation

China with the world's longest unbroken tradition of adoption has meshed into the Chinese version of agrarian communism. The canard that revolution means the abolition of the family receives its death-blow here." Benet 1976p111

Industrial Revolution

Griffith—Had a major influences in the development of Colonial New Zealand. Farm machinery caused massive redundancy of farm labour in England. Machines took over from manual and craft workers. Industrial efficiency brought wealth to Industrialists but poverty to the unemployed. The colonies provided a solution—

(a) Provided work for the unemployed of England.
(b) Had natural resources and land for exploitation, requiring lots of labour.
(c) Provided markets for machinery, and
(d) Provided cheap raw materials for England's Industry.

Indentured children

Griffith—By the 1850s, the industrial revolution with its social dislocation and poverty resulted in large numbers of poor, abandoned or orphaned children living in religious or charitable institutions. The need for unskilled labour declined. A solution was the sending of thousands of children to Canada and USA. They were taken in by

families and expected to earn their living as indentured child labour. Many of these children suffered severe hardships because of the treatment they received.

Adoption option

Griffith—Rising concern in USA about indentured child labour led State Governments to pass adoption laws. Adoption gave more protection, the child had full legal status and adopters security of tenure. In England, illegitimacy, inheritance and class stalled adoption until 1926. In USA and the colonies it was not a big issue. They believed that unsavoury and illicit origins of a child could be overcome through placement in a severely upright spiritual environment.

Supply and demand

Benet— "The really insoluble problem in Western adoption today is that of supply and demand.

(a) Where adopters are well-served, in the sense that they can choose the child of their dreams and adopt it without too much fuss, there is sure to be a large supply of unwanted children, most of whom will never be adopted.

(b) Where the children are well-served, with a large enough supply of possible parents so that the right ones can be selected for each child, there are bound to be many disappointed would-be adopters." Benet 1976 p215

Telling people not to adopt doesn't work

Benet— "Convincing people that adoption is not really what they want does not seem to work. The childless are not comforted by the knowledge that many of their friends are consciously deciding against parenthood; and institutionalized children long for parents, no matter how much their peers may want to escape their own families. Accepting one of the alternatives to adoption, however, is often suggested as one means of regulating supply and demand. At present, foster parents are in great demand even though adoptable children are few. People who are primarily interested in the children's welfare, the argument goes, will fit themselves into the system wherever they are needed." Benet 1976 p215

Relinquishment and battered babies

Benet— "The number of battered-baby cases reported continues to double every year, and this may be a sign that parents who wish to relinquish their children still cannot bring themselves to do so. Relinquishment is still not entirely acceptable in our society; but the incidence of child abuse is as sure an indication as the declining birthrate that the stresses of parenthood are being more keenly felt." Benet 1976 p215

Revocable adoption

Benet— "Dr Kellmer Pringle suggests that the attitude to children today is what the attitude to women was fifty years ago: they are chattels. And just as divorce has become the normal solution to marital strain, legal separation between hostile parents and children will surely be increasingly possible. The very existence of adoption laws is one step in this direction: they were the first challenge to the inalienability of parental status. Revocable adoption, on the analogy of divorce, is part of the most modern adoption laws. It is time that biological parenthood became revocable too." Benet 1976 p216

Tribal societies— less hassle with adoption

Benet— "The only societies we have studied that seem to combine ease of adoption, adequate care for all children, and a stable population are the homogeneous tribal societies that are vanishing so rapidly from the world. Why is it so difficult for us even to imagine the recreation of such a society? The counter-culture with its tribes and communes has tried to create a situation in which children are raised by the group-but it is difficult to make such a group permanent enough to raise its own children, let alone to care for the children of others." Benet 1976 p218

Lessons from easy Polynesian adoption

Benet— "Perhaps when adoption works as smoothly among us as it did among the Polynesians, we will know that we have arrived... It is worth noting that in groups and nations that have practised widespread adoption, those who care for children do not do it on their own. Family, friends, and society itself share the responsibility in tangible ways. Far from being irresponsible, to enable themselves to be more responsible parents. The loneliness of the mother and small child in today's big cities may be unprecedented; it is certain that it makes motherhood more difficult. Easy adoption, and widespread care for children in general, can only be helped by efforts to re-integrate parents into society." Benet 1976 p219

Polynesia

Benet— The confusion between fostering and adoption is greater in some societies, notably in Polynesia, where there is no really clear dividing line. There is a widespread feeling against fostering or adopting from outside the kin group. "In Oceania, the proportion of children fostered in this way is as high as 80 per cent...In the Gilbert Islands the persons who pass for a man or a woman's parents are never the real parents, for it is an inevitable rule that every child is adopted at birth by foster-parents." Benet 1976 p47-48

Apprenticeship- industrial link

Coles— The model for modern adoption practices was the institution of apprenticeship, applied in Great Britain for centuries. Children, particularly those from poorer backgrounds, were offered better opportunities through being taken in by families with better educational and earning prospects. By the 18th and 19th centuries, evolution of the apprenticeship scheme, in response to the need for cheap labour in Industrial Revolution England and the plantations of the colonies in the New World, led to the wholesale exploitation of children. Formal adoption was advocated in the late 19th century by morally upright, often religious groups, intent not only on giving the children a more humane protection than indentureship provided, but also on obscuring their unsavoury, poor origins.

In New South Wales, Australia, during this period, the practice of boarding out, a de facto form of adoption,

became the preferred option for the care of neglected, orphaned or abandoned children. The extreme form of this practice, in which an unmarried mother was paid a lump sum to hand over her child was known as 'baby farming'. Gary Coles *'Ever After'* 2004 p166

Eugenics adoption cultural prejudices 1910>

Carp— Medical science contributed to popular cultural prejudices against adopting a child by coupling the stigma of illegitimacy with adoption. The post-1910 rise of the eugenics movement and psychometric testing led adopted children to be linked to inherited mental defects. Studies such as Henry H. Goddard's *The Kallikak Family* claimed to demonstrate children's tendency to inherit their parents' social pathology, particularly criminality and feeblemindedness. Using the Yerkes-Bridges modification of the Binet-Simon intelligence test, psychologists and social workers uncovered a strong connection between unmarried mothers and the purported hereditary trait of feeblemindedness. It was but a small conceptual step to include adopted children in the equation. The purported link between feebleminded unwed mothers and their illegitimate chil-dren cast a pall over all adoptions, and even popular magazines warned adoptive parents against the risk of "bad heredity." Adopted children were thus doubly burdened: they were assumed to be illegitimate and thus tainted medically, and they were adopted and consequently lacked the all-important blood link to their adoptive parents . 41

Notes 41. Henry H. Goddard, The Kallikak Family: *A Study in the Heredity of Feeblemindedness* (New York: Macmillan, 1912); Hamilton Cravens, *The Triumph of Evolution: American Scientists and the Heredity-Environment Controversy,* 1900-1941 (Philadelphia: University of Pennsylvania Press, 1978), 47-48. For psychometric testing, see Michael M. Sokal, ed., *Psychological Testing and American Society,* 1890-1930 (New Brunswick, N.J.: Rutgers University Press, 1987). The belief that unwed mothers were feebleminded was widespread. See Carp, "Professional Social Workers," 172, n.77; Ada Elliot Sheffield, "Program of the Committee on Illegitimacy-Committee Report," in *Proceedings of the Forty-Sixth Annual National Conference of Social Work* ... 1919 (Chicago: Rogers & Hall Co., 1920), 78; "Our Adopted Baby," *Woman's Home Companion* 43 (Apr. 1916): 5.

Source Wayne Carp *Adoption in America* 2004 p9

For detailed World History of Adoption *See*— 'Worldwide Perspective' Folder on CD.

ADOPTION STORIES

Autobiographical Narrative and the Politics of Identity *Barbara Melosh*— Adoption is anomalous in a culture and kinship system organized by biological reproduction. This essay examines autobiographical narratives of adopted persons, birth mothers, and adoptive parents as uneasy negotiations of identity... p218

Memoirs first appeared 1930s

Memoirs of adoption by adoptive parents first appeared in the 1930s, but adoption autobiography was not established as a recognizable subgenre until the 1970s, when first adopted persons and then women who had relinquished children for adoption published their stories as testimony of their critique of adoption practices. Some of these accounts have been written by the founders of and activists in the adoption rights movement; virtually all acknowledge its influence...Even as the number of adoptions has fallen sharply since 1970, adoption stories have claimed a heightened public visibility. p218

Autobiographical construction of self

Is social and historical. These narratives illuminate the experience and cultural meaning of adoption, even as their explorations of anomalous families illuminate, by contrast, contemporary discourses of motherhood, family, and cultural identity more generally. I read these narratives as memoirs that write the self in negotiation with wider cultural positions or discourses on adoption. p218

After World War II

adoption became more common and more widely accepted than it had been before. For the first time, a broad white middle-class consensus proclaimed adoption the "best solution" to the "problem" of pregnancy out of wedlock.

1 The shift of white middle-class response from the evangelical reform of the early twentieth century, which saw the pregnant woman as a sinner in need of moral redemption, to the expert professional consensus of the 1930s and 1940s, which viewed out-of-wedlock pregnancy as the "symptom" of neurosis: their clients were not fallen women but problem girls... p218

2 After World War II, rising rates of pre-marital pregnancy among white teenagers further tempered white middle-class zeal for condemning the sinner. At the same time, the pronatalism of the 1940s and 1950s generated new public discussion and sympathy for the plight of infertile couples. In this context, adoption became widely accepted as an alternative route to family formation... p219

3 *"Expert" narratives of adoption both reflected and codified these conditions*. Professional literature-primarily that of social work but also that of psychology and psychiatry-advocated adoption as the "best solution" to the "problem" of out-of-wedlock pregnancy...p218

4 In this narrative, adoption served all three parties—
(i) The unwed mother might recover from the stigma of pregnancy out of wedlock, gaining a second chance for marriage and respectable motherhood.
(ii) The child surrendered for adoption would benefit from the improved life chances afforded by growing up in a two-parent family.
(iii) And the adoptive parents could recoup the losses of infertility by forming families through adoption...p219

During 1945-1965

Adoption practice became more uniform than it had been before or would be after. Though adoption was and remains controlled at the state level and therefore operates under varying legal codes, most adoptions were mediated by public or private agencies in U.S.A.

— *Courts widely accepted social workers*' legitimacy as experts qualified to counsel relinquishing parents, to assess adoptive homes, defend best interests of the children.

— *Confidential adoption became standard practice*-that is, (i) birth and adoptive parents generally did not meet, (ii) birth parents had no contact with their children after they were relinquished, and (iii) most states used sealed records that concealed the identity of birth parents and substituted the names of adoptive parents on the birth certificate of adopted persons. This practice powerfully symbolizes the cultural status of adoption as substitute family: the amended birth certificate rewrites the actual circumstances of the adoptive family in a document that makes their relationship indistinguishable from blood kinship, at least in the public record. p219

— *Concern for matching-placing children* with adoptive parents who were similar in appearance, temperament, and intelligence-also attests to the interest in effacing the difference of adoption, of making the adoptive family indistinguishable from the biological family. This embrace of adoption embodied a telling contradiction. On one hand, in the United States adoption is the full legal equivalent of biological kinship: adoptive children are represented "as if begotten," an equivalence expressed through physical similarities in matching families. *On the other hand*, the biological family remains the standard of kinship: the mark of the acceptance of adoption is the cultural denial of its difference from biological relatedness... p219

Social kinship of adoption enjoyed wide support

Experts and the lay public participated in a broad pro-adoption consensus whose tenets might be summarized—

(i) as the full equivalent of biological family, adoptive families were permanent. (ii) What law had ordained was not subject to disruption or renegotiation, except under the same extraordinary circumstances that might call for the disruption of families joined by blood. (iii) Adoptive families were singular and exclusive: adoption permanently severed the bonds of blood kinship, replacing them with the legal ties of adoption. (iv) Favorable views of adoption rested on assumptions that nurture figured more prominently than nature in shaping human development. (v) Expert and popular opinion alike approved relinquishment, portraying it as a difficult but loving and responsible response to pregnancy out of wedlock. (vi) Both experts and lay persons affirmed- the power of love to heal the wounds of adoption-the disappointments of infertility, - the pain of relinquishment for mother and child.

By 1970, the broad consensus began to crumble.

1 *Further liberalization of sexual attitudes*, improved birth-

control technology, and legal abortion made the "best solution" seem anachronistic. Women could terminate unwelcome pregnancies or raise children born out of wedlock without automatically forfeiting middle-class prospects of respectability... p220

2 *The political ferment of the 1960s* challenged the consensus around adoption in other ways. At home and abroad, nationalist movements produced sharp critiques of interracial and transnational adoptions.

— *Inter-country adoption restrictions*....Governments reassessed their participation in the international movement of children, and many moved to restrict adoptions.

—In scientific and popular discourses, *environmentalism gradually yielded to a pervasive biological determinism* that renewed old fears of the risks of adoption.

3 Adopted persons...contested narrative of "best solution," and women who had relinquished children for adoption soon followed. The sunny optimism of the "best solution," they argued, (i) denied the trauma of adoption's rupture of biological kinship. (ii) Adopted persons protested the idea that legal identity could erase blood kinship. (iii) In a growing search movement, they fought cultural and legal prohibitions to establish ties with biological kin.

Women began to speak out

Women who had relinquished children for adoption began to speak out. (i) Rejecting the shield of silence provided by confidential adoption, they challenged the postwar consensus. (ii) In an autobiographical act of renaming and self-construction, they claimed the new identity of "birthmother," a neologism that repudiated the fundamental doctrine of adoption, that blood ties could be permanently severed by law.

Adoption rights movement

By early 1970s, this growing critique of adoption had begun to take on the organization and self-consciousness of a social movement, later 'adoption rights movement'. p221

Adoption stories offer evidence of dramatically changing views of the institution while suggesting the ways that autobiographical narrative operates to shape, circulate, and reframe ideas about adoption. (i) Most adoptive parents' accounts validate the postwar consensus in stories that celebrate alternative family formation. (ii) By contrast, many memoirs of adopted persons and birth mothers challenge the tenets of the postwar consensus by reclaiming the blood ties supposedly erased by adoption. (iii) All signify the difference of adoption in one way or another: (iv) these stories are notable because they explore kinship that violates the cultural expectations attached to biological family. (v) And, in one way or another, all register the stigma attached to that difference: they are negotiations of what sociologist Erving Goffman called "spoiled identity." p221

The accounts illustrate fractures in cultural ideology that proclaims adoption the equivalent of biological kin by exploring the ways in which adoption figures as difference, absence, and stigma, inferior to blood kinship. (i) *Accounts by adoptive parents* struggle with the losses of infertility, the formation of a substitute identity of parenting not based in biology, and, often, the search for a child. (ii) *Autobiographies by adopted persons* deal with the absence and loss of the birth mother and the gaps and silences of adoption secrecy: most of these are narratives of a psychic and actual search for the birth mother. (iii) *Birth mothers' memoirs* offer poignant testaments to the experience of spoiled identity. Their stories are efforts to overcome the stigma of the "bad mother" and to find and reclaim children they relinquished for adoption... p221

Stories of adoptive parents

Are negotiations of identity that proclaim the equivalence of biological and adoptive kinship. (i) They are also quest narratives, tales of obstacles overcome on unconventional roads to parenthood. (ii) Accounts written since 1975 detail long searches for children, serving as advice manuals to other potential adoptive parents and as critiques of the restrictions of contemporary adoption practice. (iii) In the stock plot of these narratives, a heterosexual couple decides to have a child, encounters unexpected obstacles, pursues medical treatment for infertility, and then turns to adoption. (iv) Then, the couple encounters more obstacles-the scrutiny of social workers, the scarcity of children available for adoption, the maze of adoption law. (v) The tale ends with joyful scenes of parenthood claimed through adoption and with affirmations of the bonds and satisfactions of adoptive kinship. That point of closure implicitly endorses the logic of the "as-if-begotten" family: once the family is formed, the difference of adoptive kinship disappears. p222

— These accounts are, in part, protests against policies that many view as unduly discouraging and difficult. At the same time, these stories function symbolically as performances of parenthood. The rigors of adoption become themselves a kind of qualification for parenthood, a heroic demonstration of commitment and will that is contrasted implicitly with biological parents' effortless surrender to nature. A telling defensiveness inflects this claim, testament to the powerful ideology of "natural" parenting and the stigma of adoption... Adoptive parents seem compelled to present themselves as better than average, more than the equals of biological parents... The "good enough" parent, many fear, will not be good enough to prevail in the rigors of the selection process. p223

— These accounts typically end with a celebration of adoptive parenthood. The writers dramatize a moment that serves to confirm their parenthood to themselves and others-when their baby is first placed in their arms, when an older child begins to call them mother and father, when the court finalizes an adoption, when they proclaim themselves 'real parents'. p223

— Writing in the 1980s and 1990s, some authors directly confront and refute assumptions about adoptive kinship as second-best, an inferior substitute for blood kinship. In ironic testament to the power of blood ties, though, these writers often do so by claiming adoption as itself natural.

—If these adoption stories serve in part to naturalize adop-

tion and affirm adoptive kinship, some recent counter-narratives reveal the fracturing of the consensus that once supported adoption.

— A few exceptional authors venture onto the ground of the ultimate taboo, suggesting that love is not enough to redeem the losses of adoption.

— Another vivid counter-narrative emerges in widely publicized cases of contested adoption. These cases undermine a fundamental part of the postwar adoption consensus in their visible and painful demonstrations of the vulnerability of one of its primary tenets, that adoptive families are permanent and exclusive. In memoirs of such conflicts, all written by women, the authors contend for the name of mother, claiming it either as irrevocable blood tie, or as a status that must be earned by the investments of nurture...Contested adoptions operate on the terrain of law, where only one woman can be named mother. p225

Stories by Adopted persons

Most of these memoirs are search narratives, stories of the adopted person's quest for knowledge of the past and reunion with the birth mother. They operate within a genre established by four influential books, foundational texts of the adoption rights movement. p226

1 Jean Paton's *Orphan Voyage*, 1968, Paton argued, adopted persons had the right to information about their pasts and access to biological families.

2 In 1973, Florence Fisher *The Search for Anna Fisher,* Described her long effort to discover the identity of the woman who gave birth and relinquished her. Fisher founded Adoptees' Liberty Movement Association ALMA.

3 Betty Jean Lifton, a well-known playwright and writer and the wife of a nationally known psychiatrist, published *Twice Born* 1975.

4 The research of Annette Baran, Arthur D. Sorosky, and Reuben Pannor brought expert credentials to the growing critique of adoption secrecy. In *The Adoption Triangle* (1978), these authors took up the cause of adoption activists by advocating the opening of adoption records and an end to confidential adoption. Surveying birth parents and adopted persons, the authors applied the language of disability to adoption: adopted persons were "handicapped" because they were "severed" from their biological origins; to greater or lesser degree, their lives were shaped by the syndrome of "genealogical bewilderment. This research affirmed the experiences of a growing number of adopted persons who sought knowledge of their origins and connection with birth relatives. p227

— *Search narratives are expressions and vehicles of the adoption rights movement*. Members of adoptee organizations produce and circulate shorter accounts of search in newsletters and oral narratives within local and national chapters. In turn, these narratives serve to recruit new participants to the movement. Many authors of published memoirs explain that they decided to search after hearing the stories of other adoptees on radio or television, and then drew inspiration and learned strategies from organized search groups or their publications. In addition, search has captured the imagination of a larger public. Stories of search and reunion have become subjects of advice columnists such as Ann Landers and staples of radio and television talk shows.

— *There is a certain rehearsed quality to many of the published narratives*, a formulaic recitation of the shared assumptions and expectations of the search movement. Writers typically begin by explaining their motivations for searching. Writing against the adoption consensus, with its assumption that the adoptive family completely replaces birth kinship, the authors describe separation from blood kin as deprivation and often as stigma...p227

—*Most narratives also argue that the motivation to search is natural and intrinsic*, specifically refuting the notion that search is a symptom of unhappy adoptive families. This argument has been widely circulated by the search movement to counter the stigma sometimes still attached to search... p227

— *In some accounts, writers recall adoption as shaming or stigma.* For Jean Paton, writing in 1968, that stigma is the stain of illegitimacy. Adoptees' accounts, like those of adopters and birth mothers, often represent stigma as written on the body-as a silent and hidden defect (like infertility) or as a stigma (like stretch marks) threatening to mark the bearer and betray hidden secrets...For others, the stigma is relinquishment. p228

— *Search narratives then characteristically explain the quest to find birth relatives.* Here the narratives borrow in part from the conventions of detective stories, as searchers try to piece together the missing pieces of a lost past, to bring hidden knowledge to light. Like detective stories, they build suspense through plot lines of deepening mystification with red herrings, unreliable witnesses, and obstructions to the investigation...p228

— *Both adopted parents and adopted person stories often resort to unconventional and transgressive means...* Like infertile people, adopters express frustration over their struggle to achieve a connection that belongs effortlessly to those in biological families. And, again as in adopters' narratives, search narratives often trace a process that begins with conventional methods and expands to unusual or transgressive methods. Most adopters eventually attempt unconventional or medically unsanctioned treatments of infertility: examples recounted in these memoirs include herbal treatments, acupuncture, headstands or handstands after intercourse, psychic healing, visualization, channeling. Searchers begin by trying to get official records through social work agencies and courts and pursue leads through sources such as newspapers, telephone books, and public records. If those methods fail, they hire private investigators, consult mediums and psychics, and use insider contacts or direct action to gain access to sequestered records... p229

— *The scene of reunion provides the climax to most search narratives*. Such scenes invariably dramatize the physical encounter of birth mother and adoptee. In a restaging of the mother's intense scrutiny of her newborn infant, the reunited mother and child exchange searching gazes, looking eagerly for the physical resemblance that represents and confirms biological kinship... p229

— *In the denouement, often relatively attenuated, the narrator describes outcomes that follow the initial reunion*. - For some: (i) the search yields an ideal affinity with a welcoming mother...(ii) More commonly, newly reunited relatives struggle to negotiate a relationship that does not fit available categories...p230

— *Most of these narratives affirm the search movement's credo that reunion heals the losses of the past*. For some adopted persons: (i) the search provides an extended kinship network. (ii) In some narratives, shared rituals affirm the widened boundaries of family, as in weddings attended by both birth and adoptive relatives.(iii) In virtually every account, photographs serve as a vital medium of reunion... (iv) Reunited families tell their histories by reviewing family albums and videos and write new relatives into the story through photographs. (v) For others, the process of discovery is itself healing... p230

— *Most authors describe their search as a success even when they do not find what they had expected or hoped for..*. In the exceptional accounts with unhappy endings, search or reunion fails to overcome the losses of adoption-indeed, even deepens the adopted person's feelings of betrayal, rejection, and emptiness...p231

Stories of birth mothers

— *Most narratives of birth mothers sharply criticize adoption practices.* (i) These accounts serve as rhetorical performances that challenge and rewrite the post-war narrative through public disclosure of hidden pasts. (ii) These women, prime beneficiaries of the secrecy of confidential adoption, break that silence to narrate their own adoption decisions. (iii) Challenging the tenets of the "best solution," many argue that relinquishment inflicted lasting wounds, unresolved grief, and intense longing for the child who was surrendered...(iv) These authors powerfully challenge the "best solution" by breaking the silence that was supposed to serve them; they name themselves publicly in defiance of the stigma of unwed motherhood.. p231

— *However, as they repudiate one spoiled identity they confront another that is potentially as damaging*. (i) For these women, relinquishment, not unwed motherhood, is the stigma that is enduring and deeply felt. (ii) The authors express guilt and intense regret over this decision; (iii) refuting the postwar narrative of relinquishment as a recoupable loss, (iv) they portray it instead as an open wound. And, at the same time, they are addressing audiences in a context radically revised by changing sexual mores: in 1970, 80 percent of children born out of wedlock were relinquished for adoption; by 1983, fewer than 4% of unwed mothers made that decision...p232

— These narrators are women caught between 2 stories, neither of which is adequate to explain their experience

— They violated the postwar narrative with their unresolved grief and sustained longing for relinquished child.

— Ironically, their stories of the shame of illicit pregnancy have been rendered anachronistic, and in a social milieu far more skeptical of adoption, they are stigmatized as mothers who gave away their children.

— These narratives, then, are also exculpatory: they attempt to evoke the intense stigma once attached to out-of-wedlock pregnancy to explain the decision to relinquish.

Birth mothers' stories vividly recall the shame of pregnancy out of wedlock in the 1950s and 1960s... p232

— *For others, relinquishment is a wound that will not heal.* (i) Relinquishment as well as pregnancy is experienced as a stigma expressed on and through the body....(ii) The body stands as testament to the real. (iii) Against the rhetoric of the "best solution," women's bodies proclaim their maternity and their unresolved loss. (iv) The memoirists repudiate relinquishment as empty legalism, instead claiming the identity of mother as inviolable, conferred by nature... p233

— But to claim this identity, as these accounts do in active autobiographical acts of assertion, is often to disclaim their own agency in relinquishment.

— Most portray themselves as powerless victims of circumstance, pressured by parents and social workers.

— Some activist birth mothers describe their children as "lost" to adoption, a word that obscures the adoption decision altogether and names no one as responsible for the loss. This telling language testifies to the powerful stigma of relinquishment. The postwar adoption consensus portrayed relinquishment as an act of love, the mark of the "good" mother. With the faltering of that consensus, relinquishing mothers have no defense against the full cultural judgment brought to bear on the "bad" mother who rejects and abandons her child.

— To explain the remarkable volition that they do exercise in writing these accounts, in pursuing exhaustive searches for their children, and in some cases in speaking, writing, and organizing for the adoption rights movement-the authors invoke the power of nature as embodied in maternity...p234

—*Birth fathers are largely absent from the adoption rights movement.* Concerned United Birthparents, founded in Massachusetts in 1976, encompasses fathers as well as mothers in its gender-inclusive "birthparents,"... p235

— *The narrative of natural motherhood as repudiation of the "best solution" has gained remarkable visibility and currency in the past two decades..*.Its broad influence is registered in an unusual memoir of a highly exceptional case, *See* Michele Launders's *I Wish You Didn't Know My Name*....p235

— *Some religious publications still support "the Best Solution is Adoption" message..*. In memoirs published by religious presses, some birth mothers assert that relinquishment can still be a valid choice for women facing unwanted pregnancies at the end of the twentieth century. Their purpose is to encourage others to choose adoption rather than abortion or single motherhood. These stories are, in effect, counternarratives to the stories of birth mothers touched by the adoption rights movement...This favorable view of adoption is shared by some contemporary Catholics and evangelical Protestants. Some write as anti-abortion activists who are reaching out to unhappily pregnant women to persuade them not to abort...pp237-238

— *Most birth mother memoirs are framed by the two prevailing frames for adoption since World War II:* (i) the narrative of the "best solution" and (ii) the revisions of the adoption rights movement...p239

—What accounts for the extraordinary proliferation of adoption memoirs in recent years

And for the wide circulation of these stories? Most persons, after all, are not adopted, adoptive parents, or birth parents: they are touched by adoption only at a remove, if at all. (i) In part, these memoirs attest to the durable appeal of life writing, with its reflective view of the past, its search for the self, its place in the American project of self-construction. (ii) At the same time, these stories also offer a fresh angle on autobiographical narrative, a postmodern sensibility of unstable, fractured, shifting identities. (iii) Audiences may read these narratives against the grain-that is, readers may find pleasure in the same features of adoption that the authors experience as stigma. (iv) Separation from the past and rupture from genetic heritage are sources of pain for the authors of these memoirs, yet the same circumstances are celebrated in other parts of American culture. (v) Many observers have noted the desire to escape from history and to begin anew as a recurring theme in American literature and history. Thus, what is rupture and loss for these authors may read as imaginative possibility for many of their readers... p240

— *The secrets and silences of adoption may exert their own appeal for some readers*. Birth parents and adopted persons sometimes feel haunted by the missing part, the shadow families left behind by relinquishment, yet those raised in biological families may vicariously enjoy the idea of an alternative family. The "family romance," the child's fantasy that he or she is adopted, often noted in psychiatric literature, attests to the allure of an imagined family without the defects and imperfections of the families we know. Adoption secrecy lends suspense and intrigue to these stories. Search-and-reunion narratives in particular borrow from the conventions of detective stories, with their compelling narratives of guilty knowledge, betrayal, and the search for hidden truth. p240

— *And finally, perhaps these narratives have claimed a larger audience because they tap pervasive concerns and uncertainties about identity and family ties.* They amplify the appeal of autobiographical narrative more generally, offering new perspective on ultimate questions of identity: "Who am I? Where do I belong?" Conflicts over adoption also create a space for discussion of moral questions and family ideologies that are often excluded from public debate. We sanction-indeed, we demand-careful oversight in the formation of adoptive families. Undertaken deliberately and under the scrutiny of the state, adoption allows intervention into matters usually shielded by considerations of privacy. Finally, adoption speaks to deeply felt hopes and anxieties about the possibilities and limits of pluralism. When we ask who belongs together, what makes a family, we are asking profound questions about the boundaries of tolerance, the limits of parental altruism, the obligations and expectations we attach to children. Adoption narratives are exceptional stories, but their

Adoption in 19th Century America Children's Literature

Carol J Singley— Adoption narratives from 1850 to 1887 provide valuable insights into American literary practices and cultural values. Sharing structural as well as thematic traits, these popular juvenile fictions constitute a subgenre of the bildungsroman in which adoption constitutes narrative closure, even if only a temporary one. These novels and stories also resonate with issues of the American family, society, and nation. Adoptees, like Americans themselves, wrestle with roots and inherited traditions at the same time that they embark on paths marked by fresh beginnings, resourcefulness, and self-invention. The tension that these characters experience between autonomy and affiliation, between desire for the past and embrace of the future-even their conflicting feelings of displacement and chosenness-all resonate with the qualities we commonly call American. p74

Singley— Indeed, adoption issues reverberate throughout American cultural and literary history. Adoption has resonance for a U.S. society rooted in seventeenth-century Calvinist theology. Believing that earthly existence was but a temporary exile from their true home in heaven, Puritans sought to minimize worldly attachments-including emotional attachments to children-and prayed for eventual adoption by God, their rightful father. Intercultural conflicts imme-diately challenged the settlers as they clashed with Native Americans over access to and control of the land. We seldom think of these native-white relations in terms of adoption, yet hundreds of captivity narratives from the seventeenth through the nineteenth centuries recount adoptions of white settlers by red-skinned neighbors, and a considerable number of these stories describe settlers who only reluctantly return to their birth families-or do not return at all. Captivity narratives represent some of the earliest examples of American cross-cultural adoptions. Slavery also raises a number of adoption issues. Through-out the nineteenth century, when the United States affirmed and celebrated freedom, it continued to engage in slaveholding and slave trading, a heinous form of adoption in which African-American families were systematically separated and sold away from each other. Much literature by nineteenth-century white writers defended these distorted adoptions, yet slave narratives and other kinds of adoption fiction by African-American authors focus our attention not on the formation of adoptive relationships but on escape from slaveholding families and on reunification with birth families. p74

Singley— Nineteenth-century adoption narratives have ideological bases in American religious and economic practices. These tales reflect the sentimental creeds of their day, but they also exhibit debts to a more austere, seventeenth-century Calvinist religion and culture. In the more religious texts, adoption is enacted as Christian salvation; in the more secular ones, it is associated with purchas-ing power and material display. These narratives mark shifts from church-based to market-based values, with corresponding changes in representations of the child and family. Registering the period's social concerns and frequently

employing adoption in the service of reform, the stories generally reinstate hierarchies of gender, class, race, and ethnicity. Adoption tales are paradoxically radical and conservative-that is, they simultaneously rupture and reaffirm bonds of blood, kinship, and community. Juvenile narratives, because they highlight and often simplify these shifting ties of loyalty and affection, make provocative texts for the study of family and social relations in American literature and culture. p76

Source *Carol J Singley*.'Adoption in 19th Century America Children's Literature in book 'Adoption in America' University of Michigan Press 2004 pp51-81. *See* book for 30 pages of text.

NEW ZEALAND

CHILD CONVICTS
New Zealand 1842-1843

Adoption is but one solution to a social problem in society. In earlier times in England the Poor Laws and apprenticed indentured child labour were used to deal with child problems. However, it may come as a shock to learn that New Zealand was a recipient of child convicts, apprenticed or otherwise, as indenture labour in early 1840s.

Hansen— "The so-called 'Parkhurst boys' are well known in the history of Auckland immigration. They were a selection of juvenile convicts from Parkhurst Prison on the Isle of Wight who were considered capable of reform, given the right environment. The colonies of New Zealand, Western Australia and Van Diemans Land- Tasmania were chosen for this purpose. Between 1842 and 1844, 220 inmates were sent to these colonies to be pardoned on arrival, as long as they took up apprenticeships or settled as free immigrants, as decided by the authorities. New Zealand's share arrived on two immigrant ships, the *St George* in 1842 and the *Mandarin* in 1843." Hansen p160.

Parkhurst Prison

Prewer— "Was originally a military hospital which became redundant during the run-down of the Army after the wars with France in the early 19th century. Parliament wanted to prevent boys sentenced to transportation from being corrupted by older convicts in the prison hulks and decided to segregate them in a special prison; there they would be assisted to face a new life in Australia or New Zealand by being subjected to strong moral and religious training, education and instruction in useful trades. Parkhurst came into operation in the last days of 1838 and the numbers gradually built up. Many hours were spent in school, chapel and at hard manual work. Talking was for a long time taboo. Any undiscipline was sternly dealt with— loss of privileges, further segregation, solitary confinement, reduced diet and the birch. Yet prison authorities were men of very high calibre, earnest and 'caring', with a splendid staff to support them. Unlike us, they knew what they were trying to do, believed that they had the answer, and acted accordingly and the got excellent results." Dr R R Prewer. Had worked at Parkhurst and writing its history- quoted by Mossong 1990. p316

Child convicts in irons

Hansen— "The Parkhurst correspondence files contain valuable details of conditions in Parkhurst Prison between 1838 (when it began as a juvenile institution) and 1843. For instance, on 1 Feb 1839 Lord John Russell did 'not consider it advisable to dispense with the Prisoners wearing irons:- but, in any special case of extraordinary good behaviour, his Lordship will not object to the removal of the iron as an indulgence, and as a salutary stimulus to good conduct on the part of others'" HO21/2 Parkhurst entry book p36 cf Hansen p161

Reception

Mossong— "In the *Southern Cross* of June 1843 there were criticisms not only of the 'Home Government' for sending them, but of the New Zealand Government for the way they were treating them. The boys had been observed working on the [Auckland] roads without shoes or stockings. 'This is not by any means proper. If the Government work them they ought to keep them in food and clothing'." Editorial comment *Auckland Chronicle* of 15 November 1843, about the Parkhurst arrival- 'We have another importation of young gentlemen culled from the repository at Parkhurst. This is too bad'... On 22 November 1843, *The Chronicle* commented on a *Times* reference... 'Regarding *Times* of yesterday...it would appear that from the 92 on the *St George,* only nine or ten 'got into trouble' but that 27 boys at various times stood at the Bar of that House, and many of these more than once.' Mossong p316.

Gazette Notice arrival of Parkhurst Boy's

Gazette—"*Colonial Secretary's Office, Auckland, 1st Nov 1942*. Immigrant Boy's arrived per *St. George*. His Excellency the Officer Administering the Government, directs it to be notified, that the under-mentioned Immigrant Boys, who have been selected by the Visitors of the Parkhurst Prison, and approved by Her Majesty as eligible for pardons, on the condition of Emigration to New Zealand, and apprenticeship for a certain period in the Colony, have arrived by the *St. George*. Under Instructions received from the Right Honorable the Principal Secretary of State for the Colonies, regarding their disposal, these Boys will be apprenticed to person's desirous of obtaining them, who shall, after due enquiry, be found fit and proper persons to be entrusted with such a charge. In order further to explain the views of Her Majesty's Government in sanctioning the Emigration of these Boy's to this Colony. His Excellency had commanded the publication of the following Extracts from the Regulations drawn up by the Visitors of the above Prison, for the guidance of the Local Government, when recommending them for the indulgence which has been granted by Her Majesty." *NZ Government Gazette*', Wed 2 November 1842 Vol.2.No.45 p315

1842 Gazette Rules indentured apprenticeships

Gazette—Rules No.9 to 29 are printed in the *Gazette*.

"Rule 9th— That in placing out the Boys, reference be had as much as possible to the Trades in which they have been instructed during their confinement at Parkhurst.

10th— That the Governor be required to place the Apprentices with those Settlers only in whose respectability and character there is reason to confide; and to give preference, in the first instance, to Masters who reside within such a distance from the seat of Government, as to admit of their being frequently seen by a Government Officer.

11th— The Governor be required to appoint a competent person as Guardian of the Boy's so apprenticed.

12th— That the Guardian shall visit the Boys once every four months; to ascertain their treatment, investigate their complaints, and communicate immediately with the Governor whenever any case occurs which calls for his prompt interference.

13th— That the Guardian render assistance to the Boys in procuring situations, or employment at the end of their

apprenticeship.

14th—That Guardian make a report to the Governor every six months, and also a general report at the end of the year, stating the condition of each individual, the working of the apprenticeship system, and the manner in which the Boys dispose themselves at the expiration of their apprenticeship

15th—That the Governor be required to transmit these several reports of the Guardian to the Colonial Office half yearly, with such remarks as he may consider advisable.

16th—Not printed in *Gazette*.

17th—That the period from which the Apprentices are bound, be at the discretion of the Governor: provided, however, that no Boy be apprenticed for less that two, not more than five years.

18th— That the Governor shall decide the minimum of food and clothing which the Apprentice shall receive.

19th— That the Indenture shall prescribe, besides board, lodging, and clothing, an allowance of a certain definite and annually increasing remuneration; and that, at least half of this annual allowance be deposited in a Savings' Bank, under control of the Governor or Guardian, until the apprenticeship shall expire. [*Typical Annual payment- 1st year £1; 2nd year £2; 3rd year £3; 4th year £6. cf Hansen 1990 p160]

20th— That the Master be required to attend to the Boy's moral and religious welfare, to exempt him from labour on Sundays, and to see that he attends Divine worship of that day, as far as circumstances will admit.

21th— That it shall not be lawful for a Master to inflict corporal punishment on an apprentice, but that in the event of an Apprentice so misconducting himself as to require punishment, the Master shall take him before the nearest Magistrate to be dealt with according to law.

22nd— not printed in *Gazette*.

23rd—That an Apprentice have every facility of writing to his friends and to the Guardian of Apprentices, and also to receiving letters.

24th— That on the death of an Apprentice, the Master be required to provide for him Christian burial.

25th—That the Governor inform the Magistrates of the district, and transmit a Copy of the Indenture tot he Magistrate, who shall preserve the same for future reference in a book to be provided for that purpose.

26th—That the Magistrate of every district be authorised, as often as he shall think fit, to visit Apprentices, and to ascertain that the terms of their indentures are fulfilled.

27th—That any Magistrate receiving a complaint of ill-treatment from an Apprentice, besides taking such summary steps for his protection as may appear expedient, shall report the complaint, and the course adopted by him, to the Governor.

28th—That the Governor be empowered to cancel the Indenture, and to withdraw the Apprentice, on proof being furnished to him of the improper treatment of the Boy by his Master.

Form of Indenture

"This Indenture made the...day of...,1842, between AB of...an of...the guardian of the said infant, of the 2nd part, and EF of...,[the master] of the third part.

Witnesseth,

that the said AB under the authority and with the approbation of His Excellency the Officer administering the Government of Her Majesty's Colony of New Zealand, testified by his executing these presents, doth hereby place and bind himself apprentice to the said EF, to serve him in all lawful business for the term of...years from the date hereof;

and in consideration of the acceptance by the said EF, of the said AB, into his service, and of the covenants on the part of the said EF, hereinafter contained, the said AB, doth promise and engage that he will at all times during the said term of...years, faithfully and diligently serve the said EF in his business of...,

and will not absent himself from such service, but will conduct himself with honesty, sobriety, and temperance therein.

And in consideration of the premises he the said EF doth hereby for himself, his heirs, executors, and administrators, covenant with the said AB and also as a separate covenant with the said CD, that he the said EF, will, at all times during the said term, instruct or cause to be instructed the said AB in the business of a...,

and will pay unto the said CD in trust of an as a recompense for the services of the said AB £...in the first year, £...in the second year, &c &c, by equal (half yearly) payments, on the...day of...and the...day of...in each year: and shall and will during the said term of...years,

provide and allow unto the said AB., food and clothing according to the scale in the Schedule hereunto annexed. together with lodging, washing, medicine, or medical attendance, and in case of the death of said AB with Christian burial.

And that the said EF during the said term of years, will attend to the moral and religious welfare of the said AB, exempting him from labour on the Sabbath day, and providing as far as may be for his attendance at some public place of Divine Worship thereon.

In Witness whereof the said AB, CD and EF, have hereunto subscribed their name... AB...CD...EF..WX...YZ... Auhorised and approved by me WS Governor, of Officer, &c.

Table of clothing and Diet referred to in the foregoing Indenture:

Two complete suits of clothing per annum, of good and substantial quality, suitable for the summer and winter seasons respectively. Per diem 1 lb of biscuit, or 1.25 lb of soft bread. 1 lb of meat- fresh meat supplied not less than four days in each week. 3/4 oz of tea. 1.5 oz sugar. 1/2 lb potatoes or 1/4 lb rice...

By His Excellency's Command, (For the Colonial Secretary) William Connell."

Source *Gazette* Vol.2 No.45 Nov 2 1842 pp315-317.

29th—That at the death of any Apprentice, the Surgeon of the district shall certify in writing to the Magistrate, the cause of death; and of there be no Surgeon resident within twenty miles, the Master of the Apprentice shall, within three days appear before the Magistrate of the district, and make oath as to the circumstances attending the death of the Apprentice: and the Magistrate, on receipt of such certificate or affidavit, or on general report, may proceed to make such enquiry into the circumstances as he may think fit, and shall, with or without such enquiry, report the death and its cause to the Governor."

List of Immigrant Boys for Apprenticeship

Arrived on *St George* Auckland 25/10/1842

No	Name	Age	Trade/Occupation
1	Astle, William	13	Tailor
2	Axford, John	18	Tailor
3	Axford, William	17	Tailor
4	Baker, George	17	Shoemaker
5	Baldwin, William	16	Tailor
6	Bellamy, David	15	Tailor
7	Blackwell, William	15	Tailor
8	Bottomley, George	16	Shoemaker
9	Briggs, James	18	Tailor
10	Brown, Geroge	16	Shoemaker
11	Bryant, James	18	Shoemaker
12	Burford, William	18	Tailor
13	Burgess, James	13	Tailor
14	Burke, Michael	13	Tailor
15	Burnand, Isaac	16	Tailor
16	Burnand, Thomas	18	Shoemaker
17	Carter, Edward	14	Tailor
18	Coley, James	13	Tailor
19	Copping, John	16	Tailor
20	Critchley, Thomas	17	Tailor
21	Dawes, Frederick	16	Tailor
22	Dillon, John	14	Tailor
23	Dobby, Michael	15	
24	Duggins, Richard	16	Shoemaker
25	Edge, George	18	Shoemaker
26	Fox, John Robert	17	Tailor
27	Hitchcock, Bengamin	19	Shoemaker
28	Hollis, William	17	Tailor
29	Holloway, Charles	17	Shoemaker
30	Hopkins, Gabriel	13	Tailor
31	Horne, Frederick	16	Tailor
32	King, Thomas	15	Shoemaker
33	Lee, John	14	Tailor
34	Lloyd, John	18	Tailor
35	M'Ginnes/*McGuire*James	18	Shoemaker
36	Mc'Hugh, William	15	Tailor
37	Marsh, James	17	Shoemaker
38	Matthews, William	17	Tailor
39	Minhinnick, John	15	Shoemaker
40	Millar, John	16	Shoemaker
41	Moody, John	15	Tailor
42	Mylor, Richard	15	Tailor
43	Ogan, John	13	Tailor
44	Phips, Joseph	15	Tailor
45	Proctor, Thomas	14	Tailor
46	Rampling, James	17	Tailor
47	Richmond, Peter	15	Tailor
48	Saunders, John	15	Shoemaker
49	Shears, John	17	Shoemaker
50	Sherriff, Charles	18	Tailor
51	Stokes, James	17	Shoemaker
52	Toft/*Joff*, John	18	Shoemaker
53	Topping, William	12	Tailor
54	Tuck, William	14	Tailor
55	Warnutt, William	16	Tailor
46	Willey, John	17	Tailor
57	Wires, Henry	17	Tailor

Besides the Trade mentioned after each name, all the boys have been accustomed to work on a farm 3 hours per day for the last two years. *[Note this means that the age of admission to Parkhurst Prison would have been two years less than those shown above. Have set the list alphabetically. KCG] Application to be made to Mr S B Horne, Acting Guardian, at the home formerly used as the Government Printing Office. [92 boys came on the *St George*, 57 indentured apprentices to serve 2 to 5 years, the remaining 35 boys were given a free pardon, they are not named on the Gazette List.
Source '*Supplement to the NZ Government Gazette*', Wed 2 November 1842 Vol.2.No.45 pp315-317.]

The *St George,* 877 ton Barque under Captain Sughrue left Portsmouth on 3 June 1842 six days before the first immigrant ship *Duchess of Argyle* left Clyde, but the *St George* made a slower passage having called at Rio Janero for five days to take food and water.

Arrived on *Mandarin* Auckland 14/11/1843

Free Immigrants

No	Name	Age	Trade/Occupation
1	Adams. Thomas	17	Carpenter
2	Beales/*Boal*. William	18	Carpenter
3	Binnie. Alexander	19	Tailor
4	Cotterel/*Cotteral*. John	17	Tailor
5	Day. Thomas	18	Tailor
6	Eggarton/*Eggerton*.Isaac	17	Cooper/Shoemaker
7	Farrell. John	16	Cooper/Shoemaker
8	Goulburn/*Golb*...Thomas	18	Carpenter
9	Griffiths. James	17	Carpenter/shoemaker
10	Heritage. John	16	Carpenter
11	Hill. Robert	17	Sawyer/Shoemaker
12	Huntly. Walter	16	Bricklayer
13	Inchie/*Hinche*. John	19	Cooper
14	Lay. George	20	Carpenter
15	Lynch. John	17	Carpenter
16	Neil/*Neild*. Charles	16	Shoemaker
17	Organ/*Ogan* Richard	16	Plumber/Glazier
18	Paton/*Payton*. William	19	Bricklayer
19	Rose. Edwin	17	Farmer
20	Shaw. John	17	Sawyer/Shoemaker
21	Smith. Joseph	18	Plasterer/Bricklayer
22	Williams. Joseph	17	Cooper

List of Boys for Apprenticeship

1	Allen. George	16	Tailor/Cooper
2	Bassan. Henry	15	Bricklayer/Tailor
3	Denman. William	15	Tailor
4	Lamb. Michael	16	Bricklayer/Shoemaker
5	Parker. William	12	Tailor
6	Smith. William	16	Farmer
7	Waller. Alfred	15	Carpenter
8	West. William	16	Bricklayer/Tailor
9	Wilson. George	16	Shoemaker

The Greater number of these Lads are available for Farm Servants **Source** *NZ Government Gazette* Wed Nov 22 1843 No.47 [Arranged in alphabetical order and number. Name in italic are alternatives suggested by researchers KCG]

The *Mandarin,* a regular Botany Bay convict transport, arrived Auckland from Cowes 14 November 1843. 425 tons. Stopped at Hobart 17 days from 15 October leaving 52 Parkhurst Boys there, and the remaining 31 at Auckland.

J**ournal of the *Mandarin*** on its 1843 voyage has survived and gives a detailed account of the months on board, often mentioning boys by name. The voyage of the *St George* in 1842 must have been similar. On the *Mandarin*, the officer in charge of the boys noted the morning routine: 'The boys rise between six and seven when they take their hammocks on deck. Having washed and completely dressed themselves they are inspected by the Mess-Masters of their respective messes, and are prepared to be inspected by myself. Prayers are then read, a hymn sung, and a portion of Scripture read" (HO20/13 *Mandarin* Journal 1843). Hansen p161

Colonial Dept List prior to departure: "Four boys in their list did not eventually embark on the *Mandarin*: Frances Thompson. Frederick Hayward, John Richardson and William Rutter. They were replaced by two boys not on this list, Joseph Williams and Robert Hill, so that only 31 boys (9 apprentices and 22 free emigrants) came to Auckland (New Zealand Government Gazette, Auckland, 22 Nov 1843. It is also worth noting that the spelling of the boys in the Gazette can differ from this list.. Hansen p161

References to Parkhurst Boys

Police cases in NZ "There also exists a list of all the police cases brought against the Parkhurst boys, from their arrival on 24th October 1842 to 12th April 1843 (CO209/20 New Zealand: Despatches January-April 1843, page 158." Hansen p160.

Home office records detail of convictions "If details of the crimes which brought the boys to Parkhurst are desired, then the best source is...the Home Office records, Public Record Office, Ruskin Avenue, Kew, Richmond Surrey England. Parkhurst Prison register of inmates (HO24/15 Parkhurst register 1838-63) contains details of each inmate's criminal past. The places of origin of the inmates are suggested by their places of conviction, which range from Falmouth to Aberdeen." Hansen p161

ASTLE William 'remaining not yet apprenticed'

AXFORD John, was omitted from the reports for no apparent reason.

BRIGGS James. Sentenced at the Consistory Court of Canterbury June 1838.

BOTTOMLEY George, was apprenticed as a sailor on board HM Colonial Brig Victoria for three years from 1 Dec 1842, receiving £2 for the first year, £3 for the second year and £6 for the third year. "One of the St George Boys when in Auckland 'acquired trowsers and shirt the property of Ro Webb. a waterman at Auckland. He was tried in Auckland on 1 December 1845 for receiving stolen goods and was acquitted but was taken again and recharged with stealing, found guilty and give a sentence of transportation for seven years. Transportation from New Zealand was to Van Diemens Land, Tasmania where he was consigned on the vessel *Cheerful* in 1846. In Convict Record Tasmania Archives CON37/2/601, his statement is recorded- that he was an emigrant on *Mandarin* (sic), but denies being in Auckland. By trade a shoemaker, height 5ft 4 inches he claimed Battlebridge, Northumberland as his native place. He was with the Rocky Hills (Work) Gang of prisoners at Port Authur who were mostly working in coal mines. Bottomley continued to commit a long line of offences of assault and misconduct and while on a Ticket of Leave offended again. He was to be sent to the interior because he had achieved his Certificate of Freedom in December 1852." cf Mossong p318.

BURGESS James. Sentenced at Oxford September 1838

BURKE Michael 'remaining not yet apprenticed'

BURNAND Thomas & Isaac. Sentenced at Northallerton April 1839. "The Quarter Sessions bundles had shown that on 19 February 1839 Issac and Thomas had offended by breaking and entering the house of John Hart, painter in the township of Whitby. They had stolen two watches, two watch chains and a key (value one pound and three pence). Taken on arrest to the House of Corrections at Northallerton until the Easter sessions of that year, they pleaded guilty and were sentenced, described as labourers and the calendar of prisoners giving their ages as 12 and 13 years. Four persons appeared as witnesses against the boys including a pawnbroker." Mossong p317 "Isaac Burnard married Harriet Cooper and is believed to have been principal in the firm of Ellis and Burnand with saw-mills at Otorohanga and a sash and door joinery factory at Hamilton. Mossong p319

CHAPMAN Charles, aged 17 a free emigrant, was admonished and discharged after being found on the beach amongst Natives in the night. NZ Police Report. Employed by Mr D Smale, a farmer at Epsom, for board, lodging and £12 per annum.

DENMAN William, "aged 10, was a labourer who could write. On 10th Feb 1841 at the Westminster Sessions he was sentenced to transportation for seven years for simple larceny. He was instead admitted to Parkhurst on 23 Feb 1841 from Tothill Fields gaol, Westminister. The gaoler's report of his character was that he had an 'intractable, vicious sullen disposition'. He was discharged from Parkhurst on 21 June 1843 and sent to New Zealand as an appentice." Parkhurst register 1838-63. Hansen p161

EDGE George married Harriet Culpan and whose family were successful settlers in Whangarei. Mossong p316

FETHUN OR **FAVIAN** Thomas, aged 18, free emigrant, sentenced to 48 hours of hard labour for drunkeness. NZ Police Report.

HOLLIS William, aged 13, a labourer who could neither read nor write. He was sentenced on 4 Feb 1839 at the Central Criminal Court to transportation for seven years for larceny. He was instead admitted to Parkhurst on 20 May 1839 from the prison hulk *Euryalus*. The gaoler's report of his character stated that he had previously spent three months in Maidstone Prison and had once been in the House of Correction. He was discharged from Parkhurst on 31 May 1842 and sent to New Zealand." Parkhurst register 1838-63. Hansen p161

HOLLOWAY Charles, of Somerset had stolen a pair of pattens (shoes or clogs) valued at twelve pence.

McQUARRIE Andrew, aged 17 an apprentice, was sentenced to 30 days of hard labour and returned to his master, for leaving his master's service without leave. NZ Police report.

MOODY John, of Somerset was accused and convicted for stealing five pounds of pork values at two shillings. In NZ he was apprenticed as a carpenter to Papercrombie at 'River Thames (lower part) for four years from 13th Dec 1842, receiving £1 for the first year, £2 for the second year, £3 for the third year and £6 for the fourth year.

RICHMOND Peter, born at the town of Marple in Cheshire, had entered a house and stolen three books valued at one shilling. He was sentenced and sent to the prison hulk *Fortitude* lying off Chatham.

SHERIFF Charles of Birmingham was found guilty of stealing a 'timepiece', his second offence, was convicted and punished with a sentence of seven years transportation. His companion, a first offender, received ten days imprisonment and a whipping.

TAGGET John was convicted of theft of one pound in weight of chocolate.

TOPPING William [age 10] had been two years in custody since the Preston Quarter Sessions of October 1839 and possibly, like the Burnard brothers in a House of Correction while waiting the Sessions.

TUCK William 'remaining not yet apprenticed'.

Source For details of sources of information of lists above

see Hansen 1990 and Mossong 1992.

Punishment in England 1830s

"The nightmare that punishment was growing gentle and attractive to the poor came to haunt the mind of governing class...the agricultural labourers were sinking into such a deplorable plight that some of them often found it a relief to be committed to the House of Corrections... ordinary punishment could no longer be regarded as a deterrent, and some condition had yet to be discovered which would be more miserable than the general existence of the poor." *'The Village Labourer 1760-1832'* J & B Hammond.

"There were well-documented cases of men being sentenced to transportation for nothing more felonious than the theft of a handkerchief; and by no means was transportation considered the prerogative of adults. The grim convict ship records show that even as late as 1837 two children aged nine and 11 were sentenced to 10 years transportation. In the same year, the 'lenient' sentence of seven years transportation was imposed on eight children aged 10, two aged nine, and one who was a mere eight years old." Trickett 1979

References to Parkhurst arrival

Ensign Best "On the 25 October 1842 writing in his Journal ...Weather appears better. The *St George* arrived with upwards of 90 boys from fourteen to twenty years of age. These lads have all been convicted of various crimes at an early age and have worked at an establishment which I suppose may be called a penitentiary in the Isle of Wight. Their conduct having been good and their having qualified to form useful members of Society. Instead of turning them again amongst their old associates, they have been allowed to volunteer to come to this country. Many being free as soon as landed and others having to perform a certain term of apprenticeship. Amongst them are Tradesmen and Mechanics of all sorts and some have been brought up to Agriculture. Their conduct on the voyage is said to have been admirable and nothing could have exceeded their clean and regular appearance when landed" rf Mossong p316.

Flogging ordered but averted. "In December 1843 one of the Parkhurst 'penitents' had escaped from the lockup. Having been quickly caught he was to be punished by flogging. The new Sheriff directed his underling Thomas Somerville 'to act as scourger'. Somerville, refused the role, a decision supported by S Martin, the editor of *The Southern Cross* newspaper, who wrote that Somerville had too much self respect to lend himself to such a degrading role." Mossong cf p318

Difficult economic situation in Auckland

"Auckland in 1842 was little better than a frontier village: a raw collection of raupo whares and rough-sawn timber shacks, resided over, somewhat incongruously, by an imposing official residence built for Governor Hobson and his family at the then astronomical cost of £16,000. But by the time the *St George* arrived in the Waitemata, Hobson had been dead for just over a month...Hobson's untimely death was probably particularly unfortunate for the Parkhurst boys, because the British Government's instructions required the Governor to have overall responsibility for their welfare... Captain Rough, [Harbour-master] was appointed their nominal guardian." Tricket 1979

"The economic situation in Auckland into which the boys had arrived was far from affluent and suitable masters were not readily available. It is believed that in 1843 about a hundred Parkhurst boys were living in Victoria Street, probably in a barracks there which was first used by the passengers of the *Jane Gifford* and *Duchess of Argyle*." Mossong p318

Immigration used as a subterfuge

"For the benefit of the colonial settlers, the British Government discreetly termed the new arrivals 'immigrant boys'. But back home in England, where there was no need for subterfuge, we find them being referred to in official quarters as 'convict boys' and 'criminals'". Trickett.

Press protests

Arrival of the *Mandarin*. *The Southern Cross* Newspaper 1943 "Under the heading 'Another Importation From Parkhurst'. "We can scarcely conceive anything more heartlessly cruel, or infamously immoral and unjust, than the conduct of the Home Government towards this colony ...They have sent the deeds of crime and immorality to be scattered over the length and breadth of New Zealand, in the shape of young convicts from the penitentiary of Parkhurst...To have felons of England poured in upon us, without any benefit whatsoever excepting the infamy of living in a penal settlement, is too hard...

The Auckland Chronicle. "We have yet another importation of young gentlemen culled from the repository at Parkhurst...This is too bad. The people of Auckland, however, richly deserve this infliction. Why did they not, long ago...do their best to ward off from those shores any further cargoes of these semi-convicts."

The Auckland Times, editor Henry Falwasser noted that 'only a very few from the *St George* had got into trouble'. "Meanwhile, in London, influential friends of the Auckland settlers were lobbying to stop any further convict transportation to New Zealand...This campaign, and FitzRoy's recommendation for a moratorium on convict immigration evidently had their effect. After the *Mandarin*, there is no record of any further ships bringing convict exiles to New Zealand." Trickett 1979.

The prison chaplain wrote encouraging the boys, and noted the settlers of Western Australia, Adelaide and Port Phillip were more agreeable to receive Parkhurst Boys.

Sources

Hadfield. Bryce '*A Wind from the North*' 1997. Self published novel. See review *Sunday Star Times* July 13, 1997 pC6.

Hansen. Donald 'Parkhurst Boy Sought- My Ancestor was a Parkhurst Boy.' *NZ Genealogist* July/Aug 1990 pp160-162.

Mossong. Verna 'Parkhurst Seedlings' *NZ Genealogist* Sep/Oct 1992 pp316-319. cf '*NZ Government Gazette*', Wed 22 November 1843 No.47.

Plat. Una '*The Lively Capital'* gives a brief contemporary account- cf Mossong p316.

Trickett. Peter 'Skeletons in Auckland's Closet' NZ *Listener* 3rd March 1979 pp23-25. Includes 1843 sketch of Auckland.

Wakefield. Edward Jerningham In "Adventures in New Zealand pubished 1845 makes brief reference to the Parkhurst

PARKHURST PRISON Isle of Wight

Opened 1838

In the later part of the 1700's, there was a growing concern for the safety of juvenile prisoners. some of whom were only six years old, many of which were incarcerated in the old, rotten and disease ridden sailing ships commonly referred to as hulks.

The Site of Parkhurst was chosen as the existing buildings there were ideal to be converted into a juvenile prison, and also the location was near to a deep water anchorage, perfect for the transportation ships to collect their charges for the voyage to Australia.

The prison opened its doors on the 26th December 1838, taking in 102 boys. The first governor was Capt. Woolcombe. and he ran the establishment very much on military lines. As this was the first such institution of its kind, there were no hard and fast rules in the treatment of the young men in his care.

Report *Illustrated London News* 1847

One of the earliest measures contemplated by the Government, in consequence of the discontinuance of the System of Transportation, will be certain alterations on Millbank, Pentonville, and Parkhurst Prisons. The paramount effect will be to substitute for Transportation, imprisonment in the three national prisons above named, or in the county prisons already constructed, which, it is asserted, will meet the exigencies of the case. Pending the consideration of this important change in the Convict System, it may be interesting to introduce to our readers the present discipline at Parkhurst-the Reformatory, or Juvenile Prison, as it has been termed.

Establishment at Parkhurst was commenced in the year 1838.

It is situated nearly in the centre of the Isle of Wight, and presents altogether an imposing appearance; a portion of the buildings placed upon a rising ground, it is visible for several miles around. The original building formed the Hospital to the adjacent Barracks, and was altered for occupation as a prison in 1838. In 1843 were commenced some extensive additions, viz., a ward in the rear, a Chapel, a Probationary Ward, Schools &c.: together with the entire Junior Ward. There were also built at this time residences for the Surgeon, Assistant- Chaplain, Steward, Schoolmasters &c.; houses for Warders; besides two 1odges, and an Infirmary: and there were then completed roads and other works connected therewith. These additions wore executed at a cost of about £30,000.

The several buildings are of brick, with cement dressings; and the portions appropriated to the Prisoners are surrounded with walls fifteen feet high. The principle entrance is through a rusticated archway, of Isle of Wight stone; flanking which are two lodges, that on the left for the Porter; and on the right are the office of the Clerk of Works, the Surgery, and the Receiving-room; in the latter are dipper-baths, supply of hot water, and fumigating apparatus. Here each Prisoner, previous to his admission, is examined by the Surgeon; is next washed, and clothed in a Probationary Ward dress, entirely new. The Officers of the Prison wear military undress—blue frock-coats, cloth caps, and leather belt and strap holding keys. Each Prisoner wears a leather cap (made in the Shoe-maker's shop) and bearing on its front the Boy's No; in brass figures; the trousers and jacket are of grey cloth; on the left breast of the latter are sewn P.P. and the No.; and P.P. on the left thigh. The rest of the clothing is striped shirt, leather stock, waistcoat for winter wear, worsted stockings and boots, all of which are made in the Prison. On the right breast is worn a brass medal, with No. The Penal Class is denoted by yellow collars and cuffs, and letters of the same colour.

The Cells

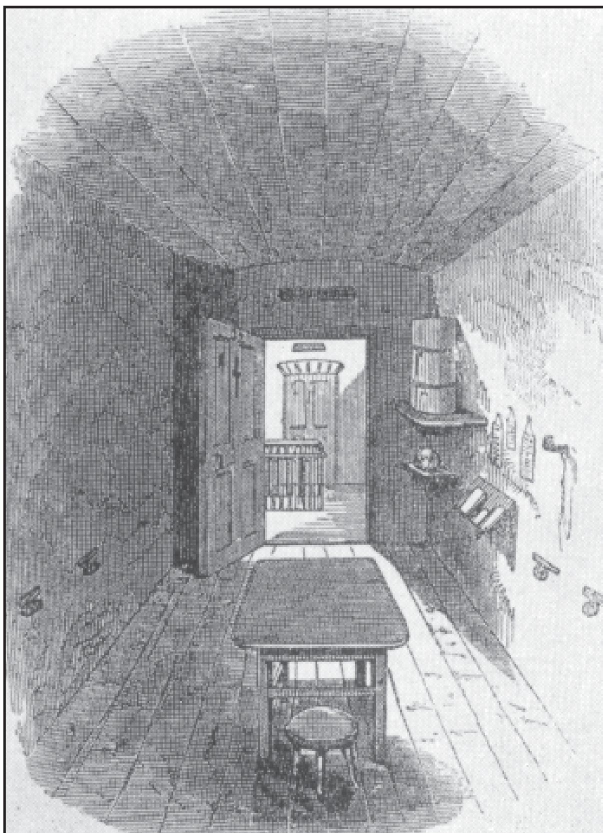
The Probationary Ward is a great improvement upon the original system for the reception of Boys on their first arrival. This division of the building consists Of the corridor, with three tiers of cells, 137 in all, each being 11 feet by 7 feet, and 8 feet 6 inches high, brick-arched, and provided with a hammock, of cocoa-nut fibre, shown in the Engraving of THE CELL, rolled up and laid on a shelf in the corner, to the right of the door; at night it is stretched with straps from wall to wall and fastened with cleats, 15 inches from the floor. Each Cell is furnished with a small table, stool, and writing-desk; a Bible, Prayer-book and Hymn-book, for Chapel use; school books, slate and pencil; and upon the wall of the Cell are placed the Morning and Evening Hymn cards with prayers, and copies for writing; by the aide of which is an iron holdfast candlestick, to receive a "Palmer's candle". Immediately over the door-way, is an iron plate for the admission of fresh air, from the Corridor; and in each door is an inspection-plate, of glass and iron wire-gauze, 4 inches by 3. There is, also, a spring-bell, which the Prisoner is to sound when he requires the attendance of an officer; there being affixed to each bell an iron plate inscribed with the number of the Cell indicated, as the bell rings, to the officer in the Corridor.

Meals in cells

The Prisoners in this Ward take their meals in their separate Cells, from which they are only allowed to be absent each day, 1.5 hours for exercise; 2.5 hours in school; half an hour cleaning; and half an hour in the morning, in chapel for prayers.

The Corridor as shown in the Engraving, is surrounded with galleries and flights of steps leading to the upper tiers. In the basement are two Dark Cells for punishment, and two Baths for the Ward. There are Washing-rooms to each gallery, with separate compartments, so that the Prisoners

Parkhurst Prison, Interior of the court.



Prisoner's cell.

Officer and Prisoners

cannot communicate with each other. There are, also, two water-closets on each floor, for night use.

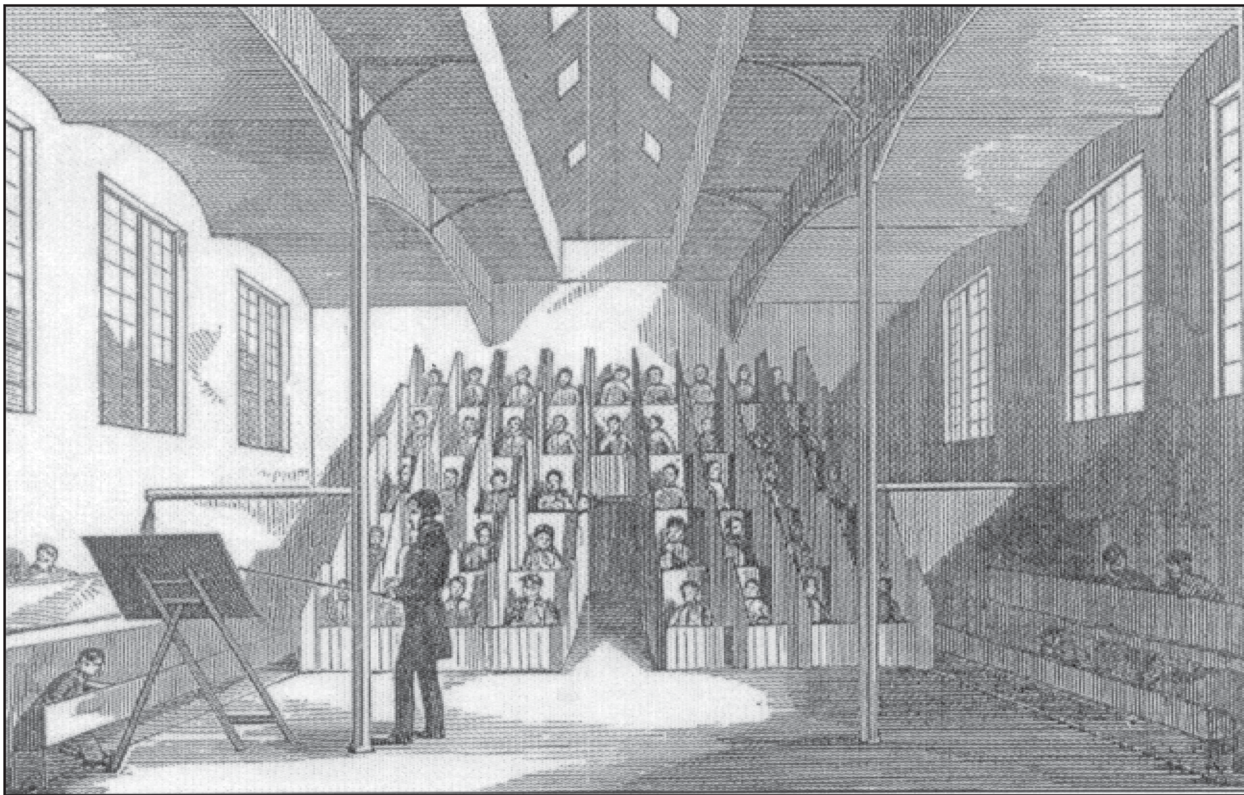
No idle moments

Instruction is given in each Cell according to the knowledge possessed by the Prisoner on entering; when not otherwise employed, he is set to work at tailoring, shoemaking, or other occupations; so that he is not allowed to be for a moment idle.

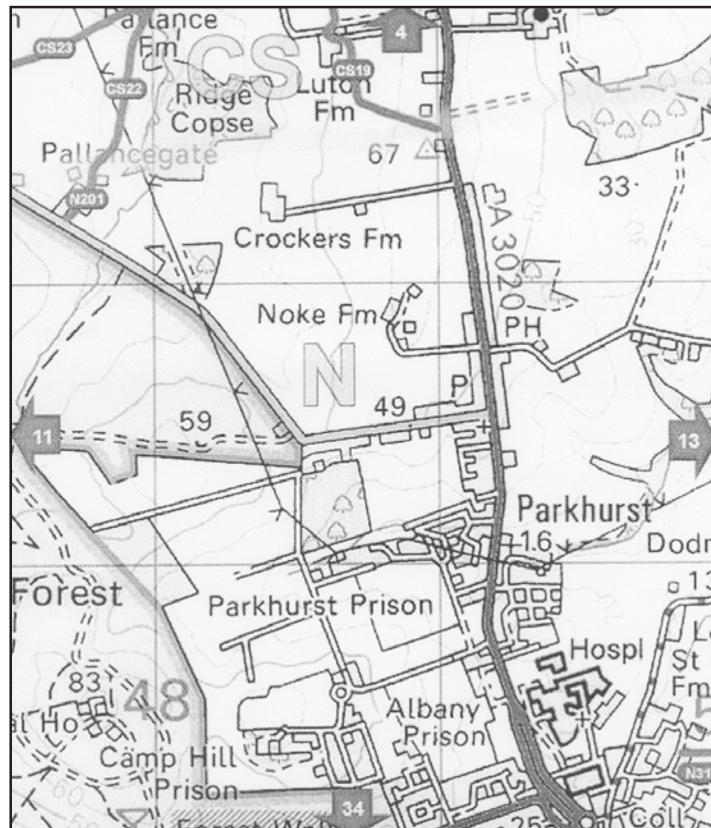
School instruction

In the Probationary Ward, the course of instruction is two hours and a half, on alternate days, of elementary instruction, chiefly religious and moral. By good conduct, the Boys are admitted to the senior division of the School, and instructed at open desks, of which the School Room is provided with 8, as well as fitted with 50 compartments.. each of the latter holds but one Prisoner, and is so planned, that the Schoolmaster can inspect and instruct without possibility of the Boys communicating with or seeing each other.

When a School Class is occupied in Cells, the Boys are regularly visited several times a day by the Schoolmaster of the Class for scholastic instruction; as well as by the Chaplain and Principal Schoolmaster, for the purpose of religious and moral admonition. To afford to each Prisoner an occasional opportunity of quiet consideration of

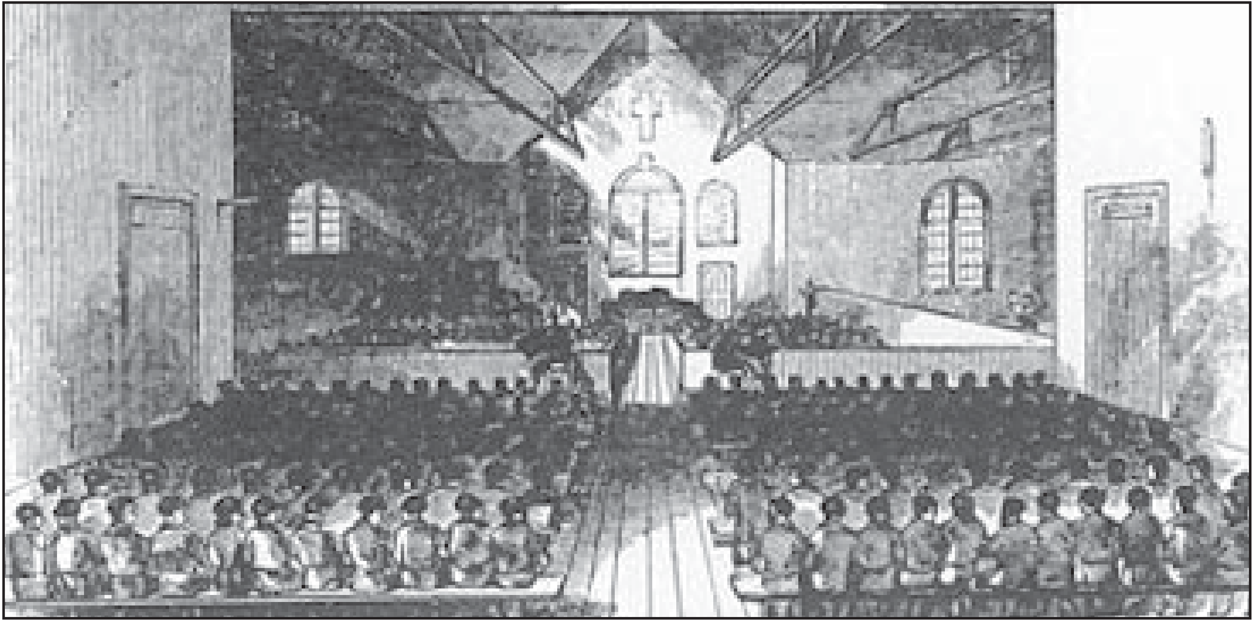


Parkhurst Prison ProbationaryWard School Room. Pupils are isolated in boxes to prevent interaction



Corridor of prison Cells Prison boys had to eat their meals in their own cell to avoid interaction

his condition and prospects, as well as reflection on the admonition and instruction which he has received, the several School classes are placed for one day in the week in separate cells, and there furnished with light employment, which, while it has afforded manual occupation, has yet allowed time and opportunity for thought. A visit to Parkhurst Prison-there to witness the exertions of philanthropic enlightenment to reclaim the juvenile offender from the ways of error to the paths of virtue and peace-is one of the most gratifying scenes of philanthropy to be enjoyed in this great Christian country. In the summer of 1845, the Queen visited the Prison, with her suite; and her



Parkhurst Prison Chapel

Parhurst Main Hall

According one text when prisonors dinned in the Main Hall they had to stand at the tables and eat their meals under strict supervision and were not allowed to interact or talk with each other.

CHILD CONVICTS

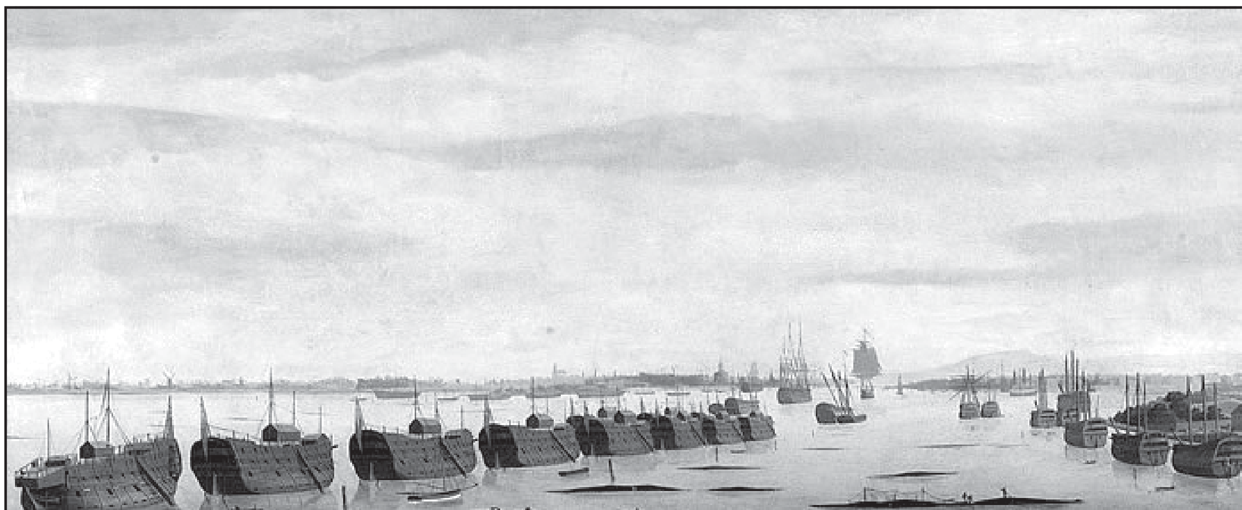
New Zealand Public reaction

Two boatloads of Parkhurst Boys were sent out to Auckland New Zealand. The first ship '*St George'* Arrived 25/10/1842 with 57 boys, and second ship '*Mandarin*' arrived 14/1/1843 with 31 boys. There was a strong public outcry about sending child convicts to New Zealand and practiced was stopped.

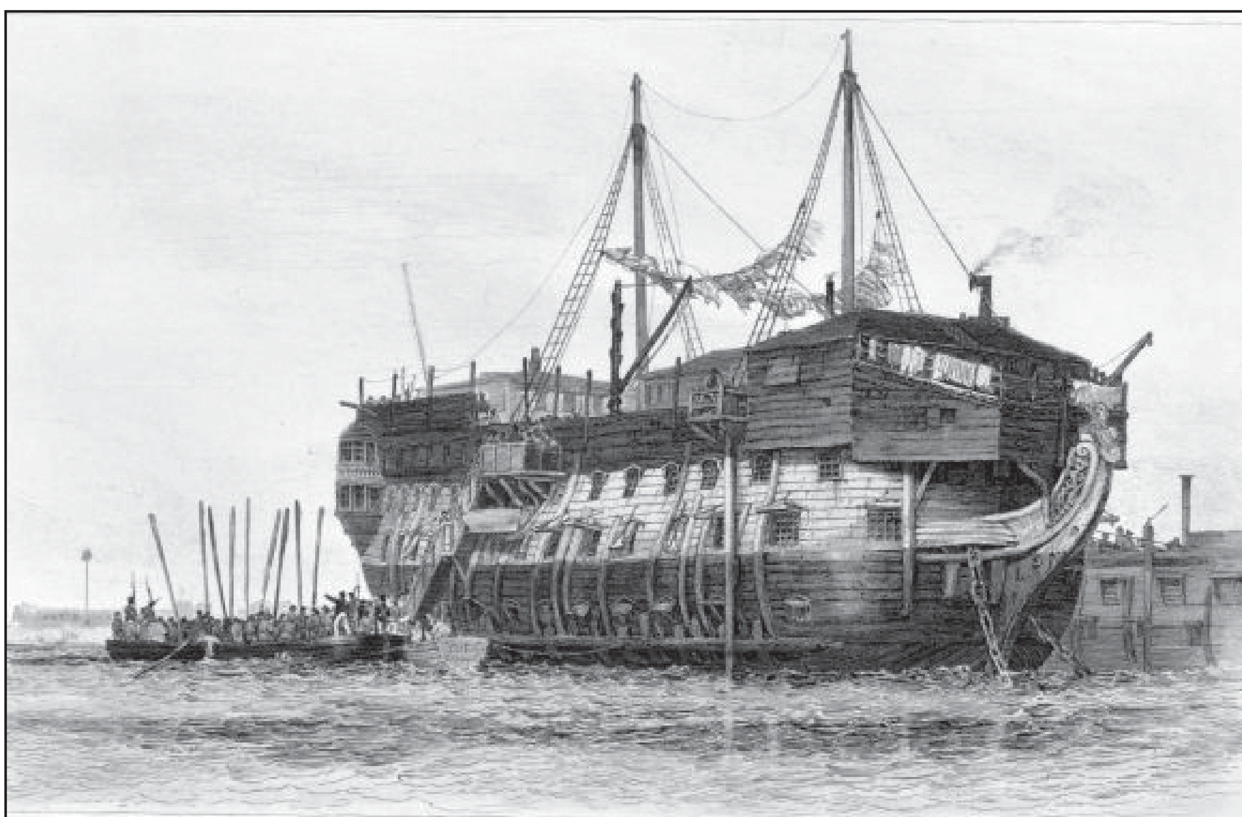
Convicts Prevention Act 1860

An Act to prevent the introduction into New Zealand of convicted felons and other persons transported for offences against the laws. The provisions of this Act included- "No person under sentence of transportation or under sentence for an transportable or capital offence or not at liberty by reason of any conviction to reside in the United Kingdom or in British possession in which convicted and no person convicted in Australian Colonies who has received a pardon on condition that he shall leave such Colony shall come to New Zealand." This statute was to protect New Zealand from becoming any form of settlement for convicts, which would preclude such importations as the Parkhurst boys.

Updated 19/6/2004



Line of Prison Hulks Portsmouth Harbour



Prison Hulk ‘York’ Portsmouth Harbour held 500 Convicts

INDUSTRIAL SCHOOLS

1850-1867 problems of neglected children

Tennant— "The failure of parental support for children was apparent as early as the 1850s, when capitation payments were made to individual women and to church groups for child care. Some of the first welfare institutions in New Zealand provided for orphans and destitute children. Auckland's St Mary's, run by the Sisters of Mercy from the early 1850s, the Parnell Orphan Home (Anglican), established in 1866, and the Otago Benevolent Institution, also opened in 1866. By the end of the provincial period there were ten institutions in existence for orphaned, criminal, or neglected children. Two of them (the industrial schools at Caversham and Burnham) came directly under the Justice Department, the rest were local or church establishments. Legislative provision was also made relatively early, the 1867 Neglected and Criminal Childrens Act allowing for the establishment of industrial schools and for the removal of children from undesirable situations. Its reference to children found begging, or receiving alms, frequenting public places, sleeping in the open air, and consorting with thieves, prostitutes, habitual drunkards, or vagrants suggests a perception that all was not well with some New Zealand families...The Acts timing was significant, in a decade marked by the social disruption of the gold rushes. Male parents, in particular, seemed to be wanting...A 1879 police survey of 'street children' in Auckland revealed 75% had lost a parent." Margaret Tennant "Paupers and Providers' p128. 1989.

Statute—Neglected & Criminal Children Act 1867

"Whereas it is expedient to provide for the care and custody of 'neglected' and 'convicted' children and to prevent the commission of crime by young persons"

Industrial schools established

s3 "If shall be lawful for the Superintendent of any Province to establish for the purposes of this Act industrial schools and every such school shall be occupied by an use for males or females exclusively as any such Superintendent may direct..."

What children to be deemed neglected

s13 "Every child who answers to any of the descriptions hereinafter mentioned shall be deemed to be a 'neglected child' with the meaning and for the purposes of this Act—(1) Any child found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms. (2) Any child who shall be found wandering about or frequenting any street, thoroughfare tavern or place of public resort or sleeping in the open air and who shall not have any home or settled place of abode or any visible means of subsistence. (3) Any child who shall reside in any brothel or associate or dwell with any person known or reputed to be a thief prostitute or habitual drunkard or with any person convicted of vagrancy under any Act or Ordinance now or hereafter to be in force. (4) Any child who having committed an offence punishable by imprisonment or some less punishment ought nevertheless in the opinion of two justices regard being had to his age and the circumstances of his case to be sent to an *industrial school*. (5) Any child whose parent represents that he is unable to control such child and that he wishes him to be sent to an *industrial school* and gives security to the satisfaction of two justices before whom such child may be brought for payment of the maintenance of such child in such *school*."

Industrial Schools Statistics 1899

Inmates	Boys	Girls	Total	Religion Prot	Cath	Jew
In residence	323	267	500	190	399	1
Boarded out	234	183	417	389	19	0
With friends	96	42	138	66	72	0
At service	244	209	453	350	103	0
In hospital	5	2	7	6	1	0
Costley Inst	1	0	1	1	0	0
Lunatic asylum	2	0	2	0	2	0
Blind asylum	1	0	1	1	1	0
Deaf mute school	1	0	1	1	0	0
Refuges Inst	0	28	28	24	4	0
Orphanages	1	4	5	5	0	0
In gaol	4	0	4	2	2	0
Absconded	20	1	21	16	5	0
Totals	932	736	1668	1060	607	1

Reasons for Admission 1899

	Gov	Private	Boys	Girls	Total
Destitute	58	25	48	35	83
Begging	0	0	0	0	0
Vagrant	10	1	7	4	11
Living in disrepute	27	33	29	31	60
Uncontrollable	12	3	11	4	15
Accused or guilty of —punishable offences	36	19	43	12	55
By arrangement	2	0	2	0	2
Infant Life Protection Act	0	1	0	1	1
Total	145	82	140	87	227

Source *Appendix to Journals of the House of Representatives* 1900 Vol.2 E3. Includes a very comprehensive report on Industrial schools. Also a 97 page report on alleged abuse at the Catholic Industrial School, Stoke, Nelson. E3B

Neglected children taken before a Justice s14

"Every child who shall be found by any constable under circumstances which make such child a 'neglected child' within the definition aforesaid may be immediately apprehended by such constable without any warrant and forthwith taken before any two or more neighbouring Justices of the Peace to be dealt with according to this Act.

Neglected children to be detained

s15 "Whenever any child shall be brought before any justices and charged with being a 'neglected child' such justices shall proceed to hear the matter of the said charge and if the same shall be established to their satisfaction is shall be lawful for them to direct such child to be sent forthwith to any one of the said *industrial school*.."

Religious creed to be respected

"17s "Any two or more justices shall when directing any

child to be sent to an *industrial or reformatory school* state to what religious persuasion creed or denomination such child in their opinion belongs and shall order and direct that such child shall be brought up and educated in that persuasion creed or denomination." s43..."All ministers of religion shall have admission to every *industrial and reformatory school*...and access to such inmates thereof as may be members of their respective denominations and may give instruction.."

No debate When the Bill came before both houses of Parliament, there was no significant debate- the need must have been self evident. "Mr Stafford said that this Bill sought to ameliorate the condition of children who had been absolutely neglected of who had been guilty of crime. It was founded on a law which had been for some time in operation in Victoria... NZPD 20/9/1867 Vol.11 p1010.

Statute—Industrial Schools Act 1882
An Act to amend and consolidate the Laws relating to the Care, Custody, and Education of Children in Industrial Schools. Two significant new provisions were—
(a) Provision for licensing out- inmates may be licensed to reside with person outside the school. s55... "The Minister may, subject to the regulations to be made hereunder, license in the prescribed form any inmate to reside with some person who shall be willing and qualified to receive, take charge of, and qualified to provide for, maintain, and educate such inmate, and so that either the person taking such inmate shall be paid for the maintenance and education of such inmate at a rate not exceeding ten shillings a week, or shall be entitled to the services of such inmate in lieu of pay, or shall pay wages for his services, and generally, upon such terms and conditions in all respects as shall be prescribed by regulations aforesaid or specially agreed between the Minister and the person receiving such inmate."
(b) Provision for apprenticeships ss59-65 Male inmates may be apprenticed to sea service. Any inmate may be apprenticed to any calling on terms and conditions set.

1882 Industrial schools Bill Legislative Council. "The Hon Mr Oliver, in moving the second reading of this Bill, said it was intended partly to consolidate and partly to repeal the existing law with regard to destitute and criminal children. At present there was in the colony—

Three classes of industrial schools. The *first* consisted of those schools maintained exclusively by the Government, such as that at Burnham [Selwyn county near Christ-church*], that at Caversham [Dunedin*], and one in Auckland [Howe Street and Kohimarama*]. *Another* class of schools, one of which existed at Thames [Orphanage near Grahamstown*], was partly maintained by the local bodies; and there was a *third* class which were in connection with some private bodies, such, for instance, as the Catholic industrial school in [St Mary's*] Auckland, and one in [St Mary's*] Nelson. The Bill proposed still to continue these classes of schools, but under amended regulations." NZPD 15/8/1882 p332. *List in Schedule to 1882 Act.

Type of children at industrial schools "Those that exhibit various degrees of juvenile delinquency, including of course, those who, being orphans or destitute or both, have not escaped a perceptible taint of evil. And it may be remarked here that the destitute child is more frequently than not of this class. Unfortunately juvenile delinquency has not shown a marked decrease of late years in any civilised country, but in most countries it has, on the contrary, increased. **Causes** are to some extent the same as those that operate in the case of adult crime, and the problem cannot be attacked as a whole without dealing with the conditions that produce crime in modern society." E3p2

Chief causes of juvenile crime "(a) The stress of the struggle of life. (b) Bad hygienic surroundings, and consequent inferior physique; (c) Temptations that result from overcrowding, and from the greater facilities for committing petty thefts with impunity that exists in towns as compared with country. (d) Inherited low physical and moral nature. (e) Weakness and want of control on part of parents, commonly producing as its fruit absence of self-control on the part of children; (f) The neglect and bad example of parents. The causes we have principally to deal with are therefore (e), (d), (e), (f). The causes would be partly met by 1. Any remedy that so ameliorated the economic condition of the rural population that they would not be tempted to forsake the comparative wholesomeness of the country for the temptations and vicissitudes of the towns. 2. Removing back into the country those who are in danger of succumbing to the temptations and vicissitudes of the towns." E3p2

Three stage delinquency 1 Acquiring nomadic habits, exhibited in truancy and vagrancy. 2 Petty thefts and isolated offences against property. 3 More serious and habitual offences against property and persons. E3p3

Work ethic The training in industrial schools should be industrial, boys and girls are taught that a taste for manual employment should be acquired, and a trade properly learnt, or the learning of it properly begun. E3p4
Source *Appendix to Journals of the House of Representatives* 1900 Vol.2 E3.

Industrial schools overview
Robb— "From the early days of the colony, neglected and delinquent children have constituted a problem for the authorities... Major legislation in this field dates from the Neglected and Criminal Children Act 1867. This Act established the system of industrial schools which dominated the scene until the end of the century. These schools were residential institutions intended for the care and education of neglected children but to some degree were used also, and unsuitably, as orphanages and reformatories. They were established chiefly by the various provincial governments, but also in a few cases by voluntary organisations. The Central Government's administrative responsibilities were handled at first by the Department of Justice, but in 1880 these responsibilities were taken over by the Department of Education which initiated more

active and enlightened policy. The Industrial Schools Act 1882 permitted the boarding out of children who were in the care of such schools, and by 1895, 81 per cent of children from the schools directly controlled by the Department were in foster homes. This emphasis on foster homes rather than institutions has remained a feature of the child welfare services to the present day and associated with it has been an encouragement of adoption..." James H Robb. Prof, School of Social Science, Victoria University. '*An Encyclopaedia of New Zealand*' 1966 Vol.1 p604

INDUSTRIAL SCHOOLS HISTORY

Matthews & Matthews—"More serious for colonial society were the side-effects in terms of flourishing prostitution, gambling, alcohol consumption and the desertion of wives and children.

Otago settlers had to deal early on with such problems on their doorstep and had to consider ways of distributing aid to the deserving poor. In 1862, the Otago Benevolent Society was formed in a bid to cope with the growing numbers of deserted wives and children and, using its own resources, established in 1865 an industrial school. Initially, the Otago Provincial Government refused to get involved but by 1867 it was convinced by a concerned public that provision had to be made for the care and custody of neglected and criminal children. Instrumental was the report of John Brannigan, Commissioner of Police for Otago, who a year earlier had pointed to the relationship between the numbers of children roaming the streets and the local crime rate. He endorsed the establishment of a local industrial school so that these children would be separated entirely from profligate relatives and other adverse circumstances' (Whelan, 1954, p. 22). The Police Commissioner had seen it all before, having had experience in dealing with abandoned and neglected children in the Australian State of Victoria. The Neglected and Criminal Children's Ordinance that was passed by the Otago Provincial Council in 1867 was, therefore, modelled on the Victorian Act of 1864 which in turn, was based on the 1861 British legislation. It made provision for neglected and criminal children to be taken into the care and custody of the provincial government and for the establishment of industrial and reformatory schools in which to house them." p60

Reformatory industrial schools established

"The Colonial Secretary foresaw problems with many of the provisions and in an attempt to standardise and control such institutions, the Legislative Council drew up instead the Neglected and Criminal Children's Act 1867, the legislation which would for years to come bind the state to caring and protecting its less fortunate younger citizens. In practice, it enabled provincial leaders to establish reformatory or industrial schools for children under 15 years of age. An amendment to this legislation in 1870 allowed for inmates of the industrial schools to be boarded out for the purpose of learning work skills. In this way, girls could be placed in domestic service while boys became farm-hands or factory helpers. Ten years later, the Education Department had taken over the control of the Industrial Schools from the Justice Department and in 1882, the Industrial Schools Act authorised the placement of children into the care of a nominated person thus representing the beginnings of foster homes. In New Zealand's male-dominated mining and milling settlements, the practice of boarding out very young children flourished but by the early 1890s there was increasing concern about the safety of infants in foster homes. The Infant Life Protection Act of 1893 went some way to step up state surveillance of foster parents. The case of infanticide of six babies in her care by Minnie Dean (who was hanged in 1895), highlighted the need for heightened state protection of children (Hood, 1990). A move in this direction was made in 1896 but it was the 1907 Infant Life Protection Act which required licensing for all foster homes caring for children under six years of age. Registration of homes was carried out by women welfare officers who, as trained nurses, also monitored applications for adoption of children as well as illegitimate births in their local areas." p61

Placement options

"Children could be placed in foster care, reformatories or industrials schools for a number of reasons: their being neglected (those found begging were included in this category); those found wandering without any home or visible means of subsistence; those residing in a brothel; those dwelling with any person known to be a thief, prostitute or habitual drunkard; or those represented by their parents as being unable to be controlled. The first such institution to be established under the 1867 legislation was the Otago Reformatory run by the Otago Benevolent Society. Transferred to the control of the Provincial Council it became known as the Otago Industrial School and later as Caversham Industrial School (Whelan, 1954, p. 36). A review of the Industrial Schools system in 1900 resulted in the separating of girls and boys into separate institutions and the establishment of reformatories for juvenile children. For example, the Burnham Industrial School became a reformatory for boys; a parallel institution known as Te Oranga was established for girls; a farm Industrial School for boys began in Levin with boys transferred there from the Caversham Industrial School whilst Caversham became a girls-only facility (Beck, 1928). The numbers of inmates in state institutions increased from 807 in 1880 to 1,703 in 1900. As Dalley (1987) observes, the overall rise in numbers of those attending the industrial schools was not matched by a corresponding growth in the numbers of those of the same age in the total population.

Institutional work and education

"Once incarcerated, children learned about 'salvation' through hard work in kitchens, the laundry, the workshop and, in the case of isolated rural institutions such as Burnham, on the farm. In these institutions they endured harsh physical surroundings, brutalisation, overcrowding and endless rules (*AIHR* 1907, E-3B, pp1-10; Lee, 1937). It is clear from Reports of Inspectors of Schools that a basic grounding in reading, writing and arithmetic was the best that could be hoped for within the inadequate schoolrooms of the industrial schools. Instead, emphasis

was placed upon the kinds of work that would equip the commonly referred to 'inmates' of each 'asylum' for a future of manual labour. To this end it was reported in 1902 that the boys at Burnham Industrial School seemed to be making progress. 'Workshops for carpentry, tailoring and shoemaking are now in full working order. These shops supply a long-felt want, opening up as they do to smart, intelligent boys interesting and profitable occupations, instead of their being. compelled, as formerly, to take farm labour, irrespective of individual tastes' (*AIHR* 1902, E-3, p10)" p62.

Churches and charitable trusts

throughout the colony also catered for orphaned, neglected and destitute children. In the main, these institutions were managed locally, subsidised by the state and monitored by Department of Education Inspectors. In Auckland, such institutions included St Mary's Convent Orphanage in Ponsonby, St Stephen's Orphans' Home in Parnell, Kohimarama Naval Training School and the Howe Street Orphan Home (known later as the Auckland Industrial School) for girls and boys. There was an orphanage and training school for girls and boys in Thames; St Joseph's Providence Orphanage for girls in Wellington; two orphanages in the Nelson area; one in Christchurch; and one in Dunedin (AIHR 1881 E-6A, pp1-28) p63

Boarding out

"became common practice in the case of older children in the care of the state. By this means, inmates of the Industrial Schools were released into service, ostensibly to learn additional skills, while remaining under the technical control of the state. The 'working age' at the time was 12 years. Placed children became a type of indentured labour force, dispersed amongst the farmers, factories and households of the communities adjacent to the schools. In what amounted to the use and abuse of children, many of them suffered exploitation and misery. For example, the Te Oranga Reformatory on the outskirts of Christchurch commonly sent its young women residents to homes throughout the Canterbury province as domestic servants. Child Welfare files reveal the consequences: on their return to Te Oranga, many were sent on to the Canterbury Female Refuge, the local maternity home, to give birth. Others, such as Georgina Shand avoided such a plight. In 1915 she was sent back to Te Oranga from a Rakaia service placement 'following trouble with a male on the property who considered her to be "fair game" (Dalley, 1987, p. 160)." p66

While placements were commonly lauded as opportunities for inmates to learn skills and have modelled for them middle-class family structures and values, they were also a cheap way of dealing with an increasing number of juveniles. Not having to provide sleeping quarters or pay supervising staff was experimented with at the Burnham Industrial School in the early 1900s. It is not clear whether this was an attempt to stem the tide of 'sexual degeneracy' which was considered to be running rampant at Burnham in 1906 but it is likely that in addition to saving money, this system might have aimed at protecting younger boys from the 'incorrigibles' and inferred homosexual activity. The practice entailed sending groups of three to five boys to neighbouring cottage homes to sleep the night. By 6 am the next morning they were returned to the institution..." p66 **Source** 'Paradigms of family, welfare and schooling in New Zealand' Kay M Matthews & Richard Matthews Ch2 *The Family in Aoteroa New Zealand* ed V Adair and R Dixon. Pub Longman 1998.

Demise of industrial schools systematic purging'

Dalley— The Child Welfare Act 1925 expunged the term 'industrial school' from the Education Department vocabulary. This terminological expulsion marked the final stage of a reorganisation of the institutions which began in 1916 and involved the closure of some homes and the refocusing of others. As with the second round of institutional closure and reorganisation which occurred from the mid 1980s, the changes between 1916 and 1925 were difficult to implement. Opposition was strong as some officers in the Department, seemingly 'ahead' of public opinion, gave practical force to their belief in the value of family life for children and young people.

Changes in the industrial school system occurred alongside continuities in other aspects of the state care of children and young people. The practice of infant life protection work, adoption and boarding out remained largely unaltered; the Education Department maintained its ambivalent relationship with private welfare groups, disparaging the system of private institutions but calling on voluntary aid for assistance in probation work. The modifications in the system around these services nevertheless had an impact on them. Boarding out and probation both became central to the new child welfare system, and this centrality meant that there was greater cooperation with families, and with religious and community groups which were enlarging their own spheres of social work.

The industrial school system had become increasingly overloaded by the time Beck assumed control in 1916. The number of children and young people under the Department's charge increased from the beginning of the First World War, a rise in the residential population of 300 in three years reflecting an overall increase in the number committed to the care of the state and matching a drop in proportion boarded out form institutions... p69

Beck embarked on what he termed a 'systematic purging' of the industrial schools. Proceeding on the principle that many residents were in institutions through no fault of their own, but because of destitution or parental neglect, he argued that they required only the opportunity to 'prove' themselves. Beck visited most institutions early in 1917, identifying those fit for service or boarding out and removing them. He took issue with the detention of residents for any longer than was necessary. Not only did this affect a young person's chances for rehabilitation by leaving him or her 'completely institutionalised', it could also cause anguish for families. 'Later ... I was to meet many a parent embittered by the fact that their son had been returned too late to be successfully reabsorbed into the family', he [Beck] noted. p70

CAVERSHAM INDUSTRIAL SCHOOL

1905 Report— "The Caversham Industrial School is situated at Lookout Point, Caversham, Dunedin, and was proclaimed an Industrial; School in the Otago Provincial "Gazette" during the year 1869. The establishment of the institution was due to the far-sightedness of 'Mr. James Macandrew, then Superintendent of the Province of Otago, and Mr. St. John Branigan, Superintendent of Police for Otago, both of whom recognised the advantages that would arise from the training of neglected and criminal children, though the numbers of these at that time were few. The school was placed under the management of Mr. Brittain, who resigned his office as sergeant of police to take up the work, and for six years he conducted the institution, which under the admirable supervision of Mr. Branigan and Dr. John Hislop, Secretary of Education for Otago, fully realised the hopes of its founders.

In 1875 Mr. Brittain died, and was succeeded by Mr. Elijah Titchener, at the time of his appointment a sergeant of police in Otago. During the seventeen years that Mr. Titchener held office ((he resigned in September, 1892) a number of additions were made to the buildings, which had been found all too small for their purpose. In 1878, on the abolition of the provinces, the management of the institution passed into the hands of the General Government.

Barrack system

In the earlier days of Mr. Titchener's management, up to 1886, the barrack system prevailed, and there were over three hundred children at one time in the school, many of them infants ; but in 1886 the boarding-out system was adopted by the Government. 'This reduced the numbers considerably, and improved matters very much. In 1889 the School Band took a prize at the Exhibition, which was held in that year in Dunedin. On the 13th of October, 1892, the Hon. W. P. Reeves, then Minister of Education, appointed the present Manager of the School, Mr. G. M. Burlinson, at that time headmaster of the Chapel Street School, in Auckland. Since 1892 considerable additions have been made to the building. These include the whole of the girls' part, which is a brick building, thoroughly fitted up with all the later sanitary and other improvements. A new dining hall and kitchen, also in brick, were subsequently added; and, but for the separation of the sexes, the boys' part-which is composed of old wooden buildings that did duty in Dunedin as a post office, etc— would have been rebuilt in brick.

The system of boarding-out children

has been extended. In place of the children returning to the school at the age of twelve they remain in their foster-homes till they are fourteen, and if the foster-parents find them situations, which are approved by the Manager, they are allowed to go to these, and some of them do not return to the school at all. Foster-parents are paid at the rate of 7s a week for the care of children, who are visited every month by a lady residing in the district, and acting as Local Visitor, and three times a year by Visiting Officers from the Department of Education, Wellington, the supreme controlling body. The teachers of the public schools are also asked to report every quarter on all boarded-out children attending schools, and in addition to this the Manager makes personal visits in any cases that require immediate attention. Miss Jessie Sievwright is the Official Correspondent to the Boarding-out Department, and acts in conjunction with the Manager of the School in these matters. She succeeded to this position in 1890, when her predecessor, Miss Janet, resigned.

The day school attached

to the institution is carried on exactly on the same lines as a public school, so far as regards the syllabus of instruction. Under the careful tuition of Mr. D. W. M. Burn, the schoolmaster, Miss J. Falconer, schoolmistress, and Miss Harrison, assistant, the children make good progress, and hold their own with the pupils of any other school. In addition to the teachers, the Manager has a staff comprising a clerk, assistant clerk, carpenter, gardener, attendant, matron, cook, laundress, dress-maker, machinist. The medical officer, who has a service experience of over twenty-five years, attends once every week, and at any other time that the may be required.

The object of the institution

is the moral, physical, and mental training of children, who have been left in indigent circumstances, or who have committed offences not sufficiently gross to cause them to be sent to a reformatory. The school is governed under the Industrial Schools Act, 1882, and the Amendment Act of 1895, and is under the control of the Minister of Education.

The institution is situated

at the top of Caversham Rise, in a picturesque position, with a splendid view of the ocean and part of the town. The buildings comprise girls' part, which is completely cut off from the boys', dining hall, kitchen, etc.; boys' dormitories, day school, carpenter's shop, recreation hall, bathroom, theatre, and two hospitals, one for each sex; these have been added quite recently.

About 2,000 passed through by 1905

Probably about two thousand inmates have passed through the school, and many of them occupy responsible positions in hew Zealand and the adjacent colonies. The present (January, 1904) number of inmates is 539; of these 141 reside in the school, 183 are boarded-out, 27 are licensed to friends, and the remainder are at service.

The amount standing to the credit of inmates at service is about £6000, in sums ranging from a few pounds to thirty or forty pounds. This money is handed over to inmates of good character, when the Minister is satisfied as to the purpose for which they require the money.

Mr. George Melville Burlinson,

Manager of the Caversham Industrial School was born in Kent, England, in 1854, and is a son of J r N. Burlinson, sometime of Mauritius. He was educated at the Royal College, Mauritius, and afterwards came to New Zealand, where he entered the teaching profession as a member of the staff of Newton East School, Auckland. In 1887 he was appointed headmaster of the Albert Street School,

which was established for the education and training of children, who for various reasons did not attend the ordinary public schools. Five years later he was offered his present appointment, which he accepted. Mr. Burlinson has not only proved a capable manager of the institution over which he now presides, but has also done a great deal, by articles contributed to various daily papers, to stimulate public opinion with respect to the necessity for such institutions. He is Major of the No. 3 Battalion of the Otago Public School Cadets, is a member of the Royal Horticultural Society of England, and President of the Dunedin Horticultural Society.

Mr. David William Murray Burn, M.A., Headmaster of the day school connected with the Caversham Industrial School, was born in Geelong, Victoria, Australia, in 1861, and came to Dunedin in 1870. He was educated at the Otago Boys' High School, and the University of Otago, and gained distinction in Latin and French. In 1884 he entered the teaching profession as a member of the staff of the Wellington College, and since that date has held several important appointments in Canterbury and Otago. He was appointed to his present post in 1895. Mr. Burn is well known as a public lecturer, and as a writer whose work in verse and prose is marked by distinction."

Source 'The Cyclopedia of New Zealand' 1905 Vol.4. Otago-Southland pp148-149

John Beck 1883–1962 Educational reformer

Obituary: John Beck was born in January 1883 at Kircudbright, Scotland, and was the son of Thomas Fazackerley Beck and of Margaret, *née* Smith. In 1889 he came to New Zealand with his parents and his father found employment with the Railways Department. In June 1899 young Beck joined the New Zealand Education Department as a clerical cadet. He worked his way rapidly through the basic grades and, in 1915, became officer in charge of the Industrial and Special Schools Section of the Department. His dislike of the system whereby delinquent children were sent to institutions led him to advocate that, except for the most serious of handicapped cases, they should be boarded out in foster homes. *Beck's outspoken campaign against the industrial schools drew strong opposition and he quickly became a controversial figure. His arguments, more than any other single factor, induced the Government to close its three industrial schools–at Auckland, Dunedin, and Burnham.*

In 1924 the Government sent Beck to study child welfare methods in the United States and Canada. When he returned he wrote a report which laid the foundations for the Child Welfare Act of 1925. When the Act came into force in the following year Beck was appointed Superintendent of Child Welfare. Among the innovations contained in the Act were provisions for the establishment of Children's Courts and for the appointment of Child Welfare Officers. Beck remained in his post until 1938, when failing health obliged him to retire. After this he lived quietly at Ngaruawahia until his death, in Hamilton, on 13 January 1962... By his singleness of purpose, Beck inaugurated widespread reforms in the New Zealand child welfare system. His forceful exposition soon caused his ideas to be accepted and there has never been any serious suggestion that the industrial schools should be revived. He was greatly aided in his campaign by J. A. Lee, the novelist and member of Parliament, who drew much of the background material for *Children of the Poor* and *The Hunted* from the industrial school at Burnham.

Source Bernard John Foster, M.A., Research Officer, Department of Internal Affairs, Wellington. *Dominion*, 17 Jan 1962 (Obit) *Evening Post*, 17 Jan 1962 (Obit).1966 Encyclopaedia.

John A Lee. 1891-1982

Was born in Dunedin to Scots Romany parents. His father Gipsy Alfredo Lee deserted the family before Lee knew him, becoming a vagrant acrobat and entertainer. The extreme poverty of the family's life is the context of Lee's novel **Children of the Poor* (1934) and of his mother Mary Lee's proud autobiography The Not So Poor (1992). Poverty breeding crime, Lee became an habitual thief and was sentenced to Burnham Industrial School in April 1906, effectively being made a ward of the state until 21. He broke away time and again, labouring and living on the swag until finally gaoled in Mt Eden. He was freed at last in March 1913. Although no criminal in any real sense, he had lived at odds with the law for seven years.

Source www.bookcouncil.org.nz

Early Child Welfare Services 1867-1925

From the early days of the colony, neglected and delinquent children have constituted a problem for the authorities, though over the years, with increasing standards of living and health, the proportion of children whose difficulties arise chiefly from economic circumstances or the death of parents has become very small. Major legislation in this field dates from the Neglected and Criminal Children Act 1867. This Act established the system of industrial schools which dominated the scene until the end of the century. These schools were residential institutions intended for the care and education of neglected children but to some degree were used also, and unsuitably, as orphanages and reformatories. They were established chiefly by the various provincial governments, but also in a few cases by voluntary organisations. The Central Government's administrative responsibilities were handled at first by the Department of Justice, but in 1880 these responsibilities were taken over by the Department of Education which initiated a more active and enlightened policy. The Industrial Schools Act 1882 permitted the boarding out of children who were in the care of such schools, and by 1895, 81 per cent of children from the schools directly controlled by the Department were in foster homes.

This emphasis on foster homes rather than institutions has remained a feature of the child welfare services to the present day and associated with it has been an encouragement of adoption, New Zealand being the first British country to make statutory provision for the adoption of children 1881). Steady developments in the field of child welfare found expression in the Child Welfare Act 1925, under which a special branch of the Department of Education, now known as the Child Welfare Division was established.

YOUTH JUSTICE IN NEW ZEALAND

1867 Neglected and Criminal Children Act passed. This gave courts the power to commit children to industrial schools. It also sought to keep industrial schools distinct from reformatories, which were for 'criminal' children.

1882 Industrial Schools Act passed, repealing the 1867 Act. This placed the guardianship of neglected or criminal children in the hands of the Managers of the Industrial Schools. The Act also increased the power of the Education Department, giving it considerable discretion over where a child was placed and for how long.

Justices of Peace Act passed. This distinguished between children (aged under 12 years) and young persons (aged 12 and under 16 years). The Act stated that non-homicide indictable offences committed by a youth could be dealt with summarily (with the parents consent). Penalties available for both children and young persons were imprisonment, fine or whipping.

1893 Criminal Code Act passed. Section 22 stated that no person under the age of 7 could be convicted of an offence and those under the age of 12 were given the benefit of the doli incapax rule.(19)

1900 Reformatories While reformatories had been legislated for since the 1867 Act, the first reformatories were established to keep criminal children separate from those in need of care. Burnham Industrial School and Te Oranga Home were transformed into reformatories. The age limit of committal to an industrial school was also raised to 16 years.

1906 Juvenile Offenders Act passed. The object of this bill was 'to save children from the degrading influences and notoriety inseparable from the administration of justice in Criminal Courts.' The Act established private hearings for juveniles, stating that Magistrates should assign a 'special hour' for hearing of charges against persons under 16 years. (20)

1908 Industrial Schools Act passed, consolidating the 1882 Act.

1917 Statute Law Amendment Act passed, giving statutory recognition for the appointment of Juvenile Probation Officers. This represented an attempt to keep juveniles in natural home conditions and relegate an admission to an institution as a last resort.

1924 Prevention of Crime (Borstal Institutions Establishment) Act passed. This recognised the measure used since 1909 of sending some male youths between 15 and 21 to prison.

1925 Child Welfare Act passed, making 'better provision with respect to the maintenance, care and control of children who are specially under the protection of the State and to provide generally for the protection and training of indigent, neglected or delinquent children.' The Act formally established Children's Courts.

1957 Juvenile Crime Prevention section of the Police established.

1961 Crimes Act passed, raising the age of criminal responsibility from seven to ten. The Act formalised the doli incapax rule: No child shall be convicted of any offence... under the age of 10 years. No child shall be convicted of any offence .. when over the age of 10 years but under the age of 14 years, unless the child knew either that the act or omission was wrong or that it was contrary to the law (ss. 21 and 22).

1968 Guardianship Act passed, which formally established the paramountcy principle, stating that the interests of the child or young person shall be the first and paramount consideration (s 23(1)).

1972 Department of Social Welfare formed.

1974 Children and Young Persons Act passed.

1978 Report of the Royal Commission on the Courts published recommending the establishment of a Family Court that should include the Children and Young Persons Act within its jurisdiction.

1979 Report by the Auckland Committee on Racism and Discrimination (ACORD) on the maltreatment of children placed in care in DSW homes.

International Year of the Child, focusing public attention upon the rights of children. Discussions during that year resulted in the establishment of the New Zealand Committee for Children and a National Advisory Committee on the Prevention of Child Abuse.(21)

1980 Revision of Court structure of Court of Appeal, High Court, District Court with separate Family Court created.

1983 Report of the Advisory Committee On Youth and Law In Our Multicultural Society published.

Maatua Whangai commenced.

1984 The Labour Government established a Working Party to review the existing Children and Young Persons legislation.

1985 Criminal Justice Act passed, forbidding imprisonment of a person under the age of 16 years except for a purely indictable offence

1986 Puao-Te-Ata-Tu report filed.Te Whainga i Te Tika report to the Minister of Justice.

1986 Children and Young Persons Bill introduced into the House, largely following the recommendations of the 1984 Working Party.

1987 The Labour Government established a second Working Party to review the 1986 Children and Young Persons Bill. The Working Party's report was referred to Select Committee in December 1987.

1988 State Sector Act passed

1989 Children Young Persons and their Families Act came into effect November 1st.

Public Sector Act passed.

New Zealand signed the United Nations Convention on the Rights of the Child, which states In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3.1)

The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or indirectly, or through a representative in a manner consistent with the procedural rules of national law (Article 12.2)

The Welfare Model in New Zealand

In New Zealand, the pendulum swing of youth justice philosophy initially followed international trends, with the classical approach giving way to the positivist welfare approach at the beginning of the 20th century. The 1925 Child Welfare Act was the first piece of legislation in New Zealand to fully embrace this model, and focused on redefining the delinquent as a child in need. Seymour argues that although the early legislation in New Zealand was heavily influenced by British law, the 1925 Act adopted the more liberal welfare-based philosophies of American policymakers. (22)

The 1925 Child Welfare Act established a discrete Children's Court 'with the aim and on the principle that [young persons] require protection and guidance rather than disciplinary punishment.'(33) This welfare philosophy prevailed for the next 50 years, reaching an apotheosis in 1974 with the Children and Young Persons Act, which was founded on the principle of 'the interests of the child or young person as the first and paramount consideration...'(24) ....

The 1989 Act: 'A New Paradigm'

The 1989 Children, Young Persons and their Families Act was hailed upon its inception as 'A New Paradigm(65) in that it went beyond traditional philosophies of youth justice and offered a completely new conceptual approach.

The legislation was unique in that it codified statutory principles and objectives (sections 4 and 5) and it established specific youth justice principles separate and distinct from those governing care and protection procedures.

These Youth Justice Principles are listed in section 208 and are as follows:(66)

— Criminal proceedings should not be used if there is an alternative means of dealing with the matter

— Criminal proceeding should not be used for welfare purposes

— Measures to deal with young offenders should strengthen family groups and foster their skills to deal with offending by their children and young people

— Young people should be kept in the community as far as is consonant with public safety

— Age is a mitigating factor when deciding on appropriate sanctions

— Sanctions should promote the development of the youth and be the least restrictive possible

— Due regard should be given to the interests of the victim

— The child or young person is entitled to special protection during any investigation or proceedings

These objectives reflect the contemporary trends and concerns pervading youth justice practice: the separation of justice and welfare processes, the importance of diversion, empowering victims, strengthening families, and offering culturally appropriate law. It is in the interplay of these objectives that the new paradigm was founded.

Objectives of the 1989 Act

While the 1989 Act makes a clear attempt to strike a balance between the competing demands of the justice and welfare models, the legislation also goes some way toward promoting other contemporary principles and concerns.

i) Striking a Balance between Justice and Welfare There are obvious attempts by the policy makers of the 1989 Act to reconcile the dichotomies of the justice and welfare models. The legislation displays some efforts to move towards a justice approach while still giving appropriate consideration to the needs of the young offender.(67)

Support for justice dictates can be seen in the establishment of a separate criminal jurisdiction in the District Court. This was intended to prevent the blurring of welfare and justice, and to promote due process, which, it was argued, would be better protected within the District Court ambit.

While the youth justice section clearly favours the justice model, the guiding principles of the 1989 Act also address welfare objectives. Section 4 states 'The object of this Act is to promote the wellbeing of children, young persons, and their families and family groups.'

Section 4(f) aims to blend the systems of welfare and justice in relation to young offenders and lays out the object that 'where children and young people commit offences; i) they are held accountable ...; and ii) they are dealt with in a way that acknowledges their needs...' This focus on needs as well as deeds represents a clear attempt to ensure that the New Zealand law did not become only a 'just desserts' model.

It must be noted that there are obvious dangers in pigeonholing the legislation within the confines of either the justice or the welfare framework, as this can lead to a rejection of the objectives of the model not chosen.

ii) Diversion

The objectives of diversion became increasingly important with the realisation that the adverse effects of court processes, including the resulting stigma, tended to increase the likelihood of re-offending.

Section 208(a) of the 1989 Act states with unprecedented clarity that criminal proceedings are to be a last resort. The legislation severely limits Police powers of arrest without warrant, and prevents non-arrest charges being laid in the Youth Court until there has been a Family Group Conference. Currently up to 84% of youth offending is dealt with out of court.

However, the Act did not directly address concerns about the Police acting as gatekeepers to the courts and it is to the Police's credit that in practice 76% of all young offending is dealt with by informal police diversionary strategies. In this way, the approach taken by Police has been fundamental to the Act's success.

iii) Victim and Offender Empowerment

The 1989 Act aims to empower both victims and offenders so that they may feel more involved in the process and satisfied with the outcome.

Traditional justice systems have tended to alienate young offenders, who often came to see themselves as victims of the system, rather than causes of distress to others.(68) Legislators made a significant step towards avoiding this problem by banishing the word 'juvenile' from NZ justice terminology. Mike Doolan noted:

> ... in my experience young people find [the word 'juvenile'] deeply offensive. They are the first to realise that juvenile is usually only used as a companion to the word delinquent. Juvenile is not a word used in relation to young people except where they are involved with the criminal justice system and thus it is a stigmatising term.(69)

More practically, the Act attempts to involve the young offender and the victim in the decision-making process with the objective of reaching a group consensus on a 'just' outcome. Traditionally, justice systems offered neither representation nor empowerment of the victim, and their interests were largely ignored. Victims were thus left feeling excluded from the process, and less likely to feel satisfied with the outcome. Similarly, the young offender was offered no real opportunity to understand the consequences of and witness the distress caused by their actions.

Family Group Conferences attempt to address these issues and offer a forum for the mediation of concerns between the victim, the offender and their families with the aims of achieving reconciliation, restitution, and rehabilitation. Although Family Group Conferences have the primary aim of family empowerment, by including the victim in the decision-making process they can achieve many of the aims of restorative justice for the victim. Thus, while 'restorative justice' is not a term used in the Act, and nor was a restorative justice approach necessarily contemplated by its policy makers, the Family Group Conference is widely seen as a restorative justice model that could be transplanted into the adult system.

iv) Strengthening Families

One of the key objectives of the 1989 Act is to empower families and communities, rather than professionals, when dealing with young offenders.

To this end, the 1989 policy makers repealed the 1974 paramountcy principle in respect of youth justice, and instead took steps to acknowledge the autonomy and responsibility of the family group. Section 5(a) establishes

The principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person,' and accordingly that, wherever possible, regard should be had to [their] views.

The Family Group Conference attempts to meet these objectives, returning autonomy and responsibility to the family group and offering them the opportunity and the resources to have a real impact in the outcomes for their young offenders.

v) Indigenous Concerns

There was a strong commitment by the Select Committee when re-drafting the 1989 legislation to offer a model of youth justice that would better meet the needs and values of Maori and other cultural groups in New Zealand.

The legislation seeks to introduce elements of indigenous responses to offending by offering a community group consensus process to deal with notions of redress and responsibility. The Family Group Conference, while not a distinctly Maori model, is certainly consistent with an indigenous approach to resolving offending. The Conference system represents an attempt to empower Maori (and other ethnic and minority peoples) to make decisions about their young people.

A New Paradigm

Clearly then, the 1989 Act was founded on a number of principles, striving not only to achieve a balance between the polarised goals of the welfare and justice models, but also to realise the objectives of effective diversionary strategies; to provide processes allowing for mediation between victims, offenders and their families; to empower whanau/families; and to offer appropriate services that are culturally sensitive.

The legislation was created in a volatile political and social setting in which there were attempts to reconcile ongoing conflicts such as the role of the Treaty and rangatiratanga; the role of the state vs. the responsibility and autonomy of the family; the role of police; the justice vs. welfare models; and the rights of the child vs. the rights of family to control and discipline.

The resulting precepts endeavour to reconcile these conflicts and at the same time to meet New Zealand society's unique needs. At its introduction, the 1989 Act was seen as a completely new process of youth justice - a New Paradigm - and it has since become 'an international trendsetter.'(70) As District Court Judge FWM McElrea concluded in 1993(71)

We indeed do have a new paradigm of justice. It is not simply an old model with modifications. A new start has been made, new threads woven together and a new spirit prevails in Youth Justice in New Zealand.

Source Youth Justice Website *See* for full 19 page Paper. www.justice.govt.nz/youth/history/part2.html

NEW ZEALAND ADOPTION

Informal common law adoption 1840-1880

Before 1881, adoptions were taking place in New Zealand. Pakeha adoptions were informal or contractual and had no secure basis in Law. Children were cared for by foster parents who agreed to receive them as members of their families. There was no security of status or tenure to adoptees or adopters. Maori adoptions arranged by Whanau, were open, based on long standing Maori custom.

"Before the enactment of the Adoption of Children Act 1881, an informal process of adoption was common in New Zealand as in other countries. Children were cared for by foster parents who agreed to receive them as members of their families. In effect it was a system of voluntary guardianship. In many situations it was an adequate and satisfactory procedure, but it has weaknesses which sometimes proved serious. A person standing in *loco parentis* to another's child had, as it were, no security of tenure, and the child was equally insecure. When years of devoted care had been bestowed on the child the natural parent might appear and successfully demand the custody of the child. A worthless parent might even use the situation as a means of extortion. It was impossible to form a secure relationship which could not be disturbed at a later date by the natural parents." Campbell 1957 p1

Common law no protection

"Attempts were made to render the position of the adoptive parent and the adopted child less vulnerable by obtaining a contractual undertaking from the natural parent; but such agreements proved unavailing against the rules of the common law. The courts adhered to a strange conception of public policy whereby adoption was deemed to be against the public interest. Neither party to an agreement for adoption could enforce any rights under the agreement or recover damages for breach of the agreement." *Humphrys v Polak* (1901) 2KB 385 LJK p752

Until adoption was recognized by an Act of Parliament any adoption agreement in dispute had to be dealt with under Common Law. "At Common Law adoption in the sense of transfer of parental rights and duties in respect of a child to another person and their assumption by him is unknown and the rights, liabilities and duties of parents are inalienable." 17 Halsbury's Laws of England 2nd Ed p679

"It was impossible, by agreement, to give the child the legal status of a child of the adoptive parents. The agreement itself was a scrap of paper. If the natural parents wished to take the child back the interests of the adoptive parents and their other children were irrelevant. So long as the natural parents were alive, there was always the possibility that at some time the parents might break up the family by reclaiming the adopted child." Campbell 1957 pp1-6. Refer for detail on Common and case law.

1875 Adoption contract revoked

First reported adoption case in New Zealand. An agreement made 2/3/1875 between Emily Cassin of Christchurch for the adoption of her four months old child by Robert Bailey (reputed father of child) and his wife of Akaroa.

Adoption Contract 1875

"**1** That in consideration of the said Robert Bailey adopting, maintaining, and educating the said child from the date of these presents, and relieving the said Emily Cassin from all responsibility in respect thereof, the said Emily Cassin will, from the said date, leave the said child in the custody and under the sole control of the said Robert Bailey - and in case of his death, under the sole control of his wife.

2 That the said Emily Cassin will not at any time hereafter attempt to remove the said child, or induce it to depart from, such custody and control, nor in any manner interfere with the said Robert Bailey or his said wife in the care, management, and education of the said child.

3 That the said Emily Cassin will not at any time represent herself as the mother of the said child.

4 That the said Robert Bailey, for himself and his said wife, agrees to accept and undertake the sole custody, control, and care of the said child and adopt and take into his family in all respects as if the said child were the lawful child of him the said Robert Bailey and his said wife.

5 That the said Robert Bailey will maintain, support, and educate the said child in a proper manner, according to his means and ability, and will do all necessary acts and things in order to bring up the said child in a proper manner.

6 Lastly, that in case either of the said parties hereto shall infringe this agreement in any particular, he or she shall be liable to pay to the other of them the sum of £200 as liquidated damages."

Regina v Bailey (1875) 3CA46-53

The Court of Appeal 24/5/1875 found, "that the mother is entitled to the custody, not withstanding the contract stated in this case" *Regina v Bailey* (1875) 3CA46-53

Demand for change

"Before any statute regulating adoption was passed there had in fact been many instances where kindly disposed persons had maintained, educated and cared for a child not their own. This relationship was created by the act of the parties, and might be broken at any time if the natural parents took steps to reclaim their own child. In some cases this occurred after a strong affection had grown up between the foster parent and child, and after considerable sums had been spent on the child's maintenance and education. It was stated by the Hon. Dr. Grace, a member of the Legislative Council, and a medical practitioner, in the debate in the Council upon the first Bill for Adoption of Children, that he had frequently seen reputed parents suffer all the agonies and pain of actual parents, from the loss of a child which had been placed in their hands by some drunken and disreputable father or mother, and very often torn away from them solely for the purpose of extorting money, at an important epoch in the child's life, and he had seen great injury inflicted on children and on the State itself, as the result of this condition of things. [NZPD Vol.39. 22/7/1881 p6] In these circumstances a demand arose for an inexpensive adoption law, which would give security to the relationship between adopting parent and child, and a more effective scope for the philanthropic activities of kindly disposed people." 1921 David Stanley

GEORGE MARSDEN WATERHOUSE 1824-1906

This remarkable man was pivotal in our New Zealand adoption history. He was responsible for the early introduction of legal adoption into New Zealand. George Waterhouse came from South Australia in 1869. He purchased substantial properties in the Wairapara, and became a member of the Legislative Council in 1870. In 1881 he introduced his 'Adoption of Children Bill'. His Private Member's Bill became the first Adoption Act in the British Empire on 12th July 1881. [England waited until 1926]

George Marsden Waterhouse 1824-1906
Source: Mortlock Library South Australia

Kanyaka Station c1870s South of Lake Torrens
Waterhouse was associated with this property, and became member for East Torrens in Legislative Council/ General Assembly.

George Marsden Waterhouse

Born at Penzance, Cornwall, England, on 6th April 1824, the sixth son of the Rev John Waterhouse, a liberal Methodist minister. George was educated at Kingswood School a Wesley College, near Bristol, England. When his father was appointed Superintendent of 'Wesleyan Methodist Missions in Australia and Polynesia', the family emigrated to Hobart Town, Tasmania on the *James,* arriving on 1st February 1839. George was then 15 and worked for a brother in Mancester House, a Hobart merchant's office for four years. At the age of 18 he visited New Zealand with his father, but on their return journey his father was lost overboard at sea on 30th March 1842.

South Australia

In 1843, George then aged 19, with an older brother established a successful Merchant's business in Adelaide.

There was a rapid increase in immigrants, generated a business boom. In 10 years George earned enough money to devote the rest of his life to public service. He married Lydia Giles [daughter of William Giles] in Adelaide on the 5th July 1848. [The same year, a candidate for South Australia's first partially representative assembly pulled out, and it was the accidental beginning of half a century's public service when Waterhouse's name was put forward in his place. Grant p44]

Political career

In 1851, he was elected to the Legislative Council for East Torrens, [North of Adelaide] on a liberal platform. Waterhouse resigned in 1854 from the Legislative Council because of ill health. He visited England and United States of America in 1855 and advocated reciprocal trade.

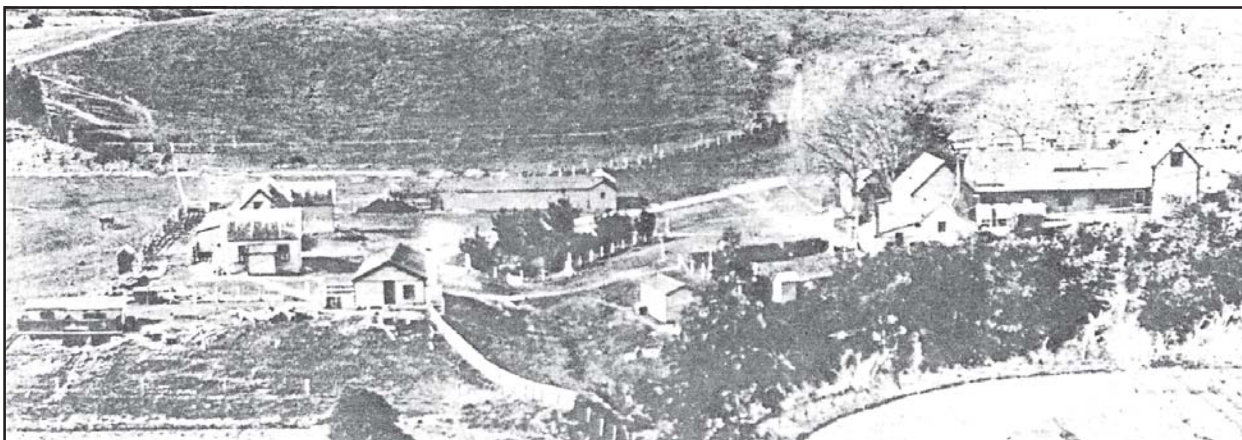
"In the United States his advocacy of reciprocal trade wasunusual at a time when Britain was the overwhelmingly preferred market for Australian products." Grant p44]

<u>*Australian Dictionary of Biography*</u>—

"On his return in 1856 he was appointed to the Adelaide Water-Works Commission. Next year he was elected member for East Torrens in the new House of Assembly; in August the first ministry under responsible government resigned and the governor sent for him, but he declined office and resigned from the assembly next month. In 1860 he won a seat in the Legislative Council, insisting that tariff duties be 'repealed on unenumerated articles to allow traders to compete on equal terms'. From 10 May to 5 February 1861 he held office as chief secretary and in March became honorary chairman of a commission on the Real Property Act. Convinced that Judge Benjamin Boothby was unjustified in his refusal to recognize the validity of this and other Acts, Waterhouse proposed and then chaired a select committee of the Legislative Council on the matter. In the council debate on the committee's report he seconded a successful motion that the House should submit an address to the Crown seeking the judge's removal; he warned that Boothby 'with one fell swoop would clear away the legislation of ten years'.

Premier 1861-1863

On the resignation of the premier T. Reynolds , a Boothby supporter, Waterhouse reluctantly formed a government specifically for transmitting the address and a similar one from the assembly; he recruited his attorney-general from outside parliament. Nine days later he was persuaded to form a new ministry on a wider basis 'to carry out those [measures] which had already been introduced'; it lasted



Huangarua Station buildings c1864 *Greytown Public Library*

from 17 October 1861 to 4 July 1863, when he resigned after his treasurer (Sir) Arthur Blyth had been attacked in the assembly for alleged misappropriation of the immigration fund. In the previous month his own interest in the Tipara (Moonta) mine had come under the scrutiny of an assembly select committee that concluded that the Tipara company, of which Waterhouse had been an original director, had no legal right to the mine. He was evasive in replying to some questions and had probably made the large personal profits alleged by F. S. Dutton, but no clear evidence emerged for Dutton's further claim that Waterhouse had been bribed with shares. He did not scruple to resume his directorship after it was clear that the assembly would take no action on the mine's ownership.

After another visit to England Waterhouse migrated to New Zealand in January 1869 and purchased for £21,000 cash the original Huangarua station, together with 18,000 sheep. Member for Wellington in the Legislative Council in 1870-90, he was minister without portfolio in the Fox ministry in 1871, premier in 1872-73, and Speaker of the Legislative Council in 1887. He visited England several times before retiring to Torquay, Devon. Survived by his wife and two adopted daughters, he died at his home on 6 August 1906, leaving an estate sworn for probate at £69,000.

A successful capitalist with a variety of investments in several countries, Waterhouse was interested above all in economic development and the freeing of trade; these objectives led him to advocate a uniform tariff for Australia and shaped his views of Judge Boothby. Although reluctant to hold office he proved a lucid exponent of legislation and a capable administrator. His portrait is in Parliament House, Wellington, New Zealand."

Source: *Australian Dictionary of Biography* Vol.6. 1851-1890 pp358-359 He was Premier of South Australia 8th October 1861 to July 1863.

New Zealand

In January 1869, at the age of 44, he came to New Zealand mainly for health reasons. He purchased land in the Wairarapa. He was not a farmer, he was a capitalist who invested in sheep stations, and employed managers on the properties. His property transactions included—

1869 Huangarua Station, South Wairarapa, on the Whare-kaka Plains. An area of 20,000 acres, stocked with 18,000 sheep, employed up to 100 men. Purchased for £42,000. He visited England to purchase supplies for property improvements and published articles promoting New Zealand produce. He was strongly opposed any withdrawal of British troops from the colony fearing renewed bloodshed in the land wars. Appealing to Lord Granville, he said, "The blood of thousands of your fellow countrymen might be at your door and England may witness the destruction of a thriving colony."

"Waterhouse with 22 years experience in South Australia was essentially an owner-capitalist rather than a farmer although he immediately embarked upon a programme of extensive improvements. More importantly his exciting juggles with station properties in Wairarapa during his five year stay sustained local morale. He imported wire to complete twenty miles of fencing. The destruction of the old woolshed by fire led to its replacement by a 24 stand shed with matching shearers accommodation, quite a step forward for the times. One of his interests was forestry which he developed under the stimulus of the short lived Forest Tree Planting Encouragement Act. By 1879 Waterhouse was thinking of moving on, his agents were in touch with a very eager buyer." A.G Bagnell 'Wairarapa' 1976 p340.

The station was now 34,000 acres and it was sold for £85,000 to the Hon. Johnny Martin in 1879. He subdivided the property into 500 small farms and laid out a town, first called Waihenga, but now Martinborough. A 1864 photograph of Huangarua Station is in the Masterton Archives. Martin's planned subdivision was frustrated by the 1880s depression, but the town of Martinborough, laid out like a Union Jack, with streets named after places he visited remains a small South Wairarapa country town. Today the area is mainly used for sheep farming, but has also become an important wine growing area.

1872 Tiraumea Station purchased. It was a rough undeveloped station of 7,061 acres. Purchased at 5/- per acre plus £1754 for stock. It was stocked with 5,000 sheep and 100 cattle. Was sold in 1874.

1873 Castlepoint Station 11,535 acres. Purchased £1 per acre, 5,000 acres crown lease, 6,300 Maori reserve lease. Stocked 9,700 sheep and 200 cattle. Purchased for

£15,000. Sold in 1876, £9,000 cash plus £9,000 mortgage.

NZ Political career 1870

Appointed by Hon. Fox to the Legislative Council. Fox had met Waterhouse in Australia and fully appreciated his high qualities. Waterhouse was a sagacious adviser, a clear thinker of moderate views, a champion of democratic rights and a stickler for the purity of Parliament. He very soon made a place for himself, at a time when the standard of Parliament was not high and the Legislative Council was weak. He had a great reverence for format, precedents and ancient constitutional principles. A man of means, he never accepted salary, even when holding a portfolio. His honorarium was used to establish the Greytown 'Wairarapa Institute' library in 1872. When I visited the Greytown library in 1970s they had books of the Waterhouse Collection in a glass case. I pointed out the historic importance of the collection, but when I visited in 1990 the books had all vanished in a modernisation programme. Waterhouse became an Education Board member and held cabinet rank in the Fox Ministry in 1871.

Political life

The best summary is by Ian F Grant— "But the political life could not be avoided indefinitely. In about equal proportions, Waterhouse continued to have a passion for politics and distaste for the way it was usually conducted. He also had his local champions: within the year Sam Revans had plans for him to occupy the Wairarapa seat in the House of Representatives; William Fox, who had met him in South Australia, was quicker off the mark and arranged a seat in the Legislative Council in 1870, a more congenial setting for a man of Waterhouse's temperament. Moreover, he agreed to lead the Council until the end of the session.

Guy Scholefield wrote: "A sagacious adviser, a clear thinker of moderate views, a champion of democratic rights and a stickler for the purity of Parliament, Waterhouse came on the scene just when such a man was needed." 2

Waterhouse quickly took a leading part in improving the Legislative Council's spotty reputation. As Gisborne wrote: "He has great reverence for forms and precedents and for the ancient ways and constitutional principles." 3. His sense of propriety was finely tuned; that same year he refused to be associated with a petition for a Wairarapa railway line because of 'conflict of interest', even though the proposed route was miles from his property. William Fox was now premier for the third time, but the powerhouse in his ministry was Julius Vogel, who was content to begin the implementation of his hugely ambitious immigration and public works schemes from the background. Vogel noted the arrival of George Waterhouse on the New Zealand parliamentary scene with considerable, and calculating, interest. p45

In turn, Waterhouse was impressed with the national scope and promise of Vogel's vision, shared his enthusiasm for international trade and favoured abolition of the provinces. He was no parochial provincialist and had said: "I detest the idea of being an inhabitant of a parish, with all the narrow views of those who never look beyond the borders of a parish. Let us look at matters from a colonial and not from a narrow provincial point of view." 4. Accordingly, he joined Fox's cabinet and steered the necessary legislation through a doubting Council.

Nevertheless, Waterhouse resigned from the executive at the end of the session, troubled by the way government business was conducted and to spend more time managing his farming interests. He promoted a system of salting meat for export as a director of the Wairarapa Meat Preserving Co, imported more stud sheep, particularly the Lincoln breed, and exhibited at Masterton's first agricultural show in 1871.

In September 1872 the Fox ministry collapsed and Stafford's replacement administration was spectacularly shortlived, even by the standards of the day. At this point Julius Vogel appealed to Waterhouse to lend his name and standing to a new ministry. As R M Burdon wrote: "Vogel found all the respectability he required incarnate in the person of George Marsden Waterhouse." 5. p5 Grant

Premier 1872-73

He was Premier of New Zealand for five months, from 11th October 1872 to 3rd March 1873. The only time the office was entrusted to a person without portfolio, salary, or seat in the Chamber. He was the only person ever to become Premier of two British colonies. He became acting Colonial Treasurer in 1873. On discovering dubious financial dealings of the Vogel Government he resigned. He was appointed Deputy Governor of New Zealand in 1884 and Speaker of Legislative Council in 1887.

Appointment The best summary is by Ian F Grant— "To everyone's surprise - and undoubtedly to Waterhouse himself - New Zealand had a new premier who had been in the country barely three years, in Parliament for two years as an upper house appointee, who had no portfolio and, as a matter of principle, refused a salary.

Waterhouse put great store on his 'independence' but, as Raewyn Dalziel notes, " ....he must have been the only person who thought he could control Vogel". 6.

Invidious position Vogel retained the power

While Waterhouse, speaking in the Council, was committing himself to the premiership and offering his colleagues assistance with their departments, Vogel was making it unmistakably clear in the House that he had formed the government. Dalziel wrote: "Tensions between Vogel and Waterhouse had become apparent within days of their taking office together. In the House Vogel had rather touchily insisted on his role in forming the Ministry even though Waterhouse was Premier. Waterhouse soon discovered that he was no match for Vogel's 'much stronger mind' and that 'he had no chance of carrying any proposition he had to make in Cabinet'. 7.

Scholefield described Waterhouse's invidious position: "Even before the end of the session the inconvenience and the sham of his position were abundantly evident. He held the shadow of power; Vogel the substance." 8.

Waterhouse extricates himself Waterhouse welcomed an opportunity to extricate himself when, in February 1873, John Hall resigned as colonial secretary. Although Vogel was overseas, Waterhouse resigned as well. Governor Bowen, about to leave the country, did not want to accept the resignation and asked Fox to mediate. Waterhouse's response was that if Vogel had formed the ministry, then Vogel could find another colonial secretary. Bowen procrasinated, but had to back down, calling on Fox to form a new ministry, when Waterhouse forbade the government steamer carrying the Governor to leave port. Fox agreed unwillingly, saying he would resign when Vogel returned to the country. It was thought this incident cost Waterhouse a knighthood.

In a letter to Vogel, Waterhouse wrote: "I have felt throughout that you have regarded yourself as the actual and me as the nominal Premier; and the strength of your will and the advantage arising from your having formed the ministry have given you an influence in the ministry which is fatal to my exerting the influence attached to my office as Premier. We have been cast in different moulds, and can not with mutual satisfaction run in harness together." 9

In retrospect, it is puzzling that Waterhouse, suspicious as he had been of the flamboyant treasurer's willingness to agree to major financial contracts without parliamentary consultation, ever agreed to Vogel's overtures. Burdon commented: "Had he and Vogel been better acquainted, had they fully realised what each one expected of the other, it is unlikely that they would have entered into so incompatible an alliance." ....10 pp45-46 Grant

Remained in Parliament as a Private Member.

George Waterhouse, his reputation sullied to some extent, continued in Parliament as a private member for another 14 years.

He played an active part in a number of community organisations and bought and sold property. At times he had employed over 100 men on the Huangarua station, which he sold to Hon John Martin in 1878, doubling his initial outlay; a portion of the property was later laid out as Martinborough. Waterhouse made regular visits to England and, like many wealthy colonists of the period, finally left New Zealand in 1888 to spend his last years in the country of his birth. He died in Devon in 1906.

Waterhouse never stood for election in New Zealand, but he contributed positively to the dignity and decorum of the political system. He was also one of the first premiers to express independent views on foreign affairs and to suggest closer links with the United States. Scholefield wrote a fitting epitaph: "Surely such a man, footloose purely on account of his health, was the very requisite of a colonial democracy, a man who wanted nothing for himself and would relinquish office more willingly than he accepted it. All that he demonstrably lacked was the art of ingratiating himself with the people - the popularity of the hustings." 12 Grant p46

Source '*Public Lives- New Zealand Premiers and Prime ministers 1856-2003.* Ian F Grant. Pub NZ Cartoon Archives Alexander Turnbull Library 2003 ISBN 958-2320-2-4.

He was one of the most able Statesmen of his day, well educated, well travelled, brilliant tactician, forceful speaker, and successful businessman. However, unpredictable ill health plagued his career. Frequent resignations on grounds of conscience or ill health led at times to a nomadic footloose life. He was a reluctant politician, his orderly mind found much that was repugnant in the conduct of politics. Dr. Buchanan, a fellow Legislative Councillor and critic, described Waterhouse, "His Judgement was so sound, his views on constitutional subjects so large, he was so industrious, so impartial, and his ability was so great, that he listened nearly always with instruction and pleasure to the silvery tones of his voice." NZPD 18/10/1872 p779. Deceased Wife's Sister Marriage Bill 1872.

Faith and conflict

George Waterhouse was brought up in a theologically liberal home, given a very good education, but retained the deep social concerns of his Methodist faith that drove his political campaigns for social reform. Waterhouse believed that people had a right to know the truth and that politicians must be fully accountable. He refused to join political parties, as they compromised his freedom of expression and action. Advocated free trade, law reform, human rights, universal suffrage, womens rights, triennial elections, free education, ending Government appointees to the Legislative Council, and abolition of any State aid to churches. These policies and a refusal to compromise with the inner rings of political power, along with outspoken statements won few political friends. He remained a member of Parliament until 1890, but left the colony in 1889. Waterhouse retired at age of 65 to 'Hawthornden', Torquay, Devon, England. He revisited New Zealand briefly in 1894. He died at 'Hawthornden' on 6th August 1906, aged 81. He was survived by his wife and two adopted daughters*. Tributes were paid in newspapers throughout the Empire, no customary tribute was ever made in either House of the New Zealand Parliament.

Footnote: Just a few months before Waterhouse introduced his 1881 Adoption Bill, he had tragic experience. He had been visited by his brother Joseph b1828. Unfortunately returning to Australia from his holiday Joseph was drowned in the wreck of the *Tararua* off Dunedin on 29th April 1881.

Sources *Australian Dictionary of Biography* Vol.6. 1851-1890 pp358-359. *'Encyclopaedia of New Zealand'* Waterhouse GM Vol.3 p590 Government Print 1966. Responsible Government in South Australia. Combe, G.D. 1957. *Wellington Independent* 16/1/1969 14/9/1969; *Torquay Times and South Devon Advertiser* 10/8/1906 24/8/1906. *Freedom Wellington News* 12/10/1955. *New Zealand Biographies* Turnbull Library re Waterhouse. by G H Scholefield includes photo of George Waterhouse 24/8/1934 pp79,174. *'Wairarapa'* A G Bagnall 1979. *'New Zealand's Heritage'* includes Huangarua Homestead photo, also reproduction of Waterhouse's portrait in Parliament Buildings Vol.8 pp1117-20. Revised Edition 1978 Hamlyn House.

Note I visited Adelaide Library in 2002 and discovered more information on George Waterhouse. Mainly detail about business transactions, farming properties and mining. The Library archives has a copy of his Australian and England Wills and

MINNE WILLIAMINA DEAN 1844-1895

The Minnie Dean case exposed baby farming and the murder of illegitimate children given for adoption. It ended with the only execution by hanging of a woman in New Zealand. Minnie claimed she was born in Edinburgh, Scotland, 1847, daughter of Rev McKellar of Church of Scotland. She had a good education and became a teacher. She came to Invercargill in 1871 as Minnie McCulloch, a doctor's widow with two daughters.

Background

Researcher Lynley Hood reveals a different story. Minnie's birth name was Williamina McCulloch, born 1st of September 1844, and baptised into the Church of Scotland one month later. Her father was John McCulloch, a railway engine driver on the Paisley-Greenock line. Her mother's maiden name was Elizabeth Swan. On census night 1851 the children were listed as Elizabeth 12, Williamina 6 and Christina 4, and they lived at 65 Anne Street, Greenock. There is no evidence of any previous marriage before Minnie married Charles Dean. It appears she had two ex-nuptial children, and fabricated her origins as a cover story to make herself socially acceptable.

On 19th June 1872 Minnie, aged 24, married Charles Dean, a farmer, at Etal Creek, on the way from Wreys Bush to Mossburn. There were no children of the marriage. They adopted Margaret Cameron 5, in late 1880. They were forced off their farm in the 1880s depression, and declared bankrupt, December 1884. About 1887 they left Etal Creek and bought "The Larches" at East Winton. A 22 acre property with orchard, garden, and a large two-stored house. Unfortunately the house burnt down on 29th April 1888. They lacked adequate insurance but salvaged what they could and built a two-bedroom house with lean-to. Minnie began her own business of baby farming. She received cash payments for receiving, keeping and finding homes for the children. Her husband took no part in the business. The number of children in residence ranged from 6 to 8. Most were well nourished and cared for. She appeared as a kind caring person to most who knew her.

First sign of trouble

On 29th October 1889, May Irene Dean, their six month old second adopted child died. On the 29th March 1891, six weeks old Bertha Currie died. At the inquest the state of over-crowding was revealed by Minnie's own evidence. "At the time of the child's death she had in her keeping ten children whose ages ranged from 6 weeks to 11 years. In addition there was her husband, herself, and their adopted daughter, Margaret Cameron. Three of the children slept in the same bed as Mrs Dean and four in boxes in her room. Two slept with Mr Dean in the lean-to and one girl shared Margaret Cameron's bed in the kitchen." Watt 1973 p4. It's not surprising that Mr Dean disapproved of the venture. The jury at the inquest raised their concerns. The County Council was notified but took no action. However, the police were alerted and began visiting the home to check conditions. The Infant Life Protection Act 1893 took effect, 1st January 1894. Persons caring for children under two years of age must register annually. In Otago-Southland 83 women registered, but not Minnie. She was prosecuted, 9th July 1894, pleaded guilty and was fined 1/- [10c].

Evidence

On April 29th 1895, Mrs Dean travelled from Winton to Bluff to receive baby *Dorothy Edith Carter,* from Mrs Louisa Cox of Christchurch. On May 2nd she took the child from the Larches and boarded the Invercargill-Kingston train at Lady Barkly. The child disappeared between Dipton and Lumsden, the allegation being that Mrs Dean killed it by administration of laudanum (opium) and placed the body in a tin hat box she carried. The next day she travelled from Lumsden to Gore where she caught the Dunedin express. At Milburn she met Mrs Eva *Hornsby* and received a child and was paid £20. Mrs Dean got off the train with the baby at Clarendon, the next station on the way to Dunedin. It is presumed she killed the child and placed the body in her hat box with the other child. (In her condemned cell statement she admits the Hornsby child died within 10 minutes of being placed in her care.) However, the train guard noticed Minnie had got on the train with a baby but got off without it; this triggered an alarm. The Police investigated and the bodies of two babies and a skeleton were discovered in her flower garden. Minnie and her husband were arrested and charged with murder. Her husband was later completely exonerated. He had no part in, or knowledge of the murders.

Inquest

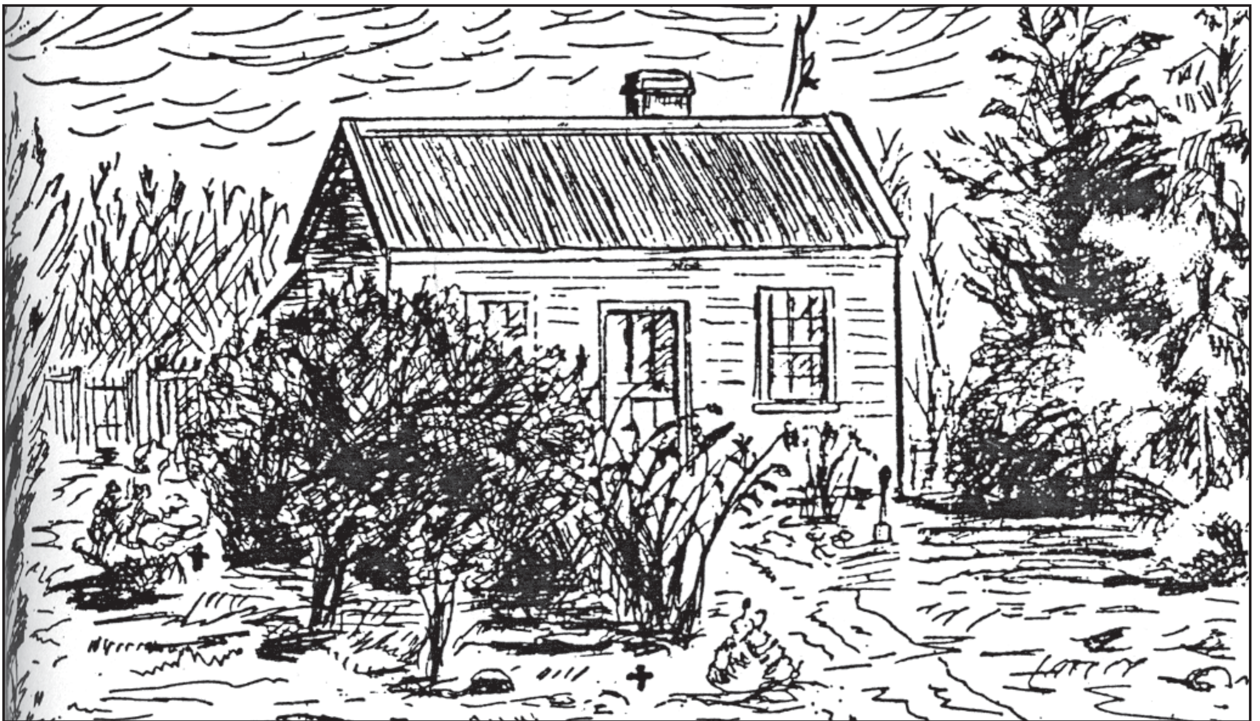
The inquest was held before a coroner's jury. In building up the case against Minnie Dean, the inquest "allowed the police to convey to the public and the press the impression that Minnie Dean was engaged in a large scale, cold-blooded, mercenary scheme of systematic, premeditated murder. Minnie Dean may have been hanged for the murder of Dorothy Edith Carter, but in the eyes of the public it was the evidence that emerged at this inquest that determined her guilt." Hood 1994 p157

Trial

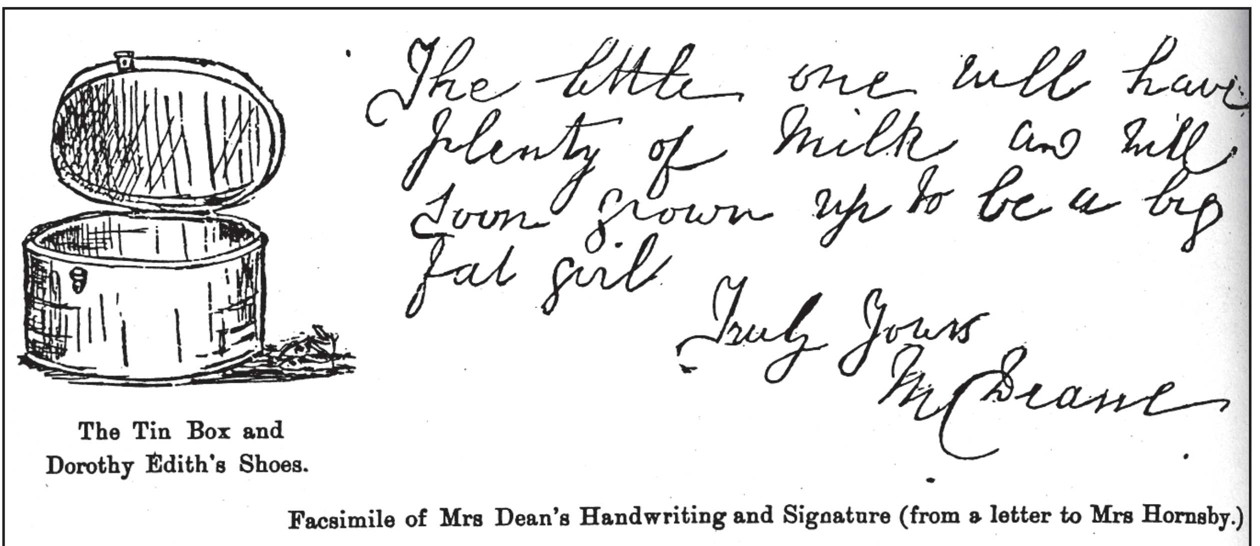
The Supreme Court trial opened at Invercargill on 18th June 1895, before Justice Joshua Strange Williams. There was an all male jury. [Women won the right to vote in 1893, but not the right to serve on juries until 1942.] Defence council, A C Hanlon, a twenty-nine year old Dunedin lawyer, put up a brilliant defence. His court notes are held in the Hocken Library, Dunedin, they are classic documents. Hanlon did not put Minnie in the witness box but chose to address the Jury instead, probably on the ground that she was unreliable. There was never any attempt to prove or claim insanity. She was found guilty and sentenced to death.

Appeal

Regina v Dean CA 1895 Vol.14 p272. Leave to appeal the Dean case was considered by the Court of Appeal at Wellington 27, 29, 31st July 1895. Five Judges, including Justice Williams sitting on his own case. The Court was unanimous, leave to appeal was refused. Hanlon, did not attend, he left that to Wellington lawyer Dr Finlay, who later became Attorney-General and recalled his experience of the case. *see* NZPD Vol.140 3/9/1907 p636



Above: The Dean House ‘The Larches’. Below: Police searching
Source ‘Trial of Minnie Dean J.O.P. Watt



The little one will have
plenty of Milk and will
soon grown up to be a big
fat girl.
Truly Yours
M Deane.

The Tin Box and
Dorothy Edith's Shoes.

Facsimile of Mrs Dean's Handwriting and Signature (from a letter to Mrs Hornsby.)

Appeal to Executive Council

On 3rd August 1895 Premier R Seddon and Council found no reason for his Excellency the Governor to intervene with the ordinary course of law.

Execution

Minnie, aged 47, was hanged by Tom Long in Invercargill gaol, 8am, Monday 12th August 1895. At three minutes to eight the gaoler, sheriff, doctor and executioner entered Minnie's cell. The sheriff formally, in front of Minnie, demanded from the gaoler the body of Minnie Dean. He turned to the hangman and said, 'Executioner, do your duty'. She was buried in the Winton Cemetery by Rev. James Baird (Presbyterian), about six people were present.

Minnie's Motivation

The Deans lost their farm in 1884 and 'Larches' home in 1888. Minnie baby farmed to earn money. "Minnie probably had every intention of providing an honest child care service. Besides, she wasn't doing anything illegal. There were no laws to stop her taking as many children as she wanted for whatever fee she desired and keeping them in whatever manner she chose. She was not allowed to neglect or mistreat them, but that was all...Minnie took children for economic reasons, and though it quickly became apparent that the enterprise was eroding what remained of her respectability and would never be a financial success, she persisted. Like the present-day eccentrics who take in large numbers of stray cats and dogs without any clear idea of how they are going to look after them all. There can be little doubt that Minnie loved her charges and she had every intention of caring for them all to the best of her ability. Her determination to continue, year after year, despite every obstacle life threw in her path, suggests that her career choice was underpinned by a stubborn irrationality. Whatever the reason, the records show that Minnie's need for babies often took precedence over her need for respectability, and frequently transcended her need for money." Hood 1994 p93

How many children

"The bald statistics of Minnie Dean's enterprise: of the twenty seven small children who passed through her hands, six are known to have died (this is not an unusually high number- many family plots in the old Winton cemetery contain the bodies of six or more children), ten are known to have survived (a number that any Victorian family would be proud of) and three were unaccounted for despite police efforts to trace them. The fates of the remaining eight are unknown." Hood 1994 p93.

How many killed

Minnie was charged with the murder of Dorothy Edith Carter, an infant placed in her charge for adoption, also a second infant, name unknown. (The Second charge did not proceed). There was evidence of others, the number remains unknown. At the trial, their adopted daughter Margaret Cameron gave evidence of the suspicious disappearance of several babies and children.

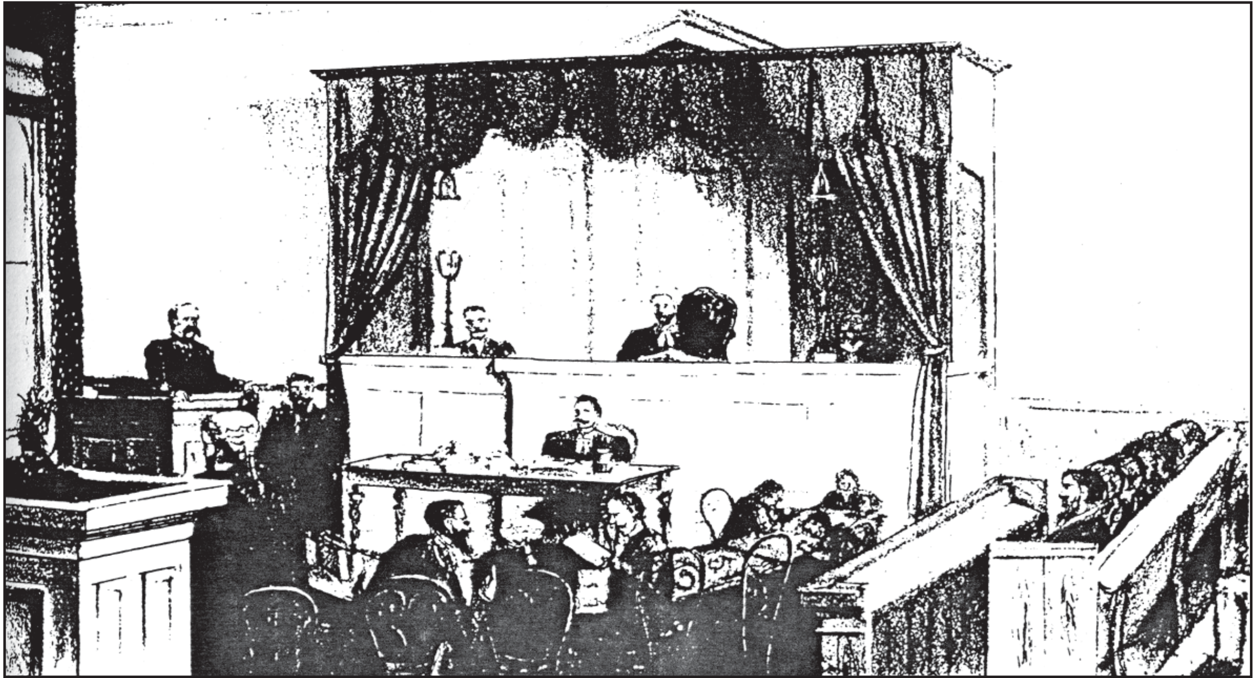
Cyril (Charles) Scoullar aged 5 had been at the Larches three years. "He disappeared one Saturday in April 1893. I was sent away for the day, but before I went Minnie gave Charles laudanum [opium]. She said it was to keep him dozing. When I came home he had gone. Some time later she showed me a photo of him from Sydney, but I don't believe it was him. Esther Wallis at the trial said that after Charles disappeared she saw all his clothing in the place." Helen Scoullar, birth mother of Charles lived in Wellington. The birth father, Colin McLauchlan of Wellington died, January 1895. He left money in his will for Charles, his only child. The legal firm ran into problems when Mrs Dean refused to disclose Charles whereabouts, saying he was in Sydney. On 17th April 1895 the police were called.

Minnie Dean- Court Sketch by *Southern Cross*

Henry Cockerill suddenly disappeared. Again some time after she showed Margaret Cameron a photograph with writing on the back 'From Henry S. Thomson with love to Mrs Dean' she was not sure if it was Henry's photo.

Sydney McKernan disappeared, taken by a lady from Woodlands according to Minnie. At the trial the birth mother Mary Caroline McKernan of Bluff gave evidence, how she placed her child with Mrs Dean. She visited the Larches twice. "The first time 2nd October 1893 to spy out the land, I saw Mrs Dean but did not make myself known to her. On the 2nd November 1893 I visited again, made myself known and asked to see the boy." Mrs Dean abused her, and denied she was the person who took the child.

Willie Phelan, a mentally retarded child. His birth mother was Mary Margaret Olsen of Dunedin. At the trial Margaret Cameron recalled his disappearance and Mrs Dean's explanation that he went to Mrs Hogan of Invercargill. At the trial Mrs Hogan said she never received the child. At



Trial of Minnie Dean Sketch by *Southern Cross*

the inquest there was evidence the skeleton found at the Larches was Willie Phelan. "Minnie admitted in her last prison statement that the skeleton found in her garden was that of Willie Phelan, who died by accident, but she continued to insist that Cyril Scoular, Sydney McKernan and Henry Cockerill were adopted, though she refused to say by whom? Well frankly, I doubt it. There was a surplus of unwanted babies in Victorian New Zealand, and eugenically conscious childless couples favoured the children of relatives over the bastards of strangers. To find willing adoptive parents Minnie would have had to advertise vigorously. She certainly advertised vigorously for babies, but I have found no evidence that she ever advertised for adoptive parents at all." Hood 1994 p158

Conclusions

"Trapped in the distorting mirror of public exposure, Minnie Dean had been transformed between her arrest and trial from a poor woman engaged in a running battle with the police to a scapegoat for all the immorality, crime and infanticide that plagued the anxiety-wracked colony. The whole country was watching, and waiting transfixed to see if one of the greatest evils of the age could be disposed of and atoned for in one dramatic prosecution." Hood p166.
The impact of sensational newspaper publicity. "It was as if every family that had ever lost a child whether through illness, accident or neglect, whether through death or adoption was convulsed by spasms of recognition and guilt. Angrily they tore at their gnawing secrets and flung them in a frenzy of rage and relief at the monstrous baby farmer. Then, intoxicated by their new-found purity, they howled for revenge." Hood 1994 p130

No money involved

Much was made of the financial motive in baby farming but no money was paid to Mrs Dean concerning Dorothy Edith Carter, the child she was convicted of murdering. Lynley Hood raises serious questions about some police evidence, conduct of the trial, summation to the Jury, and admission of evidence other than directly concerned with the specific charges—Australian, *Makin v Attorney-General of New South Wales*, baby farming murder case.

Minnie fined 1 penny- legal implications

Although the fine was very small, it doomed any hope of Minnie obtaining a baby-farming license. "When the Infant Life Protection Act came into force eighty-three women in Otago and Southland successfully sought registration under the Act, but Minnie Dean was not among them. Constable Rasmussen, checked the Larches and found one child under the age of two, baby O'Brian...He ordered Mrs Dean to apply for registration but Minnie, convinced that her application would not succeed, set about trying to return the child to one or other of his parents. Whenever Rasmussen called, Minnie claimed to be doing her best to be rid of the child but five months later the boy was still there. In June the constable informed her that the law had to take its course. On the 9 July 1894 Mrs Dean was charged with a breach of the Infant Life Protection Act. She had no choice but to plead guilty. Mr C E Rawson, SM, who was no stranger to Minnie's activities. As coroner at the inquest of Bertha Currie he had called for the very legislation which he was now required to enforce. He heard the evidence, and fined Minnie one penny. [1/- on p228 this book should read 1 penny]. One penny! Constable Rasmussen's rage inflamed the entire New Zealand police force. The Minister of Justice, the Honourable Alfred Jerome Cadman, demanded an explanation. 'I took a great deal of trouble in going fully into the matter and was much puzzled to know what to do,' Mr Rawson explained." Hood then gives Rawson's detailed explanation. Hood 1994 p113-114.
It should be pointed out that although the fine of a penny,- may seem incredibly small, it had a major consequence for Minnie, the conviction meant she could never obtain registration under the Infant Life Protection Act. Her baby

farming business was now effectively doomed.

Infant Life Protection Act 1893 s14 "No person convicted of— (a) Retaining or receiving in to his or her care or charge any infant under the age of two years without being registered as required by this Act; of (b) Neglecting to give notice of the death of an infant as required by the last-preceding section,— shall at any time thereafter be registered under this Act." Enacted 2/10/1893, took effect 1/1/1894. "Sergeant Rasmussen [Winton Police] had given her [Minnie] a copy of the Act, she must have known that anyone with a conviction entered against them was barred from registration." Hood 1994 p117. Refer Correspondence re Mrs Dean's breach of the Infant Life Protection Act. J1 1894/1116 National Archives.

Appeal for murder convictions only since 1894

In 1889 Louis Clemis was convicted for murder at Wellington, and sentenced to be hanged. There were very strong public protests concerning the conduct of the trial and the verdict. His death sentence was commuted to life imprisonment. Clemis could not appeal, as appeals could then only be heard against property offences. As a result of a long campaign to review this conviction for murder, Charles Haughton Mills MP for Waimea-Picton, "In 1894 moved an amendment to the Criminal Justice Act to allow appeals for criminal offences such as murder. The Court of Criminal Appeal was established as a direct outcome. However, under its original narrow jurisdiction, the new court refused to grant a retrial to Chemis." *Evening Post* p7, 15/11/1997. Thus, Minnie Dean's 1895 application for leave to appeal and refusal thereof, was under a new law with narrow jurisdiction. Her chances of obtaining an Appeal hearing today would have been much more substantial.

Last statement not a confession

"The fifty-three page statement she wrote while awaiting the scaffold is Min-nie's response that she was unable to make in court because she was never given the opportunity to enter the witness box in her own defense." Original document is at National Archives Wellington. The Otago District Law Society has a hand copy by her lawyer. Hood 1994 31p.

Dean burial

The plot at Winton contains two bodies. "Minnie was buried eight feet deep in 1895, while her husband Charles was buried six feet deep in 1908." Hood 1994 p26.

What happened to the family

Charles Dean died in a house fire in 1908. Margaret Cameron, their adopted daughter, at age 18 went to Mataura to learn dressmaking, then worked at Riversdale. In 1908 she married a Dipton farmer and had three sons. Her husband died in 1918, she remarried and lived at Timaru where she died in 1937.

Note new book. John Rawle. *'Minnie Dean: A Hundred Years of Memory'* A small collection of resources on the life and death of Minnie Dean the Winton baby farmer. The author, John Rawle is a local person well versed in the history of Southland. He concluded that Minnie was either innocent or guilty of manslaughter but not murder. ISBN 1-877162-03-5 Published 1997 Orca 68 pages.

Conclusion. Having studied most of the books and newspaper cuttings on the subject and carefully examined the *original* documents of the defense Counsel, police and the court, also Mrs Dean's own hand-written statement made in the condemned cell— I am left with some serious concerns about the conduct of the case, trial, conviction, appeal and execution. I doubt that the conviction for murder would stand in a court today, but it is likely she would be found guilty of a lesser charge. KCG

Sources Southland Times 13,14,16,17,18,29 May1895; 8,11,21 June 1895. *Regina v Dean* Court of Appeal. CA1895, Vol.14 pp272-90. 'Random Recollections' A.C.Hanlon 1939 by ghost writer Ronald Jones. Encyclopedia of New Zealand 1966 'Dean Williamina Minnie' Vol.1 pp455-6. 'The Trial of Minnie Dean.' 1973 JOP.Watt, Time Printing Service Invercargill. 'Hanlon', K. Catran BCNZ Enterprises, Auckland 1985. 'Minnie Dean Her Life and Crimes' Lynley Hood. Penguin Books 1994.

Maternity and Morality: Homes for Single Mothers 1890-1930.

Margaret Tennant—

Moral condemnation, social rejection

Some single mothers may have managed to conceal their unmarried status, if not their pregnancy, by passing themselves off as widows or deserted wives in districts where they were little known. For most, however, the discovery of pregnancy meant moral condemnation, social rejection and economic hardship, and there are indications that the stigma attached to unmarried pregnancy may have increased over the later nineteenth century. At the very least, it took on a different form as communities became more settled and concerned with issues of respectability

Moral debate 1850s prostitutes 1890s Illegitimacy

The public debate over moral issues, which in the 1850s and 1860s had focussed upon the wanton doings of a prostitute class, had shifted by the 1890s to the 'problem' of illegitimacy which, it seemed, could affect even 'decent' families. Illegitimacy, said the *Christchurch Press* (1900) was a social cancer, encouraged by agencies which made things 'especially easy and comfortable for the viciously inclined'. Thomas Norris, secretary of the North Canterbury Charitable Aid Board put it even more brutally: the country was getting 'overrun with bastards' whose erring mothers were only too keen to divest themselves of their natural responsibilities. p30

No public support of bastards

It was the public support of 'bastards' which caused the greatest outcry and claims that 'social offenders' were able to avoid the consequences of their misdeeds. Paternity orders were rare; even more unusual was their successful enforcement. Failing a paternity order the support of an illegitimate child was the responsibility of the mother or the mother's parents who, often as not, would have dependent children of their own to support. p30

Industrial school system

As a last resort, support would come back upon the local charitable aid board or the state, through the industrial school system. Nearly one-third of all children committed to industrial schools were illegitimate, many admitted because their mothers were too destitute to maintain them. (Beagle, 1974). To contemporaries, illegitimacy was a legal and financial issue, as well as a moral one. Despite calls from women's groups that both parents should shoulder the blame for illegitimate children, it was in practice the mother who bore the full effects of public recrimination and who suffered the emotional and financial burden of her 'fallen' status. p31

Focus on social problems, not health

The first institutions for unmarried mothers were more concerned with these 'social' problems than with the health of mother and child. Since nineteenth century public hospitals often refused to admit women in an advanced state of pregnancy, there were basically two kinds of home to which single women could turn for shelter. (a) These were the *benevolent institutions*, run by local charitable aid boards, and (b) the *women's homes*, most of them associated with particular church groups. p31

Maternity Homes for Single Mothers, 1910

List excludes homes for immoral or 'unmanageable' women which did not provide maternity care.

Auckland

St Mary's Otahuhu (Anglican): Opened in Parnell in 1884 as a women's refuge. Maternity care was provided from the 1890s with entry restricted to first admissions only. The Otahuhu home was opened in 1904.

Salvation Armv Maternity Home: Opened 1897 for first time single mothers. Later enlarged into the Auckland Bethany Hospital.

Door of Hope: Opened in 1896 by a committee representing the evangelical protestant churches. From 1921 the Door of Hope was essentially a hostel for young women in service and in 1928 the title was changed to 'Salem House'.

Wellington

Alexandra Home: Opened in 1879 by the Ladies' Christian Association. Restricted from the 1890s to 'first fall' maternity cases, but by World War I was also accepting married women.

Salvation Army Maternity Home: (Later 'Bethany'). Opened 1900 for 'first falls'.

Christchurch

Linwood Refuge: The oldest women's home in New Zealand. Opened 1864 as the 'Canterbury Female Refuge', and run by various ladies' committees. By the 1890s restricted to `first falls'. Becomes the North Canterbury Hospital Board's Essex Maternity Home in 1918.

Salvation Army Maternity Home: Opened 1891 for 'first falls'. Later as 'Bethany' takes in married patients, but on a more restricted basis than Wellington.

Dunedin

Dunedin Female Refuge: Opened 1873 and run by a group of women from local churches. Closed in 1904 through lack of patronage but reopened 1907 as the Batchelor Maternity Hospital for destitute and unmarried women, mainly for training medical students.

Invercargill

Victoria Home for Friendless Girls: Opened 1900 and run by a ladies' committee. Mainly a maternity home for 'first' cases, but also took in some destitute and handicapped women, and small children. Tennant p49

Benevolent institutions of charitable aid boards

These had begun as local shelters for a range of destitute persons, not specifically for women. Their function was to provide support for the sick and incapable and work for the able-bodied. In this respect they paralleled the English workhouse and, like the workhouse, they were rapidly turning into homes for the elderly by the 1890s.

Unlike the women's refuges, the lying-in wards provided at benevolent institutions did not aim specifically at moral reform (though incarceration with an assortment of social undesirables was supposed to have its deterrent aspect). Women were admitted in the later stages of pregnancy because they could not support themselves or were in need of medical treatment. They were expected to work

while in the institution and to leave the place within a short time of their confinement. p31

A woman entering a benevolent institution would deal almost wholly with male officials whose main concern was with questions of financial responsibility and reimbursement and, apart from the manager's wife, she would have little female company. The majority of the occupants of benevolent institutions were elderly men, many of them characterised by drunken, violent and disruptive behaviour. It is likely that a lifetime's experience of male-dominated frontier life produced a fair share of elderly misogynists. It is also likely that their own lowly social status did little to increase sympathy for the young, pregnant women who were forced into their company and, as the Inspectors of Hospitals wrote in 1909, 'By the time single girls leave these Homes they must have lost the little self respect left to them.' (AJHR, 1909). The mixture of old people and maternity cases was one which appeared increasingly inappropriate in official eyes and other options were sought for destitute women either in public hospitals, by providing midwives for home deliveries, or by sending single women to voluntary homes.p32

While the benevolent institutions provided little comfort and support, it is likely that some inmates found impersonal officialdom infinitely preferable to the intimacy of womanly concern. Womanly concern was offered in plenty at the church homes, however. By the 1900s there were a number of these voluntary institutions, most of them located in the four main centres. Some, like the Alexandra Home for Destitute Women and St Mary's in Auckland, had begun their existence as rescue homes for prostitutes, but soon found that prostitutes chose not to be rescued. They then sought more tractable cases, directing their attention toward younger women. The Salvation Army was one of the few denominations to continue with rescue work, but from the 1890s it too opened separate maternity homes for first time unwed mothers. These later expanded into the Bethany Hospitals, a number of which continued as maternity hospitals into the 1970s. The idea here, as in most of the homes, was to separate young, pregnant, 'reformable' women from older, often alcoholic cases. p32

Maternity Homes

Unlike the benevolent institutions the maternity homes emphasised female management and influence, and the separation of inmates from male society .4. The maternity services provided in the 1890s and 1900s were still very basic and they were more likely to employ a laundress to supervise inmates in laundry work than to engage a midwife. At this stage maternity care was the means to an end: the return of repentant sinners to the paths of virtuous domesticity. As the matron of one home acknowledged: There is no time when so great an influence for good can be exerted on a girl on the downward path, as when she is about to become a mothers.

The vulnerability of the single mother, isolated from her friends, sometimes ill and distressed, laid her open to subtle and not so subtle influences, and the rules of the homes were written in such a way as to encourage inmates' total dependence.

Most homes insisted upon a stay of at least six months, though this could not always be enforced. In theory, a prolonged stay was needed to expose the women to sustained moral influence, religious training and prayer. In the process, it allowed some institutions to nicely exploit inmates' labour, usually by taking in commercial laundry work. By the 1900s this practice was frowned upon by Labour Department inspectors, however, and the homes began to justify inmates' work on the basis of domestic instruction for later life. St Mary's in Auckland had refined this 'training' more fully than most. Young women were admitted to St Mary's only if they committed themselves to a course of training which included laundry work, cooking, cleaning, gardening and needlework. These duties were graded so that no woman was kept at a particular task once she was proficient at it. The inmates' day began at 5.30 a.m. and ended at 8.30 p.m., during which time they took turns at acting as laundress, cook, housemaid or parlourmaid. p33

By World War One- Plunket

By World War One, the unmarried mothers were also being 'trained' as children's nurses under the Plunket system, and went out into the community 'qualified to help mothers bring up their children'. (Mothers themselves, of course, this meant leaving their own infants behind in the Home's Campbell Nursery) .7 Clearly, one aim of the maternity homes was to produce satisfactory servants for the kind of person who endowed such institutions. Domestic work fitted in well with contemporary definitions of appropriate female behaviour and would prepare inmates either for employment in approved households or for the management of their own homes. Ironically, a majority of inmates were already in service at the time of their 'first fall', and the homes' insistence on a domestic training continued into the 1940s and 1950s when the domestic service economy had been well and truly undermined. p33

Close personal surveillance

As well as being expected to work, and to work very hard in some instances, inmates were kept under close personal surveillance. All private mail entering the Alexandra Home was censored by the matron. At the Linwood Refuge in Christchurch, clergymen and their nominees were the only males permitted contact with residents, though from 1892 it was decided that girls might be allowed out with a relative or friend 'of approved respectability'...At Linwood... To prevent movement in and out the lower windows were barred, and only the matron was supposed to open the front door.... most institutions were surrounded by a high wall which separated inmates from the street. p33

Religious homes cornered market

Despite these restrictions, the religious homes soon cornered the market in care for unmarried mothers. A set of case records from the Wellington Salvation Army maternity home gives a glimpse of the process whereby a single mother of the 1900s arrived at her 'unfortunate state' and took up the option of institutional maternity care. By this

time the Army was more heavily involved in rescue and maternity work than any other denomination, and case notes reflect the Army's more 'professional' approach to its task. A detailed questionnaire sought information on the inmate's age, occupation, state of health, family background, literacy, whether she was given to drinking, her later employment, and the health of the baby born in the Home. The applicant for admission was asked 'how long fallen', 'cause of first fall', 'when expecting', whether she had ever been in prison and for what offence, and whether she had ever been dishonest. Some questions were superfluous in a home which had restricted its services to 'first falls' and others were seldom answered, but these records provide an intriguing insight into the unmarried mother of the 1900s as perceived by the Salvation Army." p34

Salvation Army Report 1900-1901

Taking a sample of 100 cases admitted between 1900 and 1901, we find that the average age was 21, the age range 15 to 32. Apart from three married women admitted on the basis of their destitution, this was a preselected group of women having a first child outside marriage. Two found to have given birth previously were smartly transferred to the Army's rescue home in Cuba Street, where we would expect to find an older age group. Most women entered the Maternity Home in the later stages of pregnancy at seven to eight months, when their condition was probably, but not necessarily, obvious to all...The pattern which became established in later years was for women to enter the Salvation Army homes three months before the birth and to stay for at least three months afterward.

A lack of family support was apparent in a good many instances. Only 23 women were sent by relatives, usually their mother, whereas 36 sought admission of their own accord. A further 18 were sent by Salvation Army personnel in other districts and the rest by their employer, a woman acquaintance, doctor or minister. Many came long distances...Only a third came from Wellington city and its immediate surroundings... Overall, the longstay requirement was coming under pressure, since it did not suit the purposes of inmates who saw the Home as a place to give birth, rather than a place to be reformed...pp34-35

The language used in the Salvation Army case notes is fascinating... Loss of virginity had a tremendous significance, and the questions 'how long fallen' and 'cause of first fall' related to this event... Given the conditions placed on entry and the need to appear 'reformable', it was obviously in the woman's interest to present herself as a passive partner in a relationship... The most common reason given for pregnancy was 'bad company', but other standard responses were 'foolishly led astray', 'seduced', and 'ruined under promise of marriage'. The term 'ruined' was especially loaded, with its obvious connotations of loss and lifelong damage. Girls similarly 'got into trouble', were 'taken advantage of', and 'insulted by a man'. The latter appears to have been a euphemism for rape... p35

Domestic service high employer of female labour

The high proportion of domestic servants (86 per cent of the sample) suggests a fallacy behind one popular assumption. Domestic service was supposed to offer greater safeguards to morality than factory work, where women were exposed to uncouth male employees and the temptations of the street. In practice, it could create conditions where women were particularly lonely, isolated and vulnerable to sexual pressures. There may, of course, be other reasons for the high representation of domestic servants in maternity homes. <u>Domestic service was the largest single employer of female labour, providing approximately 42 per cent of the female workforce in 1901</u>. (Statistics Department, 1901). Live-in domestic positions may have undermined family ties, causing women to rely on outside agencies in time of distress. But neither the Salvation Army nor other religious bodies attempted to explain the preponderance of domestic servants among their clientele in the 1900s. Any closer analysis might have undermined their whole approach to reform as they continued to send women out to situations which, the statistics suggest, involved a fair degree of 'risk'. p36

Many women 'ruined'

Many women had been 'ruined under promise of marriage', sometimes by men with whom they had been walking out for as long as five years. As statistics on extramarital conceptions show, it was not uncommon for sexual relations to occur in expectation of marriage. The women who ended up in maternity homes were those whose partners had broken their part of the 'bargain' implicit in such relationships, either by running away, or accusing the woman of having other lovers. Some were in no hurry to marry simply to protect the woman's reputation, though they did so after the birth of the child, and there were instances where the man died before marriage could take place. Letters from the matron of the Salvation Army Home show her energetically pursuing the interests of 'her girls' against absent, unwilling, and all too often self-righteous male "offenders'. pp36-37

Need for caution in evaluating their work.

Many of those involved in rescue work were, like this matron, women of energy and broad sympathies who attempted to challenge the sexual double standard. They were only too aware of the price women paid in emotional suffering and ill-health for heterosexual relations in a pre-contraceptive age. p37

While accepting that there was 'guilt' involved in extramarital sexual activity, they at least attempted to apportion that guilt evenly and in this they were a good deal more advanced than some of their contemporaries. If conditions in the homes seem severe, even exploitative from a modern perspective, the alternatives for single mothers and their infants were often a good deal worse, and it would certainly be anachronistic not to acknowledge this. For servants entering the Wellington Salvation Army Home in the 1900s the possible alternative was lonely concealment and infanticide. p37

At the same time, there were limitations on what could be achieved through individual sympathy and support, and the mere existence of homes for unmarried mothers helped to perpetuate the double standard. Whatever a

matron's personal views on male irresponsibility, social and legal codes ensured that the male 'offender' usually got away with his actions. In only 28 of the 100 Salvation Army cases was the baby affiliated, and even when money was extracted from the father, there was no guarantee of its continuation. Without a direct admission of guilt from the child's father, there was no evidence to support stringent legal requirements. Increasingly too, young women's parents did not want to add to scandal by a paternity suit, and they would block proceedings. Twenty-one of the babies in the sample were, in any case, dead within five months, while another three were stillborn - a fair indication of the mortality associated with illegitimate births. One of the mothers died on the premises. In three instances the parents married, and 24 babies left the Home with their still unwed mothers and were alive five months later. In only three cases were babies adopted. Three stayed temporarily in the Home and 25 went out to foster mothers. Three were born to married women and went home with their mothers. In the remaining cases the fate of the child is not given. p38

The future of illegitimate babies was of increasing concern, however, just one of a number of changes that modified the homes' moral focus. In benevolent institutions the death of an illegitimate baby had been dismissed as a merciful release. The dead babies were regarded as the sickly offspring of diseased and depraved mothers who would, more than likely, farm them out to a slower end.

1890s Child-life preservation movement

From the 1890s there were signs of a change. in official attitudes. The white settler community had always been subject to population anxieties, but as the birth rate declined these reached almost hysterical levels. In this situation even "illegitimates' of the right colour and quality were worth saving. In 1904 the Liberal Premier Seddon issued his Memorandum on Child-Life Preservation which condemned the wastage of infant life in the colony, noting, in particular, the death rates associated with illegitimate children and with baby 'farming'. Soon after, maternity homes for single mothers began to stress their role in saving 'two lives, two souls, two futures here and hereafter', as the committee of St Mary's put it.'" Emphasis on child life gave the homes a strong public profile and an emotive appeal which provision for 'bad girls' lacked. Some went on to establish nurseries in which babies born in the homes could be placed while their mothers went out to work. p38

Breast-feed and keep your babies

As a kind of emotional insurance, nearly every home encouraged inmates to breastfeed in these early years. This was done not simply for the convenience, or to give the infants a 'good start', but in the hope that breastfeeding would awaken maternal affection and stop the women neglecting or abandoning their babies. Unmarried mothers of the 1900s were actively encouraged to keep their, infants, though the reasons had more to do with the baby's chance of survival than with the mother's welfare or wishes- in the days before state benefits it may simply have prolonged and increased the pain of an inevitable separation. p39

Adoptions rare

There were plenty who thought that the burden of child care was an appropriate punishment for lack of chastity, but even more important was a lack of demand for exnuptial babies. ...Adoptions were rare, since illegitimate children were thought to be tainted by the circumstances of their birth. Small babies were uneconomic, adoptive parents of the 1900s still preferring children of 'useful' years.As regulations reduced the profitability of baby 'farming' and made foster homes subject to government inspection, the maternity homes also reported difficulty in finding foster mothers. The natural mother was needed to care for her baby, at least in the first years of its life and despite the fact that sheer economic necessity might later force her to give it up. p39

The days of maternity homes in business mainly to provide small babies for married couples to adoption did not dawn until 1940s... By the 1940s even the Child Welfare Division had begun to suggest that some maternity homes were in business mainly to provide small babies for married couples to adopt. p39

Changing value of child in urban society

The shift is no doubt linked to the changing value of child life in an urbanising society and, especially, to the reduced importance of older children's work in the family economy. It also reflects a new ideal of motherhood, which may have opened up the adoption market for newborn babies while it compounded the pressures on single mothers. p39

Ideology of motherhood intensive

The early twentieth century is recognised as a time when the ideology of motherhood took on a particularly intensive cast; when, as Australian historian Jill Matthews (1984) has pointed out, a woman's role as mother overshadowed her earlier usefulness as 'wife, as sexual partner, economic assistant, companion, servant'. In New Zealand under the Plunket Society the maternal ideal was prescribed and promoted to a degree previously unknown. 'Mother' was virtuous, housebound and, of course, married. As new standards of motherhood were formulated, the unmarried, and especially the 'repeat offenders' among them, were seen to debase the maternal ideal. Matrons of church homes might occasionally wax lyrical about the 'ennobling' effects of motherhood on flighty young girls, but the harsh reality was one of goals unattainable by women who had to work to support themselves and their child. For 'second falls' the gulf was even wider. Motherhood had patently failed to 'ennoble' them, or to raise their minds above the baser aspects of sex. The removal of the child, already seriously disadvantaged by its birth, might save it from further pollution by the parent. And who better to provide for the care of illegitimate babies than childless married women, whose unfulfilled state was everymore emphasised by the new ideology? p39

Cover up conflict

These developments initially posed a dilemma for the maternity homes. In terms of their moral purpose, the homes aimed at the reform and rehabilitation of unmarried mothers into society. Maternal responsibility was an important aspect of reform, and they believed that their clients should acknowledge their sin, face up to their responsibilities, and be guided by the knowledge of past consequences. However, the moral dictates of the time meant that rehabilitation might best be achieved through the pretence that no 'fall' had occurred. It was possible to deny that an unmarried pregnancy, handled properly, had ever occurred, and even before World War One the homes were being used as places of retreat. This was a role which caused them considerable discomfort, and which they tried to resist... p40

Screen that let birth fathers off

Pressures nonetheless continued from parents, employers and single women, who had themselves internalised on oppressive moral code, to provide a screen from judgemental local communities. This kind of screening meant, however, that the father of the child escaped a paternity suit and that mother and child were separated. There were other consequences which have reached down through time and which relate to recent debates over the Adult Adoption Information Bill. The staff of maternity homes were concerned even in the 1900s lest infants' rights be overlooked in the rush to protect the mother, and as early as 1910 one home reported on the 'pathetic anxiety of grown men to find out their parentage'." It is the archivists and administrators of these institutions who have inherited the dilemma, in demands to allow access to past records. p40

Attitudes to ex-nuptial births

The very existence of maternity homes for single mothers helped, then, to colour and define attitudes to ex-nuptial births. They represented a more organised approach to the management of unmarried pregnancy, part of the rituals and pretences which, from the 1890s seemed increasingly likely to surround the 'problem' of illegitimacy. Until very recent times single mothers wishing to retain respectability might remove themselves to the discreet isolation of a home in the country or retire to one of these city institutions for unmarried women. As these options became more entrenched, it is possible that the single woman who decided to brazen it out in her own community was all the more stigmatised for her-lack of decency. p40

'Second falls' degenerate

The homes which restricted their attention to 'first falls' helped to reinforce another distinction. In the eyes of social workers, women's groups and religious bodies, the demarcation between first and second time unmarried mothers took on a tremendous significance. Single women with only one child might be regarded as the unfortunate victims of male lust. More cynically, they might be viewed as inexperienced girls who had failed to clinch a sexual deal that was supposed to end with marriage. 'Second falls' were vulnerable to a very different set of labels, and under the influence of the eugenics movement were likely to be branded 'degenerate', inherently lacking in self-control (Fleming, 1981). From the 1900s various recommendations were put forward by hospital boards and by women's groups, advocating the enforced restraint of 'second falls'. Aspirations exceeded achievement and 'oversexed girls' continued then and in later years to alarm eugenists and moralists. Increasingly, women having a second or subsequent child out of wedlock were set apart, not only from the respectably married, but from the first time unwed mother. p41

Growing medical interest in maternity

The moral dimension was only one aspect of maternity care for the unmarried, however. Intersecting with these developments was a growing medical interest in maternity which, in theory, worked against moral categories. Medical involvement began to gather strength in New Zealand from the 1890s, quickly impinged upon the activities of the voluntary homes and brought them into a broader constellation of maternity services... p41

Midwifery and Health Department pressures

Involvement in midwifery made the homes vulnerable to Health Department pressures. With the passing of the 1904 Midwives Act and subsequent private hospitals legislation, they became subject to Departmental inspection and standards. Those which did not have a registered midwife began to call upon nurses from the state maternity hospitals, and to send their own staff to lectures at St Helens. By the 1920s most of the Salvation Army homes had shifted into larger premises. They and the Alexandra Home had been recognised as training schools for maternity nurses and there were moves to associate antenatal clinics with their facilities. (AJHR, 1910-30). They had, in essence, become 'hospitals' as well as 'homes'. p42

Medical intervention broke barriers

As medical intervention became a feature of maternity, the old distinctions between married and unmarried cases were undermined, at least in an institutional sense. When Grace Neill opened the first St Helens Hospitals in the 1900s, it was assumed that respectable married ladies would somehow be tainted by proximity to the 'fallen'. Realising that institutional maternity care was still associated with poverty and moral transgression, Neill had been careful to impose restrictions on entry and to ensure that a fee was charged for services. Married and unmarried mothers were to be kept carefully apart; the former in St Helens, the latter in voluntary maternity homes. (Tennant, 1978). For doctors keen to raise the status of obstetrics, these distinctions 'were irrelevant. Over the 1920s and 1930s childbirth was to become an illness requiring the hospitalisation and medical supervision of all mothers, regardless of moral and financial status. p42

Health Department codes

As Health Department codes required increasingly specialised facilities, the two strands of maternity care became more closely entwined. The cost of building and equipping these specialised institutions would simply not sustain separate provision for 'good' and 'bad' women. However, the transition of obstetrics from a relatively

despised branch of the medical profession to today's prestigious speciality required that students have access to a specific number of cases during their training...In Dunedin this meant the Salvation Army maternity home 'Redroofs' and the Forth Street Maternity Hospital. (Forth Street had originally been the Female Refuge, but in 1904 it was closed and later reopened as the Medical School maternity hospital for destitute married and unmarried women. p42

Moves to open St Helens to single mothers

By 1920 pressure to open St Helens to single mothers had come from an influential source. In 1922 the British Medical Association urged that New Zealand follow the Australian example and admit single women to state maternity homes, perhaps under a married name. The alternative, the doctors claimed, was abortion, since few single mothers could afford to enter private hospitals and most felt stigmatised by entering a church home (*NZ Medical Journal*, 1922). Over the 1920s, therefore, a number of single cases were admitted to St Helens, at first under special circumstances, later on a more regular basis. p43

Married mothers enter Institutions

Equally interesting is a movement the other way, as married women began to enter institutions for single mothers. This reflected both patient demand, with New Zealand's failure to develop an adequate domiciliary midwife service and the economic needs of some church homes. As Health Department pressures increased, the fees paid by married women became increasingly important, helping these homes to keep up charitable work with single mothers. At the same time, the unpaid domestic work done by single women enabled the homes to keep their fees lower than those of private hospitals. In the 1913-1914 year there were 30 single and 20 married women admitted to the Alexandra Home for Single and Destitute Women in Wellington. By 1916 the words 'friendless and destitute' had been dropped from its title as they caused offence to the married women admitted, and by 1931 less than 20 per cent of births taking place at the Alexandra Home and at Wellington's Bethany Hospital were to single mothers. (AJHR, 1931). Married women were attracted to homes by their reasonable fees, their records for careful service, and by the fact that they could have their own doctors in attendance whereas St Helens was closed to outside staff. p43

On the medical side, it was argued that the admission of married women had positive effects, however.

Decline of pain as punishment 1931

The 1931 Committee Of Inquiry into Maternity Services claimed, for example, that the high standard of medical attention demanded by married women was transmitted to the unmarried. In particular, their entry made the denial of pain relief more difficult to sustain:

> The opinion formerly held that endurance of pain during labour is an essential part of the discipline to be meted out to girls who have transgressed the moral code is now rapidly losing ground. With few exceptions it was found that in homes for unmarried girls pain-relieving measures are being used to an increasing extent. AJHR 1983... p44

Public hospital maternity beds 1920s>

From the 1920s the trend was to encourage public hospital provision of maternity beds... <u>In theory</u> public maternity services did not distinguish between married and unmarried patients, and attention had shifted from the moral to the physical condition of all cases. <u>In practice,</u> distinctions still remained, ranging from insensitivity in examination to the elaborate pretence that single mothers were married... p44

The voluntary homes remained to give married women a choice of facilities and to provide support for single mothers. As early as 1925 there was Health Department pressure for them to give up the maternity side of their work and send inmates to a central public facility for their delivery, (AJHR, 1925), but a shortage of maternity beds during the 1940s put an end to this and, in some cases, led to government or hospital board assistance for their work. As long as unmarried pregnancy was regarded with condemnation and greeted by social ostracism, they would continue to have a function. p44

Growing dissonance medical v moral

The voluntary maternity homes of the early twentieth century illustrate the growing dissonance between medical and moral definitions of maternity. From a medical perspective, the trend was to eliminate distinctions between married and unmarried mothers. The <u>new obstetrics regarded all maternity cases as 'bodies'</u> pathologically weakened by civilisation for the normal task of reproduction and in need of doctors' supervision... p45

By the Second World War it was accepted that women would enter a medical institution for childbirth, and that this was in the supposed interests of a safer birth - not from a need to retreat from the public gaze for a stipulated time. p45

At the same time, places like Bethany Hospitals, the Alexandra Home and St Mary's accentuated differences between married and unmarried mothers, and, more subtly, between kinds of unmarried mothers. Moral considerations remained, though they had been redefined over the early years of the twentieth century. The focus was less upon the individual woman and her personal need for salvation; more upon mother, baby, and their anomalous position in society. As long as she did not openly flaunt her disgrace, the first time unwed-mother might be treated more humanely than before and rehabilitated into society...

The same maternal ideology which excluded single mothers may ultimately have expanded the adoption market for their babies. However much the maternity homes still regarded their mission as moral reform, some outsiders perceived them in another light by the 1940s - not as producers of domestic servants, which they had been in the 1900s, but as producers of healthy babies for adoption. p45

Source 'Maternity and Morality: Homes for Single Mothers 1980-1930' Margaret Tennant. Lecturer in Social History , Massey University. Published *N Z Women's Studies Journal* August 1985 pp28-49. *See* full Article for more detail and ref-

Confinement of Unmarried Mothers 1955

Glass—Facilities for the confinement and care or unmarried mothers 1955—

Government - Hospital Board Maternity hospitals

Unmarried mothers are admitted to all Government and Hospital Board Maternity hospitals on the same terms as married women - this was not always so- in 1922 the New Zealand ,branch of the British Medical Association was concerned at the failure of State Maternity Hospitals to admit unmarried mothers for confinement, *New Zealand Medical Journal* (1922). Vol.21 p176 p49

Further there are private maternity hospitals available for those who can afford to pay, and also charitable institutions throughout the country which take these girls at little or no cost, like State Maternity Hospitals these private and charitable institutions all use pain relieving methods at childbirth. During the period April 1954 and March 1955 there were 1,348 confinements of unmarried mothers in the four main centres, 445 of these took place in Private Hospitals over 70% being in charitable institutions. 295 took place in St. Helens Hospitals and 576 in Public Maternity Hospitals, only 32 confinements taking place at home. Thus over 97% of the confinements took place under proper maternity conditions this is similar to the percentage of hospitalisation of all maternities which in 1942 was 95.3% rising in 1952 to 97%. p49

Charitable Institutions

The situation in the charitable institutions in regard to unmarried mothers will now be discussed.

There are no qualification apart from pregnancy needed by girls entering such homes, no discrimination exists as far as religion is concerned nor is the mother having a third or fourth illegitimate child refused admission.

Some homes primarily concerned with adopting these children are loath to take mothers of coloured blood.

These homes usually take the girls in at about the sixth month of pregnancy although they will take them earlier if there is a need. p50

Benefits and payments

While most institutions like the girls to contribute something to there support this is not demanded, however as most of the girls over sixteen years of age receive the emergency benefit of £2. 7s. 6d. per week it is usual to ask them to contribute half of this for their care. In another institution all the girl needs to provide is a set of baby clothes, while in another case the stay over the three months and the confinement is charged at the overall rate of five guineas. In the case of the *Motherhood of Man Movement* where most of the pregnant single women are placed in private homes and required to pay board at the nominal rate of £l. 5s. 6d. per week as well as rendering light domestic assistance, they are eligible for the Sickness Benefit of £2. 7s. 0d. per week for those under twenty and ;£3. 10s. 0d. per week -for those over twenty.

Antenatal examinations take place weekly or two weekly with an examination by a Doctor and if necessary these girls are sent to hospital. p50

Training

The mother is given training in the care of the child during her stay at these homes. In some homes if she is keeping the child she may stay up to three months in the home, in others she must leave after two weeks, whereas in others she must stay three months whether she is keeping her child or adopting it, except in exceptional cases such as a married woman with legitimate children to look after. p50

General facilities

The babies are confined in nurseries attached to the homes. The accommodation in these homes is adequate for the demand and in no instances are girls refused admission because of overcrowding.

In many of the homes single rooms are available for these girls although some of the older institutions the dormitory system still exists. p51

As a rule most homes prefer the girls to remain confined to the institution during their stay, occasionally the matron may take them to the nearby suburban shopping centre. In one home however, the girls were allowed a full day off each week and were allowed out every afternoon.

Visiting usually occurs once or twice a week when parents and close relatives only are allowed. In no cases were they allowed to see the putative father. p51

Usually the girls assist in the running of these homes by cooking, cleaning and washing, a roster system being used.

At one extreme the girls were polishing and cleaning for most of the day, rising at 5.30 in the morning and going to bed at 8.p.m. with little time for relaxation this state of affairs continuing right up to the day of confinement. In the case of a new home being erected in the North Island the girls will each have a room to themselves and they will be responsible for cleaning it and attending to their personal washing. p51

All the homes visited had a lounge usually provided with magazines and a radio, some also have a recreation room with a table tennis table. p51

From the foregoing a rather uneven picture is obtained ranging from almost ideal conditions to frankly unsuitable conditions. p52

Comments of the girls!

Some remarks made to me by the girls in these homes may help to round off the overall picture.

Margaret remarked that the work was not excessive although there was little recreation and they were only allowed out with their mothers. p52

Shirley on the other hand thought the work was excessive.

In another home a different picture existed. Jean said the atmosphere was friendly although they were not allowed out, no magazines or books were provided, there was no radio or cards, she could not see her friends and the work was heavy and monotonous. p52

Gina complained that she felt she was paying for her sins especially as regards the attitude of the nurses to her. The private patients were treated much better than the “girls”.

Sarah said she felt "locked in" and would prefer a private room to a dormitory, she also complained about the heavy work and the heat in the laundry especially when she was near time. p52

Conclusions

While each girls reaction varied with her intelligence and what she had been accustomed to there was a consistency about many of their complaints. p52

One could generalise and say that routine monotonous work, confinement to the institution, no permission to see the putative father and a compulsory stay after the birth of the baby is wholly or partly the case in most New Zealand shelters today. p53

The expression of such rules suggests that for a time such a girl is an inferior being and her personal convictions of moral worthlessness is reinforced. p53

The aim of homes for the unmarried mother should be attractive cheerful surroundings, the provision of single rooms with space for the child, the bringing home to her in the post-natal period the fact that responsibilities attend the pleasures associated with children. By this means the realities of motherhood will become apparent and may assist the mother in deciding the future of her child. p53

Conversely those mothers who have decided on adoption for their child should have no further contact with the child and be allowed to leave the home at the end of the post-natal lying-in stay of ten to fourteen days. p53

Rules in such institutions should be a compromise between the protection of the individual and regard for the group, infringements should be treated understandingly and this will be found more rewarding than punishment. p53

Recreational and educational facilities should be available but not compulsory.

The question of staffing these homes is most important, the absence of condemnation and pity among the staff and the presence of understanding and help is essential. p53

Let the period of stay be one of reconstruction rather than one of condemnation and punishment. p53

It is obvious that none of the charitable institutions in New Zealand provide all these ideal facilities but it must be remembered that they are charitable institutions dependent on voluntary donations for their existence and that while their work is approved of by Government Departments little or no financial assistance is given. p54

If substantial Government assistance was provided for these homes then regulations standardising these homes at th highest levels could be introduced. p54

This would be done without the oft repeated cry of "interference and infringement of freedom" so commonly heard when Government bodies are formed to look after the individual. By the establishment of a New Zealand Council for the Unmarried Mother with representatives of the, Child Welfare Department, the various charitable institutions, the Plunket Society and other interested groups, a comprehensive programme for the care of the unmarried mother antenatally, during confinement and post-natally could be developed, together with assistance and help in the arrangements of adoptions and foster homes, and in the institution and enforcement of affiliation orders. Such a council could be the first step in providing more satisfactorily for the care and problems of the unmarried mother. p54

Source "Survey of Unmarried Mothers in New Zealand' William I Glass. Thesis Otago University 1955 pp49-54

Early State support for abandoned women

Browning— The State did however attempt to reduce the financial burden of supporting abandoned women and children by pursuing men for maintenance and prosecuting them. Thomson* notes that the laws on maintenance and destitute persons were enforced and occupied a good fraction of court time and that most prosecutions involved the maintenance of young children (**A World without Welfare : New Zealand Colonial Experiment* 1998 p 144). He goes on to state that between the years 1881-1914 prosecutions for abandoning wives or children or fathering illegitimate children appear in all years (1998:148). Tennant, however observes that "paternity orders were rare; even more unusual was their successful enforcement" and, failing a paternity order, the support of an illegitimate child was the responsibility of the mother (1985:30).

The moral standard was quite different

for deserted wives who achieved a higher degree of importance than the single mother. There was a differing view on the predicament of abandoned wives in that there was more inclination to offer support and sympathy. This was because it was believed a deserted wife had not lowered her moral standards like a single mother did. However the errant husbands, according to Tennant were roundly condemned for their rejection of stable family life, as it was believed that they calculatedly used the welfare apparatus to evade responsibility and detach themselves from inconvenient unions (1989:109).

For women who wished to divest themselves of their offspring, pre-1881 adoptions occurred but on an informal basis. In a legal sense, the courts held that a birth mother could not transfer her rights or obligations in respect of her child. Women were blamed for their predicament as either inadequate wives, women who had failed in their domestic, servicing role, had driven their husbands away (Tennant, 1989:109) or as a single mother, a moral imbecile with degenerate vices inbred (Tennant, 1992:69). In some instances informal contracts were drawn up between the birth mother and adoptive parents, but courts would not uphold these contracts should the birth mother change her mind (Gillard-Glass and England, 2002:2 1).

Source Julee Browning 'Blood Ties' Thesis 2005 Ak pp28-29

MOTHERHOOD OF MAN MOVEMENT

Pamphlet Issued 1943

"Children First" *Is the Motto of the—*

"Motherhood of Man Movement" *Undenominational*

This is an appeal to all the great-hearted men and women of New Zealand to give needed kindly help to the many girl-mothers and their war babies

Aims and Objects

Below is set out the immediate aims and objects of the Movement

1— **Rescue** and give shelter and kindly help and advice to destitute and lonely girl-mothers, married and unmarried,

2— **Give** the babes a welcome, and the care that is their right as future citizens.

3— **Encourage** the mothers to keep their babes (with the aid of Government allowance)

4— **Arrange** that each child lose its identity (if expedient) through adoption by worthy foster-parents (Government allowance to be made where necessary).

5— **Call Upon** the public to share its responsibility by contributing to the support of war babies.

6— **Appeal** to country people to help shield mothers and babes by giving employment.

7— **Provide** a residential home where expectant mothers and babes shall receive necessary care and attention.

8 — **Give** each child a chance and an opportunity to take an equal place among its fellow citizens.

9— **Infuse** the motherhood influence in all human affairs.

10— **To Enlist** the personal interest and engage the services of all men and women who would foster the welfare of little children.

11— **Work** for educational reconstruction so that the, art of living, co-operation and brotherhood are developed in children, and their spiritual, moral, mental and physical potentialities are unfolded,

12— **Support** and work for all activities that will promote the well-being of children,

Convenors Mrs M Harvey & Mrs E Leighton
Legal Advisor Miss B. Webster LLB.
Appointments to be made Hon. Medical Advisor (1); Hon. Secretary; Treasurer, etc.

Text— "The cry goes forth, "Populate or Perish!" We women hear it. Whilst the bombs are still bursting, killing hundreds of innocent victims, the mothers of babbling babes are reminded that war may be the portion of their children when they reach young manhood and young womanhood.

Are we mothers going to remain passive and accept war as an inevitable process of evolution? Are we going to allow the so-called leaders of humanity to continue the cry "Populate or Perish," or shall we raise a counter-cry: "Let us populate, educate and live"?

Women know in their hearts that war is not God-ordained. It is mans ignorance of God's laws and his misuse of God's power which is alone responsible for "man's inhumanity to man."

We read the casualty lists in the newspapers— hear the dreadful tales of destruction that come over the air, and our hearts stand still with horror. Those are, all sons begotten of mothers who have loved, cared and prayed for them. Whether these mothers be Japanese or Russian, German or British, the anguish of loss, is the same... and the statesmen of the world ask us to populate to save our nation from perishing.

What shall we women answer? Bear children that twenty years hence war-mongers may herd them into battalions to kill or be killed? No! Rather than do that, we shall find another way of salvation for the race, for there IS another way. It can, and must, be found.

The mothers of humanity must take a stand and introduce a better way of life. They must unite in a combined effort to determine a more constructive and peaceful plan of education that will develop the moral and spiritual faculties in mankind which up to the present have not been given first place in importance.

It has been proved that killing men does not remove the evil from the world. Now is the time to right-about-face, and go forward in the way ordained by the Father of humanity.

An effort is being made at the present time to introduce into human affairs an influence known as The Motherhood of Man. It is still in its infant stage, but sponsored by the women of Auckland it is hoped that this will be one of the channels through which the Laws and Teachings propounded in the Gospels will be brought into practical use in all walks of life. The Motherhood of Man is a principle that permeates all life. Dr. Barnardo in his, rescue work of stray waifs is an example of this principle in man. In George Muller we find another fine example.

Many unmarried women with Great Heart spend themselves in service to little children. They are known as the Race Mothers. The childless married couples who have adopted one or more unwanted babes give further evidence of this principle, seeking expression in selfless love.

The Motherhood of Man as an influence has not been taken into account in the past. Possibly it is because women have not realised what a great power this is, and have not used it in matters national, political, educational and spiritual that humanity is suffering today. It is clearly evident that mankind has missed the way. CAN the mothers bring forth a guiding principle that shall lead us into the way of Peace? It is not an easy way. It was taught in the fields of Palestine two thousand years ago, but it meant so much self denial that the people chose the easier road to immediate satisfaction, and we today see where that road has led, and unless we women use every ounce of power we have, in another twenty years an even worse fate may await us.

Well, let us set to work on our immediate problems.

The first one to be taken in hand is surely the rescue of-the many girl-mothers who are victims of the war conditions that are shaking the foundations of our civilisation. These must be sheltered, cared for, and shown a new way of life. They must be taught that one false step does not preclude them from becoming helpful citizens, using their influence to prevent the same state of affairs occurring every two decades. The little children must be given a 'welcome'. They are citizens of the future, and need all the love and care which the compassionate ones can give them. They are, to be given a place among their fellows with equal rights and equal opportunities for education for future service for the race.

Think of the mental agony endured by these girl-mothers as they await the day of delivery. Think of the fear that must constantly haunt their mind as they wonder what will become of them and their child later-on.

Think, too, of the reproaches, that are flung; at them; from the ranks of the self-righteous as they silently bear their shame, and then think of the effect of this mental strain upon the coming child. Think, also, of the love and care that are being denied mother and child because of the mother's misplaced affection and waywardness. These girls need all the kindly help and love that understanding women can give them. Many of them will want to keep their babies, and others for various reasons will have to part with them. They must all be provided for in their time of trouble, and helped to lead a full useful life after.

The Motherhood of Man Movement yearns to take these young mothers with their precious babes and shelter them— to see that adequate and loving provision it made for them.

It is intended that the programme of the Movement should be a comprehensive one, extending its activities into many human affairs. There is no limit to the constructive changes that can be brought about through education along mental and spiritual lines— educative picture films — well chosen literature, etc., If a united effort is made by men and women alike to infuse into existing conditions an influence that will give the rising generation the chance to be more tolerant, more honest, more kind, more loving— Hence more peaceable— than preceding ones.

It, is possible to frame a way of life for our future citizens that will bring out in each one the inherent virtues that lie latent and need to be stimulated and out-drawn by a revised system of education that will place first thing first.

Given the support it deserves by great-hearted men and women, the Motherhood of Man Movement should be a tremendous influence for good in the life of the people of New Zealand.

Here is copy of a letter' sent in by a great-hearted woman, published on account of the splendid suggestions it contains—

Dear Mrs. Harvey,
May I humbly offer these suggestions for you consideration:—

Headquarters to be formed where expectant mothers, who feel unable to help their babes, can talk with confidence to a mother whose heart is filled with love and compassion. The place to be made known to doctors, ministers of religion, nurses and nursing homes, hospitals, etc., and to the public in general.

Arrangements made for child to be delivered to "Motherhood of Man" (unlimited) for adoption (identity to be lost) "Motherhood of Man" to have "Suffer little children to come unto Me" Home supported by Government subsidy. (If money can be found for ammunitions, etc., for destroying life, surely it can be found for saving same.!)

Home to be supervised by "Mother" or trained nurses, sick and infected children to be kept under supervision until condition cleared. All prospective parents for little ones to belong to the "Motherhood of Man" .

Advertising or broadcasting to be conducted (if possible to have the "air" do it through "Joan" or "Aunt Daisy"); for gifts of suitable homes.

Appeal to invalids or "shut-ins" for baby garments, mothers and expectant mothers for one or more napkins, etc.— spinsters for soap and powders, etc.— "grannies" to make cot covers— fathers to help with basinettes and cots— dried milk factories for baby foods. Make us all feel that as it is our privilege to help the fighting forces, so is our loving privilege to help these little ones. "In as much as ye have done it unto the least of these My brethren, ye have done it unto me.".

Oh, Mrs Harvey, let us all share in helping these little ones that they may feel the joyous welcome awaiting them and loving prayers surrounding them. Yours in the Master's Service. "

THIS is a big adventure. It is hoped that the appeal will reach and inspire the hearts of all who would help the helpless. The spread of this Movement will depend upon the response to the immediate requirements. All can help in this ministry of service to His little ones.

Immediate requirement

1— Suburban Residential Home and Furniture.
2— Gifts of Clothes and all Needed Accessories for Mothers and Babes.
3— Trained Nurse.
4— Understanding Woman as Matron.

Membership

All Contributors' to the Motherhood of Man Movement, either in money or gifts, are entitled to Membership.
Voting Membership Fee: 10/- per annum.
Donations - and *Membership Fees* payable to Convenors: Mesdames M. Harvey & E . Leighton, Room 317, Victoria Arcade, Auckland.

Source Alexander Turnbull Library PO Box 12349 Wel lington. File P396 MOT 1943

Motherhood of Man Movement - History

Anne Else—

1942-1953 Founding 1942 by Mrs May Harvey of Parnell to the 1953 crisis in its financial affairs.

Else— The Movement 'began its activities as a war measure, intended at first to meet the needs purely for that time'. The statement pointed out, however, that 'the need is ever present and continues to grow'. Mrs Harvey, founder of the Movement, believed that the neglect of motherhood was 'a crime against the race', but she advocated 'State aid NOT State interference.'... p52

Apparently 'duty to her family forced Mrs Harvey to give up active work for the society in 1945', but she did not resign as President until September 1950. By 1953 MOMM was running a complex organization, providing care for single pregnant women, adoption placement, and a day nursery. p52

Nursery opened in 1946

With the backing of Dove-Myer Robinson (who gave mothers employment in his Childswear factory); by the end of 1952 it had dealt with 56,000 daily attendances. Lest anyone should think it was encouraging mothers in general to go out to work and neglect their families, MOMM was quick to assure the public that the nursery's sole purpose was 'aiding those Mothers who MUST work and who do so to raise their living standards to a decent and worthy level'. Public disapproval of 'working mothers', married or single, was strong and widespread, but the existence of the nursery was in line with Mrs Harvey's original concept of assisting any mother who needed help. It is a rare example of practical assistance being made available so that unsupported mothers, in the years before the Domestic Purposes Benefit, could take a job other than a live-in housekeeping position. p52

But the Movement was best known for its assistance to single pregnant women, and there was no shortage of clients. Unmarried women who became pregnant tended to move away from their usual homes: some would go as soon as the pregnancy was confirmed, others before they started to 'show'. p52

Moving away to conceal the pregnancy

<u>The secrecy in which closed adoption was embedded started here</u>: the primary reason for moving away was to conceal the pregnancy from relatives (sometimes including the woman's own parents) and friends. p53

The larger cities offered a number of options for such women, and two sources give a picture of these. In 1948 the Immigration Department became concerned about the plight of British immigrants who became pregnant here, without family or friends and not knowing where to turn. In response, Child Welfare officers gave frank reports on various institutions. St Mary's in Auckland, run by the Anglican Church, was not well thought of, because of the restrictions it placed on the inmates, that 'give the place the air of some antediluvian reformatory'. 'No phone calls are allowed, all mail is censored, the girls rise at 5.30 a.m. and retire at 8 p.m., doing all the work in the home including laundry, scrubbing, polishing, and cleaning windows...This institution still adheres to the idea of reforming what are regarded as "fallen girls".' The Alexandra Home in Wellington was run on similar lines. 'It will thus be seen that the general arrangements [in such institutions] fall heavily on the unmarried mother.' p53

Reforming the fallen was certainly one aim, but there was another, more worldly, reason behind this regime. 'Such institutions depend on the labour of the unmarried mothers for the domestic work in the Homes and hospitals, most... catering also for married women."...There were other 'Homes', some run by churches, others by interdenominational community groups, and a few small ones run by private individuals... p53

Household help network

In some cases women would avoid institutions or charitable agencies altogether. p53

(a) Their doctor or clergyman arranged for them to live with a safely distant family, usually in return for household help...there was a network of such exchanges throughout the country. p54

(b) Alternatively they might answer a newspaper advertisement for live-in house-hold help, or be found a place by Child Welfare, especially if they had come from a city to the provinces?' Like the institutions, some households undoubtedly treated their 'guests' well, others not so well, but whatever the women encoutered they had little choice other than to put up with it. 'Unmarried mothers were a marvellous source of cheap, uncomplaining labour...how could you complain? There was nowhere else to go. p54

The Hostess system

The Motherhood of Man Movement operated on what it called 'the hostess system', though later a number of hostel places were also available. It kept a list of married women who offered room and board to pregnant women in return for help in the house. Those 'girls' who received sickness benefit also paid £l.5s. a week (about half the benefit)... p54

MOMM 1950 better than Institutions

It contrasting its own clients with those in institutions: '*We do not believe in Institutions*. We think it degrading for a young girl, who has made the mistake of loving too much and trusting too much, to have to be prepared to rub shoulders with the professional of the street, with girls of all types. Institutions are needed for a certain type only, but we deal with the very young, and the better type of girl who is frightened of life and the burden she has to cant' p54

Unmarried mothers favoured private hospitals

For the birth of the child, unmarried women were more likely to go to private hospitals than were women generally. In 1955, public hospitals provided over 77% of all maternity beds, and 75.6% of all hospital confinements were in public hospitals; but Glass's study found that in the year from April 1954 to March 1955, of 1348 unmarried women confined in the four main centres, one-third(445) went to private hospitals. Of these confinements, over 70% were in charitable institutions. p54

1954 MOMM Fairleigh hospital opens

The Motherhood of Man opened its own maternity hospital, Fairleigh, in 1954; before that it arranged for women to go to other private hospitals. When adoption was planned, the mother did not see the baby. In the older institutions, women agreed to stay for three to six months after the birth, to care for the child and do domestic work. Child Welfare officers saw this enforced stay very hard on the mother, it 'naturally develops her maternal affection, which, if adoption is to follow - as is often the case - creates acute distress upon the subsequent separation....On the other hand, not allowing women to stay for more than 14 days after confinement, which appears to have been the practice at MOMM, seemed to one observer 'to exert undue pressure on a defenceless girl to have her child adopted'. p55

As far back as 1948, facilitating adoption was seen as the main purpose of agencies such as the Motherhood of Man and Childhaven.

1945-1950 Shift keeping babies to giving them up

In the mid-1940s the Movement had listed its aim 'to encourage the mothers to keep their babies and to find congenial homes where the mother may support herself and the child' ahead of assisting 'in finding suitable foster-parents where adoption is the better plan for the child'." But by 1950, Mrs Harvey was suggesting that MOMM advertise as an 'Adoption Bureau'. p55

By1952

Though 'the care of the unmarried Mother' was the Movement's first aim, the second was 'the selected adoption of babies'. A similar shift, from presenting adoption as a regrettable second-best for both mother and child in the early 1940s to the virtually automatic linking of ex-nuptial birth with adoption by the 1950s, can be traced in the records of older organizations originally set up to assist women in difficulties, for example the Society for the Protection of Women and Children. p55

Steady demand for adoptive children

There was certainly a steady demand for children. Prospective adoptive parents who contacted MOMM in the early 1950s were sent a form letter which told them that 'our waiting list is a lengthy one and it is impossible to given any indication as to how long it will be before your wish could be fulfilled'. The applicants were to notify Child Welfare of their intention to adopt, and to obtain a foster-parents' licence. The letter asked for their full names, occupation, and religion, and 'some idea of your colouring is helpful'.' There is no suggestion that they needed to supply more information than this, or come in for an interview. However, a 1952 statement claimed that the 'cultural and financial background of all applicants' was carefully investigated, 'assuring the security of a good Christian home for every adopted child'... p55

Form letter

Applicants were invited to register as members of the Movement, to help support the work, and were asked for £16.5s. to cover the costs of a private hospital confinement; the form letter listed the mother's not seeing the baby, the routine blood tests (for venereal disease), and the 'full medical history of both mother and baby' obtained by MOMM's doctor as advantages of this arrangement. The applicants would be notified ten days after a suitable child was born, and MOMM's own solicitor obtained the mother's consent as she left the hospital. All details were kept strictly confidential, 'but we can at all times give assurance that the baby handed over is of perfect health and excellent background'." This was in line with MOMM's stress on catering for the 'better type' of girl. p56

1948 Criticism from Child Welfare

The way charitable agencies and individuals arranged adoptions was criticized by Child Welfare in 1948. For example, they did not always trouble to keep the mother's address for getting her consent when her child went to new parents after she had left. As for checking out the applicants, 'three babies were placed with applicants who were not married but were cohabiting, and this was only discovered when the legal papers were required'. There appeared to be 'urgent need to have the position regarding adoptions overhauled and clarified' and legal authority given to a definite body 'to undertake this most important work. p56

In 1952 an Interdepartmental Committee

was set up to make recommendations for a new adoption bills At that time, Child Welfare was responsible for only 27.6% of all adoption placements. In Dunedin they handled almost half, but in Auckland, where other agencies were most active, they arranged only 17 of 548 placements. p56

One of the principal, though unstated, aims of getting the legislation revised was to bring the activities of agencies and individuals under better control. Two main motives were at work: genuine concern, occasioned by instances of negligence, or worse, which had come to the attention of Child Welfare; and a drive to expand the role of social work in general, and Child Welfare in particular, so as to give it virtually complete control of adoptions, based on the conviction that that was the best and only way to ensure the welfare of all concerned, especially the child. p56

The committee submitted its report on 22 July 1952, but the Cabinet did not approve the drafting of a bill until August 1953 Child Welfare lobbied for the largest possible role throughout this process. In an article of late 1953, the then Deputy-Superintendent (later Superintendent) of the Child Welfare Division, L. G. Anderson, stressed how unsatisfactory the current situation was: the only real safeguard against unsuitable placements, the foster-parents' licence, simply meant that the home and parents had complied with a minimum standard. Anderson claimed that only trained social workers could match children and parents properly. But, unlike the officers of 1948, he expressed no concern about pressures put on women to agree to adoption. The focus of his article was the child and the adoptive parents; the mother was hardly mentioned... p57

1953 crisis in its financial affairs

Else— From 1946 on, MOMM was heavily reliant on the

work of one married couple. The Movement was run from their house, with the day nursery on the ground floor. Mr X. acted as Treasurer, Mrs X. managed the nursery, interviewed, placed and supervised the unmarried mothers, and arranged all adoptions - 1,882 of them up to the end of September 1952, says the 1952 statement, which she probably wrote. The minutes of the 1948 Annual General Meeting congratulated Mrs X. on her effort as 'unique in the country'. p57

Warren Freer. MP demands audit

However, by June 1953, Warren Freer. MP for Mount Albert, and on the committee of MOMM from 1949, was reporting 'most disturbing news': the Minister was insisting on an audit of the Movement's financial affairs before releasing its annual government grant. p57

Auditor's report of 12 July 1953

Else— Report made unpleasant reading.

(i) Unsatisfactory accounts There was no satisfactory system of recording monies received, including fees paid by adopting parents; and the fee charged was in some cases well in excess of the actual cost of confinement. Yet he found liabilities of over £500, including £108.12s. owed to nursing homes. There were many other irregularities in the accounts. He was particularly disturbed that every blank cheque in the book he received had already been signed by the Treasurer and a committee member. p57

(ii) Pressure to adopt out child Even more serious was evidence that Mrs X. had 'declined assistance to unmarried girls who wished to keep their children'. It was reported that one attempted suicide as a result. Those mothers whose babies were stillborn or died had apparently been required to pay for both their confinement and the funeral expenses. p57

(iii) Financial inducements Applicants for adoption had been discouraged 'if there was little chance of a donation to the movement, whilst obviously well-to-do couples were able to obtain infants, in many cases without delay'. [51] p57

(iv) *The police were called in,* and Mrs X. stood trial in February 1954. Her counsel submitted that there had been 'muddlement, but nothing more', and she was acquitted. p57

1954-1960s Reorganization

Reorganization in time to meet the provisions of the Adoption Act 1955, through the relatively smooth-running years from 1955 to the early 1960s...

By the time the first draft of the Adoption Bill reached the House in September 1954, MOMM had been thoroughly reorganized, and the 'adverse publicity' of the previous year's scandal overcome.' MOMM's funding came from three main sources - (a) a government grant of £1000, (b) donations from businesses such as Dominion Breweries and the Auckland Savings Bank, and its (c) own fundraising activities, plus (d) adoptive parents' fees and (e) the sickness benefit. The president's report for 1954 stated that 178 women, including 61 private (i.e. married) patients, who paid their own fees, had been confined at Fairleigh. The hospital covered costs easily, but the day nursery ran at a loss. p58

Mush-room growth of adoption agencies

Glass estimated that there were then about 750 unmarried mothers in Auckland, but an Auckland Child Welfare officer commented that 'with the mush-room growth of adoption agencies peculiar to our city', very few of them -'not more than six a year' - contacted Child Welfare. In fact, 'efforts made by the Child Welfare officer to establish... liaison with the agencies] were politely but firmly refused'. p58

MOMM was clearly the dominant agency.

In 1954, 174 'girls' registered for assistance, including 25 who were separated or divorced; the youngest was 14, the oldest 43. Their most common occupation was nurse or hospital aid; among their partners, the largest group were Royal Navy personnel. There were 137 births that year, 117 of them at Fairleigh; 131 babies lived, but only 16 were kept by their mothers. This is lower than the national figure for 1954, when at least 16% of illegitimate children were kept by solo mothers (i.e., not including mothers living with the father)... p58

The policy of assisting those who wished to keep their child should not be altered, said the president, 'although some...make a tragic mistake... p58

Consents Issue

There may have been particular pressure on mothers to agree to adoption that year, in order to obtain their consent before the law changed. One woman recalls approaching the Movement late in 1954. It agreed to help, on condition that she quickly sign the papers to have the baby adopted 'on the date of birth'. Her baby was born in August, shortly before the new Act, making consents signed before the birth invalid, came into force... p58

The Movement's solicitor, W.I. Gunn, also feared that the new statutory requirements about solicitors would make it difficult for the Movement to keep a record of when (and presumably whether) adoptions were finalized. Moreover, the adopting parents' solicitor might have some connection with the natural mother, as had occurred in one case, thus breaching confidentiality. Yet it seems that for some years the MOMM solicitor had both acted for the applicants and witnessed the consent of the natural mother. The Adoption Regulations 1956 would forbid this practice. p59

MOMM submission on Adoption Bill 1955

An amended draft of the Adoption Bill was referred to the Statutes Revision Committee in May 1955. [NZPD, 1955, 305. p.929]. The Motherhood of Man sent in the longest submission the Committee received, and [Solicitor] Gunn appeared in person. The submission strongly opposed many of the Bill's provisions, especially those that expanded the role of the Child Welfare Division and introduced additional steps into the adoption process. p59

— MOMM *wanted approved adoption societies to be licensed,* and their authority extended, so that they would have much the same powers as the Child Welfare Division in making placements and getting custody of children. p59

— It stressed its own experience in the careful matching of children with adopting parents, and claimed that unmarried mothers preferred to go to societies such as MOMM because they got more personal attention there than at Child Welfare. p60

— MOMM denied that it pressured mothers to agree to adoption. 'It merely happens that in the vast majority of cases it is the most sensible thing for the mother to do. p60

— **Secrecy was a major concern** MOMM believed there should be no possible opportunity for the natural mother to learn the adoptive parents' identity, and wanted the new provisions on this point strengthened. Citing anecdotal evidence, it raised the bogey of the mother finding out where her child was, and making a nuisance of herself; or worse, blackmailing the adoptive parents. Giving adoption societies a much larger role, it argued, would help to eliminate any such risk. p60

— **Retention of payments and advertising**
The strongest objection was to section 26 of the draft bill, forbidding any payment to be made in connection with an adoption. The submission pointed out that MOMM needed to collect fees from adoptive parents in order to cover confinement expenses, quite apart from placement expenses. It also objected to section 27, which forbade advertising except with the permission of Child Welfare. This issue was to surface again in the 1960s, when the 1950s position was reversed and the 'supply' of babies began greatly to exceed the 'demand'. p60

No points conceded in the Bill
when it reappeared for its second reading on 26 October 1955. Freer was one of the few MPs who spoke to it at length. He went over the same arguments again, referring to his personal experience of 'loose administrative practices' in support of registering approved societies and preventing individuals from arranging adoptions, and pointed out how much money adoption societies saved the state by confining unmarried mothers in private hospitals.'... In view of the 1953 scandal, it was hardly surprising that the Bill did not license adoption societies or extend their powers... p60

As for payment, the Minister suggested that the Bill did not outlaw the recovery of hospital fees. But in 1956 MOMM was twice found guilty of contravening the new Act by charging fees. Freer argued the case again, and in October 1957 an amendment allowed adopting parents to pay confinement expenses according to a scale approved by the Director-General of Health. p60

Adoption Act was passed 27/10/1955. Although it came into force immediately, regulations were not gazetted for almost a year. Despite the confusion this delay caused, and the problems over fee payments, MOMM's work continued. A table drawn up by Child Welfare covering 207 adoption placements of illegitimate children in the Auckland Child Welfare district shows MOMM as responsible for 83 (45 of them to people outside the area); other organizations arranged 29, hospitals 28, doctors 19, other 'third parties' 23, and 19 were 'unknown'. Only 6 were arranged by Child Welfare. p61

Movement finance 1955 steadily improved,
thanks largely to the profit from 117 private confinements at Fairleigh- nearly half the total. But the flow of 'girls' was increasing: numbers in the first two months of 1956 were equal to a third of the total in 1955. Defending the help MOMM gave, the president linked having a baby to innocence and ignorance rather than to sin: 'It must be remembered that "bad girls" don't have babies; they are either too well versed in birth-control methods or resort to other means to terminate a pregnancy.' p61

After October 1957, adopting parents could once more legally be asked for hospital fees, now £20, and a new application form was approved." As adoption placements rose, so did Child Welfare's share of them; in 1957 it came to just over a third, whereas private organizations arranged 23%, maternity homes and doctors 33.8%, and birth parents or grandparents only 4%. By 1959, Child Welfare had increased its share by 5%; but placements by private organizations had grown by over 10%, to 33.7% of the total. p61

1959 Motherhood of Man Movement zenith
under the energetic presidency of Dr W. R. Harrison, 1959 was 'the year of revival'. Publicity and fund-raising went extremely well. Women representing 'a complete cross-section of the community' came from all over New Zealand for help; 123 were completely cared for, and 90 adoptions were arranged, but applicants for children still faced a wait of two years. p62

For a few years more, the whole operation ran smoothly. By the end of 1961 the Movement's subscription membership had doubled, and the hospital was over £2500 in credit. However, the first signs of the coming reversal in adoption supply and demand were beginning to appear: Roman Catholic babies were becoming difficult to place. The Home of Compassion might help, but only if it was a single woman's first child. p62

1962> Surplus of babies shortage of homes
By 1962, MOMM was contacting all Child Welfare departments in Australia about potential adoptive parents, and Gunn gave permission to use the Movement's seal on documents for adoptions arranged via the American Consulate. Meanwhile the problems with placing part-Maori babies had increased to such an extent that their mothers were now being warned they might have to pay for foster homes until parents could be found. p62

By mid-May 1963, 95 babies had already been born, nearly double the number for the same period in 1962, and the secretary reported MOMM was' just holding our own' in finding adoptive parents, especially for boys. A deputation planned to meet the Minister of Justice to ask for an amendment to the Act, giving the right to advertise generally, and requiring every girl in care to pay £1 a week. By September, 175 babies had arrived, and there were no parents waiting for boys or the four 'with coloured blood'.

In November, MOMM won the right to advertise specific babies despite opposition from Child Welfare in Auck-

land; however, many of those who replied could not get Child Welfare's approval as parents. By December, it was necessary to limit the numbers of unmarried mothers admitted to Fairleigh, convert one hospital ward into a nursery, and write to the Health Department saying the delay in placing babies was beyond MOMM's control."

The committee meeting in May 1964 summed up the outlook: 'Adoption position bad for both boys and girls -applications coming in from prospective parents very low and list of girls booked into the hospital in the near future very high.' ...

The MOMM staff of three (one part-time) were under extreme pressure.... 'while frantically trying all sources to place the 100 or so babies appearing in the next six months'... In 1966 the hospital had to be temporarily closed; its licence allowed it to house only 14 babies, but 26 were waiting to be adopted." p63

Financial troubles 1964

Meanwhile the movement was having financial troubles of its own. Boarding babies was not a profitable undertaking... . At the end of the year 1964 the accounts showed a net loss for the hospital of close on £7000, and in 1965 an overdraft of £1000 had to be arranged. p64

The financial decline of the hospital was not caused by an excess of unmarried mothers and babies but by too few private patients. By 1967, private patients had fallen to 10% of Fairleigh's confinements. Thanks to free state care, few married women were having their babies in fee-charging private maternity hospitals...p64

But the 'girls' were continuing to flood in: 591 were interviewed in 1967, along with 247 adoptive parents and 22 'boys re girls', that is putative fathers." That year there were 152 adoptions, but 96 mothers kept their babies. p64

1968 Hospital became a BM hostel

The 1967 report recommended selling the hospital or turning it into a hostel for mothers keeping their babies, since that was obviously where the need now lay. It closed on 30 April 1968, and later reopened as a hostel, providing accommodation for ten mothers and babies and 14 places for expectant women...p64

Problems remained...There was more work to do than ever, with three different hospitals to cover. The secretary suggested various cutbacks, such as not visiting the mother or the baby before proposing adoption: 'Childhaven do not make these visits, nor do Child Welfare, who while they feel it is quite wrong to propose an infant for adoption when they have not seen it, cannot avoid it as they are short of staff.' Alternatively they could close the hostel or cease arranging adoptions altogether... p65

1973 Domestic Purposes Benefit

Was made statutory, giving single mothers - and those who assisted them- a basic income. Staying in the hostel cost $15 a week, enabling mothers to survive while waiting for a state house... Women could go out to work; schoolgirls could continue their studies in 'a schoolroom specially for unmarried mothers close by' at Bethany, run by the Salvation Army. p65

1971-1973 Fast change BM keep baby

The adoption picture was changing fast. In 1971, 60 of 192 mothers kept their babies; by 1973, 69 of 146 did so, and private organizations were responsible for only 3.9% of all adoptions.' With so few babies being made available, demand was once more starting to outstrip supply.

At MOMM, mothers could now 'be involved with helping... to choose the environment in which they would like their child to be brought up...This involvement I have found makes the girl...far happier with her decision.' And for some time there had been less exaggerated concern about severing all contact: 'If the girl wishes, we keep in contact with the adoptive parents and pass on any news of the baby and family.' Some women were still writing and receiving news of their child 7 yrs after the adoption.' p65

1974 DSW inspect and register baby hostels

From 1974 onwards, the Department of Social Welfare, which had absorbed the old Child Welfare Division, belatedly inspected and registered all mother and baby hostels under the Children and Young Persons Act. Its reports on Fairleigh were full of praise for the 'accepting, caring' staff. But numbers of both pre- and antenatal residents fell steadily, from 22 women and 11 children in March 1975 to ten women and eight children in Nov 1978, the date of the last report. It noted that 'like other institutions of a similar nature' the hostel was 'not used to capacity and in parts has an empty, uncared for atmosphere... p65

1978 Motherhood of Man became a trust

Fairleigh closed ane...The Movement became a trust, administered by the Guardian Trust, and ceased to provide any services directly, though it remained a substantial contributor to the work of parallel denominational institutions. Currently it makes grants totalling around $35,000 a year to such groups, for example Bethany, as well as to newer groups set up to help women and children, for example, women's refuges and Parent-line. p66

Records Apart from the confidential adoption records, lodged with the Department of Social Welfare. Auckland, the official records and sundry other papers forming the Motherhood of Man Movement archives (MOMMA) are available in the Auckland Institute and Museum

Source Anne Else ''The need is ever present' The Motherhood of Man Movement and Stranger Adoption in New Zealand', in *New Zealand Journal of History* Vol.23 (1) April 1989. pp47-67 Extracts. Note See original article- contains 20 pages of detail and footnotes.

ADOPTION OF CHILDREN ACT 1881

New Zealand adoption law arose out of the Victorian period, and those concepts had a strong influence on our law for a hundred years.

Children as possessions

"For our Victorian forefathers, 'children should be seen but not heard' and were expected to obey their parents immediately and without question...On this approach children were seen first as objects or possessions of their father, later of their parents, and were subject to the virtually absolute control and authority of their parents until they attained adulthood...The patriarchal Victorian approach was based on English common law and became part of the law of this country after European settlement. The notion of children as objects or parental possessions remains in some of the laws affecting children...as in adoption." Trapski's Family Law Vol.5 Brooker's 1995 A2 *See* pp99-100. Market forces p119 this book

Ownership adoption link

"Unless permanent ownership of the child is assured, many adults in our society are not willing to take a child into their family even though many children need temporary secure families to care for them. One must ask whether the values of capitalistic society, with its emphasis on ownership, possessions and materialism, were responsible for the rigid exclusiveness of adoption laws, especially after the Second World War. Needs of children seem to have a low priority." Iwanek 1987 p5. "The main influence of Anglo-Saxon adoption law stems from its intolerance of any kind of semi-adopted status. If adoption is to exist at all in a society where possessions, ownership and materialism hold sway it must be made absolutely total and water-tight." Benet USA 1976 p79

Morality and bastards

"The public debate over moral issues, which in the 1850s and 1860s had focussed upon the wanton doings of a prostitute class, had shifted by 1890s to the 'problem' of illegitimacy which, it seemed, could affect even 'decent' families. Illegitimacy, said the *Christchurch Press* 23/3/1900 was a social cancer, encouraged by agencies which made things 'especially easy and comfortable for the viciously inclined'. Thomas Norris, secretary of the North Canterbury Charitable Aid Board put it even more brutally: '*The country was getting overrun with bastards* whose erring mothers were only too keen to divest themselves of their natural responsibilities.' It was the public support of 'bastards' which caused the greatest outcry and claims that 'social offenders' were able to avoid the consequences of their misdeeds." One third of all children committed to industrial schools were bastards. M. Tennant, 'Maternity and Morality: Homes for Single Mothers 1890-1930' *New Zealand Women's Studies Journal* 1985 Vol 2 p30

George Waterhouse adoption law founder

In 1881, he introduced his Private Members 'Adoption of Children Bill'. The life of this remarkable man was pivotal in our adoption history. George was brought up in a theologically liberal home, given a very good education, but retained the deep social concerns of his Methodist faith that drove his political campaigns for social reform. *see* Waterhouse pp323-324.

Adoption of Children Act 1881

Main provisions: (a) adoption orders are made by a District Court Judge, (b) adoptee must be under 12 years, (c) married applicants must be at least 18 years older than adoptee, (d) one spouse makes application with consent of other, both then become adoptive parents, (e) single applicants must be same sex as child, or at least 40 years older, (f) written consent of birth parents required, except deserted children, (g) adoptees shall for all purposes, civil and criminal, be deemed by law to be a child born in lawful wedlock to adopting parents, (h) inheritance rights defined, (i) adoption by benevolent institutions, (j) adopting parents surname conferred on adoptee in addition to proper name, except for Institutional adoptions.

Why Waterhouse introduced the Bill

His Methodist faith and deep social concern. Note in the same session, his 'Married Women's Property Protection Bill'. In the debate Waterhouse gave five reasons—

— **Benefit adoptee** "That it was a practise desirable in itself...those who were benefited by it were generally those who were deprived of their natural guardians, and who would probably, but for the kindly care bestowed upon them by those who undertook to occupy the position of parents, be exposed to want and privation." p4.

— **Full parent child status** Requiring that "the person adopting a child would stand towards the child in a position of responsibility, and by which the child itself would stand in the relation to that person which the law recognized as existing between child and parent." p4.

— **Legal status** Under present law adopted children had no legal status, "so that if any accident deprived them of their adopted parents, and no provision were made for them by will, they would become utterly destitute, and thrown upon the world in a most forlorn state". p5.

— **In depth study** Waterhouse undertook a thorough study of adoption, including both historical and current adoption law practices. The sharing of his in-depth study in Parliament enhanced informed debate. He referred to Roman, American, German and French legislation.

— **Personal experience** "He could not sit down without saying that he moved in this matter in a great measure from his knowledge as an individual of the advantage of adoption." *NZPD* Vol.40 22/7/1881 pp4-5. He was either an adoptee or at least had first hand experience of adoption. He also had no children, his wife died young.

— **Principle of the Bill** Mr. Tole "The principle of the Bill was simply to declare that the benevolent might find wider scope for generous action; and that the results of their generosity might obtain some security by law". *NZPD* Vol.40 4/8/1881 p281

Fear of adoption misuse

During the Legislative Council Debate on the 1881 Bill, the Hon. Mr. Scotland (Taranaki) said, "Foolish old men might, perhaps, adopt very pretty young girls, and foolish

old women might adopt nice young boys, with ideas of matrimony at a future time...or might use them as factory hands, or put them to work on their farms? This *adoption of children had its origins in slavery* and might be used for purposes bordering on slavery in future...In England persons had offered their children for a glass of gin...It is not very long ago that a wife was sold in Wellington for 50/- [£2.10/- = $5] a woman who could play the piano. He dared say she was dear at that price, but such things did take place." *NZPD* Vol.40 22/7/1881 p7

Early New Zealand adoption law

The dynamic leadership of George Waterhouse accelerated the process that resulted in the early introduction of legal adoption. There were several significant factors similar to what led to the early introduction of adoption in USA in 1851. Namely, a new pioneering society, breakdown of class society, labour intensive demands, an under-populated country, and personal security often depended on large families. *NZPD* Vol.40 22/7/1881 p7

His Private Member's Bill became the first Adoption Act in the British Empire on Tuesday 12th July 1881. England waited until 1926, another 45 years, before it passed its first Adoption Act.

Waterhouse's 1881 Bill A.5

Trapski— **A.5.01** New Zealand's adoption laws can be traced back to the initiative of one man. In 1881, the Hon George M Waterhouse (a successful businessman, strict Methodist, one-time Premier of South Australia and later Premier of New Zealand, social reformer, and independent-minded politician) introduced a private member's Bill without the support of any political party of the day. His energy and robust advocacy for the measure succeeded in steering it through Parliament despite considerable opposition.

The parliamentary debate on Waterhouse's Bill engendered much "tilting at windmills" and little serious discussion. One opponent of the measure predicted that "Foolish old men might, perhaps, adopt very pretty young girls, and foolish old women might adopt very nice young boys, with ideas of matrimony at a future time". Another argued that the adoption of children had its origin in slavery and might be used for such purposes in future. A third perceived "a real risk of unscrupulous persons acquiring a gang of helpless children, over whom they have legal and irrevocable rights, and exploiting jhem for sordid and nefarious purposes".

Adoption of Children Act 1881 A.5.02

With the Adoption of Children Act 1881, New Zealand became the first country of the British Empire to pass adoption laws. Waterhouse drew on Roman law and adoption laws in the State of Massachusetts whose adoption laws in 1861 had provided a model for 16 other US States. Some States in Australia and the US passed adoption laws shortly afterwards but England did not allow adoption until 1926, 45 years later.

The reason Waterhouse pushed through legislation which went against long-standing social and legal traditions was that "the benevolent might find wider scope for generous action: and that the results of their generosity might obtain some security by law" *(New Zealand Parliamentary Debates,* 1881, 31, p 281). The intention, according to A Else, was "to ensure that people who were willing to go to the expense and trouble of taking in and rearing other people's children would have the same status, rights, and rewards as other parents and in particular would be protected from `disturbance' by the original parents". See A Else, *A Question of Adoption: Closed Stranger Adoption in New Zealand 1944-1974, Wellington, Bridget Williams Books, 1991* (referred to in this chapter as *"A Question of Adoption").* Else describes the measure as a convenient way to prevent the young "indigent" becoming a burden on the public purse, and a way in which pioneer settlers could recruit girls for domestic work and boys for farm work during labour shortages.

The demand was for children of "useful years": older children who could be put to work. Judge Pethig has spoken of the aim of adoption as being "to give caregivers greater security of tenure over children in their care and thus encourage people to take orphans, deserted, and neglected children into their homes so that the children would cease to be a community responsibility and a charge on public funds": *Re Application by Na*na (1992] NZFLR 37, 41. Adoption was originally, and still is, an amalgam of altruism and self-interest.

Source *Trapski's Family Law* 'Adoption' Vol 5. A5-A.5.02 14/10/2003 Brookers

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Right to inherit from natural and adoptive parents

Browning— In terms of inheritance the adopted child was given rights to the estates of both adopted and natural parents' p31

"the adopting parent shall for all purposes be deemed in law to be the parent of such adopted child, and subject to all liabilities affecting such child.... Such order shall thereby terminate all the rights and legal responsibilities and incidents existing between the child and his or her natural parents, except the right of such child to take property as heir or next of kin of his or her natural parents, directly or by right of representation." Adoption of Children Act 1881 s5.

This section was a contradiction; the adopted child was to cease being the child of his natural parents but was entitled to inherit from them and retain his/her original name. This meant he remained in some part, in the same position as he/she was prior to adoption, thus creating a legal fiction. The child can only be born once to one mother and one father p31

"The order of adoption shall confer the name of the adopting parent on the adopted child, "in addition" to the proper name of the latter." Adoption of Children Act 1881 s10.

Unforeseen consequences of 1881 Act
Baby farming

The new Act had unforeseen consequences as pioneering entrepreneurs capitalised by opening homes for fallen women to give birth and later, arranged for the adoptions of their children for a fee. The maternity options available for single mothers involved voluntary or church administered homes that Tennant observes illustrated the growing

tension between medical and moral definitions of maternity (1985:29). Pressures to eliminate distinctions between married and unmarried women, and the tenacity of moral assumptions which continued until very recent times, determined the treatment received by women in childbirth. Some single mothers, Tennant explains may have managed to conceal their unmarried status, if not their pregnancy by passing themselves off as widows or deserted wives in districts where they were little known (1985:30). For most however, the discovery of pregnancy meant moral condemnation, social rejection and economic hardship. Else observes that "right up until the 1940s many believed that keeping an illegitimate child was a fitting punishment for the mother's sin - and a warning to other women who might be tempted to stray" (1991:23). Smart concurs by saying, "the position of the unmarried mother was so undesirable that her parental obligations were seen as little more than part of her stigma and rejection. Having sole custody rightswas more a form of legal punishment than a concession" (1987:109). p32

Illegitimates and young babies not preferred

Since illegitimate children were thought to be tainted by the circumstances of their birth so the demand for ex-nuptial babies to adopt was rare. Small babies Tennant says, were uneconomic, requiring care but unable to work and contribute to the financial income of the family or undertake domestic chores for some years. Prospective adoptive parents preferred children of "useful" years. It was not uncommon for children to be adopted to work on farms or in factories (1985:39). p33

Baby farming and Infant Life Protection Act 1893

Regardless, babies were still offered for adoption by desperate and destitute women who were unable to care for them. Individuals set about accommodating these women by taking in their babies with a view to receiving payment for finding them new homes. Due to lack of laws pertaining to the care of children, baby farming became a profitable business and the infamous trial of Minnie Dean 14 resulted in the initiative of the "Infant Life Protection Act 1893" which required the licensing and inspection of houses where children were taken in (Campbell, 1957:11). This initially did not apply to adoption, but by 1907 when the statute was revised, it was deliberately extended to cases of adoption (1957:11). It was made unlawful however in 1906, for any person adopting a child to receive any premium or other consideration in respect of the adoption except with the consent of a Magistrate (1957:11). Involvement by a Magistrate resulted in strict controls of premiums paid on adoption and these were to restrict profiteering and to ensure maintenance payments adequately covered the care of the child. The State became a guarantor of the agreement and on default of installments undertook the task of enforcing the liability of the natural parent (1957:12). p33

Humiliation of unmarried mothers continued

The humiliation of unmarried mothers continued as they found themselves in the situation of having to pay for institutionalising their children, but due to low wages, ill health or unemployment, often fell behind in payments. It was unthinkable for assistance to be provided to encourage them to keep their children and this often resulted in the child being abandoned (Griffith, 1997:7) creating a burden on society to provide care for these children. In most cases, although expected to pay maintenance to the State for the child, women attempted to keep their babies despite the difficulties involved. Adoption was mainly reserved for instances where a married woman had an extra-marital child (Colebrook, 2000:14). p34

Source Julee Browning 'Blood Ties' Thesis 2005 pp31-34

Slow change to legal adoption

There was considerable opposition and suspicion of legal adoption, mainly concerning legitimation and property estate issues. It was not until the early 1900s that legal adoption became more common than informal adoption. An informal adoption carried greater risks of upset, on the other hand it was open to renegotiation without recourse to the courts as would be required with legal adoption. "The word 'adopted', used by people of the standard of education of the deceased and her husband, has the same meaning as it has in ordinary language, and refers to a child who has been recognised, treated, and looked upon as in the same position as a son...During those years [1888 to 1892] the statutory provisions relating to the adoption of children could not have been nearly so well known as they are at the present time. The phrase 'adopted child', used to describe a child who had been taken into the care of certain people, without any statutory procedure, probably continued to describe the type of adoption which existed prior to 1881; so that the phrase 'adopted child' is itself ambiguous." Judge Fair. *McKinley v Arthur* [1935] GLR 63 at 64. Also quoted in *Re Simpson* [1984] 1NZLR 747

Attitude to birth mothers 1895

Southland Times— After Minnie Dean's trial. "The deplorable circumstances brought to light and the proceedings of this trial point a moral as to the inequitable treatment under the present social system of women who may be led into temptation or by the arts of the seducer into a breach of the moral laws, and suffer the natural consequences. For these unfortunates there is no social redemption if once their fair name is tarnished, and not unreasonably they resort to questionable means to hide their shame. In the dread of public reprobation and absolute ruin of their prospects they consign the fruits of their sin to the care of strangers, desirous at all hazards to conceal their dishonour. Hence arises the opportunity to the professional baby farmer whose direct interest is to carry on business with as little trouble and as much profit as possible. How many poor children are done to death or at best miserably ill treated by these harpies can never be known. The fault unmistakably lies with society which, tolerant of any amount of immorality in man, has no sympathy or pardon for the woman but for one fault condemns her irretrievably." Reprint *Southland Times* 22/11/1958

Humiliation of unmarried mothers

"Unmarried mothers who lacked family support were faced with the humiliation of giving birth in a Home for Fallen Women or the danger of giving birth alone, fol-

lowed by the financial necessity of going straight back to work. These women were caught in a vicious cycle: they couldn't afford child care until they found work, and they couldn't find work unless they put their babies in care first. Some children of mothers rendered destitute by low wages, ill health or unemployment were cared for at no charge by kind-hearted baby minders, others ended up in orphanages or industrial schools, others died of neglect. In the 1890s illegitimacy was seen as a major threat to public morality it would have been unthinkable for Charitable Aid Boards to assist unmarried mothers to keep their own babies." Hood 'Minnie Dean Her Life and Crimes' 1994 p92

Baby farming

The need arose from three main causes. (a) Provided a quick, confidential way of disposing of illegitimate children and hid the family's shame. (b) Illegitimate babies were often hard to place, you needed someone with the right contacts. (c) Some mothers were simply too poor to maintain the child. For a down payment the baby was taken off your hands with no questions asked on the understanding an adoption would be arranged. A single down payment meant that the sooner a baby farmer got rid of the child the greater the profit. Some infants suffered an early demise in the interests of financial gain. *See* p228-230

Insurance abuse

"There was nothing contained in the [Infant Life Protection 1893] Bill dealing with insurance of children's lives. That evil had been considered at Home [England], as it was found that children's lives were insured for fabulous amounts, and the system was very greatly abused." Hon W Downie Stewart. NZPD Vol.82. 27/9/1893 p800. No evidence of this abuse in New Zealand was produced.

Police report baby farming 1893

The Annual Report of the Commissioner of Police to both Houses of the General Assembly 1/7/1893. Final paragraph reads, "Before concluding this report, attention is called to what appears to be a growing evil in this colony- viz., 'baby farming'. That this evil exists there can be no doubt; and it appears that children, either by advertisement or otherwise, are placed in the most unsuitable homes, where it is perfectly well understood that the sooner the child dies the better pleased all concerned will be. It appears to me that a similar Act to 'The Infant Life Protection Act, 1872', 35 and 36 Vict., chap.38, might with advantage be placed upon the New Zealand Statute-book, which would meet the difficulties of the case as regards infants placed out to nurse by providing for the due registration of name, and home where the children are so received; and, further, by directing inspection of such houses. Another system of disposing of infants is by so-called adoption, where children are taken for a lump sum entirely off their mothers' hands, provided no more questions are asked. Sums from £6 to £20 [$12-$40] are paid down as a premium; and for such helpless infants there is absolutely no protection. The recent disclosures in Sydney considerably opened the eyes of the public on these matters, and I believe some legislation in now absolutely required to deal with this evil in this colony." A Hume. Commissioner. *AJHR* 1893 Vol3H p26

Response to police report

Mr Hutchison, House of Representatives, asked the Minister of Justice, "Whether he proposed to introduce any legislation this session to deal with what appears to be a growing evil in the colony- baby-farming?" After quoting from the report he commented. "That was a very disturbing and he had good reason to believe, a not exaggerated statement, which must have arrested the attention of the Minister of Justice." The Minister replied, a Bill was being drafted if Cabinet approved, and the House granted urgency, it could be passed this session. *NZPD* Vol.81. 30/8/1893 p434

Infant Life Protection Act 1893

Hon Sir P Buckley moving second reading in House. "The object of the Bill was to provide for the registering of houses where children were taken in. With a few exceptions the disclosures that had been made showed that these houses were of such a character as almost made one's flesh creep, and it was to be regretted that any such state of things should exist in the colony...it was considered desirable to pass a measure of that kind to protect the poor things who were unable to protect themselves." *NZPD* Vol.82 28/9/1893 p800.

Main provisions

(a) Registration of all homes taking in children under two years for nursing for more than 3 days, or for the purpose of adoption, where any payment was made s5. (b) Annual licenses and regular inspection by police s6. (c) Keep register s10 (d) All deaths must be reported to police s13. (e) If any person adopts a child under the age of 3 years they shall within 14 days notify the police s15. [Note. Minnie Dean did not Register under the Infant Life Protection Act 1984. Hood 1994 p113]

Minnie— Williamina Dean 1844-1895

The Minnie Dean, lived at Winton, Southland. She took in children awaiting placement for adoption. She was accused of baby farming, and the murder of illegitimate children placed in her care. After a very sensational trial she was found guilty, and was executed at Invercargill in 1895. The case sent shock waves throughout the country, and demands for more rigid child protection law. For detail *see* Dean, Minnie pp228-230

Adoption premiums control 1906

Refers to any payments made by a birth parent or family to adoptive parents in consideration of taking a child for adoption. Previous to 1906 there were no controls on premiums. There was increased concern at possible links of premiums, baby-farming and early deaths of infants. The Adoption of Children Amendment Act 1906 **"s2** Adopting parent not to receive premium: It shall not be lawful for any person adopting a child under the principal Act to receive any premium or other consideration in respect of such adoption, except with the consent of a Stipendiary Magistrate." The payment of adoption premiums had largely fallen in disuse by 1950s. However, with the advent of surrogacy in the 1990s, and political moves to privatise Intercountry Adoption and its exposure to full market forces have once again brought the issues of adoption premiums to the fore. Large amounts of money

can be involved. For detail *see* Premiums pp294-297

Criticism of adoption procedure 1907

Attorney-General—"You go before the Magistrate and obtain the certificates required, and the Magistrate probably he is a busy man has not time, or has not, may be, the qualifications to decide as to the fitness of the adoptive parent. The thing is more or less perfunctory. There are some Magistrates who are to some extent inquisitive, but the thing is more or less perfunctory, and necessarily so. A lump sum is paid over, and thereafter the child must take its chance. The State had done with the child as soon as the order is made by the Magistrate. I think this is not proper. The order should, I consider, be made in this way: I would not allow a Magistrate to make an absolute order at all. The first order should be a conditional order. This conditional order should be reviewed at the end of not less than six months by the Magistrate, and should not be confirmed unless upon a favourable report from the Education officer of the Education Minister. There you would have protection: for six or more months there is probation. The child is with the adoptive parent. The Department can ascertain from time to time how they that child is being taken care of, and whether the adoptive parent is really doing her duty or not, and at the end of that time you are in a position to say whether the lifelong interests of that child can be safely committed to that woman." Hon Dr. Findlay (Attorney-General) *NZPD* Vol.140 4/9/1907 p656

Dr Findlay also said, Cabinet agreed, that control of the Infant Life Protection Act 1893 be transferred from Police to the Education Department. *NZPD* Vol.140 4/9/1907 p653

Dispensing with consent

Dr Findlay (Attorney-General)— said a serious defect of the Adoption Act is that a Judge only had discretion to dispense with consent regarding a deserted child. This should be widened. At present "A mother who is neglecting her child is not necessarily deserting it,..a woman of dissolute character, with perhaps several convictions against her, has refused to allow her child to be adopted by one of the best women. The result is that the State, in some cases, has had to pay for years and years for the child, whereas if the adoption order had been obtained the State would have been relieved of the burden. I say that where a woman has proved her unfitness to take care of a child the Magistrate should be intrusted with a discretion to dispense with that consent. *NZPD* Vol.140 4/9/1907 p656.

Death of illegitimate children 1907

Dr Findlay (Attorney-General) quotes Dr Valintine's research that 48% of New Zealand child deaths under the age of 5 have dietetic nutritional causes. In the debate it was claimed that 1 in 7 illegitimate children die in infancy, whereas 1 in 17 legitimate children die. *NZPD* Vol.140 4/9/1907 pp655,658.

Economic deprivation 1907

Hon Mr Rigg— Government is stressing education as an answer to infant deaths, but ignored the *major root cause of economic deprivation*. "The conclusion I have come... is that we first create the evils and then endeavour to suppress them, instead of going to their source and endeavouring to deal with them there...I am urging the State should provide in the first instance for the child...this is an economic question...I believe, if you make it possible for people to earn a living...without the fear of poverty you will bring about marriages and other necessary reforms will follow." *NZPD* Vol.140 4/9/1907 pp658-659.

Benevolent institutional adoption 1881-1925

The future was often bleak for a deserted child left in an Institution. It was difficult to find placements for abandoned or illegitimate children. Often only Charitable Institutions, usually church based, would provide the required care. Provisions were made in our legislation for children to be adopted by an approved Institution—

1 The Institution adopting the child assumed full parental responsibility. **2** Only a deserted or abandoned child could be adopted by an Institution. **3** For some children it was their only hope of entering a substitute family; the adoption gave them legal, social, and economic security. Adoption by Institutions was a genuine attempt to meet the needs of deserted children. These Institutions are not to be confused with work houses or industrial schools. Institutional adoption was abolished in 1925. *See* 'Institutional Adoption' pp244-245 for detail.

Court responsibility 1912

C.Kettle SM Auckland— "The duty of the Court is to, as far as poss-ible, protect and safeguard the interests of the infant. A very thorough investigation should be made into the social position, expectations and rights of the infant, the character, social and financial position of the child's parents, and of the proposed parents. In short that every possible precaution should be taken to secure as far as possible the future welfare and happiness of the child. The Magistrate should be thoroughly satisfied that the adoption will be for the benefit of the child, that the child will receive an education suitable to his or her rank, expectation, and social position, and that the infants welfare and happiness will be best promoted by making the order of adoption. The responsibility of selecting adopting parents for an infant is a very grave one, and it was therefore the bounden duty of Magistrates to take every possible precaution to protect the interests of the infant before making an adoption order." *In re B* 1912 7MCR 69.

Such concerns led to a gradual tightening up of requirements for adoptive parents culminating in the Adoption Act 1955 s11 with explicit detail of the information required in affidavits by adoptive applicants. SR1956/169,R8. SR1959/109 R8. Along with affidavit information. The Magistrate also normally had before him a social worker and police report on the applicants.

Issuing of second birth certificate 1915

The Births and Deaths Registration Amendment 1915, permitted a second birth certificate to be issued substituting the adoptive parents' names for those of the birth parents. The intention of the legislation was not to prevent adoptees from seeking identifying information pertaining to their birth origins, but rather to safeguard them from the stigma associated with illegitimacy. The original birth certificate remained on file and Court records were open and accessible to those involved until 1955 when the implementa-

tion of the Adoption Act 1955 restricted access.

Social effect of adoption 1920

Senior Magistrate W.G.Riddell "In estimating the social effect of adoption, one has to consider that fully 95 percent of orders made apply to illegitimate children. The adopting parents may have come into contact with the infant through the means of an advertisement, or from inquiries at a Receiving Home or Salvation Army Home, or by reason of the fact that the mother is known to one or both. The adopting parents are, in many cases, childless, and by adopting an infant both parties concerned are benefited, and the State relieved from the possible burden of maintaining the infant, until such time as he or she becomes self-supporting. In the case of an illegitimate child, further benefits lie in conferring a name upon the infant, and in securing for it a continuous home life. The adopted infant is assured of an environment equal to that of an ordinary legitimate child, and under these conditions has every chance of developing into a useful citizen. On the other hand, the adopting parents secure a child, which is regarded in the same light as their natural offspring. The want in their lives is supplied, and the added responsibility taken up by them has its own reward. The fact that very few orders of adoption are rescinded goes to show that sufficient care is taken to satisfy the authorities that the proposed parents are suitable persons, and capable of maintaining, educating and bringing up the child which they have elected to call their own. Speaking from my experience as a magistrate exercising jurisdiction in the capital city of New Zealand, I can say with confidence that the system of adoption practised in New Zealand has been a success from every point of view. There is no doubt about its benefits, both to the infant adopted and the adopting parents, while the State gains in this way, that the burden of maintaining destitute persons is lightened, and its liability to care for and educate the unfortunate child is lessened through the aid of private persons. It is agreed by all who are associated with the maintenance, care and guidance of destitute children that the conditions and training found in Receiving Homes (i.e. Foster Homes licensed by the Education Department), although excellent in many ways, fall short of those found in decent private family life, and the institution of adoption supplies the means by which the best results can be attained, and all parties interested benefited." W G Riddell, Senior Magistrate Wellington 1920, written at request of D Stanley Smith 'Adoption of Children in New Zealand' Journal of Comparative Legislation and International Law 3rd Series Vol.3 1921 p177 "It is of particular interest that the success of the system of adoption in New Zealand was among the chief reasons for the support which the British Government gave to the passing of the Adoption of Children Act 1926. The Secretary of State for the Home Department (Sir William Joynson-Hicks), in his speach in support of the second reading (192 HC Deb.5 s934)... "I call attention position of affairs in New Zealand" he went on to quote the above material of Mr Riddell SM." Campbell 1952 6p.

Child Welfare Division 1925

"During the 1920s and 1930s the rigours of the Victorian approach were mitigated by a new focus on the welfare of the child...It could not be assumed that parents knew what was best for their child or always acted in the child's best interests. The Child Welfare Act 1925 created a child welfare division of the Department of Education and set up separate Children's Courts to provide for the needs of any child deemed to be in need of protection...The status of children changed from 'objects' or 'parental possessions' to 'objects of concern'. Benevolently inclined adults (child welfare officers and Magistrates) were given the power to determine whether the child's welfare was at risk. If so they could remove the child from the care of the parents or current carers...The 'child welfare' approach does not fit easily into a statute which has its historical and philosophical roots in Victorian values." Trapski's Family Law Vol.5 Brooker's 1995 A2 p108.

Basis of state welfare

"The Court is placed in a position by reason of the prerogative of the Crown to act as supreme parent of children, and must exercise that jurisdiction in the manner in which a wise, affectionate, and careful parent would act for the welfare of the child." Lord Fisher MR Appeal Court *In R v Gyngall* [1893] 2QB 232 at 241

Keeping illegitimate child punishment for sin

"Before the Second World War, few people saw adoption as the automatic solution for an out-of-wedlock pregnancy. Right up until the 1940s, many believed that keeping an illegitimate child was a fitting punishment for the mother's sin— and a warning to other women who might be tempted to stray. As legal historian Carol Smart explains, 'her parental obligations were seen as little more than part of her stigma and rejection .. having sole custody [of the child]...was more a form of legal punishment than a concession.' Adoption was then still regarded as a solution mainly for a few special cases, for example where a married woman became pregnant to someone other than the husband, or a mother was very young." Else 1991 p23

Institutional or foster care preferred before 1950

"If mothers were utterly unable to keep their children, the usual alternative was institutional or, more often, foster care. In 1939 the Society for the Protection of Women and Children protested to the Minister of Education about the police prosecuting unmarried mothers because they had fallen behind in maintenance payments for their children in state foster care...By 1943, the Society was still pointing out that 'Adoptions are rare, as girls usually wish to keep their babies'...Anyway by 1949, it was promoting adoption as the best arrangement: 'If the unmarried mother wishes it, adoptions into good homes can always be arranged, but usually girls insist on keeping their babies, despite the difficulties'." Else 1991 pp23-4

Adoption became preferred option 1950

By the end of 1949 the focus had shifted, and adoption had come to be seen as the best solution for all concerned. The post war baby boom was short lived. Babies were in short supply and waiting lists continued unto the mid 1960s.

1918-1939 between the world wars

Coles— Between the World Wars, when secrecy provisions were first introduced, they were designed to stop persons not involved in the adoption from getting access to and, more particularly, misusing the information. The stigma of illegitimacy was avoided by issuing adopted children with 'clean' new birth certificates. During this period, adoption focused on rescuing neglected or abandoned children and providing them with a decent upbringing. p167

During and after World War II,

In most western countries adoption records either became sealed, or access to them highly restricted. Griffith (1991, Section 12, p2) believes that "adoption, in secrecy" was "the easiest way to hide the shame and blame" resulting from an upsurge in illegitimate births, following not only World War II, but also the earlier Great War. In Australia, until the introduction of the Children Equality of Status Act of 1976, the children of parents not married to each other were considered illegitimate. Before that date, the illegitimate were in law fillius nullius, the child of no one (Inglis, 1984, p 1). Gary Coles *'Ever After'* 2004 p167

ADOPTION ACT 1955

Adoption became preferred option 1950

By the end of 1949 the focus had shifted, and adoption had come to be seen as the best solution for all concerned. The post war baby boom was short lived. Babies were in short supply and waiting lists continued unto the mid 1960s.

Reviews of adoption law

Mr L G Anderson, ex Superintendent of Child Welfare said, "In New Zealand, it normally takes a murder case to trigger major reform of child protection or adoption law."

1896 Review Triggered by the Minnie Dean adoption baby-farm case. It was alleged she murdered some children for a quick profit. She was tried, found guilty and hanged. The outcry from the case resulted in the Infant Protection Act 1896, later consolidated in the Infant Act 1908. See p228-230.

1951-55 Review

Was triggered by a murder case. A 73 year old man was charged with the murder of his 43 year old wife. The *New Zealand Truth* 7/3/1951 revealed the man had a four year old adopted child.

Hilda Ross, 21/3/1951

Minister of Health, wrote to the Minister of Justice 21/3/1951 urging adoption reform.

1952 Interdepartmental Adoption Committe

An Interdepartmental Committee was set up, 7/11/1951. and completed its work in 1954. GC Vol.17 pp5347, 5381-86. Resulted in Adoption Act 1955.

Membership

12 members plus alaw draftsman
Chair S.T.Barnett *Secretary for Justice*
Education Department (Child Welfare Division)
Mr L.G.Anderson, Mr T.P.Cox, Miss K.M. Stewart.
Mr N.Butcher *Justice Department*
Miss P.M.Webb. *Assistant Secretary-Advisory*
Mr C.M. Bennet *Maori Affairs Department*
Mr J.M. McEwen. *Assistant Controller of Maori Welfare.*
Co-opted members;
Mr W.R.Birks, *Solicitor.* Professor I.D.Campbell, *Professor of Law Victoria University* Mrs H.C.Sharpe *Department of Child Welfare.* plus *Law Draftsman.*

The first meeting

of the Committee was held 21st February 1952.

Parliament

Consideration Adoption Act 1955 Sec.23 Cabinet 18/7/1952

A summary of proposed adoption legislation was presented to Cabinet by the Minister of Justice on 18th July 1953...

Steering Committee 17/8/1953

A steering Committee with the Attorney General as convener was set up. On the 17th of August 1953 "Cabinet approved the preparation of the Bill for introduction this Session along the lines of the Interdepartmental Committee's proposals subject to the amendments recommended by the Cabinet Committee."

First reading 29/9/1954

Adoption Bill No.117-1 introduced to Parliament, on 29th September 1954... Bill referred to Committee of Whole House. *NZPD* 1955 Vol.304 p2034.

Redraft Bill No21-1. 4/5/1955

A redrafted Bill was read the First time on 4th of May 1955. In the new Adoption Bill draft No.21-1 *NZPD* 1955 Vol.305 p746.

Second reading 6/5/1955

Adoption Bill No.21-1 read a second time and referred to the Statutes Revision Committee on 6th May 1955. *NZPD* 1955 Vol.305 p929.

Statutes Revision report to House 20/9/1055

20th September 1955. Adoption Bill No.21-2

Debate 26/10/1955

Adoption Bill No.21-2 committed for debate in House, 26th October 1955. An extensive debate.

Third Reading Bill reported with amendment and read a third time. *NZPD* Vol.307 pp3346-59. Enacted

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The Adoption Act 1955

Browning— The Adoption Act 1955 which came into force on October 27"' 1955 consolidated and amended the legislation relating to adoption (Campbell, 1957:73). It incorporated a number of new provisions dealing with matters not covered by the previous statutes, notably the effect of the order on the domicile of the child, appointment of guardian, affiliation orders and maintenance agreements (1957:73).

Formalise existing practices

The Act sought to formalise practices promoted by homes such as Bethany, Motherhood of Man and Alexandra. It imposed some much-needed controls according to Else, and was broadly in line with their views; it encouraged their activities and reinforced the attitudes behind them (1992:226). The Adoption Act 1955, section 16(a) strengthened the idea that what mattered was the rapid conversion of an "abnormal" situation into a "normal" situation and supported the fiction of the child's parentage to be "as if born to the adoptive parents" (Else, 1992:226):

"The adopted child shall be deemed to become the child of theadoptive parent, and the adoptive parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock."

And in section 16(b), "The adopted child shall be deemed to cease to be the child of his existing parents"

Closed records

Coupled with the idea that the adopted child should be viewed "as if born to" the adoptive parents, section 23 of the new act closed access to adoption records and subsequently information pertaining to the adopted child's origins:

ADOPTION ACT 1955

"Adoption records shall not be available for production or open to inspection except on the order of the Court or of the Supreme Court."

Contrary to New Zealand's first Adoption Act 1881 that placed no restrictions on access to information, closing records was a major shift in the attitude surrounding adoption protocol and the adoptees rights to know their origins.

Summary

Trapski summarises the themes permeating in the Adoption Act 1955 and notes that not only does it treat women more favourably than men by the reflecting the view of the 1950s and earlier, that mothers are the natural carers of children and the sole male applicant can only adopt a female child if the Court finds there are "special circumstances. Otherwise, adoption is the preserve of married couples. Unmarried couples cannot adopt a child, although a single female or male can adopt, he or she acquires honorary married status on the making of a final adoption order (1995:1/117).

The driving force behind adoption is explained by Trapski as a "desire to provide benefits for adults"; initially as a means of low cost assistance with domestic work or farm labouring, reducing the charge on the public purse. Later, adoption was utilised as a convenient means to avoid embarrassment and social stigma attached to extra-martial sex and unmarried pregnancy. Also he states, as a means for infertile couples to obtain a child whom the law treated as their own (1995:1/117). Nowhere is it mentioned that the "best interest of the child" is tantamount to the driving force behind adoption as a solution for both adults and children.

Source Julee Browning 'Blood Ties' Thesis 2005 pp38-40

Right to inherit from natural and adoptive parents

Browning— In terms of inheritance the adopted child was given rights to the estates of both adopted and natural parents' p31

"the adopting parent shall for all purposes be deemed in law to be the parent of such adopted child, and subject to all liabilities affecting such child.... Such order shall thereby terminate all the rights and legal responsibilities and incidents existing between the child and his or her natural parents, except the right of such child to take property as heir or next of kin of his or her natural parents, directly or by right of representation." Adoption of Children Act 1881 s5.

This section was a contradiction; the adopted child was to cease being the child of his natural parents but was entitled to inherit from them and retain his/her original name. This meant he remained in some part, in the same position as he/she was prior to adoption, thus creating a legal fiction. The child can only be born once to one mother and one father p31

"The order of adoption shall confer the name of the adopting parent on the adopted child, "in addition" to the proper name of the latter." Adoption of Children Act 1881 s10.

Unforeseen consequences of 1881 Act
Baby farming

The new Act had unforeseen consequences as pioneering entrepreneurs capitalised by opening homes for fallen women to give birth and later, arranged for the adoptions of their children for a fee. The maternity options available for single mothers involved voluntary or church administered homes that Tennant observes illustrated the growing tension between medical and moral definitions of maternity (1985:29). Pressures to eliminate distinctions between married and unmarried women, and the tenacity of moral assumptions which continued until very recent times, determined the treatment received by women in childbirth. Some single mothers, Tennant explains may have managed to conceal their unmarried status, if not their pregnancy by passing themselves off as widows or deserted wives in districts where they were little known (1985:30). For most however, the discovery of pregnancy meant moral condemnation, social rejection and economic hardship. Else observes that "right up until the 1940s many believed that keeping an illegitimate child was a fitting punishment for the mother's sin - and a warning to other women who might be tempted to stray" (1991:23). Smart concurs by saying, "the position of the unmarried mother was so undesirable that her parental obligations were seen as little more than part of her stigma and rejection. Having sole custody rightswas more a form of legal punishment than a concession" (1987:109). p32

Illegitimates and young babies not prefered

Since illegitimate children were thought to be tainted by the circumstances of their birth so the demand for ex-nuptial babies to adopt was rare. Small babies Tennant says, were uneconomic, requiring care but unable to work and contribute to the financial income of the family or undertake domestic chores for some years. Prospective adoptive parents preferred children of "useful" years. It was not uncommon for children to be adopted to work on farms or in factories (1985:39). p33

Baby farming and Infant Life Protection Act 1893

Regardless, babies were still offered for adoption by desperate and destitute women who were unable to care for them. Individuals set about accommodating these women by taking in their babies with a view to receiving payment for finding them new homes. Due to lack of laws pertaining to the care of children, baby farming became a profitable business and the infamous trial of Minnie Dean 14 resulted in the initiative of the "Infant Life Protection Act 1893" which required the licensing and inspection of houses where children were taken in (Campbell, 1957:11). This initially did not apply to adoption, but by 1907 when the statute was revised, it was deliberately extended to cases of adoption (1957:11). It was made unlawful however in 1906, for any person adopting a child to receive any premium or other consideration in respect of the adoption except with the consent of a Magistrate (1957:11). Involvement by a Magistrate resulted in strict controls of premiums paid on adoption and these were to restrict profiteering and to ensure maintenance payments adequately covered the care of the child. The State became a guarantor of the agreement and on default of instalments undertook the task of enforcing the liability of the natural parent (1957:12). p33

Humiliation of unmarried mothers continued

The humiliation of unmarried mothers continued as they found themselves in the situation of having to pay for institutionalising their children, but due to low wages, ill health or unemployment, often fell behind in payments. It was unthinkable for assistance to be provided to encourage them to keep their children and this often resulted in the child being abandoned (Griffith, 1997:7) creating a burden on society to provide care for these children. In most cases, although expected to pay maintenance to the State for the child, women attempted to keep their babies despite the difficulties involved. Adoption was mainly reserved for instances where a married woman had an extra-marital child (Colebrook, 2000:14). p34

Source Julee Browning 'Blood Ties' Thesis 2005 pp31-34

COMPLETE BREAK ADOPTION 1950-1970

Two swings of pendulum

Griffith— Genetic determinism to environmentalism created major problems and damage within the institution of adoption.

Genetic determinism

Griffith— The theory that behaviour and morality as well as physical characteristics are predominantly genetically determined. Dysfunctional or immoral behaviour in the parents, is conveyed genetically to the children. It's all in the blood. Most adopted children are illegitimate, they have sinful parents and their sin will be passed on to the child. It's all predetermined by genetic makeup. This theory dominated and blighted our early adoption history. Then we swung to the opposite extreme.

Environmentalism

Griffith— The belief environment will overcome heredity. Place a child in the right environment and it will grow likewise. The adopted child, transplanted into an adoptive family, should turn out 'as if' born to them. This led to the denial of difference practice. Due to the overwhelming influence of environment, nurturing an adopted child should be no different from a natural child.

There is some truth in both theories. It was the extremes to which they were taken that caused the damage. For example, we now know that all our physical being is genetic, along with significant portions of our personality, but there is no evidence of morality being genetically fixed. Likewise, environment can have powerful affects, but can not alter our genetic structure, and behaviour modification can be limited by genetic personality. *We inherit all our potential, but how we use and develop it is largely determined by our environment.*

Environmentalism - Konrad Lorenz 1930s

Browning— The environmentalism underlying the legal principles of adoption was supported by Konrad Lorenz's studies during the 1930s of Graylag Geese and other species of birds. Lorenz promoted the notion that attachment was transferable and his research suggested that, as long as the primary caregiver met the immediate and basic needs of the hatchling, it would become attached to the mother-substitute as if born to her (*Lorenz, 1961:52-64). Bowlby applied Lorenz's findings to humans. His theories on childhood bonding became influential in supporting the complete break theories of adoption. He promoted early placement of infants for adoption on the premise that a child needed to bond with the mother (or primary care-giver) as early as possible (1951, 1953, 1969). The nearer to birth that the substitute mother takes possession of the child, the more she will feel the child is hers and the child will bond with her (1953:124). Iwanek asserts that while these studies resulted in a major shift away from hereditary and genetic determinants to environmental concerns, they also introduced the notion that the family of origin could be discounted as being of little importance to the child (1991:11). *Lorenz K 1961 "Imprinting, in *Instinct: An enduring problem in psychology,* eds Birney & Treevan, VanNostrand Company Inc. New York USA pp52-64

Source Julee Browning 'Blood Ties' Thesis 2005 Massey Ak

Natural relationship irrelevant and buried

JudgeInglis— "The whole scheme of the Adoption Act 1955 is to cut the ties between the natural child and its parents and to place it permanently and virtually irrevocably in the position of the adoptive parents' natural child..I cannot avoid the conclusion that Paliament's intention was to create a situation where the new parent-child relationship was to be accepted by all without question or further inquiry in the knowledge that the circumstances surrounding the adoption should not, in general be disclosed, and that the previous natural relationship was to be treated as irrelevant and buried." Judge Inglis QC Napier FC *Re an Application by P* FLN144(2d) N211 at 212 // (1984) 10NZRL 47

Origin of complete break theory

Griffith— The imposition of extreme secrecy from 1945 to 1980 resulted from interwoven social, legal and philosophical factors. Unraveling the mystery is like untangling a ball of cotton made of several strands. Some strands are—

1 Environmentalism

Griffith—A growing belief that environment was more important than heredity, in determining the physical, mental and emotional development of the child, and determining their behaviour. This was a justification for making the complete break from the old fears of genetic determinism. In a class society, heredity is of great importance, being of right blood. In egalitarian society, heredity is less important, it is what you make of life that counts, environment is of greater importance. By the late 1940s the pendulum of debate had swung to the environmental extreme. Heredity was of little real importance and could be overcome by environment. The theory was then almost universally accepted, it become an idealogy.

2 One real mother two unthinkable

Griffith—The only way a child could have two mothers was if the first one died. Thus the birth mother of an adoptee was treated to all effects and purposes as dead. As the adoptee can only have one *real* mother the other mother must be *unreal* and disposed of for good. There was increasing stress on the modern woman's role as an individual relatively isolated wife and mother, bearing a heavy responsibility for her children's welfare. No one else could take her place. The idea of an adopted child having two mothers and two families was unthinkable. As for adoptees having a 'birth father', that was an affront to adoptive fathers. Even as late as 1980 in the Adult Adoption Information Bill debate a member of Parliament, Mr Mclean (Tarawera) an adoptive father, suggested "We need new words. The words *sire* and *dam* have been suggested, but I believe they have a pejorative sense; we need to look for words like *begetter*." NZPD Vol.433. 5/9/1980 p3234

3 Unmarried women unfit to raise children

Griffith—There was a very strong belief that children brought up in other than two-parent families must be de-

prived. A solo mother just could not compete with a two parent family. It cannot be in the best interests of the child to be deprived, therefore they should be adopted into a nuclear family. Birth mothers of adoptees had already proved themselves irresponsible by having an illegitimate child, and in doing so had shown contempt for marriage and the nuclear family. "An unmarried woman was unfit to bring up a child or even retain contact with it. Any desire on her part to retain contact was proof of her inability to understand what was best for the baby. She had to be banished from its life forever, as did its entire birth family. Babies available for adoption were frequently described as parentless."

4 Good adoptees' don't need origins

Griffith—If the adoptive parents are really doing their parenting task, their careful nurturing of the child will ensure that the adoptee will have no need for origins, or any contact. Just as the birth mother has put her past behind her and started a new life, so will the good adoptee. "Just as birth mothers were supposed to forget and start a new life, so adopted people were not supposed to be interested in their origins. If they were, it was a sign that their adoptive parents had somehow failed to do their job properly. All that mattered was the ability to achieve as an individual and to create a new nuclear family of one's own. Pre-birth family history was seen as irrelevant to the present. When the state denied and concealed that history, it could claim to be acting in an adopted person's best interests. It could also claim to be protecting the birth mother."

5 Bonding theory

Griffith—relating to infant-to-parent attachment. Early theories suggested there was a period shortly after birth which was optimal for the parent-child attachment. Later studies challenged this theory and argue that parent-child attachment does not depend on such contact occurring during the sensitive or critical period of short duration after the birth of a child. "Lorenze, Bowlby 1951, 1953 postulated that bonding between mother and child began shortly after birth, and that there was an optimum period soon after birth when a baby could bond to another person, not necessarily its birth mother. These ideas were used to promote baby adoptions which had previously not been so popular. The clean break theory provided maximum security for the adoptive parents so that bonding could take place." Kennard 1991 p14

6 Psychodynamic theory

Griffith—From the beginning the law on adoption assumed birth parents were likely to cause trouble for the adoptive parents and the child. The Psychodynamic Theory supplied social workers with a pseudo psychological justification and rationale for maintaining a complete break. The theory portrayed unmarried mothers as immature and unstable, the baby as unwanted, conceived to fulfil her neurotic needs and fantasy. Therefore it was in the best interests of the adoptive parents and the child that they be permanently separated from the birth mother. It was also in the best interests of the birth mother that in order to heal her dysfunctional personality, she make a complete break from the past and a new life for herself. *see* "Psychodynamic Theory'

7 Theory became practice

Griffith—In post war 1940s we were building a new society. The theory that environment reigned supreme was translated into belief and action. It shaped both our education and adoption policy for the next 40 years. The changes reflected an important post-war shift in attitudes to origins, heredity, genealogy and family. In post-war child development theories, the emphasis moved away from heredity toward environment. This was part of the general shift toward regarding children as individuals and reducing the idea of 'family' to the nuclear family group. Detaching the baby from its origins allowed it to be safely adopted.

8 Complete break ideology

Griffith—When the 1955 Adoption Act was drafted environmental supremacy had become an ideology. That is, the belief had reached the level of unquestioned acceptance demanding implementation. Because an adoptee's heredity was now considered largely irrelevant, it was in their best interests to be completely cut off from their origins. *A complete break would allow the adoptive environment full reign to take over and shape the adoptee's life into the mould of the adoptive family.* Therefore, an impenetrable wall of secrecy, between the adoptee and their origins, was the obvious and sensible thing. Thus, complete break secrecy provisions were inserted in the Adoption Act without any question or consultation with the parties directly concerned. With an ideology there was no need to consult because you know you are right.

9 Legal fiction became general fiction

Griffith—The 'legal fiction' served a defined legal purpose, as a device to clarify the legal status of the adoptee and adoptive family relationships. The major difficulty arose when social workers and adoptive parents, ignoring the legal constraints and used 'legal fiction' as both a device and justification for turning fiction into fact. The transformation of legal fiction into a general fiction is a delusion that became adoption policy and practice.

"The original adoption law introduced a simple *legal* fiction, in which the idea of an adopted person becoming 'as if born to' the adopters was a legal concept only. But gradually this turned into a *general* fiction, involving a web of pretense and denial." Else 1990 p181.

To make a lie stick you have to conceal truth or destroy the factual evidence.

Child Welfare view on complete break 1955

Griffith— The Superintendent of Child Welfare, Mr C E Peek, in a letter of 23 January 1955 to the law drafting office, concerning the 1955 Adoption Bill, commented—"I think that if the natural parent is to have any influence once the order has been made, then the whole spirit and effect of adoption orders is being undermined, and the child is not being treated as though he were the natural child of his adoptive parents. I suppose it would be true enough to say that, as far as an adopted child is concerned,

his natural parents are legally dead, and that the dead hand should not govern the upbringing of the child." GC pp5566-7

Else— "Closed adoption brought about the permanent separation of mother and child, but that was seen either as a small necessary evil for the sake of the greater good, or as a positive benefit, because it freed each of them for ever, legally and socially, from the embarrassing presence of the other." Else 1991 p26

Adoption practice 1940-1960

Kennard— "Adoption practice during the 1940's and 50's also followed the theories already outlined. If the child was not wanted for itself but was merely a symbol, then the logical conclusion was that the child was unwanted and would be better off adopted. The unmarried mother was counselled to place the baby for adoption as it would be best for the baby, and then when she did, was seen as abandoning her child. Many adoptive parents believed that they were 'rescuing' an unwanted, abandoned baby. Because it was believed that raising adopted children was the same as raising natural children, information about birth parents was seen as unnecessary, unsettling, and a threat to the bond between adoptive parent and child. Social work records, therefore, contained little or no information about birth families. The legacy of these beliefs is still evident today amongst adopted people, their adoptive and birth families." Kennard 1991 p15

The focus of adoption was on the relationships which were created and the perceived advantages for members of the new family. There was no attention given to the relationships which were destroyed and their impact upon the children, or life long effects all parties concerned.

Closed adoption Dualism

Brosnam— For the non-adopted person seeing similarities between himself and his parents is one type of verification. Being able to read your birth certificate is another. To an adopted person, these two fundamental ways to verify existence are missing or considered top secret, sealed behind impenetrable doors thus fueling fantasies that cannot be challenged by fact. This need to hide the truth about conception, about birth, about one's origins, which are all the effects of the closed adoption system, have at their base the philosophy of thought that we call Dualism.

Dualism *Brosnam*—

1 Dualism is a way of perceiving the world as an either/or situation, everything reduced to either black or white.

2 Dualism lies at the core of the closed adoption system, at the heart of sealed records.

(a) It necessitates secrecy, keeping a person's name secret even from himself.

(b) It is told that such a practice is done in the best interests of the child, but how can any honest person see it as anything other than a subtle oppression.

(c) It tempts all members of the Triad to enter the dual universe, separating and compartmentalizing the world of flesh and the world of spirit.

(d) It seeks to divorce the body from the soul.

(e) It undermines the integrity of sex and love.

(f) It seeks to exert control over what is not meant to be controlled, namely the creative forces of the human spirit which find their most powerful expression through the marvellous workings of human reproduction.

Splits adopted person into two people

Brosnam— Secrecy and sealed records impose a schizophrenia of sorts on the adopted person, virtually separating him into two people: One the product of an unmentionable sexual union, the other the result of a hopefully loving environment.

Dualism impact on psychology and adoption

Brosnam— By the mid-20th Century, it had already infected the psychology of adoption which held that it was environment, not heredity that played the dominant role in human development.

(a) If a social worker could more or less match the physical traits of the adoptive and birth parents the result might be what we call today virtual reality.

(b) The child would be as if born to you.

(c) The crucial words, of course, are as if.

(d) Virtual reality and reality are separated by one very important difference: the truth.

Now this doesn't mean that adoptive families aren't real families or that the adoptive parents aren't the real parents. Adoption can be a real blessing and has countless times been the best solution to difficult problems, but adoption cannot do the impossible. It can indeed make an infertile couple into great and wonderful parents. It can even make them the best of parents. But it can never make them fertile.

Demolition of dualism

Brosnam— If the institution of adoption is truly to come of age, it must combat this virus of Dualism. Like the razed Berlin Wall that divided a city for a generation, like the dismantled statues of Lenin across the Russias, we must seek now more than ever the abolishment of closed records and repudiate with our whole being this terrible scourge of secrecy in adoption.

Source Rev Thomas Brosnam *Issues* Num 22 Jan-April 2002

1950s-1970s Synopsis

Coles— The middle of the twentieth century was when the 'clean break' theory held sway. The belief that the child's environment prevailed over their heredity was coupled with the notion that a birth mother could eliminate her shame by giving up her illegitimate child to adoption and then making a promise to disappear from the child's life, forever.

O'Shaughnessy 1994 "...adoption was seen as a praiseworthy solution to the problem of children 'in need of parents' and infertile married couples 'in need of children'" p104

Shift to meeting adoptive parent needs *Coles*—

1 During the 1950s and 1960s the emphasis shifted gradu-

ally from the child, to meeting the needs of adoptive couples, ie finding children for parents, not parents for children.

2 In a post-war era of affluence, when so much importance was placed on the twin pillars of marriage and family, infertile women felt under pressure.

3 Adoption came to be seen as a way of creating families for those who could not have their own.

4 Adoptive parents were encouraged to consider the children to be as if born to them (some adoptive mothers went as far as faking their pregnancy), a social fiction reinforced by legislation, which created new birth certificates for adoptees and introduced the practice of matching the physical, intellectual and social characteristics of birth and adoptive parents.

5 Those mothers who considered adoption, but then gave birth to babies with a disability were the envy of birth mothers, for they got to keep their 'unadoptable, unsuitable' baby.

6 In a social setting in which the nuclear family with clearly defined gender-based roles was considered the best environment for raising children, reinforced by a conviction that children placed soon after birth could bond with the new family and be rescued from the damaging effects of the mother-child separation and potential economic and psychological deprivation.

7 Social welfare departments and adoption agencies came to see their role as that of saviours. Social workers exercised considerable power in arranging adoptions, sometimes abusing their positions by distorting information about the birth parents and the child, so that the baby would be more acceptable to an adopting couple. Information about birth fathers was sometimes deliberately withheld.

New South Wales 1971:

Coles— "You understand, don't you, that this paper you are signing means that you are giving up your baby for always? It means your baby will belong to strangers, for always, and you will never see him or hear of him again. He will, in fact, become legally their child just as if he had been born to them and not you" (NSW Legislative Council, 2000, p120).

Some social workers made categorical assurances to the birth mother and the adoptive parents; they were told that absolute secrecy was a condition of the adoption and that all adoption records were sealed and nobody could ever gain access to them. Adoptive mothers were sometimes informed that it was illegal for birth parents and adoptees to search and make contact. Birth mothers were comforted and told that their dreadful secret was safe, so they could start a stigma-free 'new life'. These claims were patently misleading, because nobody can guarantee that the social climate and laws will not change.

Statistics

Coles— Post-war, the number of adoptions increased steadily until the 1960s, when they began to surge dramatically. In Australia, the peak occurred in 1971-72. Canada, for example, shows a similar trend. New Zealand peaked in 1968. For the state of Victoria, Australia, 30% of all adoptions occurred in the ten year period 1963 to 1972. In all of these places, the number of adoptions (excluding intercountry adoptions), began falling steadily in the early 1970s. In some quarters, this decline in supply became known as an 'adoption crisis'. In New Zealand, numbers fell from 2617 adoption orders in 1968 to 123 in 2002-2003 (Griffith, personal communication, 2003). **Source** Gary Coles *'Ever After'* 2004 p167-169

Closed adoption system thrives on secrecy

Seitz— "I found it difficult to live with the unknown aspects of my life. I believe secrecy created lies, and distorted reality. I believe the closed system is responsible for the distorted growth of shame inside my head.

Too often it is the system of adoption, with its sealed records and its legal fiction -falsified birth certificates - that creates the aura of secrecy, that attempts to erase the truth, that for the child, needs to be acknowledged, not denied" Karyn Seitz *'Journey Through Adoption'* 2000 p59 Australia.

A future requires a past

*Griffith—*For the future to exist, the past must also exist, but in closed adoption the past has been completely erased by means of a false birth certificate and closed records. In closed adoptions identity is contaminated by secrecy and lies. Adopted persons grow up with genetic amnesia, no reference points for one's being, no reflection of one's Self.

Reticence of adopted persons to search

Verrier— For one thing, it was illegal to get your original birth certificates or other adoption information. This made searching difficult. On top of this, the guilt that birth mothers carried and the unworthiness that adopted persons felt inhibited them from searching for one another. They felt undeserving. They were used to bowing to authority. It wasn't until more and more triad members began to band together in organizations that searching became more common. 2003 p240

Steps to closed adoption A.8.01

Trapski— George Waterhouse (see A.5) was a fervent advocate of openness in public affairs, and adoption 1881-style did not involve any secrecy or concealment of the parties' identities. The child's surname was often a hyphenated form of the names of the birth parents and the adoptive parents.

It was only in 1915 that the first steps were taken to close the adoption process: s 8(4) Births and Deaths Registration Amendment Act 1915. A law change permitted birth records to show the names of the adoptive parents in place of those of the birth parents. The original birth registration showing names and details of the birth parents would be made available only where there was a genuine ground for seeking the information. Until 1915, the adopted child's birth certificate gave particulars of the birth par-

ents only. The rationale for the 1915 changes was to restrict the availability of documents which would disclose that the child was born out of wedlock. On this topic see K Griffith, *Adoption: Procedure - Documentation - Statistics: New Zealand 1881-1981 100 Years,* Wellington, 1981, pp 44-54.

It was not until 1951 that access to birth records was severely restricted: s 21(7) Births and Deaths Registration Act 1951. In 1955, Court adoption records were sealed from inspection with very limited exceptions: s 23 Adoption Act 1955; ch H: Secrecy, confidentiality, and open adoption.

Source *Trapski's Family Law* Vol.5 'Adoption' A.8.01. 24/10/2003 Brookers

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Adoption Act 1955

Trapski— **A.5.03** The 1955 Act consolidated earlier legislation. It resulted from concern at failings in existing adoption law expressed by Hilda Ross, the then Minister of Social Welfare, and it reflected the views of an interdepartmental committee set up to review adoption law. Much of the discussion centred on the length of time that must elapse after the birth of a child before a mother could give a valid consent. While many submissions argued for 4 or 6 weeks, and 4 weeks was included in the original Bill, the comparatively short period of 10 days was adopted by the select committee. See P J Morris, "An improper act", in P J Morris (ed), *Adoption: Past, Present and Future,* Auckland, University of Auckland Centre for Continuing Education, 1994.

Source *Trapski's Family Law* 'Adoption' Vol 5. A.5.03 24/10/2003 Brookers

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Principles underlying Adoption Act 1955 A.7

Absence of statutory principles A.7.01

Trapski— The Adoption Act 1955 is typical of family legislation of its era in that it concentrates on processes. It does not spell out any overarching principles or purposes of adoption. The long title of the Act states merely that it consolidates and amends existing legislation relating to the adoption of children.

This lack of statutory definition of purposes and principles has allowed adoption to be used to meet differing social needs at different periods of New Zealand's social development: see A.4.

In comparing the 1955 Act with more recent family legislation one is struck by the brevity and economy of the Act. It is astonishing that such a complex matter is covered by an Act containing only 30 sections.

It is possible to distil certain unstated general principles from a reading of the main provisions of the Act. In many cases these general principles have been explained or modified by Court decisions. There is some truth in the assertion that the Act places considerable emphasis on parental rights, the primacy of marriage and on issues of a contractual nature relating to parental consents and that welfare of the child issues are only of direR relevance when the Court makes its decision whether or not to grant an adoption order.

Adoption as a means of meeting adult needs A.7.02

A driving force behind adoption law has always been a desire to provide benefits for adults. When adoption was introduced it was seen as a means by which adults could secure low cost assistance with domestic work or farm labouring. Adoption was also seen as a means of reducing the charge of the public purse where children had been orphaned or abandoned or could not be cared for by their parents.

Later, adoption provided a convenient means by which families and parents could avoid the embarrassment and social stigma that attached to extra-marital sex and unmarried pregnancy. A child could be spirited away and given a new family and identity by means of adoption.

Adoption has always been a means by which infertile couples could obtain a child whom the law treated as their own child, thus relieving them from the disappointment and embarrassment of infertility. More recently it has provided opportunities for adults to rescue children from orphanages or impoverished circumstances in third world countries. Such adoptions are seen by the community as motivated by altruism and a desire to save children in difficult circumstances by offering them the benefits of a committed caregiver, good health care and education, and better employment and economic prospects.

Adoption law supports legal marriage A.7.03

A theme that permeates the 1955 Act is that adoption of children is particularly the preserve of married couples. Unmarried couples cannot adopt a child: s 3(2) and see B.3. Although a single female or single male can adopt a child (s 3(1)), he or she acquires honorary married status on the making of a final adoption order: s 16(2)(a). Where a parent and step-parent apply to adopt a child there is no requirement that a social worker's report be provided to the Court, it being assumed from the fact that a natural parent has chosen to remarry that the new spouse is a fit and proper person to care for the child and that the welfare of the child will be promoted by the adoption.

Adoption law favours mothers as natural child carers A.7.04

The Adoption Act 1955 treats women more favourably than men in a number of respects. This reflects the view current in the 1950s and earlier that mothers are the natural carers of children. A sole male applicant can only adopt a female child if the Court finds there are special circumstances: s 4(2). If the child's parents are not married and the father is not a legal guardian of the child, only the mother's consent is required although the Court can require the consent of the father if it considers it is 'expedient to do so' (proviso to s 7(3)(b)).

Welfare and interests of the child A.7.05

In making decisions in guardianship, custody, access and wardship proceedings and in child protection matters the welfare of the child is the first and paramount consideration: s 23 Guardianship Act 1968; s 6 Children, Young Persons and Their Families Act 1989.

By contrast s 13(1)(b) Adoption Act 1955 only refers to

the welfare of the child in the context of making an interim adoption order. It requires that, before making an adoption order, the Family Court Judge must be satisfied, inter alia, that the welfare and interests of the child will be promoted by adoption. The child's welfare is not the paramount consideration and, in this respect the Adoption Act fails to comply with art 21 of the UN Convention on the Rights of the Child. Furthermore the 1955 Act makes the child's welfare a consideration only on the making of an interim order. The statute does not require that the child's welfare be a consideration in making other orders or findings under the Act.

There are a number of other situations in which the Family Court can be asked to make orders or findings under the Adoption Act including:

(a) A finding that there are special circumstances justifying the making an adoption order where the applicant or one applicant has not attained the statutory minimum age (25 for non relatives, 20 for relatives of the child): s 4(1);
(b) A finding that there are special circumstances justifying the making of an adoption order in favour of a a male applicant in respect of a female child: s 4(2);
(c) An order dispensing with consent of a parent or guardian to adoption of his or her child: s 8(1);
(d) An order revoking an interim adoption order: s 12;
(e) An order varying or discharging an adoption order: s 20;
(f) An order authorising inspection of adoption records: s 23(3).

In some of these situations the Courts have ruled that despite the lack of any statutory requirement the Legislature must have so intended that the welfare of the child is a primary consideration.

Welfare of child on applications to dispense with consent A.7.06
Generally speaking, a child cannot be adopted without the formal consent of the child's mother and, if the parents are married, the father is a guardian, or the Court considers it expedient, from the child's father. However s 9 of the Adoption Act gives the Court power to dispense with the consent of a parent of the child on specific grounds ie abandonment, persistent failure to maintain, persistent ill-treatment, unfitness and failure to exercise the normal duty and care of parenthood.

Section 8(1) states that the Court may dispense with consent if it finds any of the statutory grounds proved. The Court accordingly has a discretion to grant or refuse dispensation in any particular case: see E.22 to E.30.

The Court of Appeal in *DGSW v L* [1989] 2 NZLR 314, also reported as *Re Adoption A72/89* (1989) 5 FRNZ 164 (CA) swept aside previous uncertainties and decided that, in exercising its discretion, the Court must treat the welfare of the child as the paramount consideration.

Earlier cases stressed that it was a serious matter to deprive a parent of the rights and responsibilities of parenthood and the power to dispense with consent should be exercised on for serious failure on the part of a parent. The Court of Appeal decision marks a significant shift from an adult-centred to a child-centred approach in adoption.

Welfare of child on application to revoke interim order Section 12(1) of the Act is in broad terms:A.7.07 "On the application of any person the Court may in its discretion revoke an interim order in respect of any child on such terms as the Court thinks fit."

It may, of course be the proposed adoptive parents who seek to revoke the interim order. They may have undergone a change of mind and not wish to proceed with the adoption. In some cases Child, Youth and Family may become privy to additional information about the proposed adoptive parents that changes their views about their suitability and the Department may apply to revoke the interim order.

In nearly all reported cases, applications under s 12 have been made by a birth mother who has had second thoughts about the proposed adoption and wishes to retain or reclaim the care of the child even though she has signed a consent to the adoption. The case law prior to 2001 placed great emphasis on the genuineness of the birth mother's consent. Courts were prepared to revoke interim orders where the birth mother had been misled as to the effect of giving consent or subjected to strong pressure which had overborne her own wishes: see G.9.01, G.9.03. But where the mother had freely given her consent and the legal formalities had been properly completed-it-was held that her subsequent change of mind was not a reason for revoking the interim order: G.9.02.

Litigation resulting from a birth mother's wish to resume the care of her child culminated in a hearing by a full Court of Appeal in *B v G* [2002] 3 NZLR 233; (2002) 22 FRNZ 278; [2002] NZFLR 961 (CA). This case illustrates the difficulties the courts can face in trying to import the paramountcy principle into a statutory scheme which is premised on the irrevocability of a written consent given in accordance with the requirements of the Act. A full High Court favoured the view that welfare issues could be revisited on a s 12 application but the Court of Appeal took a different view, deciding that only issues to do with the child's welfare while in the care of the proposed adoptive parents could be taken into account.

Nowhere else in New Zealand family law are parents denied the opportunity of arguing that their child's welfare will be promoted by being in their care. The irrevocability of consent provisions in the Adoption Act place contractual obligations above welfare issues. As emphasised by both Judges in the High Court decision in *CMG v MAB [adoption]* (2001) 211 FRNZ 650; [2002] NZFLR 241, the problem of interpreting the Adoption Act so that it reflects contemporary thinking and meets New Zealand's international human rights obligations cannot be adequately resolved by the Courts. What is needed is "serious and prompt legislative consideration" (para 99).

Source *Trapski's Family Law* Vol.5 'Adoption' A7-A.7.07. 24/10/2003 Brookers

Secrecy was a major concern of MOMM

Else— The Motherhood of Man Movement made in its submission re the Adoption Act 1955- "MOMM believed there should be no possible opportunity for the natural mother to learn the adoptive parents' identity, and wanted the new provisions on this point strengthened. Citing anecdotal evidence, it raised the bogey of the mother finding out where her child was, and making a nuisance of herself; or worse, blackmailing the adoptive parents. Giving adoption societies a much larger role, it argued, would help to eliminate any such risk." Else 1989 'The need Ever Present' *New Zealand Journal of History* Vol23 (1) April 1989 p60

Demise of Complete Break 1970-1985

The complete break philosophy came under increasing pressure from ten sources.

1 existentialism
2 new psychological theory and practice
3 civil rights movement
4 adoptees and birth mothers speaking out
5 research
6 formation of support groups
7 adoption law change England 1975
8 professional training of social workers
9 Adult Adoption Information Act 1985
10 UN and international conventions

While professionals continued to defend complete break practice, the foundations were already collapsing under them. *Iwanek*—"While adoption workers and legal advisors were putting in every effort to establish legislation and practices that would support the 'clean break' theory and secrecy, the literature shows that others had started to challenge these practices." Iwanek 1991

See **1955 Challenge to adoption secrecy** by Justice Herring, full High Court, Victoria Australia . *A v CS No.1* Victorian Law Reports 1955 pp340-378

1 Existentialism

—is a modern philosophical movement stressing the importance of personal experience and responsibility and the demands that they make on the individual, who is seen as a free agent in a deterministic and seemingly meaningless universe. It is empirical as opposed to theoretical; concrete as opposed to abstract.

Iwanek—"After World War II existentialism slowly emerged as a major philosophical perspective which challenged psychoanalytic theories of personality. These theories gave social workers and other professionals a different perspective about people in the world and their needs. Existentialism promotes notions such as the importance of knowing oneself, freedom of choice and responsibility for one's actions. It holds that personal truth is a matter of subjectivity and asserts that the individual alone finally decides the meaning of a new situation. The existential view of an adoption practice based on pretence, such as the 'born to' notion, and suppression of personal information by others under the guise of protecting the adopted person from possible hurt and thus from reality, is not helpful to that person and frustrates personal growth...M Iwanek 1991

2 New psychological theory and practice

— **Erickson's** work on identity formation gave new insights into why adopted people need know their origins.

— **Difference v denial** *Iwanek*—"David Kirk, a sociologist, was one of the first Canadian pioneers to undertake research into kinship. His findings show that adoptive parents who deny the difference between a child by birth and one by adoption are more likely to have dysfunctional family relationships based on secrecy, inability to communicate and general distancing between parents and their children. On the other hand, he found that where there was an acknowledgment of difference, a more open and creative relationship existed between children and their adoptive parents. Kirk's findings appear to be in direct conflict with the practice of adoption agencies and legal advisors, who very much operated on a 'rejection of difference' philosophy, and who promoted secrecy. Kirk's acknowledging the difference meant that adoption has to be regarded as a lifelong process whereby adoptive parents will discuss with their children issues relating to the adoption over the years. Agencies, on the contrary, rejected the notion of difference, and saw adoption not as a lifelong process, but as time limited. When children adopted in an environment which promoted the 'as if born to' philosophy, it also meant that once the transfer was legally completed the differences no longer existed." Iwanek1991

Mashall and McDonald—The two different coping patterns Kirk identified were the 'rejection of difference' and the 'acknowledgement of difference'. His conclusion was that in accepting their own differences, and using this acceptance as a bridge to the feelings their children experienced in relation to their adoption, more open patterns of communication could be established.

Kirk is not concerned with with questions of psychological adjustment: 'There I take not adjustment but "social ground" for the child and mutual trust for the parents and children to be the desirable outcomes of good parent-child relations in adoption'

This theory gained particular force not only because Kirk continued to test and develop it in ongoing research, but because he made use of the insights gained from his own experience as an adoptive parent: 'Certain events in my family acted as personal signposts'...illustrated how comfortably one could live with such knowledge. Parents able to deal with the realities in this way were unlikely to experience problems with the critical tasks of telling the child of his adoption or of sharing with him the details of his family background. Marshall and McDonanld 1991 p123

Dr Kirk became the equivalent of Dr Spock to adoptive parents.

3 Civil rights movement

Provided impetus to other groups in society to form and band together to promote their own particular issues. Public speaking and use of the media were enhanced and encouraged. The empowering of women also enabled many birth mothers to speak out publicly. Annual marches from New York to Washington, proclaiming the case for open records became an annual event. Many political activists learnt their skills from the civil rights movement and used them to promote adoption law reform.

4 Adoptees and birth mothers speak out

With acknowledgment of difference adoptees felt free to ask questions. They began to questions the authorities, rejecting assertions of professionals that adoptees searching for origins were pathologically dysfunctional and in need of counselling.

Iwanek—"Kirk's writing implied that children who request information about their families of origin reflect the security they feel about their relationship with their adop-

tive parents because they acknowledge the difference. On the other hand, adoption agencies often promoted the idea that children who requested information were either disturbed, or that something had gone wrong in the parent-child relationship. Kirk states: 'Because of their insistence that an adopted child was the same as if born to them, they sought the same therapeutic solution as for non-adopted children with their parents. The outcome has often been that therapy was often unsuccessful and relationships deteriorated rather than improved Kirk 1985'." Iwanek 1991. The adopted persons actions encouraged birth mothers to come out and tell their story.

5 Research

Griffith & Iwanek—"Practical research findings based on adult adopted people's experiences became available in the early 1950s. The first person to publicly speak out on the issue of secrecy in adoption was Jean Paton, a social worker and an adopted person, who at 40 embarked on a search and found her birth mother. She wrote a book called 'The Adopted Break Silence'. Others like McWhinnie 1967, Triseliotis 1973, and Raynor 1980, wrote about the need for identifying information for an adopted person, which they based on research findings...Paton's book was the beginning of the adoption reform movement starting with her own organisation called Orphan Voyage. Others followed much later in the early 1970s and 1980s, led by such people as Florence Fisher and Betty Jean Lifton. In 1978 Sorosky, Baran and Pannor reported for the first time on the feelings and attitudes of birth parents years after they had relinquished their children for adoption. This was followed by publications- Sawyer 1979, Langridge 1982, and Vankeppel 1984. All these studies described the anguish felt by birth parents, years after they had relinquished their children for adoption, and the severe emotional trauma they had suffered. The studies show that adoption agencies' and lawyers' beliefs that birth parents want permanent anonymity and privacy and to be left alone for ever was a myth. In most cases the mothers had given up their children to ensure they would have permanency. There was a growing awareness that legally defined adoption legislation had its own consequences which had not been intended at the time of passing legislation. 'The underlying belief of our adoption legislation is that the birth ties can be severed; the child's true origins erased as if they never were, and that everyone affected by this process, the adopted child, the birth parents and the adoptive parents, are benefited by this step. Griffith, 1981'" Iwanek 1991

6 Formation of support groups

Jigsaw and Adoption support groups developed effective support, educational and activist reform movements.

7 English law change 1975

The Childrens Act 1975 s26 granted all adoptees aged 18 or over access to their original birth entry. This was a major boost to the reform movement in New Zealand.

8 Professional training of social workers

Since the 1970s professional training for social workers has been available. Graduates brought new insights, research, and critical assessment to adoption work.

9 Adult Adoption Information Act 1985

Milestone in opening up adoption an consolidating change.

10 UN and International conventions

Non compliance of NZ legislation couldn't be ignored.

1970s Long road back from complete break

Kennard— "From the 1960's onwards adoption practice has gradually changed as the clean break theory has been questioned and found wanting. Secrecy was fundamental to the theory and those involved in adoption slowly recognised that there was advantage to both adoptive parents and adopted children in having some knowledge about the birth families. Practise has gradually moved towards more information, no secrecy and open adoption. Adopted people began to be listened to when they talked of their needs and rights. It was slowly realised that arguments that might be used to justify severing all links between a baby and its birth parents, could not continue to be used once that baby was an adult." Kennard 1991 p16

Else— During the complete break period both policy and practice was driven by ideology, rather than principles arrived at after careful thought, based upon research. *'Closed stranger adoption can now be seen for what it was a social experiment with unknown and un-investigated outcomes, conducted on a massive scale.'* Else 1991 p197

Financial assistance to birth mothers

Since 1968 financial aid has been available to solo parents, this enable more mothers to retain their children.

1970s social changes- adoption decline USA

Soll—In the 1970s, however, several events occurred that changed this picture dramatically, at least within the white population. With the availability of legal abortions, the number of white illegitimate births dropped precipitously. Other factors further reduced the supply of healthy white infants available for adoption. Illegitimacy became less of a stigma and unmarried mothers who kept their babies were no longer always social pariahs or unable to eventually find husbands. With the increased divorce rate among married couples and the subsequent impoverishment of divorced women and their children, the economic status of an unwed woman with a child began to resemble that of many families that had originated in wedlock. Additionally, as more and more marriages ended in divorce, other types of family organization besides the two-parent family began to receive acceptance as valid. As a result of these changes, the argument that children born out of wedlock were better off being raised by a married couple than by an unwed birthparent had been seriously undermined. Joe Soll *'Adoption Healing'* 2000 pxv

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Adoption Decline since 1968

Griffith— There were several important interrelated factors and major social changes that caused the fall in adoptions. Simply blaming the decline on any one cause is a gross over simplification.

— **Decreased stigma** associated with illegitimacy and a consequent reduction in the social pressures working against the mother keeping her child. *See*

— **Financial assistance** Mothers were no longer forced to part with their children for purely economic reasons. Benefits enabled many mothers to keep their children.

— **Child care options** Solo mothers had increased access to creches and could retain their child, and work.

— **Economic independence** by labour force participation. Most solo mothers were on the DPB for only a short period before obtaining paid work. This gave financial independence and the ability to pay for child care.

— **De facto marriages** became more acceptable. Birth mothers were no longer under heavy pressure to either marry the father or give the child up for adoption. Moving into a de facto relationship now became a viable option. Some children who would have been given up for adoption through non-acceptability of de facto relationships were now retained. *See* p

— **Less professional pressure** from medical, social and legal professionals on the birth mother to adopt.

— **Abolition of illegitimate status** The Status of Children Act 1969 s3 removed all legal discrimination against persons born illegitimate. Since 1969 there has been no legal advantage to be gained by cancelling illegitimate birth status by adoption. *See* pp

— **Abortion** since **1976** more readily available abortion has terminated some pregnancies that would have otherwise led to adoptions. Some who would have been born for adoption were terminated in-utero. *See* pp

— **Less parental pressure** Parents became less hostile and more supportive of young mothers keeping a baby, as a solo parent, or living in a de facto relationship.

— **Stepparent adoption fall** (a) Since the Status of Children Act 1969 there has been no legal advantage in cancelling illegitimate birth status by adoption. (b) Family names can be changed by deed poll: over 6,000 did so in 1993. (c) Improved guardianship through family courts have replaced the need for stepparent adoptions. (d) Acceptance that cutting children off from their natural relations and origins is seldom in their best interests. (e) Courts are wary of adoption as a weapon in custody battles and decline such adoptions. (f) Diminishing concern to formalising marital unions has reduced need for stepparent adoptions.

Re-evaluation of adoption

Research on adoption, its limitations and effects requires a re-examine adoption practice. Has closed adoption been a failed experiment? The Adult Adoption Information Act 1985 had a major impact by moving both statute and public opinion on adoption from secrecy to openness. Open adoption is now normal practice. The 1990 Report recommended that adoptees have only one birth certificate with both birth and adoptive parents names included.

Other significant factors in decline

Cohabiting parents

During 1969-72, placements of ex-nuptial children with cohabiting parents remained at a constant level of about 25%. By 1982 they had doubled to 51% of all referred ex-nuptial children. Some factors may explain this trend—

— Elimination by abortion or improved contraception of many births which, had they occurred, may have been assigned to other placement categories.

— Growing belief in some sectors that formal marriage is not a necessary setting for family formation.

— Continued rise in the level of marital breakdown. More relationships are being formed by persons with divorces pending and are not as yet free to marry.

— With the high breakdown rate of traditional marriages, many people are cautions about entering a formal legal marriage. Many now prefer a trial period, often only marrying when they begin producing children.

— There are tax and benefit payment advantages in not entering a formal marriage. Benefits are paid at a higher rate to single persons. Entering a formal marriage results in immediate reduction of benefits. A non marital cohabiting partner is hard for authorities to prove, and will yield about 20% more income than being legally married.

Consensual sexual relationships

Some people reject both formal marriage or live-in cohabiting relationships, and move to a consensual relationship. Their sexual needs are met regularly by mutual arrangements with a partner that does not live in more than two nights a week. They remain legally on full single benefits.

Contraception availability

The 1954 amendment to the Police Offences Act made it an offence for persons under 16 to procure a contraceptive or for anyone to give or sell them a contraceptive. It became an offence to instruct or persuade anyone under 16 to use a contraceptive, or to attempt to do so. While many deplored the fact that young people were having sexual intercourse and producing illegitimate children, they refused to make available contraceptive advice or devices that could prevent conceptions. Since 1976 contraceptive advice and devices have been more freely available. Effective contraception means fewer unplanned pregnancies and fewer children available for adoption.

Children individuals with own rights

Trapski—"Over the last 20 years there has been an increasing awareness of the pressures society places on mothers who give up their children for adoption. More recently there has been a growing acceptance that children are more than mere objects of concern, but rather are individuals

with rights of their own. At the same time we have come to own individuality and personal identity, may need to know their biological parents and the circumstances of their birth...On this view, children are not pawns in some human chess game to be placed and displaced at the will of the adult players. Children are individuals with their own wishes and perceptions who should be involved in decisions which affect them to the extent their maturity and level of understanding allows. Parents are not all-powerful controllers of their children's lives. They are, in a sense, 'trustees' for their children and their powers are not free-standing but are exercisable only for the child's benefit and welfare...It is hardly surprising that our adoption laws, framed in 1955, and harking back to the 19th century, give little recognition to the child's individual rights and perceptions. Adoption is something that is done to children rather than a process in which children participate." Trapski's Family Law Vol.5 Brooker's 1995 A2

1977-1987 changes in adoption

The Interdepartmental Working Party 1987 noted seven changes had taken place in adoption over the last decade.

— A worldwide trend towards natural parents keeping their children and consequent decrease in numbers of babies available for adoption.

— Increasing numbers of children being adopted by one of their parents and a stepparent.

— Increasing numbers of children being placed by natural parents with people personally known to them.

— Increasing numbers of children with special needs for whom adoptive parents can be found. 'Special needs' children include older or intellectually or physically handicapped children, and sibling groups.

— The increasing openness of adoption. There is now a greater participation by natural parents in t222he choice of adoptive parents and, sometimes, ongoing contact between natural parents and the adoptive family.

— The heightened desire of ethnic groups to see children of their culture placed within their own ethnic group.

— Increasing numbers of adoptive parents seeking children from other countries. 1987 Review p9

Financial assistance to birth mothers

Browning— During the mid 1960s concern was being raised that there were too many babies available for adoption and there was a danger that adoption could be seen as the "easy option" (Else, 1991:161). Social workers were becoming uneasy about the surplus of babies available for adoption and Else suggests that, as the only help on offer, adoption and fostering were not sufficient. The only realistic way to reduce the surplus, she states, was to enable more single women to keep their children (1991:159).

Dr Martyn Finlay's private member's Bill

Browning— Women's groups began putting forward arguments promoting the view that due to the surplus of babies, women should be encouraged and supported to keep their children. Parliament was urged to pass Dr Martyn Finlay's private member's Bill advocating that maintenance payments be made for single mothers as well as their ex-nuptial children (Else, 1991:161).

The Domestic Proceedings Act 1968 and the Legal Aid Act 1969 made it easier to obtain maintenance from the fathers of these children. But agitation continued, and single mothers were themselves beginning to take action. The hardships of the "ringless" and "the forgotten mums - the unmarrieds" were having their stories heard in the media (1991:162-163).

In 1972 Royal Commission on Social Security recommended one statutory benefit for "all those who fall within this broad category". The criteria would be (a) that the woman (or in a few cases the man) has children dependent on her; and (b) that her income is below the prescribed levels. The government was not prepared to go as far as abolishing distinctions between different types of solo parents according to Else (1991:163). But in 1973 it did introduce the Domestic Purposes Benefit (DPB) as a new statutory benefit, available as of right to solo parents, who met the criteria (1991:163).

Qualifying applicants

Browning— The following classes of applicant may qualify according to the Department of Social Welfare policy manual (DSW'8 Policy Manual, 1986:3):

a) A woman who is the mother of one or more dependent children and who is living apart from, and has lost the support of, or is being inadequately maintained by her husband.

b) An unmarried woman who is the mother of one or more dependent children. c) A woman whose marriage has been dissolved by divorce and who is the mother of one or more dependent children.

d) A woman who is the mother of one or more dependent children and who has lost the regular support of her husband as a result of his imprisonment.

e) A man who is the father of one or more dependent children and who has lost his wife by death, divorce or some other cause (other than her admission to hospital within the meaning of the Mental Health Act 1969).

Where the applicant was unable to meet the requirements of the legislation, and was therefore not entitled to receive the statutory domestic purposes benefit, payment continued to be made by way of an emergency benefit under the prefix EU/DPB (DSW Policy Manual, 1986:1).

By 1963 there were too many babies available for adoption, by 1973 there were too few (Else, 1991:159). The introduction of the Domestic Purposes Benefit in 1973 was blamed for the shortage of babies available for adoption according to Colebrook (2000:15). However, Else observes that there were a number of other factors involved in the baby shortage: the removal of the stigma of illegitimacy, the increasing availability of contraception and the softening of attitudes towards illegitimate babies and their mothers (1991:168).

Changing atttiudes to illegitimacy

Browning— Due to the changing attitudes in society towards illegitimacy, it was becoming less of an issue by

the 1970s. An increasing proportion of technically "illegitimate" children were being born to women living with, though not married to, the father (Else, 1991:170). Else asserts "the harsh terms of the "complete break" form of adoption were part of the moral climate from which it developed. The rigid moral code of the 1950s that promoted virginity before marriage loosened its hold on conventional, judgemental morality and there was an increasing proportion of unmarried women openly keeping their children". Thus "the corresponding decline in stranger adoptions was one of the most striking aspects of this major social change" (Else, 1991:170).

Source Julee Browning 'Blood Ties' Thesis 2005 Massey Ak.
See also Financial Assistance re Birth Mothers in Social Issues

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Move towards openness A.8.03

Trapski— The late 1960s and the 1970s saw a move towards openness and honesty in personal relationships. The reduction in the availability of children for adoption caused a shift of power from adoptive parents to biological parents. Aspects of the closed adoption system became unpalatable. Since the 1990s it has been considered important for the adopted child's psychological development to provide the child with information on his or her birth origins, and to open up the possibility of contact with the birth family.

It is difficult to accommodate open adoption practice within the current adoption regime. An adoption order extinguishes the child's relationship with the birth family. Having made an order declaring the birth parents to be strangers to the child it is anomalous for the Judge to simultaneously approve a plan which ensures ongoing access and communication. Open adoption strives to keep alive family ties which the Court has severed. This is another manifestation of the difficulties created by an adoption system which creates parallel truths.

An example of the twists and turns that adoption with its parallel truths can create is the situation in *Re Adoption A26186* (1987) 3 FRNZ 447. A child was born as a result of a relationship between the male applicant and the 13-year-old daughter of the female applicant (his de facto partner) from her first marriage. The female applicant adopted her daughter's child (her own grandchild), thus becoming the sole legal parent of the child. The male applicant was convicted of criminal charges relating to the incident and imprisoned. On his release he married the female applicant. The result was that the child's biological father was, by reason of the adoption, deemed not to be a parent of the child but was, through his marriage to the female applicant, the child's stepfather. The female applicant was, by reason of the adoption order, the child's legal mother but was not his biological mother. The applicants then made a joint application to adopt the child, who was unaware of his birth origins.

The Court made an adoption order so that the biological father again became the child's legal father. The wife's legal status was unchanged by the second adoption order but, by reason of that order, the child was deemed to have been born to them in lawful wedlock.

Move to open adoption A.8.04

Since the early 1980s there have been signs of a movement to pull down the walls and to open up the adoption process. See the pioneering work done by the Bethany Centre in Auckland and the Catholic Adoption Services in Christchurch; P M Webb, A Review of the Law on Adoption section VII; Working Party Report chs 7 and 8.

The Department of Child, Youth and Family Services (formerly Department of Social Welfare) has, since the late 1980s, been a world leader in developing open adoption practices and open adoption is now the norm rather than the exception.

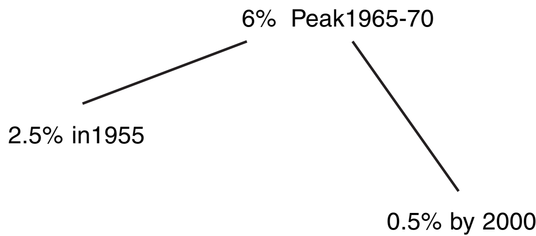
The Review Committee recommended that open adoption be encouraged as the norm (Review Committee Report recommendation 15 and ch 10) but it made the point that: "open adoption has developed under a law which was drafted with closed adoption in mind, and although there is nothing in law to prevent open adoption, there is ultimately no legal sanction for it either."

In the committee's view, legislative reform in this area is urgent and should be given priority.

The Review Committee Report considered various options for reform but opted for an open adoption plan agreed to by the parties and approved by the Family Court. The counselling facilities of the Family Court would be available to parties having difficulty drawing up or implementing an agreement. It is not clear from the committee's report how any agreed arrangements could be enforced: *Review Committee Report pp 43, 44*

Source *Trapski's Family Law* Vol.5 'Adoption' A..8.03-04

Adoption rise and decline as percent of life births



There is no simple answer it was a complex interaction of several significnat factors.

Rise of adoption % 1955-1965
1. Social factors
- Flower power and swinging 60s
- Post war baby boomers were now blooming
- Contrception now much mor e available
2. Economic factors
3. Legal factors.
1968 Domestic proceedings Act

Fall of adoption % 1970-2000
1. Social factors
2. Economic factors
3. Legal factors.

1968 Domestic Proceedings Act

Before 1968 there was only limited social security provision for financial assistance to single mothers, apart from sickness benefit during and for a limited period after pregnancy. From 1968 single mothers became eligible to claim an emergency benefit. However, it was very hard to find out what the conditions were, a lot depended on the bias of the interviewer. Neither the Government nor the Department of Social Welfare would make a clear statement, they deliberately fudged the matter in order to save costs and avoid politically embarrassing reactions. They introduced new proceedings for obtaining paternity orders. Once a paternity order was granted, or the father had formally admitted paternity, the mother could seek reasonable expenses, during pregnancy and confinement, and maintenance payments for up to five years after the birth of the child, for both herself and the child. Responsibility for administering and enforcing registered maintenance orders was transferred to the Department of Social Security, they could supplement inadequate orders and pay the mother a benefit while they sought defaulters.

1969 Status of Children Act

"s3 All children of equal status (1) For all the purposes of the law of New Zealand the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly." This removed all legal discrimination against persons born illegitimate, and removed the word 'illegitimate' from all statutes. Since 1969 there has been no legal advantage gained by cancelling illegitimate birth status by adoption.

1970 Equal pay for women Introduced into the Public Service in 1960 and the private sector 1970. In 1960, 8.3% of married women were in paid employment. By 1970 it was 18.3%. Equal pay in the 1970s had several effects: (a) Increased the income of working women and thereby their financial independence. (b) Increased the number of married women in the work force. (c) Working mothers became acceptable in society, working solo mothers became more accepted; (d) Solo parents in paid employment could now keep children they formerly couldn't.

Post 1970 change of attitude to birth mothers Financial assistance

"In the 1970s social attitudes began to change. Instead of being packed off to a strange place and hidden away from her family and the community in a mother and baby home, a single woman was able to be open about her pregnancy and her choice to keep and care for her child. These changes, together with the easier availability of contraception and abortion, resulted in dramatically fewer children coming to the notice of the Department of Social Welfare as available for adoption. There was no slackening in the demand for children to adopt. *With demand outstripping supply, birth mother assumed more power and, for the first time, were able to state conditions under which they would consent to adoption*. With the establishment of single mother support groups, such as the Council for Single Mothers and her Child, and women's groups throughout the country, single mothers were able to become a political and social force." Trapski's Family Law Vol.5 Brooker's 1995 D10.02

Financial assistance for birth mothers

"The recent trends in adoption follow trends in marriage patterns and the forms of parenting now openly supported by both the community and the State. At the same time the formerly invisible or socially ostracised mother without a husband began to be seen as a parent, and evidently regarded as in need of assistance." Kate Inglis 1984 p16

Sickness benefit

Provided she was over 16 and had been employed, she could get sickness benefit for the last three months of her pregnancy, and for three months after the birth if she was breast-feeding.

Child welfare no financial aid before 1972

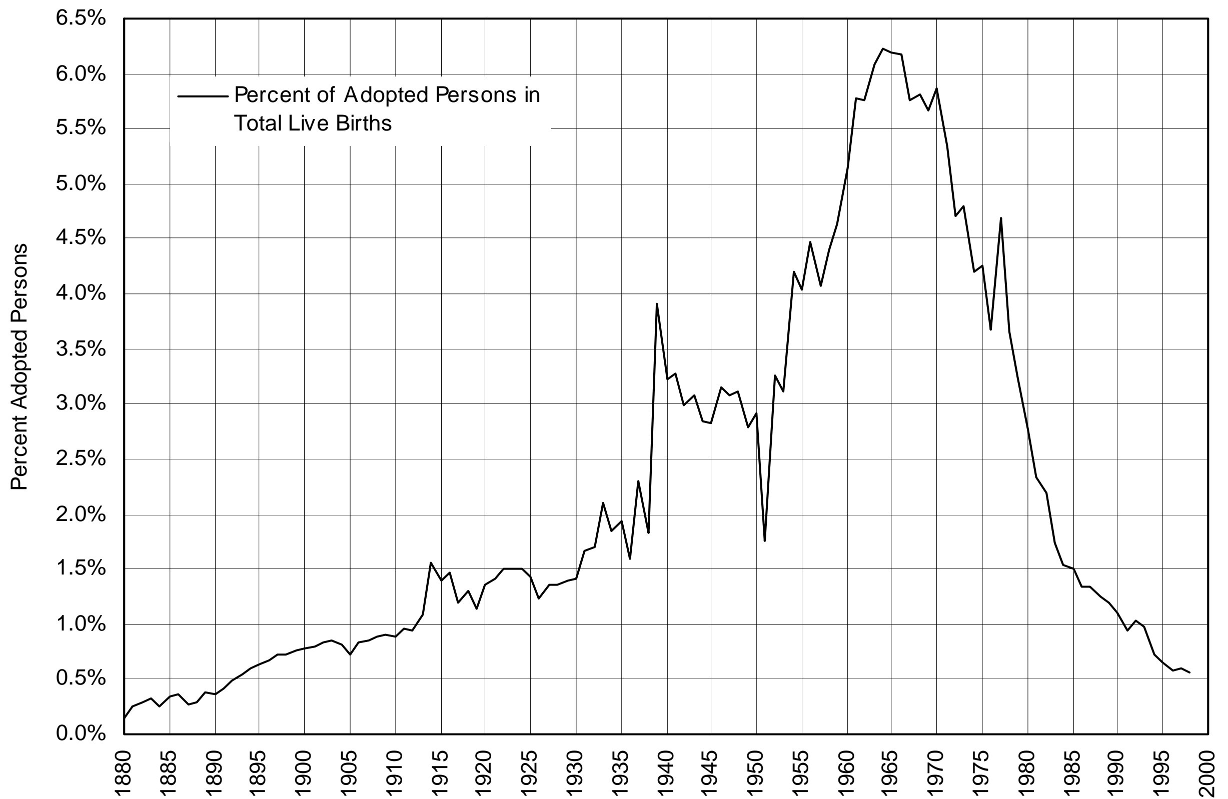
"Until [Child Welfare] merged with Social Security in 1972 to form the new Department of Social Welfare, Child Welfare was simply a division of the Department of Education. So it was not able to give or promise the mother direct financial help. But it could assist with arranging foster care after birth, and with obtaining maintenance from the father." Many mother's, not told! Else 1991 p43

1972 Royal Commission on social security

Recommend that solo mothers of ex-nuptial children be entitled as of right to the emergency benefit on the same basis as any other mothers. To do otherwise would be in breach of the 1969 Status of Children Act s3 declaration that all children were of equal status. Therefore, the law should not discriminate against any child or impose disabilities on them by reason of the accident of birth.

RISE AND DECLINE OF ADOPTION 1880-2005

Percent of Persons Adopted of Total Live Births Per Year 1880-2005



1973 Domestic Purposes Benefit

The Social Security Amendment Act 1973 introduced a new statutory benefit, the 'Domestic Purposes Benefit'. The Social Security Amendment Act 1980 introduced the liable parent contribution scheme.

Social and political impact of DPB

"The Domestic Purposes Benefit was more acceptable because essentially it replaced the missing breadwinner and turned the single mother into the supervised, stay-at-home bride of the state. In theory it allowed the state to preserve the ideal of the nuclear family; in practice, it allowed women to raise children on their own, free of individual male control. When a rapid decline in the number of women making their children available for adoption followed closely on the heels of an apparently dramatic growth of illegitimate births, it immediately posed a dilemma for the state. By making the DPB available to single mothers, had it succeeded only in replacing an almost free, socially approved method of providing care with a highly contentious one funded by the taxpayer?"...The change to more mothers retaining their ex-nuptial children "was immediately seen and described in negative terms, as a 'decline in the number of babies available for adoption', rather then positively as an increase in the number of mothers able to keep their children. The prospect of the majority of single mothers choosing to live on a state benefit (albeit a meagre one), or even to go it alone, rather than handing over their children to married adoptive parents was bound to prompt rapid attempts to turn the clock back. The view that children of single mothers formed a supply pool for couples wanting to adopt had become so ingrained that the spectacle of this pool drying up immediately prompted a search for ways to refill it." Else 1991 p164.

Impact of DPB on adoption?

Between 1963-1975 the percentage of ex-nuptial children kept by solo mothers doubled. This trend was well under way before 1968, so the introduction of the Domestic Purposes Benefit in 1973 was not the catalyst. In fact inspection of Charts 25 and 26 p115 reveal no obvious effects, indicating that any influence of the DPB has been masked by other more significant factors.

Opening up Adoption 1970>2005>

First moves 1960s

The first moves to open up adoption came from individual adult adopted persons in the late 1960s. It was a period of opening up in society, traditional values were being challenged, there was a quest for a spirit of freedom and liberation.

Reform movement 1970s

The human potential and civil rights movements empowered both individuals and minority groups. In 1976 two adoption support and activist groups emerged. Jigsaw a support group for adopted persons and birthparents, based on a similar group in England was established in Auckland. The Adoption Support Group, for all members of the adoption triangle and social workers was established in Wellington. These groups established branches around the country. The success of the reform movement was largely due to the expressed real needs and experiences of adopted persons, birth mothers and adoptive parents; dedicated leadership; public education; political activism and openness to reform in that period.

Many factors combined to effect adoption reform in New Zealand. Adopted persons, birth parents, and some adoptive parents began to lift the lid off closed stranger adoption.

Phases of reform movement

— **Enlightenment** The demythologizing of adoption. Demise of 'Complete Break' by research, existentialism, human rights, law, genetics, and feminist movement.

— **Individual action** Some adoptees, birth parents and adoptive parents, spoke out and went public.

— **Empowerment** Support groups provided shared experience, knowledge, resources and common goals.

— **Action** Education: public speaking, radio, TV, press, conveyed the message. Political: lobbying, questions, petition, Bills, debates, statutes. Legal: court cases re access to records. Religious: mainline church support.

— **Legislation** Adult Adoption Information Act 1985. That provided access to identifying information by both adult adoptees and their birthparents.

— **Implementation** New information units and social work training. Thousands of adoptees and birthparents apply for identifying information. Thousands of reunions.

— **Consolidation** New law, books, theses, papers and research. A consolidation of public, social and legal acceptance of adoption openness and practice.

— **Re-evaluation** of all aspects of adoption, fostering, and guardianship. A complete rewrite of legislation to reflect todays realities is now required.

It is an exciting story. The adoption reform movement generated it's own literature, leaders, speakers, and activist groups. Not only was law reform effected against intense opposition, but they thrust New Zealand into the forefront of world reform. Our legislation helped open the way for similar reforms in Australia, USA, and Canada.

Adoption Secrecy no longer sustainable

— Adoption as practised in the secrecy era, in which a 'clean break' was seen as the ideal, can now be seen as promoting a disabling fiction.

— The biological parents remain the biological parents irrespective of what legal arrangements are put in place with regard to the upbringing of the child.

— The attempts to blot out the reality that the child had different origins, by the emphasis in adoption that the child was to be to the adoptive parents 'as if born to them', were in the end not sustainable.

— The 'shared fate' construct as established by adoptive father and researcher David Kirk, which promotes the acceptance of difference is grounded in reality.

Source Marshall and McDonald 2001 p250

Some significant events that facilitated, hindered or shaped the Reform movement in New Zealand are listed below.

Significant events re Adoption Reform

1959 UN Declaration of the Rights of the Child
1962 Public Meeting New Plymouth *'Adopted persons view of Adoption'* Spk KCG called by Combined Social Welfare organizations.
1964 Book *Shared Fate* Kirk Canada
1965 Complaint to Ombudsman
1968 Book *Orphan Voyage* Paton USA
1973 Book *In Search of Origins* Triseliotis England
1973 Book *Search for Anna Fisher* Fisher USA
1970s Individuals speak out for reform
1970s Rise of Feminist movement
1975 **England- law change granted adoptee access**
1976 NZ Reform movements activated *Jigsaw* and *Adoption Support Groups*
1976 Jigsaw Adoption contact register
1976 John Triseliotis visit Research Eng Law Change
1976 Questions in Parliament
1977 Petition to Parliament by Jigsaw
1977 TV 7 days Doco- 'Why Adoptees Search' KCG
1978 TV Doco 'Why am I Me- Annabeth Kew'.
1978 Questions in Parliament re Adoption Reform
1978 First adoptee court access to adoption recordKCG
1978 John Triseliotis visiting speaker re Eng Change
1978 Bill- Adoption Amendment (First Bill)
1978 TV documentary *Why Am I Me* Annabeth Kew
1978 Dr John Triseliotis visits- speaker- Scotland
1978 Auckland Law Society opinion- solicitors files
1979 Bill- Births and deaths registration amendment
1979 Book *Death by Adoption* Shawyer
1979 WEA Wellington adoption reform course KCG
1979 Conference 'Rights of the Child'. Christchurch
1979 Report *Review of Law on Adoption* Webb
1979 Study *Unmarried Mothers.* Beckingham
1979 Social Work Seminar- Wellington Hospital KCG
1980 Birth parent breaks into solicitors office.
1980 Bill- Adult Adoption Information
1980 Dr Barnardo's NZ adoption counselling service
1981 Book *Adoption NZ 1881-1981* Griffith
1981 Public submissions to Select Committee

Bill suported by—Baptist Union, Methodist & Presbyterian PQ, Catholic Social Services, Barnardo's, Nurses Society of NZ, NZ Parents Centres Federation, National Council of Women.

1981 TV Eye-Witness documentary adoption reform
1982 Book *Talking about Adoption NZ* Jigsaw
1982 Book *Court Access Adoption Records* Griffith
1982 Survey *400 Birth Mothers* Langridge
1982 Muldoon post cabinet press conference
1982 TV Newsmaker program on Bill
1982 Paper Adoption & Genealogical Records GSKCG
1983 Birth Parents Anonymous Mrs Quin
1983 SPUC opposes Bill- claim increased abortion
1983 Paper to Human Rights Com re adoption secrecy.
1983 Muldoon and National leaders stall Bill
1984 UN Declaration of Rights issue Burkinshaw
1984 Bill- Adult Adoption Information Bill
1984 McLean Amendment to make Bill contact reg.
1984 Public submissions to Select Committee Supported by Baptist Union, Methodist & Presby terian PQ, Catholic Social Services, Barnardo's, Nurses Society supported Bill
1985 McLean Amendment defeated
1985 Adult Adoption Information Act passed
1987 Paul Sachdev visiting speaker from Canada
1987 Status of Children Amendment Act
1987 Hamilton Adoption Conference
1987 Ray Ensminger visiting speaker from Canada
1987 Review by an Interdepartmental Working Party
1988 Book *Reunion* Howarth
1988 Book *Adoption Today* Rockel and Ryburn
1988 Puao-Te-Atat-tu (Day Break) Report re Maori
1989 UN Convention on the *Rights of the Child*
1990 Wellington Adoption Conference
1990 New Zealand Bill of Rights Act
1990 Book *Guide Adoption Law & Practice* Ludbrook
1990 Study *2000 Birth Parent Applicants* Preston
1990 Report 'Adoption Practices Review Committee'
1991 Book *A Question of Adoption: Closed Stranger Adoption in New Zealand 1944-1974* Else
1991 Thesis Adult Adoption Bill and Practice Iwanek
1991 Thesis *Repossession of Identity* Kennard
1992 Thesis *Reunion Aftermath* Kenworthy
1992 Book '*Right to Know Who You Are*' Griffith
1993 Bill- Amend Adult Adoption Info Act Thorne
1993 Hague Convention on Protection of children and Cooperation in Respect of Inter-country adoption
1993 NZ Adoption Council formed
1993 Incest case- birth father and adult daughter
1994 MOA Adoption Conference Auckland
1994 Book *Adoption Past Present & Future* Moa
1995 NZ Ratified UN Convention on Rights of Child
1997 Book *NZ Adoption History and Practice*. Griffith
1997 Wellington Inter Conf Adoption & Healing
1997 Adoption (Intercountry) Act
1998 NZ acceded to Hague Convention
1998 Christchurch Conf 'Adoption Loking Foarward'
2000 Law Commission Report 65, *'Adoption and Its Alternatives- Diff Approach New Framework*
2002 Book *'Adopted Persons Resource'* Griffith
2003 Care of Children Bill
2003 Human Assisted Reproduction Bill
2004 Law Comm *New Issues in Legal Parenthood*

New Zealand Conferences on Adoption

Iwanek— "Over the years a growing body of knowledge about the impact of adoption has emerged, moving away from the notion that adoption is a one-off event with no long-term consequences, to accepting that adoption has a long-term impact and issues emerge at each developmental stage of the life-cycle. The timing of each conference over the years has been relevant to emerging community concerns related to adoption issues at that time.

1976 Wellington The visit of *Triseliotis in 1976* concentrated on access to adoption information, drawing from the British experience of legislative change in 1975. His visit provided a platform to make the community at large aware of the needs for access to adoption information. It strengthened the adoption support group movement that had started to emerge throughout New Zealand. It helped them to become adoption support groups which could lobby for change.

1987 Hamilton *Conference* with guest speaker Raymond Ensminger, Vice President of the American Adoption Congress, drew attention to the practice of openness in adoption placements, as well as the relevance of the adoption experience and the need for identifying information for those born as a result of donor insemination and other assisted reproductive technology.

1990 Welllington *Conference,* the impact of the Romanian situation meant the focus particularly was on intercountry adoption. The guest speakers were the Secretary-General of International Social Service in Geneva and Anne Mi-Ok Bruining, an American- Korean adopted person talking about her personal experience of intercountry adoption. The conference focused on legislative change required to make adoption comply with the United Nations Convention on the Rights of the Child, particularly as it relates to intercountry adoption.

1994 Auckland Another national conference organised by *Movement Out of Adoption in Auckland in 1994* very much focused on the need for legislative change.

1997 Wellington The *International Conference on Adoption and Healing 1997* has provided a forum for people working in the helping professions to become much more aware of the long-term impact of adoption on people's lives and the need for appropriate therapeutic intervention for individuals and both birth and adoptive families...it is hoped that as a result of this conference, all those who are hurt in some way by adoption can move from being victims and survivors to thrivers." p1

1998 Christchurch 'Adoption- looking forward' International Conference held Feb 14-15 1998 Lincoln University Christchurch.

Source Mary Iwanek 'Forward' in book *Adoption and Healing* 1997 pp1-2

Reviews of adoption law Mr L G Anderson, ex Superintendent of Child Welfare said, "In New Zealand, it normally takes a murder case to trigger major reform of child protection or adoption law."

1896 Review Triggered by Minnie Dean adoption baby-farm case. It was alleged she murdered some children for a quick profit. She was tried, found guilty and hanged. The outcry from the case resulted in the Infant Protection Act 1896, later consolidated in the Infant Act 1908.

1951-55 Review Was triggered by a murder case. A 73 year old man was charged with the murder of his 43 year old wife. The *New Zealand Truth* 7/3/1951 revealed the man had a four year old adopted child. Hilda Ross, Minister of Health, wrote to the Minister of Justice 21/3/1951 urging adoption reform. An Interdepartmental Committee was set up, 7/11/1951 and completed its work in 1954. GC Vol.17 pp5347, 5381-86. Resulted in Adoption Act 1955.
Membership: Chair S.T.Barnett (Secretary for Justice). Education Department (Child Welfare Division) Mr L.G.Anderson, Mr T.P.Cox, Miss K.M. Stewart. Justice Department Mr N.Butcher (Assistant Secretary-Advisory), Miss P.M.Webb. Maori Affairs Department Mr C.M.Bennet (Assistant Controller of Maori Welfare), Mr J.M.McEwen. Co-opted members; Mr W.R.Birks, Professor I.D. Campbell, Mrs H.C.Sharpe plus Law Draftsman.

1979 Review *'A Review of Law on Adoption'* by Patricia M Webb, formerly chief legal advisor to the Department of Justice. The review was commissioned by the Minister of Justice. It advocated substantial changes to law and practice, and became a watershed in stimulation of reform. The Muldoon Government was uncomfortable with it and shelved it.

1987 Review '*A Review by an Interdepartmental Working Party: Proposals for Discussion.*' Examined changes in adoption practice since 1955, recommending changes to the law to meet current requirements. Published, and provoked helpful discussed, but no new Adoption Act.

1988 Puao-Te-Atat-tu (Day Break) Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare. Members: John Rangihau (Chair), Mrs E Manuel, Ms D Hall, Mr H Brennan, Mr P Boag, Dr T Reedy, Mr N Baker, Mr J Grant (DGSW).

1990 Report *'Adoption Practices Review Committee'* Commissioned by Minister of Social Welfare. Membership: Ephra Garret, a retired Senior Lecturer, Social Policy and Social Work, Massey University; Margaret Tucker, a Principal Social Worker, North Harbour District, Auckland Area Health Board; Bill Atkin, a Senior Lecturer in Law, Victoria University (Chair). They examined present adoption practices within the Department of Social Welfare to determine if they best meet the needs of adoptees, birth and adoptive parents. A thorough report with many recommendations for adoption law change and practice. Provoked helpful discussion, but no new Adoption Act. Among its recommendations were; open adoption should become the norm; that only one birth certificate should be issued to adoptees, recording date of birth, date of adoption, and names of both birth and adoptive parents. The report also commented on inter-country adoption and new birth technologies.

2000 Law Commission Report 65, '*Adoption and Its Alternatives- A Different Approach and a New Framework*' A very extensive in depth Report of 340 pages to stimulate discussion and receive submissions for a new Adoption Law to replace the Adoption Act 1955.

Navigating the Report
"Adoption Law is often referred to as the "Cinderella" of family law - neglected, at times underfunded, but of vital importance in the larger scheme of things. It has been the task of the Law Commission to review the law of adoption, and to recommend whether and how the legal framework should he modified to better address contemporary social needs. We began this process by identifying the areas of adoption law that we considered to be out of date, we reviewed systems of adoption in other relevant jurisdictions, and in our discussion paper Adoption: Options for Reform we offered for public discussion some proposals for reform.

During this process we have identified a real need for adoption to be viewed not as a discrete area of family law but as an important option amongst a number of other options for the future care of a child whose parents, are for some reason, unable to fulfil that task. To that end, the Commission has gone beyond the ambit of its terms of reference and recommends the enactment of a Care of Children Act, which will encompass adoption as one of a number of options for the care of a child..." *Report Preface pxx*

Criticisms and reviews A.5.04
Trapski— he Adoption Act 1955 has attracted growing criticism and its overhaul is urgently needed. The Act still shows evidence of a "paste and scissors" approach, it does not reflect any coherent overall philosophy, and many of its provisions are clumsy or confusing. It was reviewed by P M Webb, former chief legal adviser to the Department of Justice, in *A Review of the Law on Adoption,* Wellington, Department of Justice, January 1979, and was further reviewed by an interdepartmental working party. See *Adoption Act 1955: A Review by an Interdepartmental Working Party: Proposals for Discussion* (referred to in this chapter as the *"Working Party Report")*, Wellington, Department of Justice, January 1987. A further Department of Justice review of the Act was under way in 1992 (private communication from the Department of Justice, April 1992) but no policy decision has been announced about the content of any amending legislation, and it seems unlikely that new legislation will be introduced for some time.

There are real problems in bringing adoption law into the 21st century. Maori support may be difficult to secure, and consensus on many issues seems unlikely.
Source *Trapski's Family Law* Vol.5 "Adoption' A.5.04. 24/10/2003

Marginal group action and reaction

"Marginal groups who advance their reality into an indifferent or hostile world are well aware of the problems associated with insisting on visibility. They will first of all encounter everything which in the first place made their invisibility desirable or necessary. Then, being only the forerunners of the change they foreshadow, they will encounter the suggestion that they, while perhaps right in what they say, they are not representative of the group experience from which they speak. They are given the task of dragging into sight all other persons supposedly subjected to the same conditions, and asked to prove a uniformity of experience. Marginal groups are always addressing a larger and stronger group which has all the advantages of not being marginal and whose power the marginal perceive as being the source of their difficulties. Generally, when the marginal draw attention to themselves, it is because social change has made it possible to begin to oppose the impositions which marginality always contains. It is difficult for the recipients of harsh or unjust social treatment to imagine that what they experience as rejection, humiliation, or cruelty is, for those who ostensibly cause it, no such thing." Kate Inglis *'Living Mistakes'* 1984 pp14-5

Has adoption outlived its time?

"Some lawyers, social workers, birth parents, adoptive parents and adopted people are now arguing that legal adoption has outlived its time and should be abolished. Since it is not physically or historically possible to wipe out birth connections, why provide an instrument explicitly designed to do this legally? The issue should be how to ensure permanent, secure parental care for children whose situation requires it. There is no need for this to entail the fiction of birth family replacement which formed the basis of the 1955 Adoption Act, and which appears to stand in complete contradiction to the principles and philosophy of the Children, Young Persons and Their Families Act 1989, with its focus on the importance of maintaining birth family connections." Else 1991 p200

Judicial perspective of adoption

1995 Keane DCJ Lower Hutt *Application to adopt J* "The issue in all cases is, therefore, whether the adoption will promote the welfare and interests of the child. The adoption should also serve the interests of the adults. An adoption is unlikely to be successful unless it does. The interests of adoptive parents and the interests and welfare of adopted children are intimately linked. But the interests of the adoptive applicants are strictly secondary to the interests and welfare of the child. Unless an order promotes the welfare of the child in some positive sense, especially having regard to the less absolute alternatives which exist (guardianship, sole or additional, or custody), it is unjustified. Those alternatives do not sever formally and finally the relationship between the child and the natural parents or their extended families. How vigorously s13 is applied depends, of course, in part on what concept of adoption the Court applies, and in that respect there has been a radical change in the pattern of orders made. Thus, in *MR v Department of Social Welfare* (1986) 4NZFLR 326 at 328, Hillyer J regarded adoption in the traditional sense: a step to be taken only if the child needs a substitute family, his or her own family being clearly inadequate or unwilling to provide care and nurture. But while that may have been the original purposes of adoption, it is no longer. Judge Pethig, Wellington FC, describes what has happened in *Re Application by Nana* [1992] NZFLR 37: 'Adoptions are increasingly made within families to cement already existing relationships where guardianship or custody are perfectly possible alternatives...It is clear that the original purpose of adoption...which has in the past been accepted by the Courts has long since gone. Adoption is a legal fiction and in this Court the cases originally envisaged are a minority of the adoption orders made in this Court. And in those now made with 'strangers' the practice is and has been for some years for the adoption to be open at least in the sense that the birth parents or parent meet the adopting parents and to a greater or lesser extent as they agree, contact can be maintained. In that climate and particularly when such large numbers of adoptions nowadays are by a stepparent and where consequently there can be no change in the custodial or other arrangements but the motivation is solely that by the stepparent, it can no longer be said with the same force that the Act has some inherent integrity...In each case it comes down to the question of the welfare and interests of the child irrespective of the motivations of others...' [1992] NZFLR 37 at 47

And sometimes, indeed, less absolute alternatives, like guardianship and custody do not serve the best interest of the child either. Open as they are to be reviewed and revoked, they can leave a caregiver uncertain, and erode the bond between the caregiver and the child. Where, as in this case, the natural parents willingly relinquish parenthood of a child to give other members of the family that opportunity, guardianship or custody may not be a fair measure of the love and trust implicit in the natural parent's sacrifice. Or the spirit in which the family as a whole have chosen to promote the welfare of the child.

In *Application for adoption by RRM and RBM* [1994] NZFLR 231 at 235, Williams J said that an order for adoption would strengthen the bond of the adopting parents with the child 'to the great benefit of the child'. He continued to say: "It will provide an added incentive to the adoptive parents to give the child the love, care, protection and security which comes from permanent nurturing relationships. It will strengthen the bonds which have existed between the child and the adoptive parents since birth. In a practical sense the adoption will make the adoptive parents additional parents rather than eliminating the connection with the natural parents." *Application to adopt J.* Judge Keane [1995] NZFLR 859 at 862-863 // 13FRNZ 248

Weighing pros and cons of adoption at 1994

Judge MacCormick— "The legal effect of an adoption under the current law is of course to completely sever the legal ties of the child with its birth parents, and to give the

child new replacement parents. There is no provision to cover ongoing contact with the child's birth parents. Issues of identity often arise at a later date, causing distinct problems for the child, young person, or even adult, who has been adopted without ongoing contact being maintained. An adoption can also have significant problems associated with perceived abandonment by a birth parent, particularly a birth mother. There may be circumstances where adoption in this form (being the only form currently available) is still the best option if the birth parents have died, or if they do not wish to be further involved, or if they are satisfied that by their selection of the adoptive parents they will be permitted to maintain ongoing contact and involvement, or if having abandoned the child, their future attempts to re-establish and retain contact are so disruptive that adoption will give the child greater additional security than can be achieved with guardianship and custody orders under the Guardianship Act. That there is value in maintaining the links with one's birth parents is implicit in Art 9.3 of the United Nations Convention on the Rights of the Child." 1994 MacCormick DCJ Auckland DC *Adoption Application by JLH* [1994] NZFLR 798 at 805

Move to openness

Browning— Open adoption is complex and much research has been conducted investigating views from all involved. Outlined here is a brief synopsis of the open adoption option and an in-depth discussion on the topic is not covered as it falls outside the parameters of this thesis. Refer Ryburn M (1994), Open Adoption: Research, Theory and Practice, and Mullender A (1991), Open Adoption: the philosophy and the practice, for a full bibliography on open adoption. p48

Social Workers facilitated practice 1975>

Browning— By 1975 more openness in adoption began to emerge and Social Workers facilitated the practice of open rather than closed placements of children. Open adoption 1 " involves varying degrees of contact between the child, members of its adoptive family and members of its birth family (Colebrook, 2000:4). Contact may involve visits, communication by mail or telephone. The parties involved decide upon contact regularity by mutual agreement, usually prior to the adoption taking place (2000:4). p49

With the move towards openness birth mothers may choose to be involved in the selection of the adoptive parents with the view that by building rapport, they can select prospective parents amenable to their needs in relation to contact with the child. The growth in open adoption arrangements, according to Colebrook, has been promoted by social workers who believe that open adoption is beneficial for all involved because it circumvents the issue of genealogical bewilderment for the child (2000:4). p49

New Zealand is the only country in the world where adoptions of this kind occur through private and government agencies. Currently, there is no legal provision for enforcement of contact; it relies on the good faith of the parties involved. "Since the beginning of the 1980s, open adoption in New Zealand has become standard practice. However, openness in adoption at the time off placement is not yet written into the legal process in New Zealand. Instead it is based on a moral commitment that both adoptive and birth parents make at the time of the adoption. Because off this, openness and contact of any sort between birth parents, adoptee and adoptive parents after placement of the child is a matter of trust only, with the adoptive parents having the ultimate choice of whether or not contact is maintained, and the birth parents having no legal rights to contact at all." (Fowler, 1995:1). p49

Lack of provision for conditions of contact between adopting parents and birth parent in the adoption order indicates that open practice is not encouraged. However, "good-will agreements for continuing contact after adoption have become almost universal over the past two decades" according to (Ryburn, 1994:16). The Adoption Act 1955 reflects the belief of a bygone era and does not include a provision for contact between adoptee and birth parent. Although submissions have been made to Parliament to update the Act and include provisions for the current climate of inter-country, inter-racial and open adoption, no new Act has been passed . p49

Source Julee Browning 'Blood Ties' Thesis 2005 Massey Ak

CHILD WELFARE

A brief background For detailed history of New Zealand Child Welfare *see* '*Family Matters- Child Welfare in Twentieth Century New Zealand*' Bronwyn Dalley. Auckland University Press. 1998 446p. ISBN 1-86940-190-5

Childhood innocence and vulnerability

In many western nations during the nineteenth century, religious, scientific, philanthropic, cultural and political influences combined to construct a state of childhood which was perceived as a time of innocence and vulnerability. Historians have suggested that the period between the 1870s and the 1930s witnessed the development of the conditions of 'contemporary' childhood: a state which was 'legally, legislatively, socially, medically, psychologically, educationally and politically institutionalized", One historian has dubbed this perception the 'welfare child', distinguished by the expansion of initiatives to prevent ill-treatment, to regulate the hours and form of children's labour, and to provide for children's health and welfare. The child who, in the view of some, should not labour outside the home, should attend school, and should be surrounded with a raft of protective legislation, had become 'economically "worthless" but emotionally "priceless". Dalley p15

Changing attitudes to children & young people

Many of the developments in child welfare philosophy and practice stemmed from changes in attitudes to children and young people. The basis on which various child welfare policies developed suggests that there have been diverse constructions of childhood over the twentieth century. Within these formulations, however, two strands project over child welfare policy and into practice. In New Zealand, as elsewhere, children and young people have been seen as victims of society or as threats to it, and sometimes as both at once. The image of the vulnerable child always harboured the possibility of threats to social stability, secure family life, and the health of the nation. Indigent and neglected children had the potential to grow into criminals and miscreants, while cruelly-treated youngsters could develop into abusive adults. Such doubled perceptions of children meant that policies towards the two 'groups' were never too far apart. For their own good, and that of the nation, indigent, neglected or abused children could all be located with foster families, or placed in residential institutions; for their own good, and that of the nation, delinquent and criminal children too could be placed in foster care or residential homes. Mutually sustaining issues of welfare and justice pervaded the entire spectrum of social policies for children over most of the 20th century. Dalley p5

The centrality of a family life for children enabled child welfare agencies to display a flexible attitude towards family forms. While some in society heaped opprobrium on single mothers in the 1920s, or stressed the advantages said to accrue to a child through adoption in the 1950s, child welfare agencies provided assistance to enable the single mother to keep her child. Extended family forms were recognised as well. Dalley p6

Child Welfare 1902-1925

The baby market: monitoring adoption

Dalley— "The provisions of the Infant Life Protection Act 1907 also applied to the adoption of infants when the birth parents paid a sum, or premium, to the adoptive family. In such cases district agents inspected and licensed the home of the adoptive parents, just as for any other home in which an infant was maintained away from the birth family. Like infant life protection work, this role in monitoring adoption practices extended the Department's involvement in the lives of 'non-state' children. p60

New Zealand had passed its adoption legislation in 1881, becoming the first country in the British empire to regulate the legal adoption of children. Previously, adoption had had no legal status, and simply involved the transfer' of a child from one family to another, with all the loss of rights that entailed. p60

Premiums Adoptions in the nineteenth and early twentieth centuries among Pakeha families frequently included the payment of a premium to the adoptive families.[116] Paid in either a lump sum or instalments, the premium was a recognition of the costs of raising a child during its first few years. To many observers, this practice was more akin to baby-farming, and this was indeed sometimes the case. Paying others to 'adopt' their babies probably appealed to single women who had few other- choices. p61

The baby-farming scare of the late nineteenth century may have prompted moves to regulate the payment of premiums. The 1907 legislation followed closely on the heels of the Adoption of Children Amendment Act 1906, which forbade the payment of premiums without the express approval of a court. Problems remained nevertheless. According to the Education Department, there was still a temptation for adoptive parents to 'get rid' of the child as soon as the premiums were paid. [117] p61

Screening all application orders for adoption by inspecting the homes of prospective adoptive families was intended to counter this danger. Some district agents were very enthusiastic and thorough in their inspections. One Christchurch solicitor informed Pope that some of his clients were disturbed by the inspection of their homes under the provisions of the Infant Life Protection Act; they had wished to regard themselves as the parents of the children, not as baby-farmers. [118] The Education Department maintained that investigation alone was insufficient, and recommended a probationary term of supervision for all adoption orders, during which its officers would regularly inspect all cases to ensure their continued suitability, much as it did with the adoption of industrial school children. Only through supervision, the Department suggested, could problems be checked. While magistrates could cancel adoption orders, the Department argued that much suffering may be endured by an adopted child before any neglect or ill-treatment to which it may be subjected becomes so patent as to call for public interference. To support its case, it cited a short catalogue of unsatisfactory adoptions during 1908 in which abuse or

other problems had occurred. Seven week old James Coulter had been adopted by the Todd family of Wellington for a £20 premium. A subsequent call on the Todds found James to be in a neglected state, and he was admitted to the Island Bay Home of Compassion. Other children were shuttled around from one adoptive situation to another. Five year old Robert McCabe was adopted by an Auckland family for no premium in July 1908. Perhaps realising that they could not keep the child, the family passed him, again without a premium, to a family living on Waiheke Island. [119] pp61-62

The Department's suggestions for further monitoring of adoption practices were not always welcomed by magistrates, who at times resented its 'intrusion' into their domain. Magistrates sometimes ignored the recommendations of the officers who had investigated the applications, making orders despite advice to the contrary. Mrs Bugden of Gisborne applied for a licence as a foster mother in 1908, but was declined when the District Agent found her to be unsuitable; a magistrate later granted her application to adopt six week old Annie Soloman.'- The Education Department was not the only agency to have its advice disregarded. The Wellington branch of the Society for the Protection of Women and Children, for example, had ventured to make suggestions on an adoption case in 1905, only to receive a stern rebuke from the local magistrate. He pointed out, somewhat acidly, 'that the Magistrate is in a much better position to judge of the circumstances of a case than is your committee, and that he is not going to be influenced by any extraneous body no matter how good its intentions may be'. p62

There were, of course, occasions when magistrates did act on advice. Some expressly asked district agents to take a more active role in supervising adoptions. Auckland magistrate Charles Kettle recommended that the District Agent supervise the welfare of Rachel Goodart, who was adopted by Joseph and Fanny Atkin in 1913, as she was a truant and a local church social worker had reported that she was becoming difficult to control; a prohibition order served on Ernest Cantell in 1912 was sufficient inducement for the magistrate to order the supervision of the child he and his wife had adopted. Such instances of cooperation tended to be rare. A lack of common purpose and professional dialogue between magistrates and departmental officials characterised the regulation of adoption, and would continue throughout the twentieth century. " p62

The essential features of the Department's child welfare system and philosophy were in place by 1916. It had expanded considerably its jurisdiction over children's welfare as interest in child health and welfare escalated. From administering only to those committed to the care of the state, either in residential institutions or boarded out, the Department had also gained a preventive focus in overseeing the welfare of young children in private homes. Juvenile probation had a preventive focus, too, and like other features of the child welfare system symbolised a growing involvement of state officials in the lives of New Zealanders. Tending to the welfare of children in family situations facilitated this involvement, but it also meant much more. Pursuing child welfare through family welfare emphasised family and community responsibility for children; the 'partnership', however uneven, between the state, the family and the community was a way of nurturing the country's welfare. p63

Towards the Child Welfare Act 1925

The Education Department recast New Zealand's child welfare system between 1916 and 1925, when the Child Welfare Act was passed. The increasing number of admissions to industrial schools during the 1910s exposed major shortcomings in the system which had formed the basis of state care for 50 years. In keeping with a belief in the centrality of family life for children, the Department set about closing industrial schools and placing their residents in service positions or foster homes. The probation system was also extended on this principle, as post-war changes consolidated earlier developments. p64

First World War impact

In a climate of wartime population loss, childhood and child life assumed a new importance as the nation rebuilt itself, and the changes in child welfare formed part of a cluster of state initiatives to enhance child health and well-being. Greater concern facilitated greater control, as these changes intensified state involvement in New Zealanders' family lives. p64

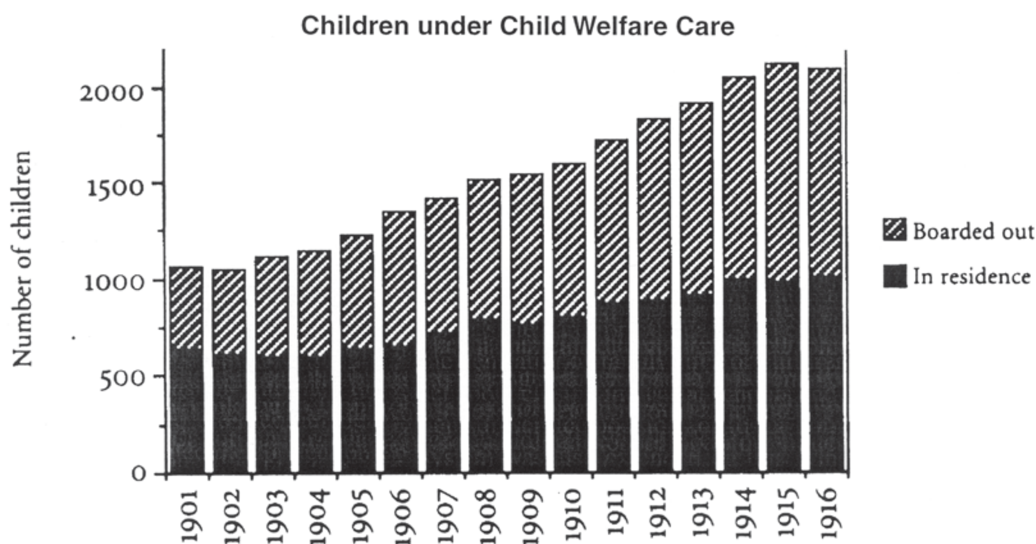
Philosophy change Save 'small army of children':

In 1916, Minister of Education Josiah Hanan tabled in Parliament a special report positing a new emphasis for the education system. The war, he claimed, had tested the country's national resources,'revealing our strength and our weakness', and it was in education and training that New Zealand possessed 'the greatest reconstructive agencies at our disposal for the repair and reorganization of national life'. As one of those 'reconstructive agencies', the industrial school system occupied a special place in the agenda for rebuilding the nation. The 'small army of children' in the care of the state required particular attention if New Zealand were to prosper and utilise all its human resources. [AJHR. 1916,1917. E-1A. p.1.] p64

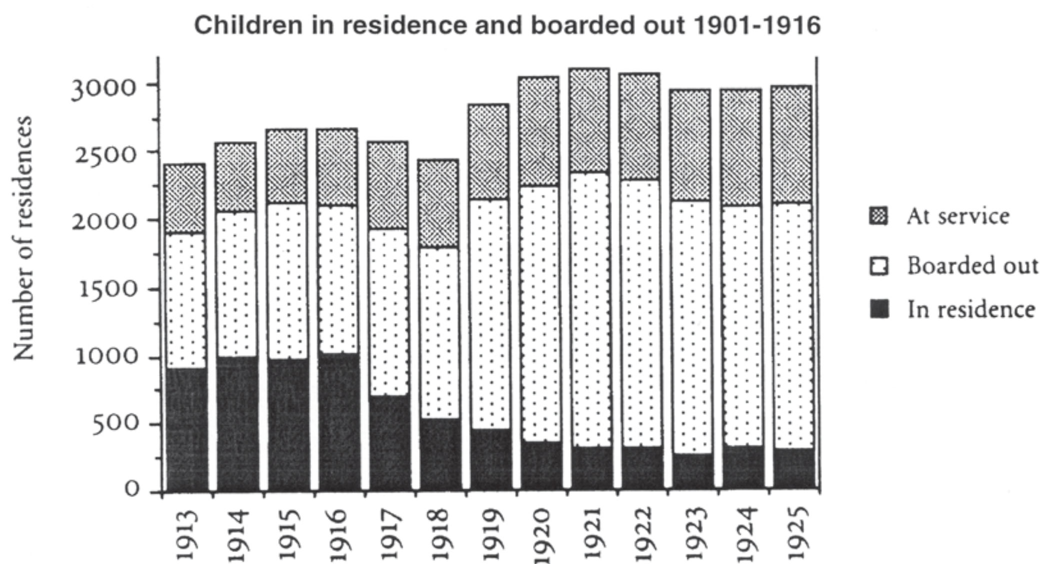
By the end of 1916 the 'small army' was 4000 strong, dispersed among institutions and foster homes, under probation and in homes governed by the infant life protection legislation. An increase of 200 in the last two years was 'of such pressing importance that it should cause grave concern, not only on account of the darkened and unhappy condition of so many handicapped lives, but on account of the national loss resulting from this threatened wastage of human resources. Hanan suggested a range of causes for the growth in numbers, but blamed inadequate parenting above all. Incapacity, ignorance and weak home influences were not the prerogative of one social class; he saw a general "'dragging up' of ill-disciplined, ill-nourished, and ill-educated children"[AJHR 1917. E-1App1-3.] p65

Hanan enunciated a multi-pronged solution to combat the expanding number of state children and to promote better care of those who remained in the community. He

Children under Child Welfare Care



Children in residence and boarded out 1901-1916



Children in Child Welfare Care 1913-1925

Source 'Family Matters- Child Welfare in Twentieth Century New Zealand' Bronwyn Dalley.1998 pp24,71.

advocated the extension of boarding out, with institutional- isation seen as a last resort. For children and young people deemed to be unsuitable for boarding out under 'ordinary conditions', a reclassification of institutions and their residents would be effected. Future policy would be guided by the adage that prevention was better than cure; influencing parents, as well as their children, through more probation and preventive work was an integral part of this strategy. [AJHR. 1917. E-1A. pp.5-6.] p66

The First World War provided the context and stimulus for changes in health and welfare policy across the Western world, as safeguarding maternal, infant and child well-being assumed new meaning. Note.x p67

New Zealand response

A slew of health and welfare initiatives targeted at children accompanied the changes to the child welfare system in New Zealand: the school medical and dental services were expanded, children's health camps began in 1919, and the reorganisation of the health system in 1920 led to the formation of divisions for Dental Hygiene, School Hygiene, and Child Welfare, the last under the leadership of Truby King. p67

In an illustration of the power and initiative which could be invested in senior public servants in the late nineteenth and early twentieth centuries, many of the developments between 1916 and 1925 were due to the determination and vision of one individual. John Beck, like George Hogben before him, was a vital catalyst for change, both in industrial schools and in the entire programme for dealing with delinquent and neglected children. Most of the changes implemented from 1916 originated with Beck, who studied international precedents and then endeavoured to convince others of the utility of his proposals. He was not always successful in winning over colleagues and superiors, and many of the changes occurred in spite of political opposition, and sometimes without a firm legal basis. Getting his proposals into legislation that would provide a legal footing for child welfare work was as important as the developments themselves... p67

As assistant to Roland Pope, Beck visited all the industrial schools and reformatories. In 1907 he toured children's courts and child welfare institutions in New South

Wales. As with his later trip to Canada and North America in i925, this exposure to other child welfare systems would provide him with ideas relevant to his work in New Zealand. p67

Notes

[116] Anderson to Minister in charge of Child Welfare Division, 18 Feb 1969. CW 1,13/12/2.
[117] Follow-up of girls discharged from Burwood 1/8/55-1/6/57, CW 1,3/18/2, part1.
[118] Follow-up of Kahitere discharges, 25 Aug 1967 and part 2nd, D.P.O'Neill, 'Follow-up of Kohitere admissions', 10 Aug 1967 and 19 Aug 1968, CW 1,3/18/2, part 2. A complex study of discharges from all boy's homes over three months in March 1967 indicated, against the general pattern, a 70 per cent success rate for long-term institutions. The methods used to reach this conclusion are not clear from the report, which examined only a small number of residents and did no provide the more long-term perspective used in other surveys. See 'Discharges from Boys' Homes March-May 1967', CW 1,3/18.
[119] Follow-up of girls 1,3/18/2. part.1.
Note x Deborah Dwork, War is Goodfor Babies and Other Young Children: A History of the Infant and Child Welfare Movement in England 1898-1918, London, Tavistock, 1987. Discussions about the pivotal role of the First World War in social policy include Cynthia R. Abeele, "'The Infant Soldier": The Great War and the Medical Campaign for Child Welfare', Canadian Bulletin of medical History, 5,1988, pp. 99-119; David F. Crew, 'German Socialism, the State, and Family Policy, 1918-33, Continuity and Change, vol. 1, no. 2,1986, pp. 235-63; Anna Davin, 'lmperialism and Motherhood', History Workshop Journal, 5,1978, p. 43; Lewis, The Politics of motherhood, pp. 16ff; Geoffrey Pearson, Hooligan: A History of respectable Fears, London, Macmillan, 1983, pp. 43-6; Ross, 'Good and Bad Mothers', pp. 200-1; Richard A. Soloway, 'Eugenics and Pronatalism in Wartime Britain', in Richard Wall and Jay Winter (eds), The Upheaval of war: Family, Work and Welfare in Europe, 1914-1918, Cambridge, Cambridge University Press, 1988, pp. 369-88; Cathy Urwin and Elaine Sharland, 'From Bodies to Minds in Childcare Literature: Advice to Parents in Interwar Britain', in Cooter, In the Name of the Child, p188-9
5 Official Register, E i6Ii; Beck, Memoirs, pp. 1-3, CW 1, 812.2.
6 Beck,Memoirs.D.s.CWi.8122.

Source 'Family Matters- Child Welfare in Twentieth Century New Zealand' Bronwyn Dalley. Auckland University Press. 1998 pp60-67

Background to Child Welfare Act 1925

Matthews—"While the nuclear family was advocated as the ideal environment in which to raise many children, the state had also to deal with the electoral fall-out from its abolition of the Industrial Schools seven years earlier. The boarding out of former inmates had not gone well. Increasing numbers of destitute, neglected, juvenile and delinquent offenders and too few suitable placement homes were making administration and monitoring too difficult for the few probation and boarding-out officers employed for the task. So it was that John Beck, officer in charge of the Special Schools Branch of the Department of Education was sent to the United States and Canada to see how these countries dealt with deviant children. In the 1925 election year, he made a number of recommendations which formed the basis of the Child Welfare Act also passed in that year (Department of Education, 1927)." pp74-75

Child centred reform "This legislation is worthy of closer attention because of the philosophy on which it was based. North American views on the care and protection of children were clearly more radical and child-centred than those of Britain. Influenced by a new breed of child psychologists such as Bowlby, children had come to be regarded as individuals in their own right, and it was acknowledged that differences existed between them as individuals. This view of children was coupled with a growing humanitarianist belief that special treatment was needed if disadvantaged children were to make a contribution to society in their adult lives (Beck, 1928)." p75

Child Welfare Branch established "The New Zealand Child Welfare Act reflected such ideas when it made provision for the establishment of a new Child Welfare Branch within the Department of Education. Into its care was placed the nation's neglected, indigent and delinquent children. The welfare paradigm of the time posited that child misbehaviour and offending could be traced back to poor parenting. For children under 16 years of age, special Children's Courts were set up and assigned investigative and assessment procedures to better inform the type of sentence delinquents should receive. Because 'children [were] not to be permanently maintained in institutions, save in exceptional circumstances', child welfare officers became responsible for overseeing a child's rehabilitation during his/her placement within either a state-run children's home or with a local foster family (New Zealand Statutes, 1925, pp. 113-120)." p75

Return to Victorian welfare "Since the mid-1980s the reduction of state intervention in the social services generally, government policies for family reflect a return to the nineteenth-century solutions of family self-help, charitable aid and minimal state intervention." p57.

Source 'Paradigms of family, welfare and schooling in New Zealand' Kay M Matthews & Richard Matthews Ch2 *The Family in Aoteroa New Zealand* ed V Adair and R Dixon. Pub Longman 1998.

John Beck (1883-1962) "Education Reformer. John Beck, born 1883 Scotland... In 1889 came to New Zealand with his parents. In June 1899 Beck joined the New Zealand Education Department as a clerical cadet. He worked his way rapidly through the basic grades and, in 1915, became officer charge of the Industrial and Special School Section of the Department. His dislike of system whereby delinquent children were sent to institutions led him to advocate that, except for the most serious of handicapped cases, they should be boarded out in foster homes... His arguments, more than any other single factor, induced the Government to close its three industrial schools - at Auckland, Dunedin, and Burnham. In 1924 the Government sent Beck to study child welfare methods in the United States and Canada. When he returned he wrote a report which laid the foundations for the Child Welfare Act of 1925. When the Act came into force in the following year Beck was appointed Superin-

tendent of Child Welfare. **Source** *An Encyclopaedia of New Zealand 1996 Government Printer. Vol. 1. pp175-176*

Child Welfare 1925-1948

Social readjustment work of Child Welfare

Economic depression and a world war—

marked New Zealand society between the 1920s and the late 1940s. The depression was uneven in its effects across society and exposed significant inequalities. Those already poor became even more destitute, and the families of working people swelled their ranks as unemployment hit the lower and middle socioeconomic groups. The marginality of Maori to Pakeha worlds, both geographically and socially, was intensified by economic depression. The first Labour government which swept to power in 1935 espoused a vision of a decent society which provided for the needs of its citizens. Welfare services which had expanded slowly during the 1910s and 1920s now received a boost, but the Second World War shattered the rosy mood of the late 1930s... p93

Depression and war focused social policy more firmly on the family, and children's health and welfare, so much the target of early twentieth-century social policy, receded into the background. The payment of family allowances began in 1926, and from 1938 various forms of assistance supported family life: sickness and unemployment benefits, subsidised medical care, state housing schemes, mortgage relief, and later a universal family benefit. The Child Welfare Act of 1925 in some respects marked the apogee of children's health and welfare matters, in that it consolidated a philosophy which had gained ascendancy over the course of the early twentieth century. In other ways, however, it was their swansong. Children's health and welfare would remain important during the mid-century decades, as the value of child life continued to have salience, *but this value would be expressed more cogently within a wider context of policies relating to the family*. pp93-94

Child Welfare Act 1925 set agenda 1925 >1950

The Child Welfare Act set the agenda for child welfare policy and practice in New Zealand for more than half a century. Through a network of child welfare officers, the Child Welfare Branch of the Department of Education increased markedly the scope of its work with children and, through them, families. The Act consolidated two decades of change and proclaimed the primacy of non-institutional care. Only in 'exceptional cases', the parameters of which were decided by the Superintendent of Child Welfare, would children live permanently in institutions. Between 1926 and 1948, there were usually fewer than 300 children in the Department's institutions at any time, and their average length of detention was two or three years. p94

Children courts

The Act created a separate system of juvenile justice through children's courts for those aged under sixteen, and made provision for those under eighteen to have their cases transferred there. Children's courts were held in premises away from other courts, and presided over by specially-appointed magistrates. Court associates, women and men of good standing who had an interest in children's welfare, could be appointed to assist children and advise magistrates. Court attendance was also limited: the proceedings were not to be published, and only individuals associated with the case, or representatives of welfare groups, could be present. Child welfare officers could investigate all cases brought to the court, and were given the opportunity to present written or verbal reports on them. They could also lay informations against children or their parents in order to bring cases to court. Previously the prerogative of the police, this new right intensified the investigative powers of the Education Department... p94

Train, rather than to punish: children's courts, supervision and residential institutions

Child welfare work after 1925 emphasised training and correction for all children who came into contact with the child welfare system, whether they had committed an offence, were neglected, or had a home life seen as likely to lead to future problems. The system of children's courts formalised under the Child Welfare Act 1925 provided an important structure for this role by acting as the conduit for much child welfare work. The expanding duties of child welfare officers and growing anxieties over juvenile delinquency brought more and more children into contact with the court system between 1925 and 1948. Despite the rhetoric of adjustment and welfare, courts were also punitive; the 'central dilemma' of balancing welfare and justice would continue to be faced in the courts for decades to come. Some of this tension was played out between the judiciary and the Child Welfare Branch, as each attempted to control child welfare policies and practices ...p100

During 1926, almost 200 children's courts were gazetted, and more than twenty magistrates appointed to sit in them. p101.... In the first year more than 1,600 children passed through childrens courts. Between 1926-1948 they heard an average of 2,400 cases, ranging up to 3076 in 1943.p102

Restrictions on publicity and on public attendance at the courts aroused disquiet about secrecy of the proceedings, and the loss of legal rights thus incurred. p107

Tension between Justice and Child Welfare

Time and experience did little to bridge differences in what was, at its heart, a battle between professionals over the control of child welfare in the courts. Michael Lyons, who was a child welfare officer in Christchurch in the 1940s, recalled the intrinsic difficulties of children's court work: 'child welfare and the Court personnel looked across the table at each other, which was really an official and legal gulf, exchanging ideas in a language that the other party probably misunderstood'. Contemporary commentators realised as much. As the draftsman preparing the amendment to the Act in 1927 noted, the Child Welfare Branch may have succeeded in pushing through its pioneering legislation, but it had failed to persuade

either the police or the judiciary of the wisdom of the policies which were centred around the children's courts. p110

Personal animosity led to some of the differences between magistrates and child welfare officers, and this became more evident once problems could no longer be attributed to 'teething troubles'. The children's courts forced magistrates to share their authority with both child welfare officers and court associates. This was a new experience for hitherto independent and unchallenged bastions of law, and at times they found it irksome. Child welfare officers and Branch officials became impatient with court officers who were unable or unwilling to embrace the new emphasis on welfare, and were reluctant to call on their expertise. Child welfare officers had been carving out for themselves a more defined niche in the social welfare area, and to have their status overlooked and their experience disregarded was vexing, particularly when the entire Act was constructed around the notions of investigation and adjustment. Some magistrates felt themselves to be put upon, with their own authority and status as professionals ignored...p110

This sporadic dissension between the Branch and the judiciary hinted at the more fundamental tensions that surrounded child welfare issues during this period. The Child Welfare Branch frequently reiterated the concept of courts administering correction, adjustment and welfare rather than punishment and justice, a notion with which some magistrates disagreed. p111

Close personal interest Court-ordered supervision The emphasis in the Child Welfare Act on providing community-based care for as many children as possible facilitated the expansion after 1925 of probation, or 'court-ordered supervision', as it was renamed. The introduction of supervision for all types of children and young people, whether they had offended or not, symbolised the primacy of working with families to overcome child welfare problems. The 'friendly contact' and close personal interest that was the basis of supervision gave child welfare officers an entrance into family life and provided them with an opportunity to tackle the source of delinquency and other social ills: a maladjusted family environment. The chance to readjust that by focusing on children within their domestic circle furthered the family-centred policies which dominated social welfare during the second quarter of the twentieth century. p121

Magistrates placed, on average, almost 700 children and young people under supervision each year between 1926 and 1948, or between 30 and 40 per cent of cases brought before the courts... p121

Magistrates ordered supervision in all kinds of cases. Petty offences, not being under control, and complaints under the Child Welfare Act could all warrant it. If children posed a danger to the community, or their home circumstances were dangerous to them, magistrates could order their immediate committal and bypass supervision entirely.p121

Supervision revolved around regular personal visits and correspondence. The latter had a special place in supervision, encouraging communication on an ongoing basis whether or not officers were personally visiting the home. p124

Voluntary organizations played an important part in supervision during the 1930's and 1940's as they had earlier. YMCA Big brothers etc. p126

Residential institutions - from industrial schools to training centres.

Child welfare policy after 1925 continued to move away from institutionalisation, as the Branch endeavoured to board out most state wards, leaving institutions to cope only with the most problematic children. The decision to commit was an option of last resort, ordered only when other methods had failed or were considered to be of no use. In keeping with the spirit of the legislation, admission to residential institutions became a comparatively minor feature of the child welfare system, numerically at least. p129

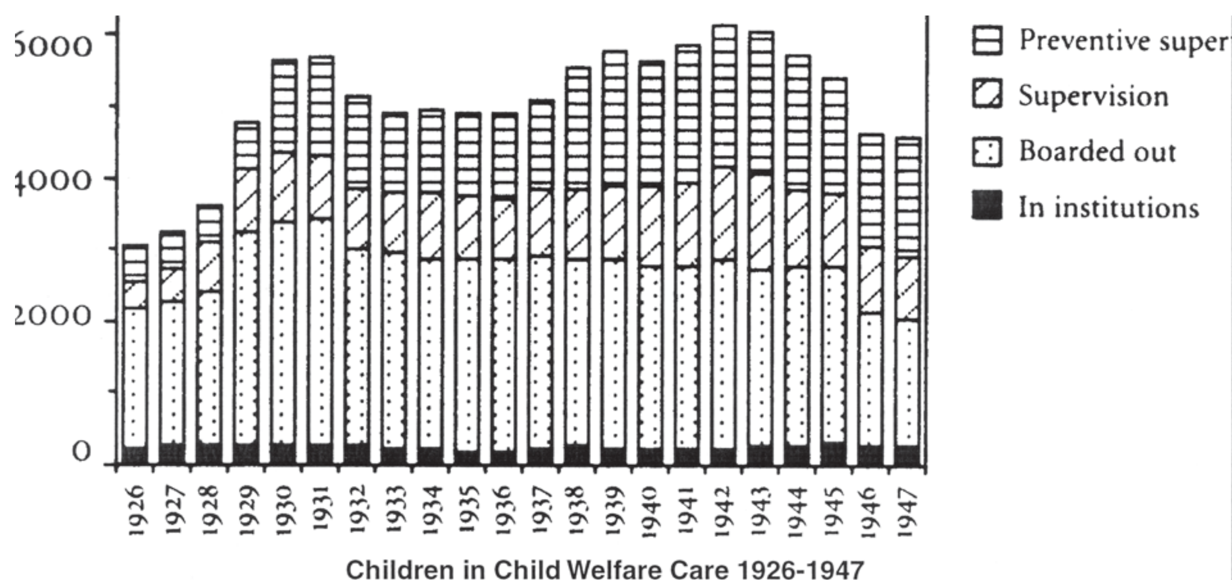
The Child Welfare Act dispensed with the term 'industrial school' in a deliberate break from past practices. Instead, it enabled the establishment of a variety of residences: receiving homes, probation homes, convalescent homes, training farms or schools, and other homes which would promote the general purposes of the Act. p129

Girls and boys aged under ten were sent to receiving homes, while probation homes admitted boys for short periods. By the mid-1930s, child welfare officers referred to probation homes -as 'boys' homes'; the term 'probation' had fallen out of use, and the institutions had become residences for boys only. p129

The training schools formed the core of the Branch's institutional services. Just as abandoning the term 'industrial schools' signalled a new direction in residential services, so too did the adoption of a new terminology. Training suggested instruction, re-education, and adjustment, with children and young people ceasing to be unruly and troublesome and becoming young citizens. p131

Few Maori had entered the Department's homes before the 1930s, partly because few had come into contact with the child welfare system, but also because the Branch consciously endeavoured to keep Maori children out of institutions. The Branch acknowledged some of the pain and anguish which forcible separation from whanau could entail. As one child welfare inspector realised, the 'Maori girl does not take kindly to Institutional life, as they are home sick and crave to be with their own people'... separation of Maori children from their locality and whanau was detrimental. p131

Private institutions and orphanages had increased in number during the first part of the twentieth century, and by the mid-1920s, the 85 private institutions and orphanages in New Zealand housed more than 4000 children. The number of institutions remained stable between 1925 and 1948, although the number of children detained decreased; by the mid-1940s, there were fewer than 3000 children in 80 homes...An amendment to the Child Welfare Act in 1927 empowered the Branch to inspect and register all private institutions in which children resided. p134



Children in Child Welfare Care 1926-1947

Source 'Family Matters- Child Welfare in Twentieth Century New Zealand' Bronwyn Dalley.1998 p122.

'Saved to the State': preventive child welfare

Preventing children and adolescents needing further contact with the Child Welfare Branch was a central philosophy of child welfare by the later 1920s. Preventive child welfare policies, the adjustment of conditions in connection with homes and families that, if allowed to develop, would lead to destitution, delinquency, juvenile crime, vice, and to antisocial conduct generally', were one way to construct a new society.' Stressing the role positive social work in the present had in avoiding negative results in the future enabled the Branch to intervene in a variety of situations in the name of saving the child and, by extension, safeguarding the welfare of families and the nation. It was an enterprise which required assistance, however, and the Branch utilised community and family resources. In the process, the Child Welfare Branch became a general welfare department with responsibility for the welfare of all citizens, not just children.

Development of preventive work

Josiah Hanan's special report of 1917 which delineated an agenda for change in the industrial school system also adumbrated an ethos of prevention. In a suitably military allusion, Hanan suggested that:

"The industrial-school system might be called a Red Cross contingent picking up and attending to the socially wounded and maimed; but we should find out why there are so many wounded, and consider whether we cannot protect a child before, instead of helping him after he goes through the Criminal Court. Society has not made the best use of its powers until it seeks to forestall and prevent those damages which at present it seeks only to repair. It is a short-sighted policy to devote our attention to the punishment or even the reform of the criminal rather than to prevent the boy or girl from becoming a criminal." [AJHR 1917 E1A p2] pp142-143

Although the Child Welfare Act made no reference to preventive work, the direction of policy and practice after 1925 made evident its centrality. The Act's emphasis on keeping children and young people out of institutions wherever possible offered a legislative rationale for prevention. In this respect, the permissiveness of the legislation enabled child welfare officers and the Branch as a whole to implement a range of policies, and was one reason why the Act remained in effect for so long. Officers regarded preventive policies as the focus of the Department's work with children and their families. p142

Cases for preventive supervision came to the attention of the Branch by various means. Teachers, neighbours, local welfare organisations, religious groups, community agencies and the police all commonly referred cases, or suspicions about potential problems. Some were also referred by other government departments... Parents themselves sometimes asked that their child be placed under preventive supervision. p144

Very rarely, children and young people themselves requested assistance. These cases could be clear cries for help, perhaps a final resort for unhappy children.... These cases, and others like them, suggest that the preventive supervision the Branch provided could be a toll with which families could disentangle complex and fraught relationship. p144-145

Child welfare and the needy families scheme

The emphasis on fostering child welfare by enhancing family welfare was manifested most explicitly in the needy families scheme. Begun in 1941 and administered primarily by the Child Welfare Branch, this scheme provided for the assistance of large or needy families whose children's well-being was endangered...The housing crisis [exacerbated during the Second World War] and the potential problems it posed led the Minister of Housing to ask the State Advances Corporation to provide solutions. The Corporation estimated that there were 4000 families with more than eight children, and 35,000 with more than five. It asserted that housing these families was a national problem. The Child Welfare Branch, the Social Security Department declared unanimously that assistance should be given to these families immediately, before their poor circumstances led their children to ,get

out of hand. p155

Source 'Family Matters- Child Welfare in Twentieth Century New Zealand' Bronwyn Dalley. Auckland University Press. 1998pp60-67

Child Welfare Adoptions 1948-1972

Making new families - more adoption services

Dalley— "The term 'adoption' encompasses a variety of arrangements for transferring, legally or by custom, the guardianship of a child from one group to another. Its form has changed over time and between cultures, but the type which assumed centrality in New Zealand, as elsewhere in -the post-war years, was the legal adoption of a young baby by strangers, or 'closed stranger adoption' Maori customary adoption, where children were raised by family members other than their birth parents, continued alongside both this and a complex arrangement for legal Maori adoptions. New Zealand's closed stranger adoption system is the subject of a number of contemporary and historical studies which offer detailed accounts of the adoption process. This section focuses on the Division's adoption policies and practices before and after the passage of the pivotal Adoption Act 1955, and its part in the preparation of that legislation. p224

Before the Second World War, the proportion of legal adoptions was generally less than 3 per cent of all live births, and always well below 1,000 orders a year. The war boosted these figures, and in 1944/5 the number of orders leapt to over 1,000, a level above which they remained for all but one year from the 1950s to the 1970s. The number of orders increased most rapidly during the 1960s, rising from about 1,800, in 1960/1 to reach its all-time high Of almost 4,000 in 1971/2, which represented more than 6 per cent of all live births. p224

Contemporaries suggested several possible reasons for the rise. The Division had 'little doubt' that greater prosperity and improved standards of living were influential, although the connection was not made clear. In circular fashion, it claimed that adoption had become more widely known, more common and more acceptable, and that married couples spoke about it more frequently presumably making it still more widely known, and so on. Anderson believed that there was no single answer, but suggested a combination of vague, unconfirmed possibilities: perhaps there were more childless marriages, perhaps there was a desire for a 'balanced' family, or a possibility that society was more 'humane ... [and] more prepared to do something for children in need of care, and protection. p224

Best environment for children Historians have placed the growth of adoption in the context of changing notions, about the 'best environment' for children, to which could be added theories about the best types of relationships between parents, particularly mothers, and children. By the 1950s that environment was a 'permanent home with breadwinning father and stay-at-home mother'. Financial savings to the state, either while the child was still young or in the future, and a desire to break the 'vicious cycle of deviance' represented by ex-nuptial births, have also been suggested as important factors. The Division's attitude towards single motherhood and other household forms suggests that the notion of the 'best environment' for children was never so rigid, but it too argued that adoption into a two-parent family afforded ex-nuptial children greater opportunities, and worked towards ensuring its popularity. p225

Divisions role The extent of the Divisions role in arranging adoptions changed substantially during the post-war years. It was always one of several agencies which matched adoptive parents with available babies. Religious and welfare organisations, and groups supplying services to unwed mothers, such as Auckland's Motherhood of Man, also arranged placements. Medical and legal professionals, as well as birth and adoptive parents themselves, placed children and sought adoption orders. The relative balance between these groups before the mid-1950s is very difficult to assess. Sporadic returns from child welfare officers indicate that their role varied markedly between districts; in Dunedin during 1950-2, officers arranged 35 Per cent of adoptions, while in Christchurch they were responsible for more than 70 per cent. Auckland, with its very active private groups, presented a different story: officers there had arranged only 3 per cent of all placements. Regional differences remained after the passage of the Adoption Act in 1955, but the Division's overall share increased markedly, from 34 per cent of all placements in 1957 to over 70 per cent by the early 1970s. The Division considered that its nationwide coverage partially accounted for this increase, and it was probably correct. pp225-226

Adoption Act 1955 The passage of the Adoption Act 1955 (and subsequent amendments) and its an administration formed the core of the Division's adoption work. The Act, an 'outstanding piece of social legislation' which placed New Zealand at the 'forefront' of English-speaking nations, overhauled the entire adoption system, and is still the major legislation applying to this area. The Act clarified who could and who could not adopt children, gave Maori the right to adopt Pakeha children (a right which they had lost in 1909), prohibited the payment of fees, and closed access to adoption records. It introduced two separate court orders for adoption: an interim order (which could be dispensed with under certain conditions) made after the applicant's home had been inspected, and a final order made after the child had lived there for at least six months. The interim order was the more important, as it enabled adoptive parents to take a child into their home; final orders were dispatched very quickly if a favourable report was given. The Division was empowered to supervise or inspect the placements before each order, and the court was required to consider, but not necessarily to act on, any such reports. Birth mothers could not formally sign a consent to the adoption until the baby was ten days old, and they remained the legal guardians until the final order was made. p226

Interdepartmental committee The issues of protection, clarification of roles and organisation lay behind the

establishment early in 1952 of an interdepartmental committee to examine adoption practices. The Division was well-represented on the committee with three of the seven members, including Deputy-Superintendent Lewis Anderson, while the other members were drawn from the departments of Justice and Maori Affairs. The committee's report and recommendations, presented late in 1952, formed the basis of a Cabinet paper on adoption, and eventually of the Adoption Bill tabled in 1955. p226

The Division's representatives emphasised that unsatisfactory placements and haphazard system made urgent the revision of the adoption laws. The Justice Department challenged this view and demanded proof of 'bad' adoptions; the Division then called on its officers to provide relevant examples. Child welfare officers criticised, in tones reminiscent of the professional disagreements about the operation of children's courts, the loose and regionally varied procedure which magistrates' courts followed when considering adoption orders. Officers argued that magistrates paid too little or no heed to their reports, and that their recommendations were disregarded. Some questioned the very involvement of magistrates. Jim Ferguson of the Wellington district office suggested that a court, with its legal bias, was not the proper agency to decide whether or not an adoption order should be made. Other members of the legal fraternity were criticised. 'Most solicitors acting for the applicants are present at the hearing to earn their fee.... Many are not concerned as to whether it is in the child's interests or not, an Auckland officer claimed. p227

The roles of private agencies and medical professionals also came under examination, and were generally found wanting. A Wanganui child welfare officer mentioned the placements arranged by doctors and matrons of maternity homes who ignored the necessity of inspecting prospective homes. 'When I have tried to explain to the applicants that their homes should have been passed I have been told that "This adoption has nothing to do with the Welfare. We got the baby from doctor.." Doctors and hospital matrons who failed to match 'types' - .babies and adoptive parents - or neglected to inquire into the background of the birth mother or adoptive parents also created problems. One doctor visiting a single mother in the Waiouru Military Camp hospital allegedly told her, 'This is a nice baby. How about letting me place him for adoption'. The child welfare officer noted that 'absolutely nothing' was known of the mother's background, 'yet the doctor wanted to place this child in a very good adoptive home'. p227

Officers also pinpointed the health, age or social condition of applicants as a problem. One cited the case of a 70 year old father and 50 year old mother who adopted an eight month old baby, while another suggested that single women should not be permitted to adopt, as this was an 'unnatural situation' Some mentioned drunkenness or criminal convictions: p227

Mrs Godwin had a conviction for being 'idle and disorderly' This was un- beknown by her husband, however it was smoothed over, but judging by the state of her home, she hasn't improved much. We arrived at the home to find her flapping about in the greatest distress; the house in it's usual grubby muddle and the infant wallowing in dirty napkins and suffering from 'summer sickness'. This was not surprising considering that the day's supply of milk was standing uncovered on the window sill in the hot sunshine, partly curdled, and being used as a swimming pool by a portion of the dense fly population. p227

That undue pressures were sometimes brought to bear on single mothers to place their children for adoption was also recognised. The Division's own role in this was neither - acknowledged nor discussed; its part was assumed to be uncomplicated, but as other scholars have shown, child welfare officers could also make hasty placements, or pressure women untowardly. Officers decried the failure of some private groups to offer alternatives to single mothers when emphasising adoption above all else. Dunedin staff knew of young women who had changed their minds about their consent some months after they had signed the forms. This occurred mainly when a woman had been given insufficient time to make up her mind or was unaware of any alternative. The District Child Welfare Officer cited the example of one young woman whose doctor had hastily placed her baby for adoption after questioning her when she was coming out of the anaesthetic following the birth. The baby was moved to the Karitane Hospital, and after five months fretting for the child, whom she assumed to be still in the hospital, the young woman and her parents approached the Division for assistance when she received a request for her consent to adoption. p229

Adoptions among Maori were generally outside the Division's jurisdiction, as they were the responsibility of the Maori Land Court, but child welfare officers nevertheless regarded some such cases as particularly fraught. Officers in Whangarei claimed that the Maori Land Court could act as haphazardly as other courts. Children were sometimes placed with known tuberculosis carriers, or in homes on which district nurses had compiled adverse reports. A Whangarei officer considered the situation to be 'so hopeless - the numbers are so terrific - that I hold my breath and hope that the District Nurses will arrange hospitalization for infants if their condition falls too low. p229

All in all, officers concluded, a more efficient method of placement could be the devised than the present one. The 1955 Act largely achieved this, in the Divisions view, in that it provided for better consent provisions and greater 'protection' for all concerned in the process. Yet participation in the committee, the drafting of the bill, the submissions process, and discussions over the final form of the legislation was not easy for the Division. Despite its efforts and the problems it had demonstrated, it did not manage to enshrine all its aims in the final legislation. p229

One of the Division's primary goals had been to enforce a lengthy 'cooling off' period before a birth mother signed the consent forms and the child was placed for adoption. Following the English precedent, it considered six weeks to be ample. Even though other members of the commit-

tee maintained that this was too long and that consents and adoptions should he finalised quickly, the Division's recommendation was included in the final report on the grounds that the birth mother's power to consent should not be fettered. Private agencies disagreed strongly. The Motherhood of Man stated that 'all persons engaged in work will agree that it is in the best interests of the child that the bond between the natural parents and the child should be severed' This was a view which others shared: 'because a few cases have had undesirable publicity,' largely because of weak minded Natural parents who do not know their minds from one minute to another, all adoptions should not be hedged round with irritating regulations and delays', a Hamilton magistrate considered. By the time of the final drafting of the legislation, the consent period had been whittled down to a maximum of ten days. pp229-230

Contest of Departmental interests The committee and the submission process were sites in which departmental and agency interests were contested. While the representatives of the Department of Maori Affairs took, or were given, a back seat, those from the Division and the Justice Department engaged with each other in very real differences of value and interpretation. On one level, the differences stemmed from a struggle to control the adoption process. In Peek's view, the Justice Department was reluctant to see merit in any proposal which might restrict the Court's discretion by giving powers to an appropriate agency such as the Child Welfare Division'. Such reluctance swung both ways, however. Reports from child welfare officers and children's court magistrates revealed the tension that had existed between the two groups for many years. Magistrates spent too little time reading reports, made their decisions too quickly (in five minutes, according to Palmerston North staff), and paid too much attention to the applicant's lawyers; Auckland's District Child Welfare Officer suggested that it was the Justice Department, rather than the adoption laws, which needed to be overhauled. For their part, magistrates alleged a lack of 'intelligent' and correctly trained child welfare officers, inadequate reports, and officers with conflicting interests. Private groups claimed that the were being shut out of the process, and that they should have the same rights the Division when it came to acting in the place of birth parents. They continued to campaign on this front, and argued for recognition of the expenses which they incurred in undertaking adoption work; a 1957 Amendment Act allowed them to collect agency fees from young women. p230

Opposing perceptions of whose interests adoption should serve also contributed to differences between departments and agencies. For the Justice Department and private groups, the welfare of the child was the most important factor, but certainly not the only one; adopting parents were also entitled to consideration. The system should be designed to ensure only that a child was not allowed to go to an unsuitable home, Justice Department representatives suggested. The Division, on the other hand, attempted to consider the rights of, both the child and the birth mother. A six-week consent period would end the 'improper' practice of birth mothers signing irrevocable consents while in a 'abnormal state of health' a few days after a child's birth. As Anderson note the Adoption Bill needed to be balanced to ensure that birth parents were 'not unjustly treated because of an over-zealous desire to satisfy the present great demand for children for adoptions' The specific interests of the child who was being adopted received little direct attention in the discussion of opposing parental rights. This silence was, however, a feature of the entire process. For despite any implicit or explicit rhetoric of providing what was best for the children, adoption was seldom about their needs, but rather 'about adult beliefs and desires and dilemmas' as Anne Else has convincingly argued. pp230-231

Divisions major adoption role The 1955 legislation afforded the Division a larger role in all aspects of the adoption process; in 1956, women officers reported that their workload had doubled. The range of their responsibilities continued as before. Officers sought out applicants and children, often by issuing circulars to other districts, and received approaches from both applicants and birth mothers. Peek reported in 1950 that most adoptive parents found children through their own efforts, but as the decade continued, more looked to the Division for assistance. Staff frequently received calls from people in the hope of 'securing a child' and letters in the Division's files suggest that many may have come to see it as a first port of call. One applicant in 1958 had heard the rumours about teenage sexual activity in the Hutt Valley, and anticipated that there would soon be children to be adopted. p231

Neutrality issues For women who had not decided on adoption, however, the provision of information about the options, rather than advice on whether or not to choose adoption, was the Division's policy. As Anderson noted in 1960, 'we do not either courage or discourage mothers to agree to an adoption' The practice could be very different, and many single mothers remembered that child welfare officers had encouraged adoption as the first choice. Teresa Lawson's case file suggests that child welfare officers did more than provide information on her options when she became pregnant at sixteen. They discussed adoption with Teresa half- way through her pregnancy, and clearly hoped that she would agree to it. She did not, however, and at the request of her foster mother, child welfare officers visited her in hospital, ostensibly to discuss both sides of the issue. Instead, they informed Teresa that they would have to commit the baby to care (for reasons not recorded), and that they required her decision within two days. Clearly distressed, Teresa changed her mind about adoption several times in that period. Told of her final decision not to adopt, the Division decided to take the baby on a warrant and commit it to care; the following day, Teresa agreed to the adoption and the baby was placed out. For Teresa, though, this was not the end of the story. Within six months, child welfare officers reported that she had run away from home; her foster mother confirmed that she was still upset about the adoption. p231

Paucity of options Child welfare officers themselves worked within the paucity of options which confronted single mothers. Mary Todd, who administered adoptions in Auckland during the 1950s and 1960s, acknowledged that: p231

there could have been some pressure ... but it was pressure from society rather than pressure from the child welfare officers .... [However] a child welfare officer may have exerted some pressure, particularly... if she had what she termed 'nice applicants'. . . By the time one met with a young woman, there had already been, more often than not, pressure exerted by family, pressure exerted in homes for unmarried mums. pp231 -232

Ultimate taboo Giving advice rather than encouraging adoption was particularly the policy when, as happened quite rarely, married couples approached the Division requesting assistance in placing their children for adoption. A Christchurch officer was aghast at the breaching of an ultimate taboo when Mrs Wakefield wrote in 1953 asking for help in finding a home for her unborn child. She and her husband had four children, and they could not afford the expense of a new baby. Despite their using 'every contraceptive', their last two children' just came along. Mrs Wakefield's pregnancy was a difficult one, and poverty, ill-health, fatigue and an air of hopelessness rang through her letter. The officer informed her that the Division was never keen to see married couples contemplating adoption. Somewhat tactlessly, she reminded Mrs Wakefield that adoption meant depriving the child of its birth siblings and parents, and noted that the issue of birth control could be dealt with by putting her in touch with local 'specialists' p232

Over-optimistic prognosis A year after its passage, the Division noted that the Adoption Act was generally achieving its purpose in facilitating more careful placement and supervision and greater security for both birth mothers and adoptive parents. This was an over optimistic prognosis, for beneath the rhetoric of success, problems remained. 'Breakdowns' in adoption occurred, with adoptive parents rejecting the children and birth mothers seeking the return of their babies. The Division continued to see placements by private agencies in which too much attention appeared to be given to the wishes of the applicant and too little to the interests of the child. Complaints about the treatment of mothers at Wellington's Alexandra Home in 1963 led the Division to investigate the institutions policy of charging women a £5 entrance fee and restricting their freedom unduly once they were in the home. While the complaints were dismissed, it is clear that the Division sought to keep private maternity homes and adoption agencies under a loose surveillance. p232

Division in over-load The Division's generally optimistic appraisal also belied the administrative and human difficulties it faced. The sheer number of adoption orders meant that at times quality of welfare work was sacrificed in favour of quantity. Officers recalled superficial assessments of applicants: 'You just rushed in and rushed out, and that was it, Mary Todd remembered. Staff received little or no training in undertaking assessments, and based judgments on their own views about the best interests of birth mother and child. The pressure of work often told, too: 'One was doing 4, 5 or 6, on average, placements of children per week. There was just a surge of babies being born. It was a balancing act...trying to keep up and do the best one could... and literally just keeping the machinery going...To the end of my days I will always have concerns for some. The lack of follow-up meant that officers had no knowledge of the 'success' of their placements. With the final orders, the child, birth mother and adoptive family all passed from the Division's view. pp232-233

Challenges after 1955 The major administrative challenges after 1955 were to satisfy all applications for adoption and to place all the children made available; demand and supply seldom matched. Until the mid-1960s, there was an excess of applicants over 'suitable' children. In 1958, 2000 unfilled applications were reported, with no indication that the number would tall, given the growing popularity of adoption. The Division also reported that long waiting lists deterred applicants, some of whom endeavoured to adopt children from overseas. It denied media reports of a shortage of applicants in the mid-1960s, but by then children did take longer to place than had been the case previously. The Division reported in 1969 that all available and suitable children had been placed. These terms, especially 'suitability', could be used very precisely. Adoptive parents preferred white baby girls; older -children, baby boys, Maori, Pacific Island or 'mixed race' children were less popular and more difficult to place - although New Zealanders displayed little reluctance to adopt the 50 Hong Kong 'orphans who were brought into the country in 1963. The Division maintained that no children ended up in its institutions or in children's homes after failing to be placed, although it did foster out unplaced children. Its consternation about a possible 'lowering of standards' in the selection of applicants suggests that the reality was somewhat different, and subsequent researchers have borne out this suspicion. p233

Maori adoption The changes in adoption procedures also affected both customary and legal Maori adoptions. While customary adoption had been theoretically prohibited by legislation enacted in 1909, the practice continued. The Division was well aware of this, as its work with Maori ex-nuptial births and fostering suggests. Legally, however, these adoptions were not binding; from 1909, all-Maori adoptions had to be approved by a judge of the Native Land Court. A tangle of restrictions surrounded Maori adoption until 1955: if both parents and the child were Maori, the adoption case would be heard in the Maori Land Court under the 1909 legislation; if the adopting parents were Pakeha and the child Maori, the Infants Act applied; a Maori/Pakeha couple could adopt a Maori child, but the case would be heard in the magistrate's court; Maori parents could not adopt Pakeha children. The sex of the child added further to the complexity: a Pakeha husband and Maori wife could only adopt a male Pakeha child, and a Maori husband and Pakeha wife a female Pakeha child. A subtext of racially-

based anxieties about intermarriage and the inheritance of property loomed large in these regulations. p233

The 1955 Act partially disentangled Maori legal adoption. On the inter-departmental committee, Maori Affairs representatives Charles Bennett and Jock McEwen argued for a revision of the grounds under which Maori could adopt. Their belief that Maori should be entitled legally to adopt on the same terms as Pakeha was incorporated in the final legislation, which removed the prohibitions on Maori adopting Pakeha children. Bennett and McEwen succeeded in clarifying the respective roles of child welfare officers and Maori welfare officers in assessing applicants and making reports. Henceforth, Maori welfare officers reported on the adoption of Maori children, and the orders were heard in the Maori Land Court. p234

The division of labour did not always work well in practice. Some child welfare officers used the new arrangement to relinquish any role in Maori adoptions. Maori welfare officers, faced with new procedures, sometimes found it difficult to locate suitable placements and liaise with the Division. Female Maori welfare officers were 'few and far between' in some districts, and child welfare officers found their role continuing. Child welfare and Maori welfare officers worked cooperatively in most districts, however. Weekly conferences in areas such as Napier went some way towards easing the pressures of finding placements for both sets of officials. p234

An attempt to standardise the adoption process by moving all Maori adoption hearings from the Maori Land Court to magistrates' courts from 1963 complicated matters further. Bennett and McEwen had earlier argued strenuously against this proposal, and predicted that it would lead to an increase in 'irregular' Maori adoptions. Such 'standardisation' brought about the very problems which they had foreseen. After three years of the new system, McEwen reported that the number of Maori legal adoptions had fallen by 600. The Department's survey of 20,000 North Island Maori households indicated that between ten and twelve thousand children were living apart from their birth parents. Maori communities may have placed considerable emphasis on the centrality of kin and family networks and the importance of shared responsibility for children, but to McEwen and others, the implications of this were vast. He saw increased child neglect and delinquency resulting directly from children having no legal status in their own homes. p234

The complexities and expense of using the Pakeha legal system were held accountable for the change, an analysis which ignored the extent and importance of Maori customary adoption. As McEwen had expected, Maori applicants distrusted the magistrate's court and the prospect of engaging solicitors. A circular sent to all court registrars in 1963 emphasised the necessity for providing assistance to Maori applicants, such as help with preparing the papers so that they did not have to use a solicitor. This had not always worked, with some magistrates disapproving, and law societies protesting when the Department of Maori Affairs attempted to charge applicants a small fee for their legal services. Greater assistance rather than a return to the former practice was seen as the solution, but despite the criticisms voiced by such powerful groups as the New Zealand Maori Council and the Maori Women's Welfare League, the problems remained." pp234-235

Source 'Child Welfare in 20th Century New Zealand' Bronwyn Dalley 1998 pp224-235

Child Welfare Adoptions 1972-1992

Parents for children: changing adoption practices

Both the number and the form of adoptions changed during the 1970s and 1980s. More tolerant attitudes to single parenthood in the 1970s, and the availability of the domestic purposes benefit from 1973, made it easier for single mothers to keep their babies. More women chose to do this, leading to claims that there was a'shortage' of babies available for adoption. The number of adoption orders declined, with the Department of Social Welfare involved in less than 1,000 in most years during the 1980s. Fewer closed stranger adoptions occurred from the 1970s as more open adoptions became the norm, with birth and adoptive parents knowing about each other, and in some cases meeting and maintaining contact. Some adoptive and birth families met during the last few weeks of a pregnancy, discussing how the baby would be raised, or possible names. p336

Focus shift from adoptive parent needs to child needs

Perhaps in response to the wider emphasis on childrens rights, departmental social workers recast adoption practices. They acknowledged that the earlier emphasis had been on meeting the needs of adoptive parents, on finding children for them rather than finding parents or cementing relationships for children in need. A 1983 working party report on the organisation of adoption services outlined a new philosophy. It defined the purpose of the Department's adoption service as finding parents for children, not vice versa. Social workers involved in the adoption area remarked on their changed views. Ann Corcoran, who had worked in adoption for 28 years by the mid-1980s, admitted to being embarrassed by earlier attitudes towards adoption, particularly towards birth mothers. Helping birth mothers to find the best home for their child was now considered to be the most appropriate option. p337-338

The revision of the focus of adoption services led to marked shifts in practice. The Child Welfare Division had maintained a list of parents who wanted to adopt a child, and contacted the selected parents when an appropriate child came in. Refocusing adoption on finding parents for children made an extensive list of prospective parents redundant. Instead, the Department kept only a short list of couples wanting to adopt, and endeavoured to match these couples to the needs of the children who were available for adoption. In some cases, this could mean selective advertising to find the 'right'couple. The Department increasingly provided a 'total adoption service' that was

something like what had been suggested in 1955 when the Child Welfare Division sought to become more closely involved with all aspects of the adoption process. A total service would work intensively both before and after placement, and enable social workers to supervise the children for a period after the final adoption order had been made. Social workers estimated that the new approach required more time to be spent with both adoptive and birth families: ten hours pre-placement work with birth families, 25 hours pre-placement work with adoptive families, twelve hours arranging placements, and twelve hours supervising them. Providing such a service necessitated greater training for social workers, and from the mid-1970s, the Department offered seminars and training programmes for those involved in adoption work. p338

Special needs children Focusing on the needs of the children who were available for adoption turned departmental attention to finding permanent homes for those with special needs. Children who were not blond-haired, blue-eyed baby girls had traditionally been harder to place: those who were physically, emotionally or mentally disabled, more than one year old, or of a mixed racial heritage could be well down the list of 'desirable' children. The Department noted that it had 'never much' considered the needs of these children in its earlier attempts to provide adoptive parents with young babies. From the early 1980s, it expended considerable effort in finding permanent homes for children with special needs. In 1981, it established a Special Needs Unit in Auckland with a small group of social workers whose task was to place children already in care. Caseloads of between three and six children allowed social workers to provide intensive training for couples wanting to adopt special needs children. Within three years the unit had provided permanent homes for 28 children, all of whom received follow-up supervision. p338

Maori children During the early 1980s, the Department increased its role in the adoption of Maori children, with which it had had little involvement since the 1960s. An increase in other demands on Maori Affairs officers had led to a request in 1978 that the Department of Social Welfare take a greater role in finding homes for the 200 or so Maori children who were adopted annually. While they were helped by Maori Affairs officers, social workers largely took over the placement of Maori children, which they saw as a further opportunity to find homes for special needs children. The development of Maatua Whangai meant that Social Welfare's renewed role was relatively short-lived, as the Department of Maori Affairs responded to demands that it take a more proactive role in placing Maori children. p339

Adoptive parents critical of Department The emphasis on addressing the needs of children in making adoption arrangements did not always meet with the approval of couples who were waiting to adopt. The Department's performance in administering adoptions came under fire from prospective adoptive couples unhappy about 'unreasonable' delays in obtaining children. Others believed that the Department was unsympathetic to their situation, and focused too little on their needs. In 1990 the Department appointed a review committee to examine adoption practices throughout the country. Although this committee found that there were regional variations of practice, it repeated the sentiments voiced throughout the 1980s that the Department's role was to meet the needs of children, not to provide a service to childless or infertile couples. pp339-340

Intercountry adoption meets shortage Such couples found it easier and quicker to obtain a baby from overseas than to wait for a New Zealand child, particularly when there was a'shortage'of babies available for adoption. New Zealand couples had travelled overseas to adopt children in the 1960s and 1970s, or had adopted 'orphans' from Hong Kong, South Vietnam or South America. In the later 1980s New Zealanders travelled to Eastern Europe in the wake of revelations about the conditions endured by babies and children in orphanages in countries such as Romania. As Anne Else noted in 1991, 'now any couple who can find at least $12,000, supply the Romanian authorities with an acceptable "home study" report by a "trained social worker", and 'locate an available child' would probably have the adoption recognised in New Zealand. Indeed, in July 1990 New Zealand recognised the validity of any adoption orders made in Romania. This situation did not last long, as the Romanian authorities placed a moratorium on international adoptions in June 1991. p340

Adult Adoption Information Act 1985 A major change to adoption policy and practice occurred with passage of the Adult Adoption Information Act 1985. The legislation enabled adopted people over twenty years of age to have access to their birth certificates, which informed them of their birth mother and sometimes their birth father. Birth mothers could, if they wished, veto access to this information. In recognition of the trauma which could accompany gaining knowledge of birth parents, the legislation also provided for counselling. Before the implementation of the legislation in 1986, social workers, agencies and independent counsellors gained approval to assist those who were seeking out their birth families. As one social worker noted, such counsellors would need to be highly skilled, as many adoptees who inquired about their birth families were likely to be disappointed by the nature of the information that their birth certificates contained. p340

Within a year of the Act coming into force more than 10,000 people had used it, stretching the Department's resources to the full; by 1989, Anne Else estimates, about a quarter of those who had been adopted between 1944 and 1969 had sought information under the Act. The Act allowed adopted people to piece together their lives, trace their histories, and perhaps gain answers to questions they had long wanted to ask. Jonathan Hunt, who presented the bill in Parliament, received many letters from grateful adoptees. 'God Bless you Mr Hunt, wrote one woman, who had been born in 1913 and adopted in the 1920s. Some adoptive families, and particularly adoptive moth-

ers, felt threatened, fearing that they would 'lose' their children. The new rights of adopted people to gain access to their full histories did not impress some adoptive families. 'I wonder what happened to our "Rights" as adoptive parents - apparently we have none', one woman wrote. Some birth mothers also found the prospect of meeting their children worrying, and feared having to tell their husbands about a pregnancy, and adoption that had happened many years before. pp340-341

The changes in adoption policy and practice occurred independently of the other major changes in the delivery of child welfare services that took place in the late 1980s. The Children, Young Persons, and Their Families Act 1989 made very little mention of adoption, despite the fact that adoption entails the severance of the link with birth families, the maintenance of which is at the core of the legislation. The Department of Social Welfare, and then the Children and Young Persons Service (through its Adoption Information and Services Unit) has maintained a role in adoptions under both the Adoption Act 1955 and the Adult Adoption Information Act 1985: it assesses placements, monitors adoptions made overseas, and facilitates access to information and support for adopted people. pp341-342

Source 'Child Welfare in 20th Century New Zealand' Bronwyn Dalley 1998 pp336-342

Modern Family Law - Aotearoa New Zealand

W R Atkin & G W Austin— The aptness of the phrase "'modern' family law" is immediately apparent when one foregrounds its modernist aspirations. Broadly understood, the founding concerns of modernity are the separation of expert knowledge from opinion, discovery of and reliance on abstract truths without reference to transcendental authority and the separation of fact from opinion and Politics. Much of what characterises family law in the latter part of the this century is the result of a long process of debunking and rejection of principles which derive ultimately from decidedly pre-modern, Judaeo-Christian traditions. The natural order of things, according to these traditions, was reflected in a number of rules and principles, including the common law doctrine of *femme covert* and those associated with paternal hegemony in areas such as child custody law. The rules, judicial statements and procedures of modern New Zealand family law indicate, on the surface at least, just how much of a departure from these principles there has been.

Those who read New Zealand child custody judgments will be reminded of this. Section 23 of the Guardianship Act 1968, which contains the rule that the welfare of the child must be the first and paramount consideration in matters of custody, access and guardianships [See Note 8] lists factors which judges are not permitted to take into account when making decisions about children. Parental conduct may be considered "only to the extent that such conduct is relevant to the welfare of the child". [Guardianship Act 1968, s 23]. Presumptions based on gender are specifically outlawed. [Guardianship Act 1968, s 23(1A)]. The wishes of the child need be considered only "to such extent as the Court thinks fit, having regard to the age and maturity of the child. [Guardianship Act 1968, s 23(2)]. Peppering child custody judgments are judicial statements to the effect that the Family Court deals "with human feelings, not any arid question of fact or law" and "will respond to the human situation in any case which comes before it." *Tiller v Esera* 26.4.89 unrep., Family Court, Wellington F.P. 085.016.89. Results in child custody decision are said to be "personalised" to meet the circumstances of the particular cases. ['Spence *v Spence* (1984) 3 N.Z.F.L.R. 347, 350; *Kidd v Kidd* 3.5.91 unrep., Family Court Hastings, F.P. 021.128.89.] Outcomes are "tailored" to meet the individual circumstances of the families who come before the Court.

These developments are consistent with the view that modern child custody law has eschewed much of its legal content. Judge B.D. Inglis Q.C., a leading New Zealand family law jurist, captured the point with his observation in 1964 that "[f]ew areas of the law-are less suited to formal legal treatment than those relating to the custody and guardianship of children." [See Note 14] New Zealand child custody law has travelled a long way from the common law rule that fathers have an absolute right to the custody of their children [See Note 15] and from the rules of thumb and presumptions which fettered the judicial discretion in the early part of the 20th century. [See Note 16] Judge Inglis' comment anticipated a period of intense interest in what the social sciences could offer to the area. In the 1970s judges told us that deliberations in the area were based on "an enormous increase in our knowledge and understanding of human nature and behaviour and the forces that shape it." [See Note 17] The work of Coldstein, Freud and Solnit, particularly that concerning the "psychological parent principle", [See Note 18] was influential in Aotearoa/New Zealand, [See Note 19] as it had been elsewhere." [See Note 20] At the beginning of the 1980s amendments to the Guardianship Act 1968 increased the role of non-legal personnel. Specific provision was made for psychiatric, medical or psychological reports to be prepared in respect of any child who is the subject of an application under the Act. [See Note 21]

With the introduction of the New Zealand Family Court system, and its accompanying counselling services, the hope was, and continues to be, that most disputes over the custody of children would be "resolved" by a counselling process with only the most entrenched disputes going to a full judicial hearing.

Broadly parallel, if not identical, developments have occurred in the area of matrimonial property law...

In this paper, we wish to highlight some of the problems which we consider accompany the characteristics of family law in Aotearoa/New Zealand just described. First, there is very little deep questioning of the aims and purposes of family law. This is hardly surprising. The suggestion that family law might be "for" anything is inconsistent with the dominant view that it is ideologically neutral. In general, it is to be observed of Anglo jurispru-

dence that, whereas discussion of the purposes, policies, or aims of discrete areas of law enjoys a central place in the literature, [See Note 29] in family law such analyses tend to lie on the margins. [See Note 30] Secondly, and more importantly, because family law is not clear about its own purposes, we are left with a body of law which deals awkwardly with other, external ideas and agenda.

Notes

8 The Infants Guardianship and Contracts Act 1887 required that, when making a child custody determination, the Court should have regard to "the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father." This provision had been borrowed from English legislation, the Guardianship of Infants Act 1886 (U.K.). The provision remained in the same form in s 6 of the Infants Act 1908 The paramountcy principle was first enshrined in New Zealand legislation with the Guardianship of Infants Act 1926, following a similar change made by the Westminster Parliament the previous year.

14 B.D. Inglis Q.C. in "Custody" (1964) 1 N.Z.U.L.R. 310, 310. Of course, these observations are not unique to New Zealand. See, for instance, the statement of Lon Fuller that, in the child custody area, a Court is not '[nlot applying legal rules at all, but is exercising an administrative discretion which by its nature cannot be rule bound". L. Fuller "Interaction Between Law and its Social Context' (1971 item 3 of unbound material for students, University of California at Berkeley) cited in R.H. Mnookin 'Child Custody Adjudication: Judical Functions in the Face of Indeterminacy" (1975) 39 L. and Contemp. Problems 996,255.

15 See, *e.g.,* the comments of Bowen L.J. in *Re Agar-Ellis* (1883) 24 Ch. 317, 337-338: "Then we must regard the benefit of the infant. but it is to be remembered that if the words 'benefit of the infant' are to be used in any but the accurate sense it would be a fallacious test to apply to the way the Court exercises its jurisdiction over the infant by way of interference with the father. It is not the benefit of the infant as conceived by the Court, but-it must be the benefit to the infant having regard to the natural law which points out that the father knows far better as a rule what is good for his children than a Court of justice can.' The English common law of child custody was recognised as being part of New Zealand law in *1.H. and L.J. Thomson (Infants)* (1911) 20 N.Z.L.R. 168, 169-173. Despite statutory changes which emphasised the welfare of the child, beginning with The Infants Act 1908, some New Zealand judges persisted with the view that the father's rights were paramount. See, *e.g., In re X and Y, Infant Children of A and B* (1912) 14 G.L.R. 668, 669 where Edwards J. commented: "The law upon this question is quite clear. At common law the father had the exclusive right to the custody of his children. That right still remains, but it is now, by the Infants Act 1908, made subject to the control of the Court." This analysis persisted as late as *Palmer v Palmer* [1961] N.Z.L.R. 702, 709 (C.A.) where Gresson F. noted that the "statutory provisions leave a residue of the common-law right in a father."

16 An example of one such rule was the presumption that a mother who was "guilty" of adultery was not suited to have custody of or access to her children. See *Fleming v Fleming* [1948] C.L.R. 220 (C.A.). These rules are discussed in G. Austin *Children: Stories the Law Tells* (1994, Victoria U. Press) Chapter 3.

17 *Hall v Hall* 22.8.77 unrep., Supreme Court, Auckland Registry 614.77; *B v B* [1978] 1 N.Z.L.R. 285, 289. See also, M. Henaghan "Judicial Attitudes in the Use of Expert Evidence in Custody Proceedings" (1978) 4 Otago L. Rev. 262; C. Jackson "Custody: Specialist Evidence" in *The Rights of the Child and the Law* (1979 Conference Papers, N.Z. National Commission for the International Year of the Child); on file with authors; C.P. Davidson "Counsel for the Child and Psychological Expert Witnesses in Custody and Access Cases" [1980] N.Z.L.J. 177,177.

18 J. Coldstein, A. Freud and A.J. Solnit *Beyond the Best Interests of the Child* (1973, Free Press).

19 *S v E* (1981) 1 N.Z.F.L.R. 73; *McKewen v McKewen*. 12.12.85 unrep., District Court, Christchurch F.P. 009.811.81; *M v M* x.4.88 unrep.,Family Court Palmerston Nth. F.P. 054.318.87 (specific date of the judgment illegible).

20 See generally, R.E. Crouch 'An Essay on the Critical and Judicial Reception of *Beyond the Best Interests of the Child*" (1979) 13 F.L.Q. 49 and the sources cited therein.

21 Guardianship Amendment Act 1980, s 17.

28 Much important scholarly work, particularly that in the area of feminist legal theory, has chipped away at the smooth surface of political and ideological neutrality that family law in the West presents to the world. In the United States context, Martha Fineman's writings expose modern child custody decision-making and matrimonial property law as continuing to serve patriarchal agenda. See M. Fineman *The Illusion of Equality: the Rhetoric and Reality of Divorce Reform* (1991, Chicago U. Press).

29 Numerous examples could be cited here. See, *e.g.,* the discussion of the purposes of tort law which appears in S. Todd (ed.) *The Law of Torts in New Zealand* (1997, 2ed., Brooker's) 32.

30 See, *e.g.,* J. Dewar *Law and the Family* (1992, 2 ed., Butterworths), a text whose theoretical stance made it a somewhat uncharacteristic addition to family law literature.

Source William R Atkin & Graeme W Austin *'Family law in Aotearoa/ New Zealand; Facing Ideologies'* Paper Ninth World Conference of the International Society of Family Law, Durban, July 1997.

AUSTRALIAN HISTORICAL NOTES

1896 Western Australia adoption NZ link

Marshall & McDonald— In 1896 Western Australia was the first Australian state to introduce formal adoption legislation although various forms of child placement referred to as adoption were quite widely practised throughout the country. The breaking of the blood tie creating instead a new legal bond required a conceptual and practical leap which was approached on the whole with reluctance and caution.

Child labour link

The early introduction of legislation in Western Australia seems to have arisen from a combination of circumstances. Throughout the 1890s when the other colonies were affected by economic depression, Western Australia was experiencing a boom as a result of the discovery of gold. The social disruption caused by the gold rushes had resulted in labour shortages, increasing the value of child labour. The reclaiming of children from their long-term foster parents, as they became a potential source of family income, clearly gave major impetus to legislative action. The object of the Bill as set out in the Legislative Council second reading speech was 'to provide for the adoption of children and to see that when they are adopted they cannot be taken away from those who have adopted them when, perhaps, they are becoming useful'.'

The bill was introduced as a private member's bill by Mr Moss, the Member for North Fremantle, originally a New Zealander, who had experience of adoption legislation in that country dating back to 1881. The Western Australian Adoption of Children Act closely resembled the 1895 New Zealand Act. It seems thus to have been in the more remote outposts of Empire that such innovations found early support. It is interesting to note that the Western Australian Adoption Act was passed with virtually no debate and only one minor amendment.' Marshall & McDonald 2001 p19

Baby Farming

Marshall & McDonald— In the absence of any state-sponsored scheme for the care or support of illegitimate children, it was up to the mother to make what arrangements she could. Either through some personal connection or by means of a newspaper advertisement, contact would be made with a woman or couple willing to take the child. A lump sum payment would be made or a regular monthly payment arranged. Children were commonly taken on this basis by people, themselves in poor circumstances, as a means of augmenting their income. There were many abuses of the system, including the passing on of the child from one 'adopter' to another for a lesser fee, or of the child being left to die slowly of neglect or starvation. 'Baby farmers' would take on more children than they could possibly hope or plan to care for, answering advertisements placed by women desperately seeking immediate care for their child, and in some cases a permanent solution to the dilemma the child's existence posed for them.

The famous 1893 trial of John and Sarah Makin, which resulted in the only recorded conviction for the offence of infanticide, revealed one of the most extreme instances of the practice. There was evidence of infant corpses disinterred from the backyard of the couple's house, and a history of the use of aliases and changes of address to escape detection.

Such cases sometimes came to light through the reports of women, who, on returning to visit their children, found them ill or neglected, or who were unable to locate the children, the supposed adopters having moved on. However, from the evidence it seemed to Judith Allen that

Boarding out

While baby farming and infanticide represent the dark side of the possible fate of children whose parents were unable or unwilling to care for them, the boarding out system established by the State Children's Relief Act of 1881, even with its acknowledged inadequacies, represents the bright side. The long established practice of caring for orphaned, abandoned or neglected children in physically imposing but functionally bleak and uncomfortable establishments was, by 1970s coming under substantial criticism. The so called 'barracks system', where large numbers of children were cared for together an subjected to a highly disciplined routine, as found be the 1873/74 Royal Commission into Public Charities in NSW to be failing in its principle aim of developing young people for a productive life in the community. Instead, in the view of the Commissioners, children thus cared for tended to be "`well drilled", "noiseless machines" who lacked the moral development provided in a proper family setting'. On discharge from wardship they were thrust ill equipped into a world of which they had little knowledge and where they had little support. Family care by foster parents who were paid an allowance by the state was recommended as the desirable alternative. This was a major policy shift which did not readily find general acceptance and which was, understandably, strongly resisted by the institutions and their supporters.
Source Marshall & McDonald 2001 pp22-23

Australian Statistics

In New South Wales, for example, between the time adoption legislation was first passed in 1923 until the 1965 Act, more than 58 000 children had been adopted, echoing a similar growth in other states. These impressive numbers could be seen as an indictment of a society which required such a stark solution to an unwanted pregnancy, or as a measure of the confidence the community had in adoption. **Source** Marshall & McDonald 2001 p8

Secrecy in Australia

1930s *Marshall & McDonald—*"Already the need for secrecy was emerging as an issue. Provision was made for cases to be heard in closed court, both to advance the aim of the Bill to protect the child from 'the unfortunate stigma of illegitimacy' and to ensure an adequate supply of prospective adopters The creation of an Adopted Children Register, which would enable the issue of a certified copy

of birth details concealing the child's original identity, was yet another measure to overcome the difficulties that were perceived to have arisen from ready access to facts concerning the parentage of the child. In New South Wales, the 1939 Child Welfare Act added similar provisions, as well as provision for the discharge of an adoption order, continuing the pattern of states' building on each other's experience." Marshall & McDonald p p29

"The enforcement of secrecy provisions was aimed at completely severing any connection between the child and the natural family. The idea of a 'clean break' or a 'fresh start' was seen to be in everyone's interests; the child relieved of the shame of illegitimacy, the birth mother able to put behind her the spoiled identity of unmarried motherhood, the adopting parents with unchallenged possession of the child who became, once adopted, 'as if born to them'. The granting of automatic rights of inheritance could be seen as part of this process." Marshall & McDonald 2001 pp37

1960s Clean break closed adoption

In the 1960s, when the more or less uniform adoption legislation was enacted throughout Australia, adoption practice was very largely based on the 'as if born to them' philosophy. The clean-break approach which this understanding dictated essentially viewed adoption as a one-off event, a transfer of parental rights from birth parents to adoptive parents, severing the child from the family of origin. It did not anticipate that the child as an adult would have any future need to contact that family nor that the birth parent would have any future role in the child's life. Practice was marked by a tendency to emphasise the similarities between adoptive parenthood and natural parenthood. The Canadian sociologist David Kirk effectively shattered this approach with the new understanding of adoptive parenthood which his research revealed. Marshall and McDonald p122

1984 Open adopt conditions on adoption order

"The 1984 Victorian Adoption Act made provision for conditions agreed to between the relinquishing parents and the adopting parents regarding access or exchange of information to become part of the order of adoption." Marshall & McDonald 2001 pp40

Rights to identifying information

Marshall & McDonald— "Rights to information dominated much adoption discussion over the next few years but, despite increasing political support, particularly for the rights of adoptees, there was still strong underlying resistance to change. The first state to change was Victoria which, in 1985, implemented legislation granting adopted persons over the age of 18 the right of access to their birth record, subject to mandatory counselling. Birth parents in Victoria had the right to ask that an approach be made to adult children to sound out their views about contact. In 1988 South Australia legislated giving equal rights to adoptees and birth parents but with a veto against the release of information. With legislative change under way in other states, and no longer able to ignore the insistent voice of the adoption community, the New South Wales Government in 1988 chose the mechanism of referring this question to the newly established Legislative Council Standing Committee on Social Issues....

The Committee's report stated: 'it is a unique form of discrimination against adult adoptees that they are not able to access information about their own origins. By the same token it is considered no longer justifiable to deny birth parents access to the adoptee's post adoptive birth certificate once the adoptee reaches adulthood' Marshall & McDonald p43-44

During the 1928 Victorian debate it was pointed out, quoting a report from New South Wales, that the 800 adoptions already completed in that state would result in a saving over fourteen years of £300 000. Marshall & McDonald p30

Legal adoption also offered women, unable or unwilling to care for their children, a socially sanctioned alternative to baby farming, or more desperately, infanticide or abandonment. Marshall & McDonald p30

200,000 children adopted

Well over two hundred thousand locally born children have been adopted in Australia since the first legislation relating to adoption was enacted in Western Australia in 1896 and in other states in the 1920s. The great majority were ex-nuptial children.

67,000 adopted by relatives or stepparents

To put these very large numbers into perspective it is important to note that adoption by relatives and natural parents represented at least one-third of the orders made.

Majority of ex-nuptial mothers kept their child

Contrary to current public perception of what happened to unmarried mothers during the decades of social conservatism and condemnation of ex-nuptial pregnancy that followed the introduction of legal adoption, it is clear that over this whole period a majority of these mothers kept their children.' They did so despite the lack of readily available and adequate financial support and in the face of generally unsympathetic and judgemental public attitudes. Marshall & McDonald pp46-47

Prior to 1970s only means of legitimisation

As already mentioned, prior to changes in legislation in the 1970s adoption provided the only means of legitimisation of children born outside marriage. Absurd as it was, if the parents subsequently married they could only legitimate the child by adopting it! If the mother married someone not the birth father, the child could be legitimised only by the couple adopting it. This accounts for the large number of natural-parent adoptions. Marshall & McDonald p47

Legislative change re adult access to records

Victoria led the way with legislation enacted in 1984 and implemented in 1985. Tasmania and South Australia followed in 1988 (1989), New South Wales and Queensland in 1990 (1991), the Australian Capital Territory in 1992 (1993) and the Northern Territory in 1993 (1994). We shall examine more closely three states: Victoria, Queens-

land and New South Wales.

Victoria

The change in the law in Victoria arose from the recommendations of the Adoption Legislation Review Committee appointed in August 1978. Some idea can be gained about the degree of community concern attached to adoption law change by considering the activities of this Committee. It met on 124 occasions, issued a preliminary working paper in 1979 and two major working papers in 1980 and 1981, held public consultations in Melbourne and six regional centres in 1982 and issued its final report in March 1983. Despite the length and range of this process there was considerable anxiety among politicians, bureaucrats and professional adoption workers about the possible effects on individuals and families of the access to information provisions, and about political fallout from this legislative change. p130

New South Wales

Legislative Council Inquiry set up in 1988 into access to adoption information influenced by the Victorian experience was able to complete its report in little more than a year. Its recommendations came down firmly in favour of equal rights for adopted persons and birth parents and against mandatory counselling, opting instead for the Contact Veto as a protective measure.

Queensland

Government, using this and material of its own, took up these ideas, enacting in 1990 legislation very much in line with the recommendations of the New South Wales report. However, a highly organised and effectively targeted political campaign led by the Queensland Adoption Privacy Protection Group, mainly representing adoptive parents, led to an eleventh-hour amendment to the legislation, almost on the eve of its planned implementation in March 1991.

This amendment brought about a significant rebalancing of the scales in favour of rights to privacy, providing an objection to release of information in addition to an objection to contact. The objection could be lodged by completing and returning the required form by mail with a minimal requirement in relation to authenticating the identity of the person lodging the form. It was subsequently established, although no action was ever taken, that some objections had been lodged without the consent or knowledge of the adopted person who was purported to be the objector. The objection remains in force until revoked, not even being lifted by the death of the objector. The law precludes any right on the part of the Department, the only adoption authority in the state, to approach a person who has lodged an objection in any circumstances unless a prior authority to do so has been indicated. pp132-133

Reasons for different AP response to law change

The Key Young's research NSW suggested that 'the difference may be linked to different patterns of family functioning, with members of 'closed' families more threatened by the Act than members of more "open" families'.

Another observation made in the Commission's report is 'That these parents, it seems had approached their role as if it were no different from that of other parents ...The child's interests would be promoted by having an "ordinary" family'." The assumption seems reasonable that 'closed families' would tend, in David Kirk's terms, to choose the rejection of difference model of adoptive parenting, and that they would have been encouraged in this by the advice given to them at the time they adopted. Given the natural tendencies of such families it is open to doubt whether a better informed assessment process would have much changed their approach. However, as one adoptive mother said to the Keys Young researcher: 'There is no way we would have adopted if this law was there then. We would not have gone into adoption'." This has been a sentiment which post-adoption workers have heard expressed again and again by distressed adoptive parents. The Keys Young report commented:

> Whereas once a 'closed family' was the norm and was supported in the community's view of adoptions, now adoptions are expected to take place only where an open system can be sustained ... Thus the issue of 'retrospectivity' reflects the tragedy whereby some families who are almost constitutionally unable to work as 'open families' are threatened in a very deep and fundamental way with being forced to do so. p139

Current practice

As adoption is practised today in most parts of Australia it seems unlikely that families tending towards the closed end of the family structure continuum would be attracted to adoption or would be likely to be accepted as adopting parents. The move away from secrecy, the expectation that children will be told of their adoption and that, as an absolute minimum, will during the years of dependence have access to non-identifying information about their background provides from the beginning a focus on the existence of another family, and the possibility, sooner or later, of a relationship with that family. At 18, adoptees may obtain their original birth certificates. As a result of birth parents' right, either to information or to have an approach made on their behalf, all adoptees as adults may be open to contact from these other parents. Such factors set the whole arrangement in a quite different framework from past adoptions. The replacement of the 'clean break' with the ideal of ensuring some continuity for the child means that both birth parents and adoptive parents will be encouraged to maintain some form of ongoing contact, if only in the periodic exchange of letters and photographs. p140

Open adoption

In Australia the earliest and most limited open adoption practices date back to the early 1970s when some agencies began to ask applicants to provide some news and an early photograph of the baby for the birth mother. One New South Wales agency dated the first meeting between a birth mother and the adoptive parents of her baby to 1979. The move towards openness has been an incremental process that has, however, accelerated greatly since the late 1980s and early 1990s. p141

New Zealand was arguably ahead in promoting open adoption practices, as described by the New Zealand ex-

pert Mary Iwanek in a 1994 paper. From her experience of twenty years of encouraging open adoption and of facilitating closed adoptions into open adoptions she stresses that it is not a practice to be romanticised as ensuring a 'happily-ever-after'. It is a relationship that must be worked on and which makes great demands on everyone concerned. p141

Research re openness

Harriet Gross American 3 year longitudial study of 41 post placement relationships between birth and adoptive families. Found—

Three patterns off openness

1 Rejector families-minimal openness. They had some pre-placement contact with the birth family and none or limited post-placement contact.

2 Acceptors-relatively advanced. Families who maintained contact with the birth family, 'viewing the instrumental value to their child as the primary basis for maintaining the relationship'

3 Embracers-defined the birth mother and/or members of her family as emotionally significant to themselves as well as to their child'. For these families contact seemed to be frequent, inclusive and flexible. Relationships develop and the effort and anxiety that are a part of reaching a plateau of comfortable acceptance on both sides
Australian workers can readily identify with these categories, able immediately to think of families known to them who fit into each group. The foot-in-the-door 'Rejector' families are those likely to have had little access or receptivity to an educative process and who, post-placement, respond fearfully and reluctantly to other than minimal requests for exchange of information. The middle group of 'Acceptors', likely, as Gross predicted, always to be the majority, see the contact as acceptable and useful and will feel some regret if the birth family withdraws. The smaller group of 'Embracers' create a relationship with the birth family which they value for its own sake and which is likely to be ongoing. Families will move between these categories according to their experience of contact and the degree of encouragement and support they may receive from the placement agency and people in their social network. p143

Viability of open adoption

Grosses observation— "The viability of open adoption arrangements together with other non-biologically connected units who define themselves as 'real' families challenge anew the inconsistencies and ambiguities inherent in our culture's formal insistence on 'blood' connection - with all its historical/contemporary political, legal and other policy undergirding."

Such families are in no doubt about the benefits of open adoption for themselves and their children. Such ideal outcomes are not uncommon. It must be recognised, however, that the wishes, needs, capacities and circumstances of birth and adoptive families will not always be conducive to open arrangements nor to producing such satisfactory results. p145

Rising Criticism of adoption

Among the most painful experiences for adoptive parents has been the growing criticism from some quarters of adoption' as an institution, and in particular aspects of past adoption practices, which have emerged with an ever more powerful birth parent voice following the legislative change.

Adoption is, however, an institution with a long and impressive history, and adoptive parents who have themselves gained so much from adoption have in their turn rendered a remarkable service to their children and to their communities. As we have considered the evolution, some would say 'revolution', in adoption law and practice, and the demands made on adoptive parents as a result..... Considerable emphasis has been laid on the inadequacy of adoption services during the critical years when very large numbers of families, adopted. The stress during those years on the 'clean break' and on adoption as a replication of natural parenthood were in the long run to prove counter-productive to many families and their children. p147

Source Marshall & McDonald 'The Many-sided Triangle-Adoption in Australia 2001.

Adoption in other English-speaking countries Earliest adoption laws 14.01

The State of Massachusetts in the US in 1851 passed the first adoption laws in any English-speaking country. Sixteen other American States passed adoption legislation modelled on the Massachusetts adoption law between 1851 and 1875, predating New Zealand's Adoption of Children Act, which was passed in 1881. In Australia, Western Australia was the first state to pass adoption laws in 1896, followed by Tasmania in 1920, New South Wales in 1923, South Australia in 1925, Victoria in 1928, Queensland in 1935, the Australian Capital Territory in 1938, and the Northern Territory in 1949. See S M Cretney, *Principles of Family Law* (4th ed), Sweet & Maxwell, 1984, p 417, Adoption of Children Act 1896 (WA), Adoption of Children Act 1920 (Tas), Child Welfare Act 1923 (NSW), Adoption of Children Act 1925 (SA), Adoption of Children Act 1928 (Vic), Adoption of Children Act 1935 (Old), Adoption of Children Ordinance 1938 (ACT), and Adoption of Children Ordinance 1949 (NT).

Adoption in the UK A.14.02

Adoption in the UK is governed by the Adoption Act 1976. In the UK adoption arrangements are handled by local authorities and accredited adoption agencies. They can apply to the Court for an order that a child be freed for adoption: s18. A parent cannot give a valid consent to adoption until the child is 6 weeks old: s 16(3). Birth parents can ask to be notified of progress with the adoption and must then be advised after 12 months whether the adoption order has been made and whether the child has its home with the adoptive parents: s 19.

Major reform of adoption law in the United Kingdom has been in the air for some years. An inter-departmental review of adoption law conducted between 1990 and 1992 produced a number of background papers and discussion

papers. A Family Law Bill introduced in 1995 included in Part II some changes to adoption law but these have never been brought into effect. A government white paper, Adoption: A New Approach, released in 2001 stressed the importance of speeding up adoption processes to reduce the tendency of children to drift in care and to reduce the number of children held in residential institutions. Following the white paper, an Adoption and Children Bill was introduced in 2000 and an amended Bill in 2001. One proposal is to establish pilot specialist adoption centres in some County Courts. An important feature would be active case management of adoption cases. The reform process seems to have since stagnated: see S Harris-Short, *The Adoption and Children Bill: A Fast Track to Failure* (2001) 13 (4) Child and Family Law Quarterly 405.

Adoption in Australia A.14.03

In Australia adoption is a responsibility of States and Territories rather than the Commonwealth Government. Adoptions are dealt with in State or Territory Courts and not in the Commonwealth Family Courts. Current adoption legislation for each State and Territory is:

(a) Australian Capital Territory: Adoption Act 1993
(b) New South Wales: Adoption Act 2000 (in force February 2002)
(c) Northern Territory: Adoption of Children Act
(d) Queensland: Adoption of Children Act 1964
(e) South Australia: Adoption Act 1988
(f) Tasmania: Adoption Act 1988
(g) Victoria: Adoption Act 1984
(h) Western Australia: Adoption Act 1994.

The most recent (and most advanced) adoption legislation is the New South Wales Adoption Act 2000 (NSW). There are some admirable features too about the Western Australian Adoption Act 1994.
These statutes can be accessed via the internet through http://www.austlii.edu.au
Source Trapsli's Family Law Vol.5. 'Adoption' A.14.01-A.14.02. 24/10/2003.

Aboriginal people forced adoption

Delany—Most certainly in the case of Aboriginal people the process of adoption was used as a means towards cultural genocide implicit in the white Australia policy. This racist, exclusionary and inhuman policy was informed by particular ontological perspectives that were imported into Australia via colonisation. These Eurocentric perspectives were importations of particular discursive knowledge positions that emerged from within, and as a consequence of the socially constructed, economic and political contexts of 18th century Europe. After colonisation in Australia many thousands of Aborigines were separated by force from their natural families and transported to 'white' institutions or adopted into white families. The real effects of forced separation from family and culture are known only too well by those Aboriginal people who were subjected to the process. They are experienced as a complete, unjust corruption of their tradi-tional culture that was designed to exterminate their race over time. However, these issues are only just beginning to be acknowledged publicly by white Australia. It can also be argued that while the effects of the process of cultural genocide as assimilation, via adoption, on Aboriginal people are becoming increasingly acknowledged, the effects, for many non-Aboriginal children who were removed from their families of origin are not. The effects of traditional, non-Aboriginal adoption and the suffering experienced by many of those exposed to it remains publicly unacknowledged. In both Aboriginal and non-Aboriginal adoption it was used as a means towards the satisfaction of particular socially constructed ends. Both Aboriginal and non-Aboriginal adoption involved social dislocation and physical separation in order to satisfy different socially constructed purposes. p124
Source Denys Delany* 'Understanding adoption: epistemological implications' in book '*Adoption and Healing*' p124
*PhD studies University of South Australia.

FRANCE - HISTORICAL NOTES

Brief historical background to the system of anonymous births in France and its evolution

Case of Odièvre v France 2003—

15 The *mater semper certa est* rule has not found acceptance in French law. There is an ancient tradition in France that enables newborn babies to be abandoned in accordance with a set procedure. The practice can be traced back to the time of Saint Vincent de Paul, who introduced the use of the *tour*, a sort of revolving crib housed in the nursing-home wall. The mother would place the child in the crib and ring a bell. On that signal someone on the other side of the wall would cause the *tour* to pivot and collect the infant. The aim of Saint Vincent de Paul in setting up the Foundlings Home (*Oeuvre des Enfants trouvés*) in 1638 was to prevent infanticide, abortion and babies being abandoned outside churches.

Revolution- Care for abandoned children

The Revolution introduced a reform making medical care available to expectant mothers who wished to abandon their children anonymously. In 1793 the Convention passed the following provision:

"The Nation shall bear all the costs of the mother's labour and provide for all her needs during her stay, which will continue until she has fully recovered from her confinement. All information about her shall be treated in the strictest confidence."

1904 Open office for abandoned children

The system of abandonment in the *tour* was abolished by a law of 27 June 1904 which introduced the "open-office" (*bureau ouvert*) system (the office was open day and night so that the mother could leave her child there secretly, without disclosing her identity; at the same time she could be given information about the consequences of abandoning the child and offered assistance). The tradition of assisting anonymous births led the Vichy Government to adopt the Legislative Decree of 2 September 1941 on the Protection of Births. The Legislative Decree allowed the mother to give birth anonymously and to receive free medical care during the month preceding and the month following the birth in any public hospital able to provide her with the care her condition required. That provision was repealed and subsequently reintroduced by decrees of 29 November 1953 and 7 January 1959, before being amended in 1986 and becoming first Article 47 of the Family and Welfare Code and then the current Article L. 222-6 of the Social Action and Families Code:

"The costs of accommodation and confinement of women who, on being admitted to a public institution or approved private institution, request that their identity remain secret shall be borne by the Child-Welfare Service in the *département* in which the institution's head-office is located.

At their request or with their agreement the women referred to in the first sub-paragraph shall receive psychological support and practical advice from the Child-Welfare Service.

The first sub-paragraph shall apply without any means of identification being required or inquiry conducted.

If the name of the child's father or mother has been recorded in a birth certificate issued within the period prescribed by Articles 55 et seq. of the Civil Code, there shall be no legal entitlement to have the costs of accommodation and confinement paid for by the Service."

1993 System of anonymous births

The system of anonymous births was embodied in Law no. 93-22 of 8 January 1993 "amending the Civil Code as regards Civil Status, the Family and the Rights of the Child and instituting the office of Family-Affairs Judge", which introduced new provisions concerning the secret abandonment of children. For the first time, choosing to give birth in secret had an effect on the determination of filiation, as Articles 341 and 341-1 of the Civil Code created an estoppel defence to proceedings to establish maternity: there was no mother in the legal sense of the word:

"An action to establish maternity may be brought subject to the application of Article 341-1. The child bringing the action shall be required to prove that he or she is the child to whom the alleged mother gave birth. The case may be proved only by strong presumptions or circumstantial evidence.

On giving birth, the mother may request that her admission to hospital and identity shall remain secret."

In addition to Article L. 222-6 of the Social Action and Families Code setting out the procedure for anonymous and secret births – which are generally known as "births by an unidentified person (*accouchement sous X*)" and are related for filiation purposes to the aforementioned Articles 341 and 341-1 of the Civil Code – information about a child's origins may also be confidential under another provision. Provided the child is less than a year old, its parents may entrust it to the Child-Welfare Service and request that their identity be kept secret (former Article 62-4° of the Family and Welfare Code, which later became Article L 224-5, 4° of the Social Action and Families Code). The filiation stated in the civil-status documents is annulled and a fictitious birth certificate, known as a provisional civil-status certificate, issued in lieu.

Official Reports and Reform

16 Since the adoption of the Law of 1993, several official reports have suggested that a reform of the system of anonymous births would be desirable.

As far back as 1990, a report by the *Conseil d'État*, entitled "Status and Protection of the Child", proposed the setting up of a mediatory body, "the Council for Tracing Family Origins", to allow information to be communicated and contact to be established between the persons concerned, provided the interested parties consented. The *Conseil d'État* thus emphasised the need for a prior consensual basis before secret information about a child's origins could be disclosed. In that connection, it noted the difficulties inherent in searching for a parent ("this task is rendered all the more difficult by the fact that the administrative authorities currently follow a wide variety of practices with regard to the secrecy of origins. No method for tracing relatives can be established in these conditions. Nonetheless, one consistently finds in practice that a certain amount of information is collected and preserved and, in theory, it could be used. However, it will only become usable if a uniform, clear and simple procedure for collecting and preserving the confidential information relied on is established beforehand"); it also

observed that professional secrecy obligations constituted a serious impediment to tracing. For that reason it proposed a compromise that would enable professionals to disregard their confidentiality obligations if they considered it appropriate for the purposes of enabling family origins to be established. In short, the *Conseil d'État* proposed that children should be given a limited right of access to information regarding the identity of their progenitors through the intermediary of a specially created structure that would be responsible for ascertaining the wishes of the parents and facilitating a psychological *rapprochement* of the parties.

In 1995, a report by Mr Mattéi entitled "Children from here, children from elsewhere – adoption without borders" proposed preserving the system of secret births, but suggested that it might be possible for non-identifying information to be gathered.

Report of Parliamentary Inquiry 1998

The report of the Parliamentary Inquiry Committee presided over by Laurent Fabius "Rights of the child, uncharted territory", which was made public on 12 May 1998, proposed reforming the system of anonymous births in these terms:

"It is possible to envisage information on the child's biological filiation being kept with a public institution. Confidential information could be disclosed during the child's minority on a joint application by the mother and child. The right to make such an application could be made subject to conditions concerning the child's capacity or as to minimum age. The right would only be exercisable by the child in person, not its legal representative. Once the child has reached the age of eighteen, the information would automatically cease to be confidential at the child's request, subject to the mother being informed. In any event, disclosure of the confidential information would be incapable of having any effect on the parental ties the child already enjoyed...

A system of this type could initially be established for cases of anonymous births and secret abandonment and subsequently extended, once the legislature considered it appropriate, to births following medically assisted procreation."

A report by Irène Théry entitled "Couples, filiation and parenthood today – the challenges posed to the law by changes in family and private life", which was submitted to the Minister of Justice and the Minister for Employment and Solidarity on 14 May 1998, made the following proposal:

"In view of the extremely serious consequences of anonymous births, which deprive the child of both its paternal and maternal filiation, we propose repealing Article 341-1 of the Civil Code. Putting the child up for adoption voluntarily and responsibly appears to be a more balanced and less painful course for the child."

A report by Professor Françoise Dekeuwer-Défossez entitled "Modernising family law: proposals for a law adapted to the realities and aspirations of our times", which was submitted to the Minister of Justice on 14 September 1999, provides a resume of the lively debate on the legitimacy of secrecy. It proposes retaining the system of anonymous births, repealing Article 62-4 of the Family and Welfare Code and encouraging a reversible implementation of a right for mothers to give birth "discreetly" by, for instance, the creation of a body or the appointment of referents who would be responsible for keeping confidential the mother's identity if she has so requested and would also act as mediators.

Law no. 2002-93 of 22 January 2002 on "Access by Adopted *See Resource CD*

Source *Case of Odièvre v France 2003*— European Court of Human Rights. Application 42326/98. Extract from the Judgment, Strasboug, 13 February 2003. Case held before 17 Judges. The full Judgment of 45 pages is on the *Adoption Resource CD.*

SEE "France*' in* 'World Adoption' on *Adoption Resource CD* for more information.

IRELAND- HISTORICAL NOTES

Background and history of adoption in Ireland

Ireland's first adoption law was the Adoption Act, 1952. Prior to its introduction, adoption had been an informal and unregulated process. Although there were several adoption agencies in existence prior to the enactment of legislation, they were operating without mandate and their operations left children in a legal limbo.

The introduction of adoption law was, it seems from a study of the National Archives, designed not to serve the best interests of the child, but rather to serve the needs of adoptive parents and the Roman Catholic Church. Our research [3] has failed to find any indication that the psychological implications on either natural parents or children were taken into account.

Ironically, the Roman Catholic Church had initially opposed legal adoption [4] , but evidently eventually changed its mind on the basis that a legal system of adoption, which it had helped to draft, would prevent the practice of prosleytism, which it saw as a major problem. Indeed, one agency was formerly even known as the Catholic Anti-Prosleytism Agency. Following the approval of the Bill by Archbishop John Charles McQuaid, it passed into law and came into effect on 1st January 1953.

What followed was nothing less than the widespread and systematic abuse of both natural parents and their children.

The catalogue of abuses inflicted on the natural parents of this country has finally come to widespread public attention, due in part to some survivors of the system who have spoken out, but mainly due to the media. We refer you to such books as Mike Milotte's "Banished Babies", June Goulding's "A Light in the Window", "Sex in a Cold Climate", "States of Fear", and the dramas "Sinners", "Magdalene Sisters", and the play "Stolen Child". While these latter are fictionalised dramas, they are all rooted in fact – in the personal accounts as told by survivors to the writers of the above, to the now-adult children who have found them and to the APA.

The abuses inflicted on natural parents in the State-funded Mother and Baby Home system

and the Magdalene Laundries included:

1 Imprisonment, with the complicity of the State, in insti-

tutions for periods of time varying from weeks to years. Some of these women are *still* effectively imprisoned, having become so institutionalised that they can no longer live in normal society.

2 Forced labour, involving heavy physical work, which often had to be carried out until a woman went into labour, and other forms of work that we regard as deliberate mental cruelty. [5]

3 Deliberate withholding of appropriate medical treatment prior to, during and after births, endangering the lives of both mothers and babies and inflicting needless pain. Births without pain relief were the norm. Episiotomies and stitching without pain relief were also commonplace.

4 Women and girls were, in many cases, not permitted to leave Mother and Baby Homes after the birth, but instead had to remain and work and also care for their child. Often they were forced to remain for two years. Coincidentally, this is the same length of time that the Mother and Baby Home would receive a State payment, equivalent to the average industrial wage, for each mother and baby. When the payment ran out, the children were placed for adoption and the mothers were released. The concept of making the payment directly to the mother, to allow her to care for herself and her child, did not arise until 1974. If a woman wanted to leave 'early' her family had to make a massive financial contribution to the Mother and Baby Home –way beyond the circumstances of the average family.

5 Many women did not give any consent to the adoption of their children. In some cases, signatures were forged. In others, coercion was used. Certainly, the concept of "Full, free and informed consent" was absent. We must also question the legality of a 'Consent to Adoption' obtained from a minor.

6 The vast majority of women whose children were placed for adoption were told to forget the existence of their child, to put it behind them, and to get on with their lives [6].

Abuses inflicted on adopted people include:

1 Children's full identities, cultural and family background, genetic and medical histories, and those of all their descendents as a result were obliterated.

2 Children were denied the right to grow up with their siblings, who were deliberately placed with other adoptive families. [7]

3 Children were subject to *de facto* adoption (where the child was illegally registered as the natural child of the adoptive parents), even after the introduction of legal adoption [8]. Some nursing homes are notorious for this practice.

4 Children were placed with unsuitable adoptive parents, who should never have passed an assessment due, e.g., to their advanced age, mental and /or physical ill health. In the case of private adoptions, e.g. those facilitated by priests, doctors or agency owners without recourse to the Adoption Board, assessments were dispensed with completely.

5 Children were effectively sold, as donations were (and continue to be) solicited by adoption agencies, nursing homes, Mother and Baby Homes and adoption facilitators such as priests, nuns and doctors.

6 Children were exported, in a scheme of dubious legality, to other countries such as the United States (again, q.v. Banished Babies by Mike Milotte).

7 Children were used as human guinea pigs in experimental vaccine trials, without parental consent. The most notorious of these is the 4- in-1 vaccine trial, which resulted in them not being properly immunised. These trials are currently the subject of a special investigation by the Commission to Inquire into Child Abuse (La ffoy).

8 Children were separated from their natural mothers at up to two years of age, after having being cared for by them for that period, in Mother and Baby Homes. The excuse for the above catalogue of abuse is often given that "those were different times".

The Adopted People's Association does not for one moment accept that as in any way validating what went on.

As we have stated, what occurred was the widespread and systematic abuse of both natural parents and their children. It is inexcusable. It is unjustifiable. What occurred cannot be allowed to remain buried and secretive, perhaps leaking out in dribs and drabs. For these reasons, we are calling for complete openness and honesty. The State knowingly permitted – indeed, legislated for and funded! - many of these abuses, and it must accept responsibility for its actions. Nothing less is acceptable.

NOTES

3 In the National Archives.

4 Irish Times report on documents made public from the National Archives, 3/1/2000.

5 We are aware of one Mother and Baby Home (Good Shepherd, Dunboyne, Co. Meath), which as recently as 1983 forced women and girls staying there to pack greeting cards bearing the legend "Congratulations on the Birth of Your Baby."

6 This has somehow been translated in today's terms to a bald statement, not backed up by any evidence whatsoever, that "Guarantees of confidentiality were given to women concerned."

7 It was relatively common for a woman to relinquish more than one child – however, no policy nor procedure existed to attempt placements with families who had already adopted an older natural sibling of a younger child.

8 We are aware of one such case, which we reported to the Southern Health Board, occurring as recently as ten years ago.

Source Extract from *Submission to the Adoption Legislation Consultation* July 2003 by *'AdoptionIreland'* The Adopted People's Association of Ireland. Full Submission of 94 pages is on the *Adoption Resource CD*. Web
SEE "Ireland*' in* 'World Adoption' on *Adoption Resource CD* for more information. Also www.adoptionireland.com

ADOPTION RATIONALE

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ADOPTION RATIONALE

Rationale "A reasoned exposition, especially one defining the fundamental reasons for a course of action or belief etc" Collins English Dictionary

Socially constructed means of child care

Ludbrook— "If a parent or family member is not available for the child's nurturing, social education, and material support, another person or the community at large must take over the caring role for the child to survive and develop. The acceptance of collective responsibility for orphaned children appears to be an early indication of the socialisation of primitive society. The willingness of non-parental carers to provide short or long term care for a child is not a product of our statutory law. It stems from deep human feelings; the personal satisfaction derived from the symbiotic relationship between child and adult carers, a sense of concern for the weak and vulnerable" R Lubrook 1995.

"Despite repeated claims that adoption centres on the needs and welfare of children, adoption is really about adult beliefs and desires and dilemmas. It is a socially constructed means of providing particular kinds of care for particular times. As such, it is also a vivid illustration of dominant beliefs in the recent past about children, parents and families, and how far society is prepared to go in order to make the reality appear to match those beliefs." Else 1991 p.xiii

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Adoption defined
Judicial descriptions A.6.01

Trapski—Adoption is hard to describe and even harder to define. In *Re Adoptions 19/87 and 20/87* (1988) 3 FRNZ 581, also reported as Re W (1988) 4 NZFLR 648, at p 583; p 650, Judge Inglis QC explained adoption as follows:

"[Adoption] is a statutory process by means of which the family relationship between a child and his natural parents is destroyed and an entirely new family relationship substituted as between the child and his adoptive parents. To all intents and purposes the adopting parents are placed, by statute, in the shoes of the child's natural parents, and he becomes his adoptive parents' child, and they his parents, as if he had been born to them in lawful wedlock."

In *O'Connor v A and B* [1971] 2 All ER 1230, 1237, Lord Simon described adoption as a "legal metamorphosis":

"the procedure whereby the two classes of adults - those who wish to surrender their rights and obligations in respect of a child and those who wish to assume them - are brought together, so that the latter are legally substituted for the former in relation to the' child in question."

Legal process A.6.02

Trapski—The Adoption Act does not define adoption; it merely describes the necessary procedures for obtaining an adoption order and the legal effect of the order.

Adoption is a legal process culminating in the making of an adoption order by which the child's biological parents lose their status as parents and their parental rights and are absolved from their parental responsibilities. By the adoption order, the adoptive parents assume the status of parenthood and the accompanying rights and responsibilities in relation to the child. The child gains a new parent or parents and acquires a new set of relatives traced through the adoptive parent(s). The child loses its birth parents and the set of relatives traced through them. Adoption authorises and effects a legal transplant of the child, severing relationships with its family of origin and creating a new set of family relationships through the adoptive parent(s).

Other modern descriptions and objectives A.6.03

Trapski—An adoption order seeks to transmute biological and genetic links by legal decree and creates artificial parenthood in favour of the adoptive parent(s). Adoption has been described as a "legal fiction": *Re Application by Nana* [1992] NZFLR 37, 42. Adoption has also been described as a means of "cutting and pasting" family relationships: *Re Adoption Application by T* (1995) 13 FRNZ 490; [1996] NZFLR 28.

A modern view of adoption as a care option can be found in the report of the Adoption Legislation Review Committee of Victoria, Australia in 1983:

"The primary objective of adoption is to help a child who would not otherwise have a family, and who would benefit from family life, become a member of a family which is able to give him/her love, care, protection and the security which comes from permanent nurturing relationships."

This was quoted with approval by Judge Mahony in *Adoptions A95/87; A96/87* 5/9/87, Judge Mahony, FC Auckland A95/87; A96/87; see also Hillyer J in R v DSW (1986) 2 FRNZ 75, 77 and Judge Pethig's remarks in *Re Application by Nana* [1992] NZFLR 37, 42.

The Australian Royal Commission on Human Relationships described adoption as a "process by which society provides a substitute family for a child whose natural parents are unable or unwilling to care for the child": Royal Commission on Family Relationships, *Final Report* (1977), vol 4, p 98.

A Else— in *A Question of Adoption,* writes of adoption as "a socially constructed means of providing particular kinds of care for particular kinds of children at particular times".

Source *Trapski's Family Law* Vole 5 'Adoption' A6-A.6.03. 24/10/2003 Brookers

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Social and emotional impact of adoption
Social purposes of adoption A.4.01

Trapski— While the fundamental effect of adoption has always been to transfer the rights and responsibilities of parenthood from biological parents to adoptive parents, adoption has shown itself to be very flexible in meeting changing needs and priorities within New Zealand society.

Adoption has been part of New Zealand law since 1881. Society has changed considerably during the intervening period but the fundamental principle of adoption has

remained: the transfer of parental status and rights from the natural parents to the adoptive parents. Although the fundamentals have not changed, the social goals to which adoption has been applied have changed...The adoption process has been shaped and modified over the years to meet the perceived social needs of differing generations."

Forty three purposes of adoption

1 Adoption as a way of getting (unpaid) domestic, farm labouring or other help in the home, farm, or business;

2 Adoption as a means of reducing the cost to the public purse of caring for children who have lost the support of their parents or have been abandoned or neglected;

3 Adoption as a means of ensuring that families with whom orphaned or abandoned children are boarded out do not lose the benefit of their investment in the child who has been supported, educated, and trained during childhood and who is expected to make a contribution in the home, on the farm, or in the family business later on;

4 Adoption as a means of giving a child the advantage of a fresh, unblemished new family identity;

5 Adoption as a means of relieving married couples from the embarrassment and lack of personal fulfilment resulting from infertility;

6 Adoption as an attempt to hold together or cement a failing marriage;

7 Adoption as a means by which couples can exercise control over the make up of their family (for example, by ensuring that their child is a healthy child, is a girl (or boy), has certain physical, racial, or personal characteristics);

8 Adoption as a means of relieving a child from the social and legal disadvantages of having been born illegitimate;

9 Adoption is a means of relieving and unmarried mother (and her family) from the shame and stigma of having given birth to a child outside marriage;

10 Adoption as a means of reducing the incidence of abortion- [by providing an alternative to abortion];

11 Adoption as a means of providing committed carers to children with special needs;

12 Adoption as providing greater security or permanency to non-parental carers and to children out of family care;

13 Adoption as a means of having a child without the health risks or disadvantages of pregnancy and childbirth and/or without increasing global overcrowding;

14 Adoption as a means of providing for the needs of an 'unwanted' child or rescuing third world or underprivileged children from their situation.

15 Adoption as a means of securing permanent residence in New Zealand or immigration status for a child;

16 Adoption as a way of helping a child who would not otherwise have a family, and who would benefit from family life, become a member of a family which is able to give him or her love, care, protection, and the security which comes from a permanent nurturing relationship."

Source Robert Ludbrook 1995 *Trapski's Family Law* Vol 5 'Adoption' A.4/01 Brookers. To this list may be added—

17 Adoption as a means whereby one birth parent can shut out the other birth parent, usually the birth father, from having right of access to their child by stepparent adoption. The 'shut out' parent loose all parental rights.

18 Adoption as a means of relief from the liable parent financial responsibility. Demanding payments of money can and is used as a very successful lever to obtain adoption consents from reluctant birth parents.

19 Open adoption as a means of providing a secure adoptive relationship while retaining ongoing access between all parties concerned.

20 Adoption as a means to provide a clear line of inheritance and maintain the family name for childless couples. Has also been used to reduce estate death duties.

21 Adoption as means of making guardianship permanent. Guardianship can be subject to a court appeal at any time. It is very difficult to discharge an adoption order.

22 Adoption as a means of overcoming insecurity of fostering. Gets any birth parent off your back and avoids any interference, repossession or blackmail.

23 Adoption as a means of income in baby farming in 1880-1920s. Taking children for a lump sum payment and then adopting them out at a profit.

24 Adoption as a means of gaining clear undisputed entitlement to a child in complex family situations, created by divorces, deaths and traumatic events.

25 Adoption as a means of breaking inherited diseases links. Huntington's Chorea, Haemophilia, Tay Sacks or Sickle-Cell Anaemia and many other genetic conditions.

26 Adoption as a means of creating a bicultural or multiracial family.

27 Adoption as a rapid replacement for a dead child in an attempt to alleviate grief.

28 Adoption as a means of falsifying a birth certificate with statutory approval. Since 1962 new birth certificates of adopted persons normally name the adoptive parents as the birth parents of the child, in most cases this is falsification. This has also been used to conceal the fact of adoption from the adoptee and deceive them of their true status.

29 Adoption as providing a 'statutory guillotine' to cut off a child from their birth origins and relegate the birth parents to 'as if' dead status.

30 Adoption as a means of creating an impenetrable wall of secrecy between the child and its natural parents.

31 Adoption as a means of disposing of surplus babies particularly exnuptial ones. And in times of shortage a means of driving prospective adopters to despair on waiting lists.

32 Adoption as a means of providing homosexual or lesbian couples, and single people with a family .

33 Adoption as a means of legitimating surrogacy. By adopting the child, the receiving couple become the child's parents and the donor can make no further claim.

34 Adoption as a means of concealing an adulterous or

incestuous relationships. The child conceived is secretly adopted. Adoption can also used as means of disposing of children conceived by incest or rape.

35 Adoption as providing a 'legal fiction' as a basis of transferring of parental rights.

36 Adoption as a means of providing a healthy caring environment to overcome defects of heredity.

37 Adoption as a means of denial of difference between adopted and natural families.

38 Adoption as a means of providing care and company for old age. - a Maori custom.

39 Adoption as a means of strengthening or extending tribal links.- a Maori custom.

40 Adoption as a means of redistributing children within the Whanau. - a Maori custom.

41 Adoption as a factor in family planning, a logical way to fill any unintended age gaps among the children.

42 Adoption as a means to refill the 'empty nest'. Some marriages retain their purpose and stability dependent on a continuing supply of children to nurture.

43 Adoption as a means to achieve a sex balance of boys and girls in the family.

Thus adoption motivations are many and varied

None of the above adoption motivations can be ignored. They are each well documented in New Zealand adoption history. The diversity throws some light on the intense and often conflicting mixture of positive and negative, thoughts and feelings, about adoption. It also helps explain the difficulty of defining our motivations and objectives in adoption policy and practice.

Recent overseas initiatives A.4.02

Trapski— There have been recent moves in the US and Britain to fast-track adoptions as a means of reducing the government's responsibility for children whose parents are unable to provide them with adequate care. British Prime Minister, Tony Blair, announced on 17 February 2000 that he would chair a new Cabinet committee to consider a radical overhaul of adoption laws to make it easier for prospective adopters by overcoming "hurdles". His aim was to reduce the number of children in children's homes. An Adoption of Children Bill has since been introduced.

Emotional impact of adoption A.4.03

Trapski— The point has been made earlier that adoption holds a unique position in family law because it breaks the child's legal and family links with the biological parents, severs the biological parents' relationship with their offspring, despatches into legal oblivion one set of relatives and replaces them with a new set of relatives, and creates the legal fiction that the adoptive parents are the child's natural parents. While other family law processes effect a readjustment of the care responsibilities between people who already have a close relationship with the child, stranger adoption gives the rights and responsibilities of biological parenthood to persons who have no prior connection with the child.

Adoption has been described as a "statutory guillotine" and, while such a description may be seen as emotive, it is a reminder that the severance of the child from his or her birth family and grafting of the child onto a new family tree can be a source of trauma and dislocation for the people involved.

Over the last 20 years much has been written about the emotional consequences of adoption for adopted children, birth parents and adoptive parents. This growing literature is helpfully summarised by Keith Griffith in *Adopted Person Resource: life long consequences of adoption* available from Mr Griffith at 20 Herewini St, Titahi Bay, Wellington email: keith-griffith®clear.net.nz. The summary below draws heavily on his work.

Emotional effects of adoption on adopted children A.4.04

Trapski— During childhood, adopted children are likely to feel different from other children. This feeling of being different may be heightened if it is obvious from skin colour, physical features or other characteristics that they are not the natural children of their legal parents. Adopted children may be reluctant to tell their friends or peers that they are adopted for fear of being teased or ridiculed. They may be embarrassed by people commenting on how different they are from their parents. It is not uncommon for adopted children to have a feeling that they do not "fit" with their adoptive family.

Children who have been adopted are sometimes described as experiencing genealogical bewilderment. They have two sets of parents and two different families and it is sometimes argued that they inevitably develop a dual identity. They may fantasise about their biological parents seeing them as having all the good qualities that their caregiving parents lack. Adopted children may feel rage towards their birth parents for abandoning them or anger towards their adoptive parents for separating them from their birth parents. This anger can result in conflict, alienation or rejection of a birth or adoptive parent. The child may refuse to have anything to do with a birth mother seeking to initiate contact or may run away or leave the home of the adoptive parents. This sense of 'not belonging' can manifest itself in physical or verbal aggression or involvement in anti-social behaviour. If the adopted child has siblings who are not adopted there may be jealousy and a sense that they are treated unfairly or receive less favourable treatment.

One must treat with some caution the literature dealing with the social and emotional problems which adopted children experience, some of which almost suggests that being adopted is a pathological condition with inevitable damaging consequences. There are many life circumstances that impact on a child's emotional and social development and there are many adopted children who are comfortable with their situation and suffer no emotional damage. Adoption can be an important factor in a child's self-identity but it is wrong to see all adopted children as irreparably damaged.

Emotional effects on birth mothers A.4.05

Trapski— Keith Griffith has written that "For many birth mothers, the entire experience from conception to pregnancy to adoption and beyond is emotional, overwhelming, confusing and unfortunate." It is hardly surprising that a woman who has carried a child in her womb during pregnancy and given birth to that child is likely to be traumatically affected by the abrupt severance of her ties with the child shortly after birth. Hormonal changes in her body will have prepared her for motherhood and loss of the child is likely to have physical as well as emotional consequences for her. There is frequently a period of grieving for the lost child, doubts about the decision she has made and, sometimes, a blacking-out of the painful experiences of giving up her child or a sense of emotional numbness. Birth mothers often feel embarrassment, shame or guilt for giving up. their child as well as loss, sadness and depression.

Pregnancy resulting from rape or from an unhappy, abusive or fleeting relationship may be the cause of additional stress. So also may a pregnancy resulting from a loving relationship where the mother had hopes that the child might be brought up in secure family environment. Another common stress factor is pressure placed on the mother by the child's father, the mother's family, professionals or others to relinquish or to keep the child.

In speaking or writing about birth parents and adopted children it can easily be overlooked that birth parents may themselves be children. Departmental statistics show that there have been adoption orders made in respect of children of birth parents as young as 13 or 14 years: see S Smith, E Preston, C Woods, Social Work and Adoption Services in *Reflections on Current Social Work Practice* Eds R Truell, L Nowland Dunmore Press Ltd (2002) 46,n4. Little is known about the emotional effects on a young teenager of giving birth and immediately giving the child in adoption.

Emotional effects on birth fathers A.4.06

Trapski— Less is known about the emotional consequences for birth fathers flowing from the adoption of their child. In the past, fathers were often condemned and marginalised as a result of the woman's pregnancy and their failure to "do the decent thing" and marry the mother. Fathers were seen to have forfeited the right to a say in decisions about the future care of the child. If they were consulted, they were often happy to give a consent to adoption to avoid the financial consequences of supporting the child. Some fathers who would like to support the mothers-hiring pregnancy and childbirth are deterred from doing so because of opposition from the mother's parents or relatives for fear that any emotional or financial support might provide evidence of paternity and expose them to paying child support for the next 16 or more years.

There are reported cases where a father's care for his child has been upheld by the Courts, despite the mother's desire to give the child in adoption: see E.9, E.10. Fathers have rarely been successful.

Emotional effects on adoptive parents A.4.07

Trapski— In many cases adoptive parents have been unable to have children of their own whether through infertility or some other reason. The bonding process between adoptive parent and adopted child is more difficult because bonding between mother and child starts in utero and continues through childbirth, breast-feeding and early nurturing. It is supported by bodily changes in the mother and the child. Bonding may prove difficult with older children or with children who have suffered economic, emotional or social deprivation or lack of nurturing. This is particularly true of children who have languished in orphanages or children's homes or children who have "drifted in care" or been exposed to numerous temporary placements.

Adoptive parents often have fears that the child's birth parents may criticise their parenting efforts or seek to reclaim the child. They may feel deeply hurt and anxious if the child develops a close relationship with a birth parent or a member of the birth family. Adoptive parents may experience feelings of guilt or failure if their primary relationship breaks down or if the child suffers health problems or exhibits anti-social behaviour. Because they are adoptive parents and have chosen to adopt the child, they may feel a greater pressure to succeed in their parenting role.

If adoptive parents later have natural children they may have to resist a temptation to favour their own children (or even feel pressure to give special care and attention to the adopted child) to avoid any suggestion of favouritism.

Adoptive parents are usually able to control the information given to the child about their adoption and about their birth parents. Attitudes have changed over the last forty years from a view that it was better not to tell children that they are adopted until they are old enough to fully understand the meaning of adoption, to a view that children should from birth be told the truth about their origins. The generally accepted view today is that they should be given whatever information is available about their birth family and their questions should be answered honestly and openly. Decisions about what information to give and when to give it are difficult and there will always be a tendency to withhold information which may be seen as being distressing and unsettling for the child. Decisions about the nature and extent of contact with the birth family and the role in the child's life to be played by the birth mother in the child's life are also difficult.

Effect of trend towards open adoption A.4.08

Trapski— Open adoption can reduce the emotional deficits which can afflict adopted children, birth parents and adoptive parents. In lifting the curtain of secrecy, there is the potential for normalisation of relationships. Feelings will be generated by personal knowledge and experience of the individuals concerned rather than based on stereotypes.

It should not be thought that opening the adoption process has swept away the emotional anguish. It is harder to manage a relationship with a real person than with a stereotyped image. Many reunions between adopted children

and their birth parents have been deeply satisfying for all concerned. But there are some reunions that have gone terribly wrong with devastating fallout to some or all of those involved.

Contact with a birth parent may muddy the boundaries between members of the adoption triad. The birth mother may try to assuage her feelings of guilt and make up for her past mistakes by smothering the child with affection and demanding a pivotal role in the child's care and upbringing. Adopted children may have their fantasies about their birth parents brought suddenly down to earth. Adoptive parents may feel threatened by the birth parents and members of the child's family of origin and resent the strong feelings unleashed by a reunion. They may have a justified grievance that their years of hard work and anxiety in caring for the child are being pushed aside by an outsider who plays on the child's emotions.

Access to counselling and mediation A.4.09

Trapski— Because the Adoption Act was passed in an era when counselling was in its infancy and mediation was virtually unknown there are no provisions in the Act which permit the Court to refer matters to counselling or mediation. Later legislation such as the Family Proceedings Act 1980, the Children, Young Persons and their Families Act 1989 and the Domestic Violence Act 1995 place considerable emphasis on counselling and/or mediation as a means of resolving disputes over children.

Counselling and mediation are far more effective methods of dealing with the emotional consequences arising from adoption than court processes. The Law Commission Report *Adoption and its Alternatives (2000)* contains a whole chapter on support services and proposes mandatory pre-adoption counselling for birth parents and prospective adoptive parents, access to family or whanau meetings and mediation services and access to post-adoption counselling: Ch 11 of Report. The recommendation is that such counselling and mediation should be provided by community based organisations accredited by Child, Youth and Family Service: paras 248-257.

Source Robert Ludbrook 1995 *Trapski's Family Law* Vol 5 'Adoption' A.4-A.4.09. 24/10/03 Brookers.

Primary objective of adoption

"The primary objective of adoption is to help a child who would not otherwise have a family, and who would benefit from family life, become a member of a family which is able to give love, care, protection and the security which comes from permanent nurturing relationships."

Source Adoption Legislative Review Committee Victoria Australia 1983.

Development of policy

DSW— "It is suggested that the DSW consult widely and develop a philosophy and a set of policies concerning adoption. Policies should not be set in concrete but accompanied by constant research to see that such policies are firstly in the best interest of the child, but that secondly, birth parent(s) and prospective adoptive and adoptive parents needs are considered as just as important as long as the best interests of the child are not prejudiced." 1990 Report p33.

Reform of adoption law

For the past 20 years, successive Governments have promised to review the Adoption Act 1955, but as at 1996 none have delivered. For the barriers to reform, and areas needing urgent reform. *see* Trapski's Family Law Vol.5 A10.

Philosophical base - adoption model

DSW "During the 1980's much discussion on adoption, nationally and internationally, focused on the notion of the "adoption triangle". Consequently great efforts were made to meet the needs and balance the rights of the three parties involved: birth parents, adoptive parents and the child. Adoption legislation in New Zealand also aims at protecting the three parties involved. Under Section 11 of the Adoption Act 1955, the promotion of the welfare of the child is one of three considerations that must be satisfied. Section 11(a) states that adoptive parents are to be fit and proper persons to have the custody of the child and of sufficient ability to bring up, maintain, and educate the child. Section 11(b) states that the Court shall be satisfied that the welfare and interests of the child will be promoted by the adoption. Adoption, by creating a change of legal status, can affect the adopted child/person in a number of different ways which may have little or nothing to do with the care and upbringing of the child. In practice the adoption legislation can be used for other purposes, such as immigration, inheritance, obtaining citizenship, avoiding liable parent contribution, and an attempt to exclude the non-custodial parent permanently.

As we move towards the year 2,000 the principles of the United Nations Convention of the Rights of the Child are likely to bring significant changes to adoption law and practice, as New Zealand is among those countries which have ratified the Convention. This Convention priorities a set of principles requiring that in all actions concerning children, the best interest of the child, should be the paramount consideration. With the emergence of more openness in adoption practice we see a shift from the notion of the "adoption triangle", towards an acceptance of the model of the "adoption circle" Watson and Reitz. In the "adoption circle" the child is the centre of all considerations. The circle contains the biological parents of the child with their extended family/whanau, as well as the adoptive parents and their families. Although relationships and links between people can change over time, the parties all have an on-going role to play in the child's life. In that way continuity in the child's relationships and identity can be preserved, in spite of the change of its legal status by adoption. It must be acknowledged that, although the 'adoption circle' is an ideal model that occurs in practice by the agreement and goodwill of all parties involved, current New Zealand adoption legislation effectively severs the legal links between the adopted children and their birth families." Adoptions Local Placements Manual 1.6 CYPS DSW 1995

Rationale of adoption

Inglis DCJ QC—"Adoption was unknown in common law. It is a statutory process by means of which the fam-

ily relationship between a child and his natural parents is destroyed and an entirely new family relationship substituted as between the child and his adoptive parents. To all intents and purposes the adopting parents are placed, by statute, in the shoes of the child's natural parents, and he becomes his adoptive parent's child, and they his parents, as if he had been born to them in lawful wedlock...In a case where the natural parents are unable or unwilling to accept the responsibility of bringing up and nurturing their child an alternative home for the child has to be found. What adoptive parents do is to undertake the whole of that responsibility, involving a very substantial emotional and financial commitment. It is not merely a matter of providing the child with a home. It is a matter of accepting the child without qualification or reservation as a permanent member of the adoptive parents' family. It is not a matter of 'owning' the child. It is a matter of assuming the obligations and commitments of parenthood, for better, for worse, for richer, for poorer. But, unlike marriage, those obligations and commitments cannot be got rid of if one or the other party tires of them. The child has his adoptive parents in a lifelong bond. An adoption, once completed, cannot be reversed except in the most exceptional and limited circumstances: *see* Adoption Act 1955 s20. The fact that an adoption is for all practical purposes irrevocable accounts for the great care that has to be taken in ensuring that the natural parents have consented to the adoption and have fully understood, in giving the consent, the implications of what they are doing. And, once the final adoption order has been made, the child and the adoptive parents can forge their emotional and family bonds and undertake their important mutual responsibilities knowing that they are absolutely secure in doing so. To provided that absolute security, all the rights of the natural parents are transferred to adoptive parents so that the adoptive parents become, in law, the child's only legal guardians and so are able to provide the child with the security of upbringing that is necessary for the child's welfare. It is not a transfer of 'ownership' in the child. It is a matter of the natural parents acknowledging that they do not wish to undertake the obligations and commitments of parents towards the child, the adoptive parents undertaking those obligations and commitments, and the child being accepted as a permanent and secure member of his new family." 1988 Inglis DCJ QC Hastings FC *Re W* (1988) 4NZFLR 648 at 650 // *Re Adoptions 19/87 and 20/87* 3FRNZ 581. Quoted with approval 1989 Heron J Wellington HC *H v R and H* 5FRNZ 104 // *Hamlin v Rutherford* (1989) 5NZFLR 426 at 431.

Differences adoption and foster parenting

Inglis DCJ QC—"**Firstly**, foster parents who bring up a child who is not theirs have no security of tenure. Nor does the child. At any time the child's home with his foster parents and his family relationship with them are liable to be disrupted by the child's natural parents asserting their rights to the child. At law the natural parents are the child's sole guardians: Guardianship Act 1968 s6. They are entitled, *prima facie*, to the possession and care of the child and to control the child's upbringing: s3. In the absence of adoption the only protection the child or his foster parents might have from a possibly disastrous disruption of what may to all intents and purposes be a normal family relationship is that provided by the Guardianship Act under which the natural parent's demand for custody might fail if it appeared that it was in the child's best interests to remain with the foster parents: see s23(1). Obviously it is not enough, in the case of excellent foster parents and hopeless natural parents, to say that the Courts would not allow the natural parents to assert their rights to the detriment of the child. Even in such a case there is no real security either for the child or for the foster parents. Less security still in more marginal situations.

Secondly, no matter how close the relationship between the child and the foster parents may become, or however many custody or guardianship orders may be made in the foster parents' favour, nothing can alter the fact that at law the child remains a stranger to the foster parents. However neglectful and unworthy his natural parents may be, he is still tied to them by blood...

Thirdly, any agreement as to fostering between the natural parents and the foster parents is at law void as contrary to public policy: *R v Bailey* (1875) 3NZCA 46; *Humphreys v Polak* [1901] 2KB385: note that s18 of the Guardianship Act does not apply in such a case. No such agreement can affect the natural parents' right to custody, though the Court in its equitable or statutory jurisdiction might refuse to allow the natural parents to assert their rights against the child's best interests: *see In re Fynn* (1884) 2 De G & Sm 457; *R v Gyngall* [1893] 2QB 232 (CA). Most of these problems can be avoided by adoption." 1988 Inglis QC DCJ Hastings FC *Re W* (1988) 4NZFLR 648 at 651 // *Re Adoptions 19/87 and 20/87* 3FRNZ 581

Key Issues in New Zealand adoption

Griffith— The history of adoption in New Zealand, both Pakeha and Maori has been well covered in recent years. At the 1997 Wellington Adoption Conference there were several papers on the subject. Presenters included Anne Else, Mary Iwanek, Harry Walker, John Bradley, Robert Ludbrook and myself. These papers are now published in the book Adoption and Healing by New Zealand Adoption and Healing Trust, PO Box 11-446 Wellington. There are also two detailed resource books available, The Question of Adoption- Closed Stranger Adoption in New Zealand 1944-1974 by Anne Else, and New Zealand Adoption- History and Practices- Social and Legal 1840-1996, by K C Griffith. For persons interested in the detailed history of adoption I draw their attention to the above publications. I will attempt to focus on a few key issues, mainly relating to adopted persons, that shed some light on, where we have come from, where we are now, and where we may be going in the future.

Opening up adoption

Griffith— The first moves to open up adoption came from individual adult adopted persons in the late 1960s. it was a period of opening up in society, traditional values were being challenged, there was a quest for a spirit of free-

dom and liberation. The human potential and civil rights movements empowered both individuals and minority groups. In 1976 two adoption support and activist groups emerged. Jigsaw a support group for adopted persons and birthparents, based on a similar group in England was established in Auckland. The Adoption Support Group, for all members of the adoption triangle and social workers was established in Wellington. These groups established branches around the country. The success of the reform movement was largely due to the expressed real needs and experiences of adopted persons, birth mothers and adoptive parents, dedicated leadership, public education; political activism and openness to reform in that period.

Widening adoptive relationship

Griffith— Words used to describe the adoptive relationship reflect the opening up of adoption-

Dyad 1955 to 1975. The closed adoption period. Birth parents were legally and socially disposed of by the 'adoption order', leaving only the adopting parents and adopted person 'as if born to them'.

Adoption Triangle 1976-1985. The coming out of adult adopted persons in search for their origins was joined by birthmothers, creating an adoption triangle of adopted persons, adoptive parents and birth parents.

Adoption Circle 1985- 1998+ The Adult Adoption Information Act 1985 has resulted in about 20,000 reunions of adopted persons, with their birth parents, siblings, grandparents or other relations. The adoption triangle was transformed into a much wider adoption circle. The practice of open adoption became normal accepted practice.

Use of term 'adoptee'.

Griffith— The label 'adoptee' was important in the coming out phase of the protest movement, and is still used widely in USA, where the battle to open up adoption is still being fought. In New Zealand the term 'adoptee' is now being replaced by 'adopted person- a person in their own right, adoption is only one of many important aspects of their personal identity.

Adoption is a life long process

Griffith— Under the complete break ideology from 1955 to 1980, adoption was perceived as a basic legal and social transaction. A child was relinquished by their birth parents and adopted into a new family, 'as if born to them'. The Court adoption order was the end of the process. Thereafter the child was expected to grow up in the adoptive family 'as is' born to them, and 'as if not born to their birth parents. We now know that adoption is a complex lifelong process. For adopted persons, adoptive parents, birth parents and all parties concerned, adoption has continuing life long consequences and saga of events.

Some adopted persons issues

Griffith— Resilient adopted persons come to terms with the reality of their dual origins and divided self. They seek and obtain the truth and reality of their origins, reconcile their duality and affirm their true self- identity.

Adopted persons are normal

Griffith— In some countries, such as USA, there is considerable stress on the 'pathology' of adoption. Adopted persons are seen as special 'cases', who may manifest antisocial behaviours as a result of an adoption syndrome. Adopted persons are often treated as abnormal persons in need of special treatment to make them normal. However, we now realise that adopted persons are typically normal people subjected to some abnormal stresses, that may result in increased susceptibility to some social and mental conditions. While some adopted persons may need and benefit from counselling, emotional reactions to past events are often normal and need validating. We need to be reminded that it is often not the person but the legal and social systems pertaining to adoption that requires reform. Since the Adult Adoption Information Act 1985, the secrecy surrounding adoption has continued to lift and reveal the complexity of adoption. The increased openness within the adoption circle is now being reflected in the wider community. Increasingly the adopted persons search and reunion is begin accepted as a normal expected process.

Bonding complexity

Griffith— Adopted persons often feel uncomfortable discussing the subject of adoptive bonding. Most books by adopted persons avoid the subject. The fact of their dual origins and dual identity makes bonding to anyone more difficult. Their fundamental problem is that the primal bonding with their birth mother has been severed shortly after birth, but the full genetic and some memory bonding remains. They were in effect separated and abandoned by the birth mother. The adoptive mother became a substitute for the birth mother, but can never fully replace her. No matter how good the adoptive mother is she lacks full resonance with the child's genetic personality. Most adopted persons are more comfortable with the concept that they are 'attached' rather than 'bonded' to their adoptive family.

Genetic bonding

Griffith— The genetic bonding with their birth parents is imprinted on every cell of an adopted persons body. Take any cell from the adopted person and within the chromosomes are living copies of their complete genetic makeup. Every gene in our body is a reproduction of genes carried by our birth parents. The gene is the only living, part of us that is physically passed on from one generation to the next. We are all made of second hand genes that have lived in countless generations of our genetic ancestors. Our only claim to fame is that we are a unique collection. It is utterly impossible to break the genetic bond with our birth parents.

Genetic personality

Griffith— The evidence from thousands of reunions is that genetic bonding extends to a large part of our basic personality. Any child, adopted or not, is born with some basic personality traits, inherited from their parental ancestry. Both our physical structure and genetic personality are written with a script that we cannot rewrite- we have to learn to live it. Failure to recognize and acknowledge the genetic components of personality, have driven

many adopted persons and their adoptive persons to despair.

All adopted persons have divided self

Griffith— It is an inevitable consequence of the adoption process. It stems from the dual origins of the adopted person. The split between the genetic and adoptive reality. Every cell in their body and the genetic personality comes from their birth parents. The nurturing process undertaken for nine months by the birth mother is terminated, and taken over by the adoptive parents. Four traumas create a divided self

1 Abandonment No matter how much the mother wanted to keep her baby or what altruistic or intellectual reasons she had, the child experiences separation as abandonment and being handed over to strangers.

2 The child learns they are adopted. Hearing you were not born to your mother is a profound trauma.

3 The child learns they are, and are not the child of their parents, the shock connects to the earlier proverbial trauma.

4 The secrecy that disconnects the adopted person from their parentage and history They are forbidden to know to whom they were born.

Identity

Griffith— Much of our success in life, requires a clear identity and understanding as to who we really are. What is our basic personality, dynamics, limits and potential? The ability to cope fully with different life situations or enter relationships with others is largely dependent on the strength and quality of our self-identity. Not being able to orient yourself in your own existence creates anxiety and uncertainty. The foundations of self-Identity are laid in the first few years of life and adolescence. Adopted persons have extra complicating factors, and may end up with a Swiss cheese identity with lots of holes in it.

With the knowledge we have today, it is impossible to justify the complete break ideology of the period 1950s-1980. During this closed phase of New Zealand adoption most adopted persons had their original identity cut off by a Judicially operated statutory guillotine, by an Adoption order of the court. The destruction of the child's ancestral history and identity, became an obsessive preoccupation of many social work and legal professionals, who claimed it was 'in the best interests of the child'.

Personal identity

Griffith— Eric Erikson, an esteemed expert on identity issues, a professor, psychoanalyst and an adopted person, saw the achievements of a satisfactory personal identity as a key developmental task. The young person in order to experience wholeness, must feel a progressive continuity between that which they have come to be during the long years of childhood and that which he/she promises to be in the anticipated future: between that which he/she conceives themselves to be and that which he/she perceives others to see him/her and to expect of him/her. Erikson 'Identity, Youth and Crisis' NY 1968 p87

Two sets of parents

Griffith— The self-identity process is more complex for adopted persons because they must integrate two sets of parents within their self-identity structure. It would be easier if there was a real place for birth parents within the identity of the adoptive family. While adopted persons seek to model themselves on the only parents they know, they at the same time cannot obliterate the reality of the other set of parents. To do so would do violence to reason, honesty and reality. Adoptive parents face a similar identity crises integrating the reality of birth parents and their own entitlement to the child.

Rejection

Griffith— Fear of rejection is a normal part of our self-protection. However, with adopted persons the fear of rejection is often excessive. Its origin may stem from the separation from the birth mother, as a 'primal wound'. The trauma remains in the subconscious mind. Any rejection in life may re-trigger the primal trauma, that surfaces as irrational fear with paralysing effect, a quite common experience of traumatised persons. With adopted persons rejection may be reinforced by, illegitimacy, rejection by birth parents, and secrecy of origins. Hence, adopted persons are often hyper-vigilant, may over react to criticism, experience difficulty with job applications, exams, intimate relations or any action involving potential rejection risk. They may even regard themselves as 'rejects', because they had to be adopted, and set themselves up for rejection, because it seems inevitable.

Healing of adoption

Griffith— Empowerment, reconnection and integration are the three key experiences in the process-

Reclaiming the name- The discovery of their original name is of tremendous significance to adopted persons, it is the key to the recovery of their lost identity.

The Search The journey toward your unknown parents and your unknown self, is an awesome task. The adopted person is empowered and takes control of their life.

Reunion The meeting with birth parents, relatives and siblings enables the reconnection with your lost identity. Integration It is the reintegration of your recovered lost genetic identity with your adoptive identity. The pathway to healing is the search for the missing pieces of the self, and integrating them into a wholeness.

Some things cannot he healed.

Griffith— Just as with physical afflictions, some things can be healed but others cannot, we just have to accept them and learn to live with them. Also, no matter how much support and counselling, you cannot turn the clock back. We cannot rewrite facts of history, we cannot change the past, we have to accept reality, affirm and validate our experiences.

The victim

Griffith— Adoption is the only trauma where the victim is expected by the whole of society to be grateful. It is important to work through the hurt and let it go. The victim who won't forgive will often live in psychological

bondage to the victimizer, leading to a kind of paralysis.

Process of Self Integration

Griffith— It is self-integration that brings healing and wholeness. Betty J Lifton has apply summarised this task..

—Adopted persons must weave a new self-narrative out of the fragments of what was, what might have been, and what is.

—This means they must integrate their two selves: the regressed baby who was abandoned and the adult that baby has become.

—They must make the Artificial Self real, and allow the Forbidden Self to come out of hiding.

—They must integrate what is authentic in these two selves, and balance the power between them. It Is during this period that the adoptee feels most vulnerable, because neither self is in charge.

—They must integrate the internal and external birth mother (the fantasy and actual one) into a composite birth mother. They must accept her for what she is, with her strengths and weaknesses and find forgiveness for the past.

—They must integrate the internal and external adoptive mother (the one they resisted and the one they can now claim) into a composite adoptive mother. They must accept and forgive her too. They must integrate the birth father and the adoptive father in the same way.

—They must accept that they cannot be fully the birth parents' child any more than they could be fully the adoptive parents' child.

—They must claim their own child, become their own person, and belong to themselves. (Betty J Lifton Journey of the Adopted Self- A Quest for Wholeness Basic Books Harper 1994 pp258-259.

Increasing diversity

Over the last ten years there has been an increase in adoption support groups, and a diversity objectives.

Adoption support groups

Griffith— Perform an important role in providing support for members of the adoption circle. They encourage opening up of adoption, provide support and healing, and advocate adoption reform. There are support groups for adopted persons, birth and adoptive parents. They provide a safe arena, where persons can share thoughts, feelings and experiences of adoption. They listen and learn from each other. There is an intuitive mutual understanding, and a discovery that one's inner experiences are not crazy but normal to persons in the adoption circle. Participants become empowered to speak for themselves, release and receive strong emotions and have them validated. They are enabled to search, reconnect, and establish a more fully integrated personal identity. In Auckland there is now an Adoption Resource Centre.

Increased polarization

Griffith— Groups such as MOA advocate, Moving Out of Adoption. OPANS (Open Adoption Network) advocates the practice of open adoption. ICANZ (Inter-country Adoption of New Zealand), supports adoptive parents with Inter-country adoptions, advocates Private Adoption Agencies. Others, would like to completely privatise adoption and let the market forces to sort it out. Others, label people who seek reform as 'anti-adoption', and some state social work professionals have been denigrated by politicians under the cloak of Parliamentary privilege, such behaviour is counter productive.

Changing family dynamics

Griffith— The strength of a society rests on the effective functioning of its basic family unit, be it nuclear, extended, whanau, agia, or solo. All these models have the potential to be functional or dysfunctional. If the family unit is dysfunctional then society becomes dysfunctional. The present adoption law is patterned on the nuclear family, which now constitutes only about 50% of families. Adoption law needs to be relevant to the range of family structures models that exist today.

Adoption Law reform

Griffith— Over the last 30 years there have been many calls for a review of the Adoption Act 1955. Adopted persons, adoptive parents, birth parents, Judges and the Department of Social Welfare have asked for a Review. The official reports commissioned by the Government in 1979, 1984, 1990 all recommended a full Review. Some interdepartmental studies were undertaken, and some legislation drafted. However, after 15 years of unfulfilled political promises, the review of the Adoption Act 1955 is a stalled process. Some reasons are, (a) Interdepartmental division... The legal responsibility for the Adoption Act rests with the Department of Justice, but the practical implementation rests mainly with Children and Young Persons Service. (b) Lack of political commitment to adoption reform. (c) The complexity of the social and legal issues raised. (d) The diversity of responses from members within the adoption circle.

Need for a Commission

Griffith— It has become very clear that something more than an Interdepartmental or Law Commission Review is required. We need a Commission along the lines of NSW Review of Adoption, to undertake a widespread public consultation with all interested parties. The experiences of those directly involved in adoption need to be heard and validated. The whole philosophy of adoption needs to be examined. It would need to address such special issues as International Conventions- UN Rights of the Child, Hague Convention, Maori adoption and the Treaty, inter-country and interracial adoption, artificial birth technology, prohibited marriage relationships, legislative provisions for open adoption, guardianship alternatives, provisions for state and private adoption agencies, accountability, support and regulation. New legislation could then be drafted based on the Commission report and proceed through the normal Parliamentary process, with a consciences vote. The recent Adoption Amendment Bill re Inter-country adoption that ended up being referred to the Commerce Committee and being passed under urgency on a party vote was quite inappropriate.

Addressing past wrongs

Griffith— There have been serious allegations concerning some legal, medical and social work adoption practices. Many of the allegations are not trivia but involve fundamental breaches of law and human rights. While redress for wrongs in the past may be limited, the wrongs need to be heard, examined and acknowledged. Also, for many birth mothers and adopted persons, the wrongs of the past still continue to have traumatic impact on their life today. Much can be learned from past mist takes, and measures taken to avoid a repetition. This could be part of the brief for an Adoption Commission.

Possible amendments to adoption law

—*Griffith—* Birth parents consents may be withdrawn prior to an adoption order, within a period of 26 days of the birth.

—Any party to an adoption may attend the adoption hearings and make submissions.

—Legislative provision be made for open adoption agreements, changed only by mutual consent or Court order.

—Adoption orders may be discharged by the Family Court in cases of irretrievable breakdown of adoption.

—Adoption creates complex relationships. Court may give dispensation to marry within prohibited degrees.

—Provide alternative adoption procedures in accord with Maori custom and the Treaty.

—Guardianship in the form of a 'parental responsibility order' be available as an alternative to adoption.

Adult Adoption Information Act

—*Griffith—* Minimum application age under the Adult Adoption Information Act be lowered from 20 to 1 8 years.

—Similar provisions apply to adopted persons and birth parents. If no veto, information supplied of right.

—The Family Court may grant relatives and siblings access to information in special circumstances. Where special needs exist any party to an adoption, may apply to the Family Court for access to records.

—The veto system be abolished. All existing vetoes would terminate on their expiry date. All counselling be optional.

—Administration of Adoption Act be transferred from Department of Justice to the Children and Young Persons and Families Service.

—Provision of adequate Information, Support and Counselling services.

Conclusion

Griffith— New Zealand has a long history of legal adoption- since 188 1. The Adult Adoption Information Act 1985 also put us in the forefront of opening up of adoption. The majority of adult adopted persons have now applied for and received their identifying information. Thousands of reunions have taken place. Open adoption is now a normal practice. We have lifted the lid off adoption and opened it up to research in a way never before possible. These results will provide important material in a full Review.

Source 'Key Issues in New Zealand Adoption' Paper at *Adoption looking forward Conference* Lincoln University, Christchurch Feb14-15, 1998.

Lifelong impact of adoption

Russell— Adoption is more than a single event in time marked by the signing of the adoption decree; it has lifelong consequences for all triad members. Even though the legal aspects of adoption are time-limited, the emotional aspects of adoption continue throughout each triad member's life. It is difficult, if not impossible, to shield one's self from the lifelong impact of adoption. Becoming aware of the emotional issues of adoption and embracing them enables people to work through their feelings, express them, and resolve them to the best of their ability... p33

Adoption is a second choice

*Russell—*for all the triad members. People do not expect to grow up, get married, and adopt a child. They expect to grow up, get married, and have their own biological children. Likewise, a person does not expect to grow up, get pregnant, and give their child to strangers to raise. It is also expected that families will retain their kinship ties and grow up knowing their biological relatives. Adoption as a second choice does not necessarily mean that adoption is less than or not as good as non-adoption choices. Taking an alternative path can sometimes lead to amazing experiences and growth that would not have been possible if the original road were taken. p35

Source Marlou Russell Ph.D. *Adoption Wisdom- A Guide to the Issues and Feelings of Adoption. Broken* Branch Productions. Santa Monica, Claifornia USA. 1996 pp33-4

Principles and Background of Adoption

*Trapski—***A.1** Introduction. For the first few years of life human children are almost totally dependent on adult carers. Older children continue to depend on their parents or carers for their material needs (such as food, clothing, shelter), and their social and emotional needs (bonding, love, security).

If a parent or family member is not available for the child's nurturing, social education, and material support, another person or the community at large must take over the caring role for the child to survive and develop.

Alternative care of orphaned or abandoned children is common to all civilisations but the first codified adoption laws are found in the Babylonian Code of Hammurabi (2265-2242 BC). A form of adoption was common in ancient Greece and recognised under Roman law: for a detailed historical and comparative summary see K C Griffith, *New Zealand Adoption: History and Practice - Social and Legal 1840-1996,* Wellington 1997, p 1.

The willingness of non-parental carers to provide short- or long-term care for a child is not a product of our statutory law. It stems from deep human feelings: the personal satisfaction derived from the symbiotic relationship between child and adult carers, and a sense of concern for the weak and vulnerable.

In New Zealand, the dominant social expectation is that

parents will be primarily responsible for the support and upbringing of their children, and this expectation is reinforced by several legal provisions and sanctions: ss 3 and 6 Guardianship Act 1968; ss 59 and 152 Crimes Act 1961.

New Zealand law, which is based on English common law, emphasises the primacy of a child's biological parents: non-parental carers are seen as substitute parents. Such a view does not accord with traditional Maori culture, where responsibility for children was shared among members of the whanau, and movement of children between households was informal and commonplace. See D Durie-Hall and J Metge, "Kua tutu te puehu, kia mau - Maori aspirations in family law", in M Henaghan and B Atkin (eds), *Family Law and Policy in New Zealand*, Auckland, Oxford University Press, 1992, p 69. The greater significance accorded to members of the child's extended family is a hallmark of most Pacific Island cultures.

There is economic and social advantage in involving grandparents, extended family members, and older siblings in child care. This reduces the pressure on the biological parents allowing them to engage in work which will provide economic, social, or practical benefits to the household. It also provides a useful social role for older family members and allows the older generation to pass on wisdom and cultural knowledge.

A.2 Perception of children under New Zealand law

Social & legal attitudes towards children have undergone significant transformations since the late 19th century.

A.2.01 Children as objects or possessions

For our Victorian forebears, "children should be seen and not heard" and were expected to obey their parents immediately and without question. An English Judge stated the law of that era in *Re Agar-Ellis* (1883) 24 Ch D 317: "The father has control over the person, education and conduct of his children until they are 21 years of age. That is the law."

On this approach children were seen first as objects or possessions of their father, later of their parents, and were subject to the virtually absolute control and authority of their parents until they attained adulthood at the age of 21. Under s 4(1) Age of Majority Act 1970, the age of reaching adulthood was reduced from 21 to 20 in New Zealand.

Modern commentators have suggested that adoption has more in common with properly law than family law. Moira Rayner has argued that adoption in Australia derives from the law of property, its purpose being "less the care of an unprotected child than the assurance that there would be an heir to inherit property on the death of the present holder who had no such heir": M Rayner, "Self, Self-esteem and Sense of Place", in Kate Funder (ed) *Citizen Child: Australian Law and Children's Rights*, Melbourne, Australian Institute of Family Studies, 1996, ch 3. An English commentator wrote of children adopted out against their parents' wishes as being "in many respects treated as pieces of transportable personal property who can, by a legal fiction, have past links extinguished and join a new family as if they were born to it": M Ryburn, "What kind of permanence is needed for children?", in *Has Adoption a Future?* Sydney, Post Adoption Resource Centre, 1994, p 337, 343.

The patriarchal Victorian approach was based on English common law and became part of the law of this country after European settlement. The authoritarian view which sees children as parental possessions can still be discerned in children's law, particularly in our guardianship and adoption legislation. See the definitions of guardianship in s 3 Guardianship Act 1968 and s 16(2)(a) Adoption Act 1955.

A.2.02 Children as objects of concern - the welfare approach

During the 1920s and 1930s, the rigours of the Victorian approach were mitigated by a new for-us on the welfare of the child. See the Child Welfare Act 1925, the Child Welfare Amendment Act 1925, and the Guardianship of Infants Act 1926 (particularly s 2). It could not be assumed that parents knew what was best for their child or always acted in the child's best interests. The Child Welfare Act 1925 created a child welfare division of the Department of Education and set up separate Children's Courts to provide for the needs of any child deemed to be in need of care and protection. It was not until 1972 that responsibility for the welfare of children shifted from the Education Department's child welfare division to the Department of Social Welfare. See s27(3) Department of Social Welfare Act 1971.

The notion of children being parental possessions gave way to a "welfare" approach which treated them as objects of concern. Benevolently inclined adults (child welfare officers and Magistrates) were given the power to determine whether the child's welfare was at risk. If so, they could remove the child from the care of the parents or current carers.

The child welfare approach is now the basis of New Zealand's family law system and it can be seen, in rather weak form, in the Adoption Act 1955. The New Zealand judiciary has made commendable attempts to strengthen the child welfare thrust of the 1955 Act (see E.31 and *DGSW v L* [1989] 2 NZLR 314, also reported as *Re Adoption CA72/89* (1989) 5 FRNZ 164) but the "child welfare" approach does not fit easily into a statute which has its historical and philosophical roots in Victorian values. See A.5.

A.2.03 Children as people with independent rights and interests

Since the 1970s there has been a movement away from the concepts of children as "objects" or "objects of concern" towards an acceptance of children as people with independent interests and powers. On this view, children are not pawns in some human chess game to be placed and displaced at the will of the adult players. Children are individuals with their own wishes and perceptions who should be involved in decisions which affect them to the extent that their maturity and level of understanding allows. Parents are not all-powerful controllers of their children's lives. Obey are, in a sense, "trustees" for their children; their powers are not freestanding but are linked with

their responsibilities to the child and are exercisable only for the child's benefit and welfare: see *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402; *Pallin v DSW* [1983] NZLR 266, also reported as *P v DSW* (1983) FRNZ 117 (CA); *DGSW v L* [1989] 2 NZLR 314, also reported as *Re Adoption* CA 72189 (1989) 5 FRNZ 164 (CA). See also s 5(d) and (e)(ii), s 22(1)(a) and (h), s 251(1)(a) and (g), and s 323 Children, Young Persons, and Their Families Act 1989; s 162(1)(b) Family Proceedings Act 1980; s 30(1)(b) Guardianship Act 1968; Trapski's Family Law vol 1, Wellington, Brooker's, 1991, NT.I.

It is hardly surprising that our adoption laws, framed in 1955 and harking back to the 19th century, give little recognition to the child's individual rights and perceptions. Adoption is something that is done to children rather than a process in which children participate. See particularly C.6, E.2, F.16.

The form of adoption provided by the Adoption Act is referred to as "closed adoption". Although there is nothing in law preventing birth parents, adoptive parents, and the adopted child from having ongoing contact, arranging regular access, and exchanging information, there are difficulties and disincentives which inhibit open communication between the two families.

Proposed changes to adoption law in New South Wales and in New Zealand would provide children with detailed rights to participate in the adoption process: see A-12.01,02.

Source *Trapski's Family Law* Vol 5 "Adoption". A1-A.2.03. 23/2/01. Brooker's.

Commodification of adoption

Market forces-

Else— 'Market forces' have, inevitably, had an impact on adoption. The involvement of the law, the adoption agencies, and the Child Welfare Division of the Department of Education developed when the 'supply' of babies available for adoption was too small to meet the 'demand' from would-be adoptive parents, and there was a waiting-list. By the mid-1960s, although numbers of adoption orders continued to increase annually, it was the babies who waited. Would-be adoptive parents were eagerly welcomed and could, to some extent, specify the sort of the child they wanted. p48

Grading system

Else— A 'grading' system quickly emerged, according to the child's sex, health, race, religious affiliation, and (to a lesser extent) family background. The most easily placed babies, perfect Pakeha girls, rose to the top of the list, and boys who were disabled and/or of mixed race sank to the bottom.' [*Evening Post* (EP), 17 August 1948,9 May 1958; *New Zealand Free Lance.* 10 October 1958; EP, 18 August 1964,10 May 1965.22 October 1965.22 January 1966; *Weekly News.* 16 September 1964.]

Minimum State cost

Else— Adoption was, by then, firmly established in the minds of both the public and those responsible for social policy as the ideal way of providing for ex-nuptial children. It also had the great merit of costing the state very little. The need for a form of state assistance that would allow single mothers to bring up their children themselves was slow to be admitted. But the overflowing nurseries could not be ignored. and were a factor in the Domestic Purposes Benefit being made statutory from 1973. p48...

Rise and fall- supply and demand

Else— This leads into the ...complex circumstances which induced so many single women to make their children available for adoption in the 1950s and 1960s- and why most had ceased to do so by the end of the 1970s. The sheer difficulty of supporting both themselves and their children was the major reason why women agreed to adoption, but it was not the only one. p49

Source Else 1989 'The need Ever Present' *New Zealand Journal of History* Vol23 (1) April 1989 pp48-49

DPB threat to product supply

Else— "The Domestic Purposes Benefit...essentially replaced the missing breadwinner and turned the single mother into the supervised, stay-at-home bride of the state. In theory it allowed the state to preserve the ideal of the nuclear family; in practice, it allowed women to raise children on their own, free of individual male control. When a rapid decline in the number of women making their children available for adoption followed closely on the heels of an apparently dramatic growth of illegitimate births, it immediately posed a dilemma for the state. By making the DPB available to single mothers, had it succeeded only in replacing an almost free, socially approved method of providing care with a highly contentious one funded by the taxpayer?"... The change to more mothers retaining their ex-nuptial children "was immediately seen and described in negative terms, as a 'decline in the number of babies available for adoption', rather then positively as an increase in the number of mothers able to keep their children. The prospect of the majority of single mothers choosing to live on a state benefit (albeit a meagre one), or even to go it alone, rather than handing over their children to married adoptive parents was bound to prompt rapid attempts to turn the clock back. The view that children of single mothers formed a supply pool for couples wanting to adopt had become so ingrained that the spectacle of this pool drying up immediately prompted a search for ways to refill it." Else 1991 p164.

Intercountry Adoption

Griffith— There is sometimes a very fine line between legitimate Intercounty Adoption and child trafficking.

Payments of large some of money in US dollars without proper receipts or accountbaility raise serious questions.

Commodification of adoption to facilates immigration.

Applicants can be caught in vice between need altruism charity and corruption.

NZ has taken two major steps: 1 Recognition of Hauge Convention. 2 Adoption (Intercountry Act) 1997 and Licensing of agencies.

..

A satirical business perspective

Carroll —graduated from Massey University in 1991 B.

S. W. Adopted himself, his main topic of interest during his study was adoption policies and principles (and included research on the position of Birthfathers). Although now working in the Assistant Vice-Chancellor's Office, Massey University, where he is responsible for Academic Projects on a corporate-wide level, Martin maintains an active interest in the adoption debate.

This article takes a satirical look at adoption history in New Zealand,

Carroll —from a retrospective position set In 2003AD, using a business framework. It is alarming the extent to which the framework fits. Of interest, is that applying this framework the author arrives at the same conclusion he has arrived at following a social work perspective: adoption should not be continued.

"Members of the Board of the Social Welfare Corporation, may I present to you my findings upon conducting an analysis of adoption as a going business concern.

Adoption has been a remarkably successful business. It has survived since New Zealand was colonised by Europeans in the early to mid- nineteenth century. However, now that we have moved towards a laissez faire economy, to what extent can adoption business continue as a going concern?

Carroll —In the mid-nineteenth century, demand for the adoption product was very high. The product itself was in plentiful supply by virtue of the unvirtuous, which for us, of course, meant nil salaries for production-line labour and minimal overheads. However, there was no set process and adoption transactions were only as reliable as the parties involved. This led, on occasion, to complications in terms of ownership disputes etc...

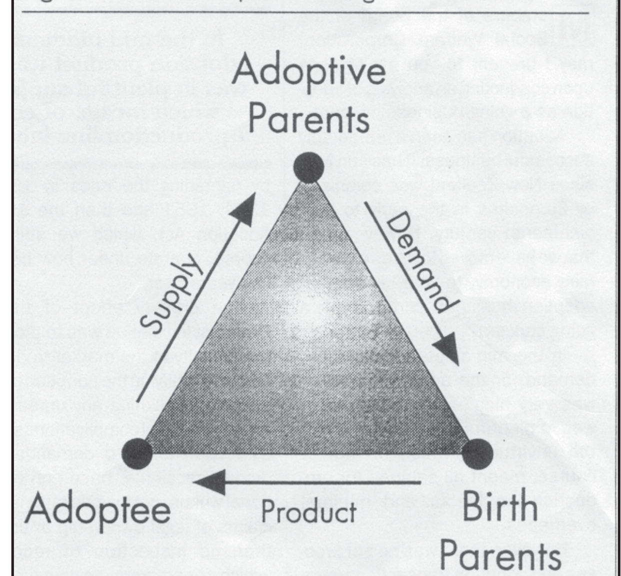
Government first moved to formally sanction adoptions in 1881 with the Adoption of Children Act. New Zealand can be proud that it was a Commonwealth leader in introducing legislation of this type governing ownership rights to illegitimate children.

Carroll —As demand grew and the supply of babies became scarce, it was necessary for the Government to take on a more interventionalist role and regulate the market place. As a consequence, the Governments of the day furthered their protection of the adoption process by tightening the rules in 1915, 1924, 1951 and then the 1955 Adoption Act, which we still, of course, operate under now nearly fifty years later.

Carroll —The primary effect of these pieces of legislation was to protect the sanctity of the market transaction by simplifying the adoption process and abolishing any unreason- able or unhelpful complications such as unsubstantiated demands for product recall (i.e. based on emotional whims, not logistic rationale), claims of legal ownership or unauthorised inspection of records (which, apart from anything else, constituted a breach of customer security).

Carroll —Regarding the parenting process, the acts served

Figure 1: The Adoption Triangle



to strengthen a rational division of labour between birthing and rearing, utilising each party in the area where their strengths would be used to maximum effect without any unnecessary overlap and the inefficiencies this can create. Of course, another effect of the legislation was to ensure that we at the Social Welfare Corporation, then known as DSW, enjoyed a market monopoly, with very few private agencies being allowed to practise adoption.

Carroll —Business reached its peak during the 1960's when there was an abundant supply of babies. However, this was soon followed by a market crash when the baby boom period ended in the late 1970's.

Infertile couples provided us with a captive market, and various marketing strategies were put to good effect. Such strategies included promotion of the nuclear family as the single appropriate family structure, providing a disincentive for the birthmother to try and raise the child herself, and the adoption triangle (see Fig.1) which neatly restricted the process to the key market forces involved - demand, supply and product without having to complicate the process by including third parties (siblings etc ...

Carroll —Meanwhile, we continued to enjoy massive popular support for providing a service which not only meant good business, but also fulfilled a charitable cause, and at the same time created jobs within SWC.

Come the 1980's, however, we witnessed a shift in the business environment: demand far exceeded supply; new market forces were brought to bear from international competitors; political lobbying organisations became increasingly active.

Carroll —Government behaved, as it was often inclined to do, against the interests of sound business when it yielded to the complaints of nonexpert community groups who wanted to have adoptions 'opened' to the public, a move which was clearly a spin-off from the drive that resulted in the Official Information Act 1982 and other similar legislation of the day.

Carroll —The Adult Adoption Information Act 1985 was passed enabling adoptees and other parties to the con-

tract to access records of the adoption transactions. In effect this was tantamount to permitting persons with clearly vested interests conducting public audits on our operating activities. Strong concern was voiced at the time over this legislation allowing binding, confidential contracts sealed in the past to subsequently have that confidentiality breached. Such a breach constituted very poor business ethics and certainly damaged our reputation in the market, with a major drop in shareholder confidence.

Carroll —Fortunately we were able to capitalise upon the situation by associating various charges with this 'search/access to information' service and I am happy to report that we were able to generate good revenue off this. The boost to our cashflow that this provided in the early days has, regrettably and predictably, subsided and in June 1993 we agreed to abolish customer charges altogether. This was done partly to boost the government-of-the-day's standing prior to an election, and partly because the adoption market had proven to be fees-sensitive and had indicated that such fees were detrimental to our core business of dealing in babies.

Carroll —We took comfort from the fact that access to the information was restricted until the adoptee turned 20 years old. It meant that our income was held at a rate proportional to adoptions for at least twenty years (of which we are now approaching the end) whilst the avoided a sudden cash injection followed by virtually nothing, which would have been the case had no age limit been set.

The consequence of the 1985 Act from a product perspective, however, was quite significant. It served to provide adoptive parents with a limited 20 year warranty on their adopted child, whereas previously this had been assumed for the life of the product. Upon the warranty expiring the adoptee could potentially access the contract information and act upon it in an independent manner. There is no question that the potential for faulty products not being covered under warranty was a primary factor behind the aforementioned drop in confidence.

Carroll —Around the same time we witnessed substantial signs of de- regulation in the market place. For the first time private agencies had a legislated role in the adoption process, whereas before their role had been marginal. Although this was in areas pertaining to counselling, it precipitated a move towards privately arranged adoptions which certainly stole market share from us. The other fundamental shift in the 1980's was towards practising open interaction even prior to placement. In such open practice, the expectation of after-sales service customers demanded from our staff was considerable, and, ultimately, not economically sustainable. Also, there can be no doubt that not offering a confidential service has deterred many customers.

For adoptions, a shift away from traditional values in society has resulted in a decrease of supply, with more birthmothers keeping their children in single-parent families and more abortions occurring. In the 1970's and 1980's real numbers dropped by over 90% down to around 500 a year.

Carroll —Surprisingly, adoptions by one parent and spouse, relatives and close friends, although declining in numbers, has not suffered to the extent that stranger adoptions have. This is a surprising market because these consumers act not of necessity, but rather of want and, with a little guidance on our part, conditioning.

Carroll —Adoptions by step parents (one birthparent and spouse), relatives or close friends became the major form of adoption in 1975 when the comprised 52% of total adoption turnover. By the turn of that decade step parent, relative or close friend adoptions were our bread and butter comprising 67% of all adoptions, and ten years later this had increased to 75% turnover in 1990. The future for 2000 was closer to 85%. SWC market share of one parent and spouse, relative or close friends adoptions has continued its downward curve. In 1980 we held 86%, 71% in 1990 and around 50% in 2000. The decline in real numbers, however, would indicate that our influence in this market aspect is waning.

Carroll —The majority of stranger adoptions are now imports, with very few being manufactured locally. Our international competitors have gone two ways: most countries New Zealand traditionally aligns with have either abolished adoption altogether or (especially in the case of strongly capitalist economies such as the United States of America) totally deregulated, allowing for private businesses to engage in an open-ended range of adoption business, underdeveloped countries and countries in crisis have advertised their merchandise profusely on the international markets.

So where does that leave us in the 21st century?

Carroll —We must certainly consider the needs of our primary stakeholders. I refer of course to those employed by SWC, the Justice Corporation and the legal fraternity. To abolish adoption would be likely to mean the loss of many jobs. However, let us summarise the key trends:

1. Dramatic decline in adoption numbers.,
2. Decline in one parent and spouse/relative/close friend adoptions - the group most likely to use alternative forms of guardianship;
3. Increase in alternatives;
4. Increase in competitors;
5. Increased overheads associated.
6. Decrease in market confidence;
7. Increase in political pressure to abolish adoptions. And, of course, do we want to be associated with an adoption system which represents very poor business ethics:

By way of conclusion, it is quite clear that we are not able to provide the return on our activities that is required of Government Corporations. I am convinced that the situation is non-recoverable, and suggest that we turn our attention to new enterprises. I offer the following recommendations:

1. That Social Welfare Corporation request the Minister to introduce legislation which will abolish adoption.

2. That remaining staff be channelled into alternative social welfare enterprises such as cost- plus guardianship orders.

Source Martin Carroll "Adoption Report a Business Perspective' *[NZ] Social Work Review* July 1993 pp24-26

Case for abolishing adoption
Ludbrook—"12 reasons why adoption should be abolished—

1 Adoption creates a legal fiction (or more correctly a series of legal fictions). Such legal fictions have no place in the area of family and interpersonal relationships.

2 Adoption establishes parallel truths It seeks to replace the biological, genetic and experiential truth of parenthood with a legal or deemed truth that the adoptive parents are the birth parents of the child. The result is that the child has a double identity (for example s/he may have two sets of names).

3 Adoption spawns a series of anomalies The women who has carried the child in her womb for nine months, has given birth to the child and (sometimes) cared for the child in infancy becomes, in law, a complete stranger to her child and is disqualified from any further involvement in her child's life. She becomes a 'non-mother'. The only other way in which a parent can be stripped of parental rights is where a court is satisfied that for some grave reason the parent is unfit or unwilling to exercise responsibilities of guardianship.
— By signing the consent form the parents of a child can sever completely not only their own relationship with the child but also the child's relationship with siblings, grandparents, aunts, uncles.. This breaches the principles of natural justice in that relatives can be deprived of their status without consent or consultation. It also denies the importance of members of the child's whanau or agia.

—Where a child is adopted by a single person the law deems that person is married and that the child is born to her/him in lawful wedlock. The same is true where the child is adopted jointly by an unmarried couple.

4 Adoption more in common with property law than family law By signing a consent to adoption the owners of the child (the parents) transfer all their right, title and interest in the child to new parents. The adopting parents acquire indefeasible title which is registered in a government registry (Register of Births). They acquire naming rights to the child. The transferrers (biological parents) lose all their rights in relation to the child and can be ejected as trespasses if they are seen to be interfering with the owner's rights. The emphasis is on the technical formalities of the transaction rather than the needs of the child. This is illustrated by a recent decision where a mother was able to reclaim her child because her consent had been witnessed by an experienced family law barrister rather than by a solicitor as required by the Act. [*H v S* Wellington HC]

5 Adoption breaches fundamental principles of family law The welfare principle is the cornerstone of our family law. Nowhere does the Adoption Act state that the welfare of the child is the first and paramount or even a primary consideration. It is true that an adoption order can only be made if it will promote the welfare and interests of the child but this is only one of the criteria for making an order and the reference to welfare and interests is misleading because **(a)** the biological parents are legally out of contention having signed the adoption consent; **(b)** by the time the matter is considered by the court the child is likely to have bonded with the adoptive parents; **(c)** usually no alternative care arrangements are presented to the court. Traditionally the adoption order was a rubber stamp operation. Today Family Court judges do look more closely at certain types of adoption.

6 Adoption is antithetical to deeply held Maori values Adoption has been described in *Puao-te-ata-tu* as 'A totally alien concept contrary to the laws of nature in Maori eyes'. It has been asserted that children are taonga and that the Adoption Act is in breach of the Crown's obligations under the Treaty of Waitangi. In Pacific Island cultures kinship fostering is commonplace and the idea of severing a child's connection with his/her kinship network offends traditional cultural values.

7 Adoption can cause unacceptable distortions in family relationships *Ludbrook*—Grandparent adoption has the result that the child's mother becomes in law a sibling to her own child. With the increasing incidence of breakdown of co-parental relationships and the special status accorded to stepparent adoption, a child may have a succession of legal parents or may find that the legal parent has had only a minimal involvement in his/her care or upbringing.

8 Adoption law and policy travelling in different directions What the law extinguishes, open adoption policy encourages. In law, adoption severs the legal and family ties between child and parent so that the parent becomes a stranger to the child: open adoption policy seeks to maintain links between the parent and child

9 Adoption serves to meet needs of adults rather than child It is a 'cut and paste' exercise with the child being excised from one family and joined to a new family. The 'clean break' principle overlooks the needs of children to know their personal history and their family identity.

10 Adoption Act contains provisions which discriminate against people on the grounds of age, race, religion, sex and marital status.

11 Adoption Act breaches principles of the United Nations Convention on the Rights of the Child. Article 12 requires that children be given the opportunity to express their views freely in matters which affect them. The only statutory mechanism by which the views of children can be placed before the Court is through the Social Worker's report. With stepparent adoption even this channel is not open to children. In some cases Social Workers fail to interview children, fail to fully and honestly explain to them the effect of an adoption order and the alternatives or fail to record or transmit accurately the child's views. Article 9 of the Convention deals with

situation where children are separated from their parents. Art 9.2 states that 'all interested parties shall be given the opportunity to participate in proceedings and to make their views known'. Art 9.3 requires that governments shall respect the right of the child who is separated from parents to 'maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'.

12 Adoption Act philosophy runs counter to modern social thinking As Dr Murray Ryburn has pointed out principles now accepted as fundamental in post-separation family adjustment are seldom applied in adoption decisions. He summarises these principles as: the child's right to contact with a non-custodial parent, the belief that such contact offers important advantages to the child, that opposition on the part of the custodial parent is not a good or efficient reason for denying contact, that contact should be re-established as soon as possible and that the long-term advantages of contact override possible short-term distress to the child.

The Adoption Act includes no recognition of the whanau principle which is the guiding principle of the Children and Young Persons and Their Families Act 1989. The first principle of that Act is that, wherever possible the child's family, whanau, hapu, iwi or family groups should participate in the making of decisions regarding children and the child's relationship with the family should maintained and strengthened.

The reality is that the Adoption Act 1955 is now 42 years old and reflects attitudes and values of an even earlier era. The fact that there has been no major reform of adoption law despite a series of official reports urging reform and strong criticism from adoption groups, judges, lawyers and social commentators suggests that the failings cannot be remedied by piecemeal reform." pp57-59.

Source Robert Ludbrook *'Closing the wound: An argument for the abolition of adoption'* in 'Adoption and Healing' 1997.

Nurture of children

Ludbrook—"The human child takes a long time to grow to maturity. During infancy and early childhood the child is dependent on others. Because of the symbiotic relationship between mother and child, the mother, in most societies, is the person immediately and primarily responsible for nurturing and caring for a child in the early years. The mother will usually need support from her mate and from the community so that she can direct her time and energy to the nurturing and caring role.

Collective responsibility

Ludbrook—If a birth parent is unavailable to perform the nurturing role then, if the child is to survive and develop, some other person, or the community at large, must take over the parental role. Bronowski ['The Ascent of Man' 1973] maintains that the first indication of the socialisation of primitive man was the acceptance of collective responsibility for orphaned children. The rearing of children by persons other than the birth parents is not an invention of modern western society. Informal or kinship fostering has been practised since people grouped together. Studies of child rearing in pre-European Maori society, in the Cook Islands and elsewhere show that in Polynesian society children were often shared. A child might belong to two families openly and proudly. The birth parents and the parent who reared the child were each important— a child with two families might be seen as doubly blessed.

Rationale of adoption law

Ludbrook—It is interesting to consider the rationale of our present system of adoption. Roman Law recognised adoption as a means of providing an heir for the children. Our adoption laws originated in Victorian times and reflect the ethic of that age. As Britain moved toward industrialisation there was greater emphasis on the nuclear family as a discrete unit. Old community networks broke down as people moved to the cities. The working classes had to fend for themselves. Middle class families were concerned that their newly acquired wealth should be passed to their children. A child born out of wedlock was branded illegitimate and bore for life the shame and stigma of bastardy. The mother was a moral outlaw.

Legal adoption was an ingenious device

Ludbrook—which brought benefits to the birth parents, the child and the adoptive parents. The birth mother was relieved of the shame and degradation which a punitive society heaped upon the unwed mother. She could dissociate herself from the living evidence of her disgrace. Her child would have advantages and opportunities that she herself could not offer. The child was laundered—the adoption process washed away the stigma and legal disadvantages of being born illegitimate. It created a new identity and new family by Court order. The adoptive parents became instant parents. Often they were not able to have children of their own and the adoptive process allowed them to know the joys and responsibilities of parenthood. They could integrate the child into their family in the knowledge that the child could not be taken away from them. There were benefits to the community at large in having children who had been deserted by their birth parents brought up by a substitute caregiver rather than become a charge on the State."

Source Ludbrook's Family Law Service Ch14 14-5, 1991.

Adoption is an odd concept

Ludbrook— "It is a legal oddity in that it creates and perpetuates a falsehood. Fictional parenthood is bestowed by legal decree. Adoption is odd, too, in human terms. It creates a 'pretend' family and the child instantaneously acquires a whole set of new family members. Legal links with the old family are irrevocably erased. In legal and human terms adoption is a curiosity. It does not fit easily into existing concepts of family law. In fact it is more easily explicable in terms of property law. Perhaps it is unduly cynical to see adoption as a means by which one set of parents transfers to a new set of parents absolute property rights in the child, but many of the earlier decisions reflect this attitude."

Source Ludbrook's Family Law Service Ch14 14-9, 1991.

Adoption as protective measure

Sagar—"Legal control of adoption has as its major aims—

1 Protecting the child from unnecessary separation from biological parents.

2 Preventing adoption by unfit persons.

3 Preventing interference by biological parents after the adoption is arranged.

4 Preventing biological parents, especially the mother, from unwise, hurried decisions made under stress, which may be regretted later.

5 Providing the child with legal status and legal family membership.

6 Preventing adoptive parents from taking permanent responsibility for a child who's health, heredity, physical or mental capacities may be a disappointment to them.

7 Protecting adoptive parents from later disturbances of their relationship with the child."

Source Sagar 1969 Thesis p195.

Nuclear family stress load

Benet— Modern western adoption law and practice is entered on the nuclear family structure as the norm. However, in terms of historical study the nuclear family is a very recent innovation. "Many observers have commented that the loading of all possible parental roles- nurturing, discipline, daily care, socialization, support, and so on-on the biological parents alone has created strains unmatched in any other sort of family...p51.What can modern man learn from the societies we call primitive? How can he use the relaxed flexibility of the extended family, and the easy sharing of children, without losing the dynamic range of possibilities he so prizes?...p53. The nuclear family has becomes and intensely protective refuge from a competitive world, it has also been a forcing-house of the qualities needed to succeed in that world..."

Economy of adoption

Adoption has a cost benefit to the state. The Children's Aid Society took homeless children from New York's Lower East Side and shipped them west in box-cars 'Orphan Trains' to be picked out by waiting farmers and their wives as farm and kitchen help. There was a growing realisation that fostering cost less than keeping children in institutions; and that adoption, after the formalities were completed, cost nothing at all.

Source Benet M K 'The Character of Adoption' Jonathan Cape 1976. p51,52

Adoption focuses adult concerns and dilemmas

Else—"Despite repeated claims that it centres on the needs and welfare of children, adoption is really about adult beliefs and desires and dilemmas. It is a socially constructed means of providing particular kinds of care for particular kinds of children at particular times. But it is also a socially constructed means of classifying and policing the behaviour of women. It is shaped as much by the current discourse about women, men and sex as it is by the current discourse about children, parents and families." p50

Source Anne Else 'The uses of history in adoption education and healing' in book *Adoption and Healing* 1997 pp50-56

1998 Adoption policy landscape of contestation

Kelly–"The picture that emerges of New Zealand adoption policy is that of a landscape of contestation. For some, the state, represented by DSW, is rigid, unsympathetic to adopters, bureaucratic and resistant to providing choice. For others, the state is a bulwark (however flawed) against corruption, the commodification of children, the exploitation of women's vulnerability, and the proliferation of adoption to meet adult needs. The debate is as much about adoption itself, as the relative roles of the public and private sectors."

Source B Kelly Thesis 1998

Illegitimates de-personalised as 'its'.

"Thomas Richard Dodd Fitzgerald was charged with being a neglected child...it being illegitimate and its mother being in indigent circumstances and unable to support it.—His Worship committed it to the Industrial School..."

Source News Item, *Otago Times* 8th February 1889.

CHILD PLACEMENT OPTIONS

Adoption as part of a spectrum of child care options

Trapski—A.9.01 Adoption and other legal categories available to substitute carers. The New Zealand Law Commission has reminded us that "adoption cannot be viewed in isolation from the wider issue of placement of children needing alternative care. Rather, it represents one end of a spectrum of available options": *Adoption and Its Alternatives.. A Different Approach and a New Framework*, NZLC R65, September 2000, para 7.

Adoption differs from other care options because it does not merely confer on an adult carer certain rights and responsibilities in relation to a child. Adoption severs the child's relationship with the biological parents and creates a new legal and family relationship with the adoptive parents. Adoption changes the child's legal and family status and identity. Unlike other care options, adoption is virtually irreversible. An adoption order cannot be revoked even if the adoption can be shown to be contrary to the child's welfare or an adoptee expresses a strong and understandable desire to revoke the adoption order.

Other care options under New Zealand law include:

(1) Foster and family placements "Foster care" or "out-of-home care" describes a care arrangement rather than a legal status. These terms are used to describe an arrangement where strangers to a child provide for that child's day-to-day care. The term "family care" is often used to describe a situation where members of the child's family other than biological parents provide for the child's care.

"Long-term foster care" refers to a placement that is intended to be permanent or long term. While in practical terms, long-term foster care is virtually indistinguishable from adoption, the carers may have no legal status in relation to the child. The child may be placed infor-

mally with a friend or relative and the guardianship and custody rights remain with the parent(s). Alternatively, the carer may have a legal status as custodian or guardian under ss 78, 101, 102, 1 10 Children, Young Persons and their Families Act 1989 or ss 6, 6A, 7, 8 Guardianship Act 1968. Where a child is a ward of the Court under ss I0A to 10E Guardianship Act a person may be appointed an agent of the Court to have custody and day-to-day care of the child.

The research evidence as to the advantages of adoption over a permanent planned fostering arrangement is equivocal. One view is that the child's sense of security derives from the quality of the personal relationship between child and parent including the love, nurturing, and sense of belonging and that the legal status has no real bearing on the quality of the relationship. A different view is that the legal status is important as a formal recognition of the carer's role and provides an environment in which a long term or permanent commitment can grow, thus enhancing the sense of emotional security of both carer and child. It also has symbolic importance as a public manifestation of the carer's commitment to the child. For an mended discussion of these issues and a reference to relevant research literature see *Application by P (adoption)* [2001] NZFLR 673.

There is no doubt that many long-term foster placements arranged by the Child, Youth and Family Service have broken down and there is a lack of research as to the reason for such breakdowns. A series of failed placements is particularly destructive to children.

(2) Placement by CYFS pursuant to agreement with parent

A child may be placed with foster carers by Child Youth and Family Service pursuant to an agreement between a parent and the service: this may be an extended care agreement (more than 28 days) under s140 CYPF Act 1989 or a temporary care agreement under s139 (less than 28 days).

(3) Custody

Under s 3 Guardianship Act 1968 "custody" connotes "the right to possession and care of a child", which is the definition of custody in s 2 Children, Young Persons, and Their Families Act 1989. Custody is awarded to the parent or other person primarily responsible for the day-today care and nurture of the child.

(4) Guardianship

Section 3 Guardianship Act 1968 defines "guardianship" as the "right of control over the upbringing of a child" and all rights, powers, and duties in connection with the person and upbringing of a child prescribed by law. Guardianship gives the guardian the right to custody of the child, except where there is a custody order in force in favour of some other person or persons: s 3. An equivalent definition appears in s 2 Children, Young Persons, and Their Families Act 1989. The guardian of a child is entitled to make, in consultation with the child's other guardian(s), important decisions in relation to the child's upbringing, including the child's health and education.

(5) Wardship

The Court can be appointed the child's legal guardian. On the making of an order in wardship, the Court acquires the common law rights and powers over the ward's person and property: s10A to 10E Guardianship Act 1968. See *Trapski's Family Law* Vol IV, ch 2. Wardship proceedings can be brought in the Family Court or High Court and, on the making of an order, the Court has the rights and powers over the person and property of the child that a guardian would have: s10E Guardianship Act. Under that section the Court can give custody of the child to any person or can authorise any person to have care and control of the child.

(6) Enduring guardianship

The Law Commission has proposed, in Adoption and Its Alternatives: *A Different Approach and a New Framework,* NZLC R65, September 2000, paras 117 to 125, a new care status of enduring guardian which it sees as being particularly appropriate where care of the child is assumed by a step-parent or relative. Enduring guardianship would establish a lifetime parent-child relationship, but would not sever the child's legal links with the biological parents.

Source *Trapski's Family Law* Vol 5 "Adoption". 11/9/01. 1-116-118. A9 Brooker's.

RELATIONSHIPS OF ADOPTION

One of the issues raised frequently by adoption is the significance of psychological and genetic relationships and their relative importance. There are conflicts between legal fiction, truth and reality. The advert of artificial reproductive technology has heightened the debate.

Blood lines?

W. Atkin—"Biology versus psychological bonds. Family and whanau versus friendships. Fortunately, such oppositions are not the norm. A child's "psychological parents" will more often than not be the natural parents, and we are often able to count members of our family as our friends. Nevertheless, these coincidences do breakdown with disturbing frequency. The subject of family law involves, at least in part, a choice between certain commonly accepted views about relationships and the way people actually live their lives.

The bias in our law shifts as we look into different areas. Child support emphasises blood and adoptive lines, although *T v T* [1998] NZFLR 776 bucks the trend by holding that an ex-lesbian partner can be declared a step-parent liable for assessment. The Children, Young Persons, and Their Families Act 1989 is frequently paraded as a piece of legislation concerning biological families and whakapapa. This illusion was destroyed, however, by Elias J in *CMP v D-GSW* [19971 NZFLR 43 where Her Honour asserted that the Act contained no weighting to the biological family as against the foster parents. The key definition of "family group" extends to psychological relationships as well as biological ones. Elias J is indirectly supported by the Court of Appeal in *B (CA204/97) v Department of Social Welfare* (1998) 16 FRNZ522, where an argument elevating biological ties to the most impor-

tant factor in determining the welfare of the child was firmly rejected. Tipping J for the Court also noted that nothing in the United Nations Convention on the Rights of the Child 'regards the biological tie as decisive or as justifying some preliminary threshold before one gets to the welfare and interests of the child' (524-525). So, welfare trumped blood.

Mental health

W. Atkin–Two pieces of legislation recently introduced into Parliament pick up some of these themes. The Mental Health (Compulsory Assessment and Treatment) Amendment Bill makes a lot of technical and procedural changes which those dealing in the area will have to study carefully. Among them is a new provision which requires those with powers under the Act to exercise their powers in consultation with the family or whanau of the person who is being assessed or treated. There are two exceptions to this obligation: where consultation is not practicable and where the person does not wish such consultation to occur. The new s 5 also repeats existing requirements which, in summary, involve respect for the person's family and beliefs.

Neither "family' nor "whanau" are defined. Yet we can surmise that the drafters have blood family and spouses primarily in mind. The exclusion of the family from the mental health processes is a stand-out feature of the present law, and doubtless exasperating for those who have the well-being of their relative at heart. The revised s 5 will go some way to rectifying this, although what happens when proper consultation does not take place, how the family complains and what its remedies are will he interesting questions for lawyers to mull over.

On the other hand, mental health issues can be a source of great tension with in a family. A relative may be a prime mover in getting someone committed (to use the old language). Some members of the family might be in favour with the committed person and others not. The amendment talks about the family and whanau as generic concepts, and does not differentiate among relatives with varying interests. Furthermore, there might be other people, not blood-related, who are more important in the person's life. What about the gay man's lover who is ostracised by the family? Does he have a right to be consulted? Can he be deemed a "family member"? What about the best friend, whose psychological bonds to the person are much closer than anyone in the family? How, we may wonder, will health professionals handle these kinds of questions?

Assisted human reproduction

W. Atkin–The Assisted Human Reproduction Bill is based in part on the work of the Ministerial Committee on Assisted

Reproductive Technologies which reported to the Minister of justice in July 1994. Four years to reach Parliament is probably not a bad record. Apart from placing the national ethics committee on assisted reproduction on a statutory basis and dealing with such ephemeral notions as cloning and mermaids, the Bill establishes a national register of "donor children", incorporating details about the donor. Other rules cover obligations on clinics to keep records, and rights of access of information.

Biology and whakapapa are the driving forces behind these provisions. The use of donor sperm, eggs and embryos is problematic for a number of people, for religious, feminist and cultural reasons, but it is now commonplace and some of the hesitations are mollified if there is openness about the donor child's origins. In the past, like adoption, donation was secretive. The tide has turned. The growing appreciation of the right of the children to know about their biological heritage, coupled with the absence of legal responsibility on the part of the donor (see the Status of Children Amendment Act 1987), have opened the way for system being put in place by the new Bill. A system of information about biological parenthood does not, it is suggested, compromise social and legal standing of the two parenting the child. The Bill does not alter their status.

Blood and water

W. Atkin–Is blood thicker than water in family law? Frequently, as we have seen, it is, but often it is not. Finding the right balance between biology and social reality is one of society's perennial challenges"

Source William Atkin, Reader in Law, Victoria University of Wellington; Member of the Ministerial Committee on Assisted Reproduction Technologies. 'Blood lines?' Editorial *Butterworths Family Law Journal* Vol.2. Pt 12 December 1998 pp299-300.

Principles of adoption practice
1990 Report identified 13 key adoption principles

1 The deciding principle is the best interest or welfare of the child. We understand the best interests of the child to mean looking at each case on its merits, making an assessment of the needs of each child and not relying on broad generalisations, but nevertheless being aware of some overall guidelines such as the importance of ethnic background, bonding, ability or preparedness to parent and openness in relationships. The child has a right to be raised by birth parents or birth family/whanau/hupu/iwi in so far as this is in the child's best interests. The best interests principle should operate wherever possible, so that the rights and needs of all parties in the adoption process are preserved and protected. This principle is in line with Article 21 of the United Nations Convention on the Rights of the Child.

2 Retention of a sense of belonging and identity in relation to genetic forebears and relatives including receipt of information, acceptance of origins, and open adoption.

3 Love and acceptance by the adoptive family not to be seen as lesser than natural children.

4 Permanency of placement, adoptive parents should be able to parent their adopted child without fear of disruption.

5 The child has a right to legal or other representation to protect the child's interests.

6 Adoption has changed. 'The new adoption' is a process rather than an event, the new relationships are likely to be

an ongoing reality, the closed and secretive style of the past is largely going.

7 New Zealand is a bicultural country and becoming multi-cultural and different cultural perspectives, especially those of the tangata whenua, must be incorporated into adoption practice. The Treaty of Waitangi and Puao-Te-Ata-Tu are foundation documents.

8 The holding of whanau and family meetings may be valuable in reaching a decision for the future of the child, subject to the best interests of the child. Birth parents should be encouraged to involve families but ultimately the wishes of the birth mother are protected by legislation.

9 Social work practice should be professional, neutral, non-judgmental, co-operative and flexible; not doctrinaire or rigid, and neither should it promote particular ideologies. Adoption social work should be seen as a specialism, backed up by qualifications and appropriate and ongoing training. This should ensure a similar quality of service throughout the country.

10 The counselling of birthmothers and where possible birthfathers should be sensitive and non-directive. The availability of all options, including keeping the child, looking to the whanau/family for care of the child, guardianship and adoption should be discussed and presented objectively.

11 The counselling of adopting parents and those enquiring about adoption should be sensitive and objective.

12 Transparency in decision-making, avoidance of conflicts of interests, accountability and review mechanism.

13 Screening of adopting parents, according to regular and public standards." Report 1990 pp11-12.

Adoption packages

Griffith— In this fast changing world, if we don't front reality and take action we become increasingly irrelevant, redundant or die. Businesses and organizations are facing change with their survival at stake. <u>The institution of adoption is also on the line, and needs change if it is to survive today's realities</u>. Practice, policies, laws and attitudes must change to reflect realities rather than the myths about adoption....

Western adoption packages

Griffith— Adoption is a social arrangement, not a natural process happening to the individual. Modern Western adoption has been packaged in several forms to meet social changes and consumer demand. Society produced lots of children they labelled illegitimate, born out of wedlock. Not locked into marriage they were misfits of society. With birth certificates stamped illegitimate, they faced a difficult future. Griffith 1992 Sec 2 p12

Massachusetts 1851

*Griffith—*a solution was found in 1851. Illegitimate children were re-packaged as "Western adoption." It was slow to take off, but became popular in USA. Legal adoption was introduced to New Zealand 1881, but England not till 1926! Recycling illegitimates into legitimate families was suspect. Adoptive parents were accused of introducing "bad blood" into the family. Both adopted persons and adoptive parents were often given a rough time by friends and relatives. Griffith 1992 Sec 2 p12

Eight packages of Western adoption

Griffith—

1 Work package Provided older children as a working asset for farm or home. Indenturing provided leasehold children, but adoption freehold. The open exploitation model.

2 Infertility package Solved problem of childless families, and homes for surplus children at no cost to the State. Provided mutual benefits to adoptive parents and adopted persons. The childless marriage model.

3 Humanitarian package As society became more proficient at producing illegitimate children, over-production required humanitarian action. Available prepackaged, right age and sex. The complete a family model.

4 Complete break package For the heyday of environment over genetics 1950-60s. In this package, adopted persons were guaranteed to have all their roots cut off. Root cutting became an obsessive preoccupation of law makers, judges and social workers. Some became so obsessed they continue to abuse the child as an adult by denying them their roots. Suppression of truth from the adoptee also became a social work and legal obsession. Also known as the "as if" no difference model

5 Meet and break package Birth mother and adoptive parents meet before complete break. Gave acknowledgment and fleeting interaction of both sets of parents. Can be remembered as real people.

6 Overseas package

7 Open adoption package Instead of roots being cut off, they are openly acknowledged in on going contact between adoptee and birth origins. Openness, honesty and integrity are an important part of open adoption. Open adoption is not easy and is not a panacea for adoption problems.

8 Post adoption package Adoption becomes more like guaranteed long term fostering until adulthood. It attempts to retain the best from adoption and fostering but avoid the pitfalls. This package is still being put together. A lot more work needs to be done.

Two core problems of western adoption

Griffith— Most problems in Western adoption stem from treating children as possessions and secrecy.

1 Treating children as possessions Materialism sees children as possessions, *the goods we transfer ownership of by adoption.* Entitlement is a major issue. Fostering is lease-hold, adoption free-hold. Possessiveness is a factor in cutting off an adopted persons roots and denying them truth of origins. It is also a factor in not allowing adopted children to grow up. In many Statutes the adoptee is an adopted child for the rest of their life- you are always an adopted child irrespective of your age.

2 Secrecy of records was to protect adopted persons

from others prying. It's now used against adopted persons to deny them truth of their origins. Secrecy prevents proper research and accountability of adoption practice. Secrecy gives power to those who hold it, some play God.

Secrecy in USA and some other countries is now a saleable asset, some agencies charge high prices for non identifying information. Private operators charge over a $1000 for identifying information. While some people spend their lives seeking adoption law reform to allow adopted persons and birth parents free access to the truth, others make a living out of secrecy by selling it off or selling expert knowledge to break it.

Lifting the lid off adoption

Griffith— It is being blown off by adopted persons, birth mothers, some adoptive parents, but very few professionals. Moves for adoption law reform have come mainly from the cliental having to rise up and battle the social work system, the legal system, professionals, agencies and politicians.

If you subjected the institution of marriage like the institution of adoption, and passed decrees that all links with your past families must be destroyed.

If the social work, medical, legal, Judiciary professions and politicians of that country, endorsed and pledged their support to this suppression of truth and destruction of family links... How would the USA and other Western democracies respond to that country and its professionals? Would there not be outrage at such a blatant violation of democracy?

For the past 40 years this is what USA and most Western countries have believed, practiced and enforced upon adopted persons in violation of democratic principles.

That is what the Adoption Law Reform Movement seeks to rectify and ,restore the Constitutional and Democratic rights based on openness, honesty and integrity.

Any business clouding itself in secrecy, and using it to avoid accountability and objective research is doomed to fail. Adoption has moved along this track for too long and is only now emerging into the light and truth demanded of it

Source KC.Griffith '*Right To Know Who You Are'* Canada 1992 Sec pp12-13

Purposes and objects of adoption A12

Lack of statutory guidance A.12.01

Trapski— Adoption has been part of New Zealand family and social life for 120 years, yet there have been no attempts in successive adoption statutes to clarify the purpose, objects, and principles behind adoption, other than a reference of the need of adoption to promote the welfare and interests of the child: s 11(b) Adoption Act 1955. As has been noted earlier, adoption has at different times and in different circumstances been used to meet some 42 different social purposes: see A.4. This fact is an indication of the elasticity and flexibility of adoption.

It is likely that if adoption continues to be one of the care options available to non-parental carers any future legislation will be specific about the purpose and objects and principles of adoption. This is part of a trend evident both in New Zealand and overseas.

Law Commission's recommendations A.12.02

Trapski— The New Zealand Law Commission in its report *Adoption and Its Alternatives: A Different Approach and a New Framework*, NZLC R65, September 2000 envisaged adoption as one of a range of legal care options open to courts making decisions about children in need of out-of-home care. The Law Commission put forward recommendations as to suitable objects and purposes of adoption. These are set out in the following three sections.

Proposed principles governing adoption A.12.03

Trapski— The Law Commission considered that ss 8(a)-(e) Adoption Act 2000 (NSW) neatly articulated the principles which underlie the proposals it made in its report:

(a) The best interests of the child, both in childhood and in later life, must be the paramount consideration.

(b) Adoption is to be regarded as a service for the child, not for the adults wishing to acquire the care of the child.

(c) No adult has a right to adopt a child.

(d) If the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances.

(e) The child's names, identity, language, cultural, and religious ties should, as far as possible, be identified and preserved. NZLC R65, September 2000, para 173

Proposed objects underlying new adoption legislation A.12.04

Trapski— The Law Commission proposed the following objects to be included in any new adoption legislation:

(a) Adoption is to be regarded as a service for children with the purpose of providing a child, who cannot or will not be cared for by his or her own parents, with a permanent family life.

(b) The best interests of the child both in childhood and later life shall be the paramount consideration in adoption law and practice.

(c) Adoption law and practice must comply with New Zealand's obligations under treaties and international covenants.

(d) Equivalent safeguards and standards that apply to New Zealand children should apply to children adopted from overseas.

(e) The changing nature of adoption practice must be recognised.

(f) Adoption law and practice must encourage openness in adoption.

(g) Children must be assisted to know and have access to their cultural heritage.

(h) Adoptees and their birth and adoptive families must have access to information relating to the adoption.

(i) Post-adoption assistance must be provided for adopted children and for birth and adoptive parents: *Adoption and Its Alternatives: A Different Approach and a New Framework*, NZLC R65, September 2000, para 174.

Matters to be considered in determining child's welfare A.12.05

Trapski— The Law Commission proposed a non-exhaustive list of factors decision-makers should consider when assessing the welfare and interests of a child. This list is based on the United Nations Declaration of Child Placement Principles and the Children Act 1989 (UK): NZLC R65, September 2000 para 172.

The Law Commission provided a non-exhaustive list of matters to be taken into account in assessing the child's best interests:

(a) The child's physical and emotional needs, including a sense of personal, family and cultural identity;

(b) The wishes expressed by the child;

(c) The importance to the child of having a secure place as a member of a family;

(d) The alternatives to the making of an adoption order, and the likely short and long-term effects of adoption for the child;

(e) The quality of the child's relationship with the birth parents and birth family and the effect of maintaining or severing that relationship;

(f) The wishes of the birth parents and their character and attitudes;

(g) The suitability of the adoptive parent(s) to provide for the child's needs;

(h) The attitude of the adoptive parent(s) to the child and the responsibilities of

parenthood and the potential quality of the child's relationship with them; and

(i) The preservation of the child's cultural, linguistic, and religious heritage.

(j) Post-adoption assistance must be provided for adopted children and for birth and adoptive parents: *Adoption and Its Alternatives: A Different Approach and a New Framework,* NZLC R65, September 2000, para 172.

Proposed purpose of adoption A.12.06

Trapski— The Law Commission proposed that the purpose of adoption should be stated in new legislation in the terms of the United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. See A.11.01 and Annexure A.14. Under art 13 of that declaration, the aim is "to provide the child who cannot be cared for by his or her own parents with a permanent family", which has been proposed by the Law Commission along with post-adoption assistance for adopted children and for birth and adoptive parents: *Adoption and Its Alternatives: A Different Approach and a New Framework*, NZLC R65, September 2000, paras 166 to 168.

The Adoption Act 1955 does not lay down any over-arching principles governing the interpretation and administration of the Act. Since the late 1980s it has become routine in the US, Australia, and the UK for legislation affecting children to include statutory objects and principles which provide an over-arching social framework and which provide assistance to Judges, social workers, and others in interpreting the legal provisions.

Trapski— It is of interest to compare the Law Commission's proposals with the detailed objects set out in the Adoption Act 2000 (NSW):

(a) Emphases that the best interests of the child concerned, both in childhood and in later life, must be the paramount consideration in adoption law and practice; **(b)** Make clear adoption is to be regarded as a service for the child concerned;

(c) Ensure that adoption law and practice assist a child to know and have access to

his or her birth family and cultural heritage;

(d) Recognise the changing nature of the practice of adoption;

(e) Ensure that equivalent safeguards and standards that apply to children from New South Wales apply to children adopted from overseas;

(f) Ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements;

(g) Ensure openness in adoption;

(h) Allow access to certain information relating to adoption; and

(i) Provide for the giving, in certain circumstances, of post-adoption financial and other assistance to adopted children and their birth and adoptive parents.

Source *Trapski's Family Law* Vol.5. 'Adoption' A12-A.12.06 24/10/2003

The word 'adoption'

Coles— The word 'adoption' is derived from the two Latin words *ad* and *optare*, meaning 'to choose'. It is a bitter irony, that adoptions, as practised in Western societies, are the very antithesis of choice. An adopted person does not choose to be severed from his or her family of origin. That decision was and is made for them, ostensibly in their best interests.

Source Gary Coles *Ever After* Clova Publications p2004 p232

How have we understood adoption?

Delany— Our understanding of adoption has not been placed in a framework of a more general analysis of knowledge. Everyday knowledge about adoption has been created and recreated within a social environment that demands undying faith in a legitimated, positivistic, social science to find the right answers. This has served to constitute and reconstitute the very fabric of meanings that we have brought to the process. p118

Objectification of adoption

Delany—The resultant, pervasive, underlying assumption is that adoption has an essential reality all of its own.

(a) This reality has clearly defined boundaries that presents adoption as a homogenous, [7] benign institution that has, and continues to serve the functional (biological, emotional, economic and social) needs of the individual and of society. p118

(b) Adoption has been understood and presented in discourse as an objectified, universal reality separate from its historical and social/context.

(c) It has been presented, and consequently understood in Australia as an institution that cannot be compared, other than with adoption in a few other very similar Western industrialised countries such as the USA and the UK.

(d) Adoption has been portrayed and presented as given, unalterable and self-evident and as a consequence it confronts the individual as an historically and scientifically justified, objective and benign process and therefore, it is undeniable '*fact*'. p118

Response of persons involved merely reactive!

(a) The biography of those consumed by the process is apprehended merely as a reactive, subjective personal episode, separate and distanced from the institution of adoption.

(b) However, individuals continue to experience the power of institutionalised adoption as an objective coercive, and in many cases, an oppressive force.

(i) Any attempts by them to resist tend to be subsumed by the sheer force of the institution's objectified facticity.

(ii) This sheer force is not diminished when the individual does not understand or accept the institutions purpose or its mode of operation because adoption is reality, perceived as external to the individual.

(iii) The individual, struggling for understanding, finds that the dominant culture demands that 'proper' understanding will only eventuate when the individual applies the same value-free, rational rules of analysis that are seen as appropriate for investigating nature.

(iv) This even in the face of the social world as a humanly constructed reality that is understandable in a way not possible in the case of the natural world. [8] p118

Adoption a valid entity above critical analysis

Delany—As we have seen the objectification of adoption makes it separate and above the unavoidable emotional bias of the human subject and therefore it is a valid entity that cannot be, and should not be subjected to critical analysis.

(a) This homogenising of adoption is further assisted by a limiting reductionist emphasis on the nuclear family (mother, father, child) as the primary and only relevant, objective unit of analysis in adoption research.

(b) This limited focus has served to obfuscate a range of social institutions that are undeniably implicated in the creation and perpetuation of the process.

(c) This limiting concentration on the nuclear family presents adoption as a private and beneficial, consensual transaction just between members of the adoption triangle.

(d) The crucial importance of the centrality of the social constructedness of adoption is blended out and it assumes a legitimised position as part of everyday knowledge, obscured from its inherent complexity and its very real, unwanted and unintended effects. p118

Problematic dimensions of adoption revealed

Delany—History has shown us however, that even in the face of its objectified reality, the unwanted and unintended effects of adoption have come to characterise the process to its detriment and arguably, to the detriment of many who could have benefited by it if it had been understood and constructed differently.

The subjective experience of many thousands of individuals who have, in varying degrees, been consumed by the process remains as an enormous yet ambiguous contradiction that struggles to push through the institution's objectified facticity. **(i)** In Australia many of those consumed have translated their personal experiences into political and social action. **(ii)** Individuals have collected together and formed support and action groups that have tended to I take two dichotomous paths. p118

1 Work within the system

Delany—The first, while acknowledging the inherent problems associated /with adoption, have accepted its objectified reality and worked alongside those institutions who maintain and present the process as a legitimate entity, understandable only as objectified everyday knowledge. Examination of the operating philosophies or mission statements of these groups reveals a theoretical orientation that appears to again be contradictory. While attempting, on the one hand, to address adoption's unwanted and unintended effects, on the other they legitimate the process by refusing to challenge, question or relocate understanding of the process. For them the State, and its 'expert' agents are the only legitimate arbiters of our understanding of adoption. Many of these groups receive generous annual funding from the State to provide services to those effected by adoption, services which rarely address or question the fundamental cause/effect nexus. pp118-119

2 Change the system

Delany—The second type of group that has come to be part of the adoption landscape in Australia is the action oriented, social change group. Like the first they are usually comprised of people who have been, in some way, consumed by the process. However, examination of their philosophical approach to the process reveals a differing set of beliefs. **(i)** More often than not these groups tend to

be problem orientated. **(ii)** They see adoption as an inherently problematic and contradictory process that has often resulted in the institutionalised denial of human rights. **(iii)** They believe that not all are equal in the adoption process and that birthmothers and adopted people in particular have been exposed to unjust processes that others have not. **(iv)** They argue that the rights of all those implicated in the adoption process cannot and should not be legislatively balanced because the basic human rights of two sectors of the adoption triangle have been denied in favour of the third. **(v)** They ask the question, "how can the rights of all ever be balanced and equal when the rights of two factions have been corrupted to serve the needs of the third?"

However, while this social action group questions the contradictions inherent within the process of adoption, they are more often than not subsumed again by their exposure to the social objectification of reality. Understanding of the process becomes obstructed by the sheer facticity of the institution. Their experiences of the process tells them that something is drastically wrong, yet they are trapped within an ontological prison that limits and reduces understanding to existing, legitimised, and prescribed ways of knowing the world.

Both of the groups described above however, have served to provide a greater awareness of the problematic dimensions of adoption. The second in particular has (a) provided permission for those affected to speak out and question what has been done to them. p119.

State and Society blames individual not system

Delany—Unfortunately, the kinds of ameliorative measures ratified by the State and by mainstream Australian society have been geared towards addressing issues relating to the individual or family rather than towards understanding the process and addressing its underlying historical and social context/cause. <u>This top-down approach reveals a fundamental theoretical and conceptual framework that again locates and places the responsibility for the problem, and for change, at the level of the individual rather than with adoption as a social product</u>. It seems that while logic has assumed a powerful and privileged position in human thinking, in practice when we don't have to deal with the question of how we know what we know, when we are able to discount and devalue the stated experiences of the powerless as irrational, subjective anger, then perceptions become much more acceptable than logic. [9] p119.

How should adoption be understood?

Delany—How should adoption be understood and represented? Is there an inherent logic to the process that is being disguised by its objectivity? In order to understand the nature of the process of adoption as it has existed within the past 120 years in Western industrialised countries like Australia we need to take a reflexive, questioning position and look again at not only what we know, but how we come to know it. Western positivistic, social science with its top-down approach and its need to eliminate the subjective has provided us with a one dimensional and rigidly compart-mentalised view of adoption as a blueprint from above. [10] As McIntyre quite correctly states in her book, *Tools for Ethical Thinking and Caring*, "there is a responsibility to ensure that theoretical literacy guides the decisions and actions of social researchers, social workers and mental heath professionals, and that theoretical literacy needs to be combined with a highly developed sense of ethics." [11] Professionals who enjoy a privileged position in society have an inherent responsibility to ensure that what they do and how they do it does not place those who are powerless and marginalised, at risk. p119.

Stance of social workers and researchers

Delany—For the adoption worker and researcher, being 'theoretically literate' involves—

(a) the need to adopt a reflexive approach to analysis both in terms of the structural societal shapers and the human perceptions of all stakeholders.

(b) The theoretically literate adoption worker and researcher will strive to understand the assumptions underpinning different policy and practice decisions and locate them both ontologically and epistemologically.

(c) The theoretically literate adoption worker and researcher will know that the assumptions, beliefs and attitudes that they bring to the situation need to be critically analysed so that their implications are understood.

(d) Most importantly of all the theoretically literate adoption worker and researcher will realise that truth lies in their preparedness to listen to the viewpoint of others whilst maintaining a belief in the potential power of individual creativity and the core values of human rights and dignity. [12]

When we take this reflexive approach the socially constructed nature of adoption and answers to questions about the origins of adoption's contradictions and unwanted and unintended effects begin to emerge. p120.

Adoption a socially constructed human product

Delany—By listening to the real-life experiences of those who have been touched by adoption it becomes clear that—

(i) this is a process that is a human product, **(ii)** that it is socially constructed. **(iii)** It becomes evident that adoption is not something that exists, divorced or separate from the workings of human beings. **(iv)** It is not a reified entity that should be attributed the status of being ridged and thing-like because it is more properly the result of complex and changing sets of social relationships. [13]

In order to understand the nature of adoption as an institutionalised, human product we must first address the question of the nature of the social construction of reality. p120. See pp120-122 for DenyDelany's dissertation on this subject.

Notes 7 O'Shaughnessy, T., (1994) Adoption, Social Work and Social Theory, Avebury, England. p.19. **8** Berger, P. & Luckmann T. (1966) The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin Books, USA. p, 69. **9** McIntyre, J.J., (1996) "Tools for Ethical Thinking and Caring: A reflexive approach to community development theory and Practice in the pragmatic 90s" I, Melbourne. **10** ibid., p. 44. **11** ibid., p. 38. **12** ibid., p. 49. **13** ibid., p. 21.

Source Denys Delany 'Understanding adoption: epistemological implications' book 'Adoption and Healing' 1997 pp118-120.

Adoption satisfies socially constructed purposes

Delany— Adoption it was used to satisfy a multitude of different, yet still socially constructed purposes—

(i) the need to protect the child from socially constructed illegitimacy and the unmarried mother from socially constructed shame.

(ii) It was used to satisfy the socially constructed need of childless, often infertile couples to socially reproduce by presenting another's child as their own.

(iii) And it was used to provide so called 'unwanted' children with homes and 'rescue' them from (socially constructed) poverty and disadvantage.

Source Denys Delany 'Understanding adoption: epistemological implications' in book 'Adoption and Healing' 1997 p123.

Rise of professionalisation

Delany— The rise of professionalisation during the past 100 years has served to exacerbate and in turn has been exacerbated by the distortion of knowledge phenomena.

(a) Underpinned and legitimated by an undying belief in scientific rationality to provide access to universal social laws, everyday knowledge encompasses a belief in the skills, knowledge and right of experts to define and then deal with social problems.

(b) This belief in the ability and therefore, the legitimacy of experts to provide the right answers, without due examination of the origins and nature of their knowledge bases, has resulted in an overdependence on these experts.

(c) However, as argued previously, embracing positivistic rationality has not provided answers to the unwanted and unintended effects of adoption other than to level blame at those who have suffered.

(d) Could it be that the kind of rationality permitted by universal law is not much more enabling than that permitted by divine law? <u>Both demand that human beings defer to an authority or be considered mad or evil.</u>

(e) Moreover, it could be argued that given the lack of adequate, inclusive and systematic social inquiry into the process of adoption in Australia, the beliefs and actions of many so-called experts have been little more than attempts at social closure.

(f) Has an opportunity to increase advantages by monopolising resources, restricting access to their profession and refusing to identify and state the knowledge base or position that informs their actions been provided by the institutionalised objectivation and elevation of 'expert knowledges? p124

Ascribing total blame to one sector of society

Delany— As we have seen in the case of the objectivation of those suffering the effects of adoption, there is an inherent danger in ascribing total blame to any one particular sector of our society. Nevertheless, it has become very fashionable during the past ten years for those consumed by the adoption process to level blame for the misunderstandings, the misrepresentations, the wrong-doings and abuses of adoption—

(a) firstly at the feet of adoptive parents and

(b) now more so, directly at social workers.

Blaming social workers

Delany— **(a)** Those individuals whose responsibility it was to provide people in need with services that enhanced their (and the society's) general state of health and well-being continue to be accused of performing or assisting and condoning horrendous acts of human rights abuse against birthmothers and adopted people. Acts that include— **(i)** physical assault, **(ii)** kidnapping, **(iii)** obtaining the consent of birthmothers by drugs and/or deceit, of **(iv)** trading in human flesh for profit or gain and of (v) commodifying children.

(b) They have been accused of purposefully maintaining and propagating a particular socially constructed and objectified morality that is **(i)** hostile and oppressive to many single mothers and adopted people. These include the **(ii)** maintenance and support of the institutionalised restriction of the release of familial, genetic and historical information to birth relatives either through **(iii)** advising the policy and legislative process or **(iv)** through the actual administration of those policies and legislation.

(c) They, and their educators, have been accused time and again of failing to learn from the lessons of the past. pp124-125

Is it really that simple?

Delany— If the consumed level blame for the socially constructed problematic, contradictory and damaging effects of adoption at one sector of our community, are they not then guilty of objectifying the understanding of what is a socially constructed process?

Are they not then guilty of pathologising one group, of reducing the responsibility for cause and effect to one small sector within the adoption process?

This again is the objectification of knowledge and the pathologising of the individual. It may be therapeutic to vent anger at social workers for the problematic dimensions of adoption but is it accurate? When we think in these reductionist ways we limit our understanding of a socially constructed process to the level of the individual and label, stigmatise and potentially damage one group. p125

Social workers altruistic motives in their society

Delany— Social workers did then, and do now operate within the acceptable normative dimensions of an objectified human existence. Their actions were then, and are now a reflection of the normative values and beliefs that underpin western industrialised societies. These are values and beliefs that in the 1950s, 60s and 70s where underpinned by particular socially constructed knowledge positions that demanded uncompromising faith in the power of a value-free, social science to provide answers to questions about how human organisation should proceed and by what means. The fact that we may now understand and question the problematic and contradictory nature of adoption does not mean that the knowledge positions that produced it were not premised on altruistic motives. p125

How sets assumptions and values emerge

Delany—As Berger and Luckmann have indicated, the sets of assumptions which we use and the values from which they emerge are shaped by our existence and position within a socially constructed reality. Our life experiences, the time and place in which we find ourselves and our interpretations of our experiences [26] relate directly to the values and beliefs habitualised, institutionalised, and received through primary, secondary and tertiary socialisation. As human beings and as social workers the way we understand a particular problem, and even whether or not it is a problem, will depend not only on the training we have received but also on the experiential assumptions we bring with us as part of a temporal social construction of reality. This reality, internalised, will in turn define and dictate any action that we may take towards the problem. Our socially constructed and internalised reality will also define, produce and replicate the realities that develop as we move through time and space. However, as we have seen, the objectification of social reality, underpinned by notions of a positivistic, social science separates the knowing subject from the creation of their environment. This not only tends to provide a particular, very often one dimensional understanding about our clients, it also defines our role as professionals and the role of politicians who create adoption policy. p125

State political process re adoption

Delany— The reified, socially disconnected understanding of adoption has not only become manifest as legitimate adoption discourse but it has also underpinned and validated the values and beliefs of the dominant culture towards adoption as expressions within the political process. The term 'political process' is used here in a broad sense to define the entirety of the social relations that precede, create, maintain and then in turn are themselves shaped as the political system. These processes are at work both at the level of the collective as well as at the level of the individual and involve a concern with expressing personal issues and influencing the content, goals and policies that are implicated in the creation and recreation of social reality. <u>The state as the socially constructed, institutionalised, legitimated authority encases its members within ideologically linked activities</u> that, in the case of adoption, have involved both private and public issues. p125

Bureaucratic processes

Delany— Bureaucratic, public purposes have emerged that include **(i)** the need to reduced public expenditure for the care of children whose parents were defined as relinquishers or unknown. **(ii)** Adoption here has provided the opportunity for the socially constructed transformation of public problems into private ones. **(iii)** Adoption has also served to publicly exemplify the most desirable form of social-isation environment e.g. patriarchal nuclear family, husband wage earner, wife home carer, middle class, church-going etc, and as a public resource in the child welfare tool kit. [27] p126

NOTES

26 McIntyre, J.J., (1996) *"Tools for Ethical Thinking and Caring: A reflexive approach to community devel-opment theory and Practice in the pragmatic 90s"*; I, Melbourne. p. 29.

27 O'Shaughnessy, T., (1994) *Adoption, Social Work and Social Theory,* Avebury, England., p. 81.

Source Denys Delany 'Understanding adoption: epistemological implications' in book 'Adoption and Healing' 1997 pp124-126.

Birthparent view/political implications

Delany— "The socially constructed messages that natural mothers have been exposed to include 'relinquishment is the best thing for your child,' 'be free of the stigma of ex-nuptial conception and birth.' 'Chances of marriage will be greater, adoption will help you to forget the child, you cannot give the child the care that it needs and the life it deserves, adoptive parents can.'

(a) 'Disappearing will protect the child from the stigma of illegitimacy.'

(b) The private sphere of the family or the state gave single unmarried mothers little support and many were economically and ideologically trapped by a patriarchal society that benefited from the systematic exploitation and denigration of woman.

(c) Adoption for many natural mothers became a metaphor for a violent act of aggression.

(d) Many came to view the institutionalised separation of a mother from her child as a violent political act against a female who has offended against the (socially constructed) sexual mores of the dominant culture.

However, many mothers who have lost a child to adoption have been unable to forget as easily as they were led to believe by agents of the state. They have continued to grieve and mourn the child that is lost to them and many have ultimately, paid with their lives through suicide or death via substance abuse." p126

Way to understanding and reconciliation

Delany— "The way we continue to understand and construct the process of adoption leaves us nowhere to go other than to continue down the path toward painfully felt injustices and serious social tensions. For McIntyre. [30] Reflexivity is the basis of theoretical literacy and ethical practice and theoretical literacy is the appropriate response to the competing and often disempowering constructs of post-modernist realities. Adopting methods and practice that do not drown the point of view of disempowered stakeholders can not only lead to more compassionate interaction but also to an enlightened understanding of the subject's world and reveal the factors implicated in their creation and recreation. If adoption workers and researchers wish to work with individuals and groups of people who have been touched by the process, then they must be able to deal with the often competing constructs of truth of the various stakeholders by locating them not only ontologically but also epistemologically. The modern adoption worker in the late 1990s exists within a changing socially constructed world where professionals are being exposed to increasing pressure to increase their hard skills at the expense of developing a capacity to challenge existing orthodoxies.

Competency is defined as a measurement of what people can do rather than what or how they understand. p127

It should be clear now that the human organism exists within, and recreates a particular social environment where there is little human thought that is not influenced by the ideologising influ-ences of the social context. When we view the propositions of positivistic social science as legitimations of significant constructions of a modern social reality and then bracket the question of scientific validity, such questions become part of the data in understanding the objective and subjective realities from which they emerge and, which in turn, they influence. p127

Legitimising the voices of those marginalised by the adoption process, including social workers, is something that must begin at the individual level and move to the collective or community level. Reconstructing previously objectified, 'personal' problems as socially constructed, therefore 'political' problems legitimises the voices of the marginalised and provides logical understanding of an inherently problematic, contradictory, process that is characterised by distortions, absurdities and legal untruths. p127

Social research and social work of all kinds is essentially an ideological activity, it is political practice. [31] Those who engage in it for reward must be well informed, broadly educated, critically reflexive and sensitive to others. Theoretical literacy demands an inclusive tolerance that begins with a willingness to listen to the voices of others, even in the face of competing truths. p127

Social work and its practice must move from the individualisation and objectivation of social problems to more collective, historically respectful and socially located understandings and action.[32] p127

Ethical practice must be built on the assumption that power and knowledge are linked and that we must not accept blindly what we know, but also question how we come to know what we know. p127

Social researchers, in their role as discoverers and legitimators of social knowledge must acknowledge that they are intimately attached to the research process. They must acknowledge that their own knowledge positions will influence, shape and eventually serve to define particular research questions, as well as the operationalisation of those questions and their eventual conclusions."p127

While there are a multitude of methods available, unless we understand and acknowledge that we cannot totally separate our (socially constructed) personal knowledge positions from the theoretical and methodological implications of our research, then we are in danger of engaging in research which is unethical. [33] p127

Conclusion

Delany— "When we take a theoretically literate stance and then listen to the perceptions of others we are able to map their emerging constructs epistemologically and ontologically. —

(a) Compassion becomes possible and in the case of adoption, we are able to renegotiate and relocate our understanding of it from an objectified, homogenous, untouchable 'reality' to a socially constructed and maintained entity. Adoption becomes redefined, understandable, disempowered and demystified.

(b) The origins and nature of the massive contradictions that have come to characterise the process emerge and clearly locate the problematic dimensions of adoption as a product of those contradictions. p128

(c) When we take what McIntyre calls a critical humanist approach [34] to understanding, not only do we acquire a new understanding of adoption that is historically respectful and socially connected but those who have been consumed by the process gain a sense of mastery over what has been done to them.

(d) Blame for the unwanted and unintended effects of adoption is shifted away from the individual to the collective, organising human consciousness and a better way of knowing emerges." p128

What is the future of adoption?

Delany— Finally, the question of the future of adoption must be dealt with. Is there any value left in a process that has been shown to be so damaging?

(a) Arguably there is, so long as we are able and willing to re-think our understanding of it and reconstruct the process so that we avoid the problematic dimensions that occur when we deny the social construction of reality and then build in sets of massive social contradictions.

(b) While it is acknowledged that the 'rescue ideology' that has informed the traditional form of adoption is culturally specific and even ethnocentric it is nevertheless, difficult to ignore the potential of a redefined and reconstructed adoption process to provide children in need with a safe, socially connected environment.

(c) The starting point of a re-constructed adoption process would involve the institutionalised recognition of the complexity of adoptive relationships and of the need for respect and recognition of adopted persons life histories.

(d) This new understanding could even strengthen existing or traditional western kinship norms by enhancing the life experience of all individuals and institutionalising new supports for authenticity, empathy, compassion and communicative abilities. p128

NOTES

30 McIntyre, J.J. (1995) "Achieving Social Rights and Responsibility: Towards a Critical Humanist Approach to Community Development," *Communication Quarterly,* Victoria. p78.
31 Iffe, J. (1997) *Rethinking Social Work: Towards critical practice,* Longman, Australia. pp. 175-204.
32 O'Shaughnessy, T., (1994) *Adoption, Social Work and Social Theory,* Avebury, England. p6.
33 McIntyre, op. cit., pp. 69-86
34 ibid., p. 66.McIntyre, op. cit., p. 78.

Source Denys Delany *'Understanding adoption: epistemological implications'* on book 'Adoption and Healing' 1997 pp126-128

ADOPTION REFORM

ADOPTION REFORM

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ADOPTION REFORM

Over the last 30 years there have been many calls for a review of the Adoption Act 1955. Adopted persons, adoptive parents, birth parents, Judges and the Department of Social Welfare have asked for a review. The official reports commissioned by the Government in 1979, 1984, 1990 all recommended a review. Several interdepartmental studies were undertaken, and legislation drafted. However at November 1997 all attempts to review the Adoption Act 1955 have been thwarted, all fell victim to *adoptio polito rigor mortis.*

Adoption reform turtle "You'll notice that a turtle only makes progress when it sticks its neck out" KCG

Background of adoption reform

Ludbrook— "New Zealand takes some pride in being the first Commonwealth country to introduce a system of legal adoption of children in 1881. But the concept of adopting someone else's child as a member of one's own family can be traced back more than 2000 years to Roman and Assyrian civilisations.

At the simplest level

Ludbrook— adoption of children can be seen as an expression of compassionate concern for children who, for whatever reason, cannot be cared for by their biological parents. Adoptive parents have often been viewed as child savers, and much of New Zealand's adoption law has been based on the (unarticulated) premise that people who are willing to take on the care and responsibility of an abandoned or unsupported child deserve special consideration.

Over last 20 years

Ludbrook— However, over the last 20 years there has been an increasing awareness of the pressures society places on mothers who give up their children for adoption. More recently there has been a growing acceptance that children are more than mere objects of concern, but rather are individuals with rights of their own. At the same time we have come to recognise that children, if they are to develop a sense of their own individuality and personal identity, may need to know about their biological parents and the circumstances of their birth. Added to all of this has been a sudden shift in supply and demand - there are far more people wanting to adopt than there are children available for adoption.

Radical changes in perception of adoption

Ludbrook— Faced with these changes and the clamouring of various interest groups, the New Zealand Legislature has done nothing. The Adoption Act 1955, reflecting the circumstances and attitudes of a different era, remains the basis of our adoption law. Important developments in the Adult Adoption Information Act 1985 were brought about by the heroic efforts of a small group of people in the face of parliamentary obstruction. While everyone would agree on the need for reform, no one seems to be able to see the way ahead. There is a growing movement supporting the view that adoption is fundamentally flawed and should be abandoned. Faced with legislation that is so obviously out of touch with modern reality, New Zealand Judges, adoption policy officers, and social workers in State and non-government agencies have responded to the challenge with initiative and flair. New Zealand has a deserved reputation for innovation in child care practice, and its work in the field of open adoption is admired overseas. The Family Court has made commendable efforts to breathe life into the Adoption Act.

Despite an Adoption Act that is dilapidated and close to becoming a dangerous structure, adoption remains a fascinating topic. Adoption almost always generates deep human emotions, and in creating a system of parallel truths it throws up great legal complexities and anomalies. Most civil laws governing human relationships tend towards openness and flexibility, and it is the closed and absolutist nature of adoption that has caused it to be spoken of as a "statutory guillotine", and the adoption experience being described as "death by adoption" or "life imprisonment".

Many exceptional and committed New Zealanders, starting with George Waterhouse in 1881, have contributed to the public debate on adoption. I would like to express my thanks to all those people. This chapter could not have been written without the friendship and support of many "adoption" people. I hope I have been able to add something useful to the ongoing debate."

Source Robert Ludbrook. January 1995 in *Trapski's Family Law* Vol 5 'Adoption' *Preface.* Brookers 16/2/95. 1-3

Reform a contentious issue

Shannon— a sociologist at Otago University, an adoptive parent— "Family forms are changing, as we men are having to learn, neither kids nor women can any longer be regarded as the exclusive possession or chattels of men within the inherently violent nuclear unit. At long last we are discovering that 'no child is an island', but part of a continent. Children's rights and their best interests may occasionally require priority over those of all adults when they come into conflict but they still have no meaning outside an extended family context. The Children, Young Persons and Their Families Act that we got in 1989, again significantly due to the Maori people, clearly rejected a nuclear focus in favour of the child's rights to extended family relationships."...

The future of adoption

Shannon— "Like other members of the triangle adoptive parents are victims of the 1955 Adoption Act and the whole legal system built around commodities, ownership and protection of possessions. In that law the adoption process is a transfer of ownership. Some very significant people for children, like siblings, grandparents, are left out completely of the triangle and of any consideration. This a travesty of parenting and of family life.

This leads inevitably to my conclusion that 'adoption' at least as presently defined in law, rapidly needs to become an out of date legal anachronism, like witchcraft law. Like witchcraft law it is used to oppress people and should be deleted. All the elements of dishonesty and pretence, 'let's

pretend you are not who you are, let's pretend we are your natural parents, let's pretend your roots are not important, let's pretend that I own you exclusively and am willing to share', have a go...

Of course what we really need is not a review of 'adoption' alone but a review of all law/policy relating to families. Large numbers of children, parents and families are going through very similar processes in divorce, step families, fostering, day care and the like: a review must see all these as related as indeed they are. It needs to be undertaken from a point of view which stresses the importance of a variety of family forms and especially extended families. Forms of alternative or substitute care must take their directions from and be consistent with developing flexibility and openness rather than arbitrarily defined 'fictions' which paper over anachronistic outdated forms."...

Politics and economics of adoption

Shannon— "Because we are dealing with a scarce, highly valued resource, *children*, the sort of thing economists love talking about, adoption is a political football with the only seeming interest of our current politicians being maximising income. Selling off our public assets is one thing, but should it include our children?

Part of the current argument is the deliberate propagation of the lie that the major cost of the *Domestic Purposes Benefit* is for young mothers. So that benefit, which gives women an option, has been discontinued for people under 18 and we are heading back to the days of forced adoptions and all the evil and suffering that caused, as Joss Sawyer pointed out in the 1970s...

Why do we think the rate of reported child abuse and neglect has trebled in the last three years so that the under-resourced welfare can no longer cope? Have parents suddenly become three times as bad and violent as they were before? If so, why?. There is no doubt in my mind that it is related to the 1990 Benefit cuts, the 1991 Employment Contracts Act, unemployment and the whole of recent government policy which has increased *poverty* in New Zealand by 40% overall since 1989/90 and 'most of the increased poor were children and their family members' (Easton, 1993). The changes have also exploded the gaps between income groups. In view of this I would allege that the current government is a direct accessory in all the abuse and preventable deaths of children which have become such an issue recently. I would also define their involvement as premeditated as they knew quite clearly what they were doing.

It also seems to me that they are seeking consciously to manipulate existing and potential adoptive parents to save themselves money just as they are currently attempting to slide out from under supporting foster parents. Adoption suits such politicians so well, taking the kids off the poor and giving them to the rich who get them cheap because they do not have to pay an up front price, only the development costs, what a lovely market system and a way to cut government expenditure! In a social situation where everything, health, welfare and families, is being treated as a commodity the tendency to do so with regard to children, making them a market commodity like any other, seems inevitable..".

Source Pat Shannon '*An Adoptive Parent Retrospective*'. Lecturer in Sociology, Otago University. 1994 MOA Conference Paper pp71-74.

Future of adoption

Rockel and Ryburn— "The 1955 Adoption Act expresses the values and attitudes of another time, and needs revision to bring it into line with today's understanding of the needs of all those involved in adoption...*Will there be a place for adoption in the future?* It is likely that the number of birth parents choosing adoption will continue to decline. This trend, combined with a shift towards the use of guardianship and custody orders instead of adoption, suggests adoption may scarcely exist in the future. It is likely, however, that there will always be situations in which birth parents see adoption as the best option." Rockel and Ryburn 1988 pp185,189.

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Navigating this report

Adoption Law is often referred to as the "Cinderella" of family law - neglected, at times underfunded, but of vital importance in the larger scheme of things. It has been the task of the Law Commission to review the law of adoption, and to recommend whether and how the legal framework should he modified to better address contemporary social needs. We began this process by identifying the areas of adoption law that we considered to be out of date, we reviewed systems of adoption in other relevant jurisdictions, and in our discussion paper Adoption: Options for Reform we offered for public discussion some proposals for reform.

During this process we have identified a real need for adoption to be viewed not as a discrete area of family law but as an important option amongst a number of other options for the future care of a child whose parents, are for some reason, unable to fulfil that task. To that end, the Commission has gone beyond the ambit of its terms of reference and recommends the enactment of a Care of Children Act, which will encompass adoption as one of a number of options for the care of a child...

Part 1 Context *Law Commission*

Chapter 1 describes the systemic inadequacies that have led to our proposal for a Care of Children Act and provides a number of case studies that demonstrate the context in which adoption law operates. Chapter 2 places the concept of adoption in its historical context and traces the way the concept has evolved throughout New Zealand's history, particularly focusing upon developments since the enactment of the Adoption Act 1955. Chapter 3 provides a basic explanation of current adoption law (as found in the Adoption Act, the Adult Adoption Information Act and the Adoption (Intercountry) Act and the related legal concepts of guardianship, care and protection, and wardship.

Part II Proposals for reform *Law Commission*

Chapter 4 sets out the reasons for our recommendation to

enact a Care of Children Act. Chapter 5 explains our proposals for this legislation. It sets out our proposals for reformulating the legal concept of adoption and our recommendations for revising the legal effects of an adoption order. Our recommendation that a parenting plan must accompany an adoption order will afford some legal recognition to the concept of open adoption. This section also identifies and explains the other orders that will be available in the Care of Children Act. Chapter 6 then sets out a snapshot of our proposals for the framework of the Care of Children Act.

Part III Adoption Reform *Law Commission*

Our discussion of the problems to be found within current adoption law, the options we considered for reform, and our final recommendations for reform are to be found at chapters 7-18 of the report. A...summary of our proposals for adoption law reform and how it will fit into the Care of Children Act is found in chapter 6. In brief, part 111 of the report sets out the following recommendations:

• guiding principles should he a part of adoption legislation;
• adoption legislation should provide for support services to be available throughout the adoption process;
• issues of jurisdiction, citizenship and intercountry adoption should be clarified;
• amendments should be made to the definition of who is eligible to be adopted;
• categories of persons eligible to adopt a child should not he limited, although suitability should be carefully assessed on a case, by-case basis;
• procedural requirements for giving consent to an adoption application should be strengthened;
• there should be full access to adoption information for adopted persons, birth parents and adoptive parents; and
• the applicability of the crime of incest and the law of forbidden marriage to adoptive families should be clarified. • We also make some suggestions regarding how surrogacy arrangements might he regulated by the Care of Children Act.

Overview *Law Commission*

1 The family [5] as a social unit is the foundation of our society. It provides security, a sense of identity for the child, and is "the natural environment for the growth and well-being of all its members...particularly children. [6] Where for some reason such relationship is unavailable or fails, society must provide systems and resources to safeguard the welfare of the child.

2 New Zealand was party to the preparation of the UN Declaration on Child Placement, [7] which provides:

Article 3 The first priority for a child is to be cared for by his or her own parents.

Article 4 When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute - foster or adoptive - family or, if necessary, by an appropriate institution should he considered.

Article 5 In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

3 Our law at present lacks any coherent set of provisions to provide systematically for these interests. The major legislation comprises an Adoption Act of 1955, which antedates the Status of Children Act 1969 and reflects value judgments that are inconsistent with today's standards, a separate Guardianship Act of 1968, which deals with some of these interests, and a Children, Young Persons, and Their Families Act of 1989, [8] which provides for "at risk" children. The Guardianship Act and the CYP&F Act place the child's interests at the centre of each stage of the process; the Adoption Act does not give the interests of children such priority.

4 The current practice of open adoption challenges the emphasis upon secrecy that has permeated adoption law since 1955. [9] just as the status of illegitimacy has been removed from New Zealand society, [10] so the concept of an effective transfer of legal title to a child, often a reaction to the stigma of illegitimacy, has been discredited.

5 How we treat our children, especially those who lack adequate parental care, is a measure of our community. There have been major changes over the past half century, both in our society and in our perception, of the significance of a child's personal status and of the role of the family. It is time to undertake a fundamental reappraisal of our laws and institutions in this sphere.

6 Accordingly, in March 1999 the Minister of Justice asked the Law Commission to "recommend whether and how the framework [of adoption law] should be modified to better address contemporary social needs". We published a discussion paper in October 1999 in which we drew attention to the deficiencies of the current legislation and invited public discussion of improvements that might be made. We have received over 150 submissions from individuals, families and community groups and have consulted widely with interested organisations.

7 It is evident that the lack of a coherent and principled approach to the placement, protection and care of New Zealand children whose birth families cannot or will not provide properly for them disadvantages these children. Adoption cannot be viewed in isolation from the wider issue of the placement of children needing alternative care. Rather, it represents one end of a spectrum of available options. [11]

8 Rather than simply updating the current adoption legislation, [12] we recommend consolidation of the legislation relating to parenting and care of children. Adoption, with the changes we recommend as a result of our review, will represent the most permanent of the options on the spectrum. Guardianship (including a new form entitled "enduring guardianship") [13] provides for a variety of other options which will represent other points on the spectrum. Such consolidation will remove the current disjunction and promote a principled, coherent and flexible approach to the determination of who should be entrusted with the responsibility of providing care for a child. [14]

Reviewing concept and functions of adoption

9 Reform must be grounded in reality. Adoption in the twenty-first century serves a variety of purposes for a wide range of people. Current legislation fails to serve many of these people properly. We propose a system for reconciling the needs of all those involved in or contemplating adoption.

10 It is first necessary to identify the categories of people involved and the purpose that adoption serves for them. Adoption affects the whole community, but the people immediately involved are:

- children who may be adopted;
- people who have been adopted;
- birth parents;
- prospective adoptive parents;
- adoptive parents; and
- relatives and whanau of adopted persons (extended family of birth parents, adoptive parents).

11 We have identified two main categories- New Zealand and overseas and several sub-categories of adoption.

New Zealand: *Law Commission*

- adoptions where the birth mother" has given up the child within the first few months of the child's life because she believes she cannot offer the child the stability and security it deserves;
- adoptions where the child has come into the care of the State because the birth parent(s) have failed to care for the child in a satisfactory manner; and
- adoption of a child to obtain legal recognition of social relationships (for example, step-parent adoptions and adoptions to regulate status after a surrogacy arrangement).

Intercountry: *Law Commission*

- adoption of an orphaned or abandoned child from another country; and
- adoption of a relative from another country (usually Pacific Islands) to secure New Zealand citizenship.

NOTES

[5] Whether this is the Western concept of the nuclear family or the concepts of extended family that other cultures have, for example, Maori "whanau".

[6] Preamble, United Nations Convention on the Rights of the Child (UNCROC) adopted by General Assembly resolution 44/25 of 20 November 1989.

[7] United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, adopted by General Assembly resolution 41/85 of 3 December 1986. See appendix F for the text of this Declaration.

[8] CYP&F Act.

[9] Section 23 Adoption Act 1955, Adoption Regulations 1959, and sections 23, 24 and 63 Births, Deaths, and Marriages Registration Act.

[10] Status of Children Act.

[11] This spectrum also includes guardianship (encompassing temporary and permanent guardianship and whangai) and the wardship jurisdiction of the High Court and Family Court.

[12] See chapter 3 for a summary of current adoption legislation and the related concepts of guardianship and wardship.

[13] See chapter 5.

[14] See chapter 5 for a more detailed discussion of our proposals for a spectrum of options.

[15] In most cases of adoption, the birth mother, and not the father or other members of their families, is the decision-maker. We therefore refer to her while recognising that in some cases others may be involved. Where we do refer to birth parents, we recognise that in many cases this is likely to he referring to only the birth mother.

Source Law Commission Report 2000. No 65 'Adoption and Its Alternatives' A Different Approach and a New Framework.' Chapter 1 "Introduction- Overview' Clauses 1-11. pp2-5

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Background

73 The Adoption Act 1955 provides that when an adoption order is made:

the adopted child shall be deemed to become the child of the adoptive parent, and the adoptive parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock.

74 This provision, together with section 23 of the Adoption Act, [166] the Adoption Regulations 1959, [167] and section 21 of the Births and Deaths Registration Act 1951, [168] established the principle of secrecy in adoption. As a result, for many years adoptions were conducted in secret. The previous identity of the adopted child was inaccessible, and the birth parents were not given access to the new identity of their child.

75 The interests of the child were not central to the institution or practice of adoption. Adoption legislation and practice were based upon an assumption that the past should he concealed, that the birth mother would forget her ordeal and get on with her life and that the new adoptive family unit would develop like any other. [169]

76 Unfortunately this assumption was flawed. [170] Some adoptees have reported problems in establishing a sense of identity; fundamental matters such as similarity in common interests, thinking patterns, behaviour, personality characteristics and physical attributes may be missing in an adoptive family. [171] Longitudinal research indicates that birth mothers do not just forget about their child; rather they go through a complex grieving process. [172] Surrounding adoption in secrecy serve to repress that grieving process for many women, causing emotional difficulties later on in life. [173]

77 Robert Ludbrook, [174] a leading authority in adoption law and practice, has identified a number of social benefits and disadvantages associated with adoption as it is currently constituted. [175]

Adoption- On the positive side: *Law Commission*

- adoption creates a new legal family which includes the child as a full family member;
- adoption can provide an inducement for people to assume the care of children who would otherwise be without a permanent family;
- adoption gives substitute parents a greater sense of se-

curity (which is passed on to the child); and
• adoption is a cost-effective means by which the State can relieve itself of financial responsibility for children for whom it has (or might otherwise have) financial responsibility. To Robert Ludbrook's comments, one might add that adoption has the benefit of being internationally recognised.

Disadvantages of adoption include *Law Comm*
• the effect of adoption on adoptees - the secrecy and deception promoted by the Adoption Act have caused serious psychological trauma to some adoptees, as well as feelings of rejection, confusion, or of being unwanted;
• the effect on the relinquishing parents - adoption is a traumatic event likely to have serious repercussions for the birth family;
• current New Zealand adoption legislation focuses on the needs and rights of adults rather than those of children;
• adoption legislation dilutes the principle that the best interests of the child must he the paramount consideration [176] - this formulation does not fulfil New Zealand's international obligations; [177]
• adoption legislation is notable for a lack of participation rights for children; [178]
• past adoption practices had a devastating impact on many birth parents and adopted persons;
• adoption legislation reflects property and contract law principles rather than family law principles;
• adoption creates a legal fiction that many adopted people find unacceptable; and
• adoption is inconsistent with deeply held Maori cultural values.

78-81 Impact of Open Adoption practice- See "Open Adoption"- Law Commission in 'Adoption Options section of this book. Part.4.

82 Types of adoption. *Law Commission*
In the 1955, 67.6 per cent of adoptions were by strangers and 32.4 per cent were by non-strangers. Of the non stranger adoptions, the majority were adoptions by birth parents and step-parents, and the rest were by other relatives or other non-strangers. In 1996, only 21.1 per cent of adoptions were to strangers whilst 78.9 per cent were to non-strangers. Today, most adoption orders are made within a family or step-family. The deeming provisions of the adoption legislation create genealogical distortion and more often than not the legal emphasis upon secrecy is unrealistic.

83 Submissions *Law Commission*
The discussion paper asked whether adoption as an institution should be retained, whether a new system could be adopted, and whether a flexible "care of children" system that encompasses options from temporary guardianship to permanent legal care of children could be adopted.

84 Thirty-eight of eighty submitters stated that adoption as an institution should he abolished. Of the forty two who supported retaining adoption as an option, the majority were concerned that a substitute for adoption would not provide sufficient permanency of status for the child.

85 Sixty three submitters agreed and one disagreed with the proposal that the needs of contemporary society require amendment of the law. Of the submitters who described their ideal system, sixteen suggested that a system of open adoption should be adopted, seventeen supported the use of guardianship in a modified form, [186] and nine supported the concept of legal parenthood proposed in the discussion paper. [187]

NOTES

[166] Which restricts access to adoption records.

[167] Which provides for adoption consent forms that do not reveal the names of the adoptive parents.

[168] Which provides for the re-registration of birth when a child is adopted and restricts access to the original birth certificate. This provision was re-enacted as sections 23, 24 and 63 of the Births, Deaths, and Marriages Registration Act.

[169] Law Commission, above n 2, paragraph 13.

[170] Law Commission, above n 2, paragraphs 15-16. [171] Open Adoption, above n 62.

[172] See G Palmer "Birth Mothers: Adoption in New Zealand and the Social Control of Women 1881-1885" (MA Hons thesis, University of Canterbury, 1991); L Langridge "Adoption: The Birth Mother's Experience" (MA thesis, University of Auckland, 1984); R Winkler and M van Keppel *Relinquishing Mothers in Adoption: Their Long-term Adjustment* (Institute of Family Studies Monograph No 3, Melbourne, 1984).

[173] For example, another pregnancy might trigger repressed grief relating to the adoption, as might a reunion with the adopted child.

[174] Solicitor, Children's Legal Centre, London, 1980s; established Youth Law Project, Auckland , 1987; Inaugural Director of the Australian National Children's and Youth Law Centre 1993-1996; Legal Adviser to Laurie O'Reilly, Commissioner for Children, 1996-1997; Legal Adviser to Commission for Children and Young People, New South Wales, 2000; Principal author of *Ludbrook's Family Law Practice*; author of update of the section on adoption in Trapski's Family Law vol v (Brooker's, Wellington, 1991- author of *Adoption: Guide to Law and Practice* (1990).

[175] Submission, Robert Ludbrook.

[176] Section 11 (b) states that when making an adoption order the court shall be satisfied that the welfare and interests of the child will be promoted by the adoption. As well as being a diluted form of the welfare principle, it only applies when the court makes the adoption order - the principle is not given a role throughout the adoption process.

[177] Article 12, UNCROC.

[178] Either personal participation in the case of an older child or a right to representation by counsel. [186] Modified to enable permanent legal status to be given to relationships.

[187] See below paragraph 96 for an explanation of the proposal. [96 We considered renaming adoption "legal parenthood" to give our proposals the opportunity of starting with a clean slate. We were concerned that because the current formulation of adoption is so well understood, a reformulation would encounter resistance and be seen as something "less" than adoption. Emphasising the legal nature of the new relationship might address these concerns and avoid the negative connotations that the word adoption has for many people.]

Source Law Commission Report No 65 *'Adoption and Its Alternatives' A Different Approach and a New Framework.'* Ch 4 'The need for change' September 2000. Clauses 73-77, 82-

85. pp 36-38, 40-41.

A CARE OF CHILDREN ACT
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The continuum of care arrangements

86 The discussion paper suggested that a Care of Children Act could replace adoption and other legislation governing the guardianship and care of children. Such an Act would encompass at one end of its spectrum the temporary care of children (temporary custody and/or guardianship [188] and at the other a reformulated concept of adoption.

87 The advantage of such a Care of Children Act is that it enables child placement issues to he dealt with coherently. Each care option on the spectrum, from temporary care to permanent placement, would be canvassed as an option for that particular child. Such an approach, with an emphasis upon the best interests of the child, would he consistent with the principles espoused in UNCROC. [189]

88 We observed in the introduction to this report that there are disjunctions between the legislation dealing with placement of children in the context of adoption, guardianship, and care and protection proceedings. [190] Reformulating adoption and placing it at one end of a spectrum emphasises the availability of all the options and provides for an ease of movement between the options. It brings together a number of disparate pieces of legislation, and it subordinates them to an over-arching emphasis upon the best interests of the child. Thirty-six submitters agreed that a flexible system for the care of children could be created, while five objected to the proposal.

89 We offer for consideration an outline of what such a statute might contain. We have not gone into all categories in great detail, as the focus of this review has been on reviewing aspects of adoption law. We acknowledge that the Care of Children Act proposal is not fully developed, but we would prefer to gauge whether there is support for such a proposal before conducting more detailed work on aspects of guardianship [191] and matters relating to parental status.

We recommend that the Adoption Act and the provisions of the Guardianship Act and the CYP&F Act relating to the placement of children be incorporated in a Care of Children Act.

Defining parenthood *Law Commission*

90 The Status of Children Act, the Status of Children Amendment Act and the Family Proceedings Act all establish legal principles or methods that, in addition to the Guardianship Act, determine who should or should not be deemed to be a parent of a particular child. The Commission considers that the legislation that deems persons to be parents would be more appropriately located in a single piece of legislation, such as the proposed Care of Children Act.

We recommend that a Care of Children Act contain a section describing the persons who are, in law, considered to be the parents of a child.

Orders available under a Care of Children Act
Adoption
A reformulated concept *Law Commission*

91 The majority of submitters agreed that adoption should not continue in its current form. The present legislation deems an adopted child to be born to the adoptive parents. [192] It is now clear that many people affected by adoption find this provision a repugnant and an unnecessary distortion of reality. A submission from an adoption support group stated that a fundamental principle of adoption is that: [193]

An adopted person's well-being and the adoptive parents' security in parenting are not dependent upon a pretence that adopted children are the adoptive parents' biological children created by a legal fiction severing the adopted child's blood ties with the birth family or having details of the child's birth family cloaked in secrecy.

92 Forty-eight submitters supported reformulating the legal effect of an adoption, so that adoption no longer creates a "legal fiction". Three submitters objected to this proposal. We agree that the way forward for adoption as a legal concept and institution is to reformulate the legal effect of adoption.

93 The discussion paper proposed that an adoption order should have the effect of permanently transferring full parental responsibility from the birth parents to the adoptive parents, making the adoptive parents the legal parents of the child. This proposal received widespread support. [194] We set out below at paragraph 99 our proposal for a definition of parental responsibility. [195]

94 This formulation recognises that parental responsibility is being transferred both in law and in fact from the birth parents to the adoptive parents, that a new legal family is being created, and that a birth family still exists and may have a role in the child's life.

95 Ludbrook agrees that re-formulating adoption in this way, and placing it at one end of the spectrum of options, would: [196]

meet the social goal of giving substitute carers a recognised status in relation to the child - a status which carries with it the right to care for the child and make decisions about the child's upbringing...It would remove the elements of secrecy and legal fiction which are inappropriate in regulating family relationships.

96 We considered renaming adoption "legal parenthood" to give our proposals the opportunity of starting with a clean slate. We were concerned that because the current formulation of adoption is so well understood, a reformulation would encounter resistance and be seen as something "less" than adoption. Emphasising the legal nature of the new relationship might address these concerns and avoid the negative connotations that the word adoption has for many people.

97 Adoption, however, has existed for almost five thousand years and has been adapted to suit the social circumstances of a variety of cultures. [197] Adoption need

not continue to have the negative connotations that have arisen as a result of New Zealand's short history of closed stranger adoption. As we observed earlier, for many families currently raising adoptive children, secrecy is no longer an aspect of modem adoption - "adoption" to them means something quite different from "adoption" as it was perceived in the 1950s, 1960s and 1970s. For many Maori, "adoption" is a term that has positive connotations. [198]

98 Furthermore, we experienced difficulties when we attempted to put the new term to use. It proved almost impossible to avoid using the word "adopted". It is our belief that the term is so universal that any attempt to rename it, while academically appealing, would be ignored by the general public. It is clear that what the public understands by the term adoption will alter as adoption practices change.

We recommend that the legal effect of adoption should he the transfer of permanent parental responsibility from birth parents to the adoptive parents.

Parental responsibility *Law Commission*

99 We consider the proposed Care of Children Act an appropriate place to state categorically what a parent's responsibility to a child actually is and to define the rights that a parent has in relation to his or her child. We are attracted by the Scottish approach. [199] We consider that these provisions should he adapted, suitably amended for the New Zealand context, and included in a Care of Children Act. Amendments would also need to be made to the current definition of "guardianship" found in the Guardianship Act. We envisage that the provisions could he enacted to the following effect:

GUARDIANSHIP ACT *Law Commission*

4 Definition of custody and guardianship For the purposes of this Act -

"Custody" means the right to possession and care of a child and the responsibility for the care of the child.

"Guardianship" means that the parent has the power to exercise all parental responsibilities and parental rights in relation to the child, including the right to custody of the child (except in the case of testamentary guardian and subject to any custody order made by the Court); and "guardian" has a corresponding meaning.

Parental responsibilities *Law Commission*

(1) A parent has in relation to his or her child the responsibility -

(a) to safeguard and promote the child's health, development and welfare;

(b) to provide, in a manner appropriate to the stage of development of the child - (i) direction; and (ii) guidance to the child;

(c) if the parent does not have custody of the child, to maintain personal relations and direct contact with the child on a regular basis but only in so far as compliance with this section is practicable and in the interests of the child.

(2) "Child" means for the purposes of -

(a) paragraphs (a), (b)(i) and (c) of subsection (1) above, a person under the age of 16 years;

(b) paragraph (b)(ii) of that subsection, a person under the age of 20 years.

[(2A)A definition of parent to be included once overall policy is settled. See paragraph 90 above and footnote 588 below.]

(3) The responsibilities mentioned in paragraphs (a) to (c) of subsection (1) above are in this Act referred to as "parental responsibilities". [200]

(4) The parental responsibilities are in addition to any duties imposed on a parent at common law; and this section is without prejudice to any other duty so imposed on any parent or to any duty imposed on the parent by, under or by virtue of any other provision of this Act or of any other enactment.

Parental rights *Law Commission*

(1) A parent, in order to enable him or her to fulfil his or her parental responsibilities in relation to a child, has the right -

(a) to have custody of the child or otherwise to regulate the child's residence;

(b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;

(c) if the parent does not have custody of the child, to maintain personal relations and direct contact with the child on a regular basis.

(2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any court order conferring the right, or regulating its exercise, otherwise provides.

(3) Without prejudice to any court order, no person shall he entitled to remove a child habitually resident in New Zealand from, or to retain any such child outside, New Zealand without the consent of a person described in subsection (6) below.

(4) The rights mentioned in paragraphs (a) to (c) of subsection (1) above are in this Act referred to as "parental rights". [201]

(5) The parental rights are in addition to any rights enjoyed by a parent at common law; and this section is without prejudice to any other right so enjoyed by a parent or to any right enjoyed by the parent by, under or by virtue of any other provision of this Act or any other enactment.

(6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.

(7) In this section, "child" means a person under the age of sixteen years.

100 This definition of guardianship is open-ended and section 4 is designed to preserve any common law or statutory rights of parents (adoptive or natural) and guardians.

101 Adoption confers upon adoptive parents the rights and responsibilities of parents outlined above.

We recommend that parental responsibilities and rights be specifically defined in the Care of Children Act.

Mandatory effects of an adoption order *Law Com*

102 We propose that the legal effect of adoption be reformulated. Rather than relying on deeming provisions to create a legal fiction that the child was born to the adoptive parents, adoption should be a transparent process for the permanent transfer of parental rights and responsibilities. The adoptive parents will obtain the legal right and obligation to care for and control the child and make decisions regarding the education, medical care and upbringing of the child. The child's natural parents will cede their parental rights and responsibilities in respect of the child.

103 The child's original birth certificate will be annotated to show the identities of the adoptive parents and the date of the adoption order. At the same time, a new certificate will be issued showing only the child's current (that is, new) name and date and place of birth, and the identity of current parents. Only the second certificate would be a matter of public record. We discuss our proposals for these birth certificates in more detail in chapter 16.

104 The adoption order will specify that any former child support or maintenance obligations on the part of the natural parents cease to exist and that the adoptive parents assume those obligations.

105 The adoption order will specify the child's rights of succession and the child's domicile.

Parenting plan *Law Commission*

106 Parties will be required to create a parenting plan that would document the parties' intentions regarding the adoption of the child and would cover the matters listed below. Our intention here is that parties address at the outset all issues regarding open adoption and the potential consequences of open adoption, and determine what best suits the child's needs.

(a) Contact *Law Commission*

107 The parties will specify in the plan the name by which the child shall be known and what, if any, type of contact there will be between the adopting parents, birth parents and child. Parties may decide that there will be no contact, or that the contact may take the form of an exchange of written information, photographs, telephone calls or actual physical contact. [202] Parties should not attempt to specify in too much detail the amount of contact that they will have. This will inevitably change as the child grows and as the circumstances of the adults alter. Attempts to quantify contact may lead to unrealistic expectations. As Grotevant and McRoy have stated: [203]

Developmental differences contribute to the dynamic nature of openness relationships. What may be "best" for one party in the adoption triad at one point may not be "best" for other parties. Furthermore, parties' needs for more or less openness may change over time and may not always occur in synchrony among triad members. Over time, adoptive kinship networks will develop different relationship solutions as they engage in the process of arriving at a workable comfort zone of contact.

108 If the parties agree, the interests of other birth relatives might also be canvassed at this stage, and arrangements for some degree of contact between the adopted child and other birth relatives might be negotiated.

(b) Succession *Law Commission*

109 Current legislation mandates that succession rights flow from the making of an adoption order. [204] Under the new scheme the child will continue automatically to obtain succession rights in respect of the adoptive parents and the adoptive parents will be able to inherit from the child in the event of intestacy.

110 We favour retaining the presumption that the child's rights of inheritance (and right to inherit in the event of intestacy) from the natural family be extinguished when that child is adopted. Where, however, a natural parent wishes the child to he able to succeed, this should be recorded in an adoption plan. [205] Such right would flow only one way; the birth parents and other birth relatives would not have any right to inherit from the child.

(c) Other conditions *Law Commission*

111 In addition, the parties or the court may express other intentions in the adoption plan, such as providing the child with the opportunity to learn about cultural and linguistic heritage. In the case of a Maori child, it would be desirable for the child's tribal affiliations (whakapapa) to be recorded in the plan.

(d) Enforceability of a parenting plan *Law Com*

112 A challenging issue is the status that the law should confer upon open adoption arrangements. Many submitters commented positively about their experiences of open adoption. Where there have been difficulties with open adoption, many of the problems can be attributed to a lack of understanding about the dynamics of such arrangements and the parties involved having differing (and often unarticulated) expectations of the arrangement. A number of submitters commented that the success of open adoption arrangements can be attributed to the informality of the arrangements, and they expressed concern that if such arrangements were made justiciable (able to be enforced by the court) it would undermine their success.

113 If compliance with the terms of the open adoption arrangement were the dominant consideration, there must be an ultimate sanction. But the potential effect of such sanctions carries a high cost. In custody and access disputes, the sanctions for non- compliance include stripping access rights, warrants to enforce access, and ultimately, removal as a guardian. If the terms of an order for open adoption were to be legally enforceable, the ultimate sanction for breaching an open adoption agreement must logically be the discharge of the adoption order. The Commission does not consider that refusal to comply with an open adoption arrangement, in the absence of any fundamental parental deficiencies on the part of the adopters, should ultimately lead to such sanction. The resulting upheaval would be contrary to the child's

best interests.

114 It must be recognised that there is a risk that open adoption might be used to induce birth parents to agree to an adoption ("You will still he able to see him whenever you want - nothing will really change"). It must be made very clear to birth parents that by consenting to an adoption, the birth parent has permanently given up parental responsibility for that child. If a birth parent has any doubts about that consequence, a measure short of adoption should be considered.

115 The Law Commission's views, formed on balance, are that, in the interests of certainty and the stability of the new adoptive parent- child relationship, there should be no opportunity for resort to the courts. Therefore, the Commission proposes that in the event of a dispute between the birth family and the adoptive family, a parenting plan will not be legally enforceable. It is appropriate that Parliament resolve this point.

116 We propose, however, that when tensions or disputes arise between adoptive and birth families regarding implementation of the adoption plan, those families have recourse to mediation services. We consider that this is the best way to attempt to re-establish fractured relationships in order to promote the welfare and interests of the adopted child. If mediation fails to resolve an intractable dispute, the adoptive parents, having assumed full parental responsibility for the child, must ultimately he trusted to act in the child's best interests. We discuss recourse to mediation and other support services in more detail in chapter 10. We considered, but rejected, the option of compelling parties to attend mediation. Mediation is most likely to be effective where both parties are committed to, or at least amenable to, reaching a mutually acceptable outcome. We consider that compelling attendance would he counterproductive and inconsistent with the philosophy underlying the concept of the parenting plan.

We recommend that adoption have defined mandatory consequences and that a parenting plan accompany the order.

Enduring guardianship *Law Commission*

117 The next point on the spectrum would provide for the role of "enduring guardian". We envisage that this form of guardianship might appropriately be used instead of adoption in situations where responsibility for a child has been partially or totally assumed by a step-parent or family member. Rather than having the effect of removing a parent from a child's life, enduring guardianship could be used to confer a status with some characteristics of parenthood on persons other than the child's natural (or preexisting) parents. In this way a child would retain links to existing parents as well as having recognised the child's relationship to any other person(s) acting in a capacity akin to that of a parent in terms of adding to the child's sense of security.

118 Enduring guardianship is not the same as adoption. As outlined in the foregoing paragraph, it provides a means of legally adding a further adult relationship to a child's life rather than substituting parents, as in the case of adoption. Thus, enduring guardianship would not qualify as a form of adoption for the purposes of international instruments.

119 Enduring guardianship is an enhanced version of the current form of guardianship, encompassing guardianship but with the added social (and limited legal) consequences of a lifetime parent-child relationship. Unlike guardianship, which expires when the child reaches 20, the nominal status of enduring guardian would not expire but would endure. [206]

120 Enduring guardianship may only he created by court appointment. Where there is a dispute between existing parents and the proposed guardian regarding the appointment of an enduring guardian, the court should take into account the views and interests of the child and the existing parents, but should not be constrained by such views. As in any other guardianship case, the paramount consideration is the welfare and interests of the child. Disputes between an enduring guardian and any other guardians and/or parents should be determined in the same manner as any other dispute between guardians.

121 The New South Wales Adoption Bill [207] requires step-parents who seek to adopt a child to have lived with the child for a period of not less than three years preceding the application for adoption. Similarly relatives seeking to adopt a related child must have had a relationship with the child for at least five years preceding the application. It may be appropriate to enact a similar requirement in New Zealand in respect of an application by a step-parent and relative to become an enduring guardian.

122 Enduring guardianship would have the following implications for succession:

- When the court appoints an enduring guardian, the guardian should give thought to whether he or she intends the ward to inherit from the guardian, and a will should he created or altered accordingly.
- Where a testamentary disposition has been made in favour of the ward, the ward will inherit in accordance with that disposition and may defend a Family Protection Act [208] claim against the estate.
- Where the enduring guardian has made a will but elects not to make provision for the ward, the ward may not bring a Family Protection Act claim for provision out of the estate on the basis that they are on the same footing as a child of the testator. However, any existing rights as regards stepchildren and step-parents under the Family Protection Act [209] would be preserved, and cases falling within the Law Reform (Testamentary Promises) Act 1949 would be unaffected by such restriction.
- Where the guardian dies intestate, the ward will be entitled to inherit as a child of the guardian in accordance with sections 77- 78 of the Administration Act 1969.
- Because the parents may not have ceded all rights and responsibilities of parenthood, it is equitable that the ward retain succession rights in respect of any other parents.

123 Appointment as an enduring guardian could result in the enduring guardian being treated as a step-parent

(and therefore a liable parent) for the purposes of the Child Support Act 1991. [210]

124 Like adoption and guardianship, enduring guardianship would be terminable by court order. Because enduring guardianship is designed to place the enduring guardian in the same position as the child's parents, we propose that the test for removal of guardianship from a parent, also be applied to enduring guardians. Section 10 of the Guardianship Act provides:

(1) The Court may at any time in application by the other parent or by a guardian or near relative or, with the leave of the Court by any other person deprive a parent of the guardianship of his child or remove from his office any testamentary guardian or any guardian appointed by the Court.

(2) No parent shall he deprived of the guardianship of his child pursuant to subsection (1) unless the Court is satisfied that the parent is for some grave reason unfit to be guardian or is unwilling to exercise the responsibilities of a guardian.

125 Apart from its enduring nature and the altered succession rights, the role of enduring guardian carries the same legal consequences as the role of guardian. The importance of enduring guardianship lies less in its legal significance than in the moral and social benefit of providing explicit recognition of the social importance of the extra parent in the child's life. Enduring guardianship provides a means by which a child's security and sense of familial belonging can be incrementally strengthened.

We recommend that the role of "enduring guardian" he created to recognise the social status of a guardian who acts as a parent.

Guardianship *Law Commission*

126 We propose that those elements of the Guardianship Act that set out who is a guardian, or determine who can be made a guardian or have guardianship removed from them, should be transferred to the Care of Children Act. Guardianship as a legal concept will remain as it is currently constituted, [211] and include natural guardians, [212] additional guardians, [213] testamentary guardians and the guardianship provisions of the CYP&F Act. [214]

127 As noted in chapter 3, the duration and legal consequences of a guardianship order may vary from full responsibility for and control over the way a child is brought up, whether until the age of 20 or for a more limited period (for example where a child is placed in foster care), to a more temporary or limited scenario where a child needs particular medical treatment and a guardian is appointed only for the purpose of consenting to that treatment.

We recommend that the provisions governing who is, who can apply to be, and who may be removed as a guardian be transferred from the Guardianship Act and the CYP&F Act to the Care of Children Act.

NOTES

[188] Which includes fostering. See also above n 148

[189] Particularly articles 3, 7, 20 and 21.

[190] Some social workers dealing with care and protection issues may he philosophically opposed to adoption by strangers because such adoptions are perceived to be in conflict with the CYP&F Act and international conventions which emphasise family care - therefore in many cases adoption is not seen as an option. A recent consultation paper on adoption contains echoes of our proposal for a Care of Children Act. The paper, issued by the UK Prime Minister recommends that the UK Adoption Act be aligned with the Children Act to ensure that children are provided with a full range of legal options for permanent placements, whether adoptive or otherwise. See *Prime Minister's Review of Adoption - Issues for Consultation* (Cabinet Office Performance and Innovation Unit, London, July 2000, <http://www.cabinet-office.gov.uk/innovation/2000/adoption/adindex.htm>

[191] The Ministry of Justice is conducting a review of the Guardianship Act. The primary focus of the review is on custody and access disputes between guardians, rather than the more general aspects of the law pertaining to guardianship. See *Responsibilities for Children: Especially When Parents Part* (Ministry of Justice, Wellington, 2000).

[192] Section 16 Adoption Act.

[193] Submission 1/16, 17.

[194] Forty-eight submitters supported the proposal, three objected to it.

[195] This proposed definition could be considered in the context of any future review of guardianship legislation.

[196] Submission, Robert Ludbrook.

[197] See chapter 3 for a brief history of adoption.

[198] Metge, above n 27, 211-213.

[199] See appendix 1 for the Scottish legislation. Our attention was drawn to this legislation by a recent article RM Henaghan "Custody Decisions - Discretion Gone too Far?" (2000) 9 Otago Law Review 731.

[200] The Commission has deleted the latter part of this clause, which can he seen in appendix 1. It is unnecessary in the New Zealand context to empower a child to sue or defend in any proceedings in relation to those responsibilities.

[201] The Commission has deleted the latter part of this clause, which can be seen in appendix 1. It is unnecessary in the New Zealand context to empower a parent to sue or defend in any proceedings in relation to those rights.

[202] At this point we might note, as Grotevant and McRoy do (above n181, 199), that in adoptive relationships the power to make decisions and control the level of mutually acceptable contact is not always equally distributed between the adoptive parents, birth parents and child.

[203] Above n 181, 198-199.

[204] Section 16(2)(a) Adoption Act.

[205] Although such an intention will not he legally enforceable if a later will does not express this intent. See below paragraphs 112-116 for a general discussion of the enforceability of the parenting plan.

[206] Although the practical powers that accompany guardianship, such as the right to exercise control over the child, would tail off as the young person matures and would expire when the child reaches 20 - as they do for any guardian.

[207] Clauses 20 and 30 Adoption Bill (NSW).

[208] Family Protection Act 1955.

[209] Section 3(1)(d) Family Protection Act.

[210] Section 99 of the Child Support Act 1991 allows the court to treat a person as a step-parent for the purposes of the Act. A step-parent may then be considered a liable parent and have to pay child support. Note that this scenario also applies to persons appointed as additional guardians - *A v R* [1999] NZFLR 249 (HC). It is arguable that in some cases there ought to be scope for both the natural parent and enduring guardian to be liable parents in terms of the Act. It would be feasible for there to be an apportionment of liability in respect of the child. This is a matter that the legislature might wish to consider.

[211] Subject to the amendments in relation to parental responsibility, discussed above at paragraphs 99-101.

[212] Sections 6, 6A, 7 and 8 Guardianship Act.

[213] Section 8 Guardianship Act.

[214] Sections 110-120 CYP&F Act.

Source Law Commission Report No 65 *'Adoption and Its Alternatives' A Different Approach and a New Framework*.' Ch 5 'Care of Children Act' Sep 2000. Clauses 86-127 pp42-55

Future of adoption?

Delany—"Is there any value left in a process that has been shown to be so damaging? Arguably there is, so long as we are able and willing to rethink our understanding of it and reconstruct the process so that we avoid the problematic dimensions that occur when we deny the social construction of reality and then build in sets of massive social contradictions. While it is acknowledged that the 'rescue ideology' that has informed the traditional form of adoption is culturally specific and even ethnocentric it is nevertheless, difficult to ignore the potential of a redefined and reconstructed adoption process to provide children in need with a safe, socially connected environment. The starting point of a reconstructed adoption process would involve the institutionalised recognition of the complexity of adoptive relationships and of the need for respect and recognition of adopted persons life histories. This new understanding could even strengthen existing or traditional western kinship norms by enhancing the life experience of all individuals and institutionalising new supports for authenticity, empathy, compassion and communicative abilities."

Source Denys Delany *'Understanding adoption: epistemological implications'* in book 'Adoption and Healing' 1997 p128.

Reform of adoption law

"The Coalition Government also acknowledges that the Adoption Act 1955 is an old Act and is in need of review. Work is progressing on this and I am personally committed to seeing it included on the legislative programme in the next twelve months." Hon Roger Sowry Minister of Social Welfare- speech at opening of 1997 Adoption Conference June 1997 in book *Adoption and Healing* 1997 p6

Need for adoption reform or abolition

Ludbrook— "The theme of this conference is 'Adoption - Healing the Wound'. The underlying assumption is that the process and consequences of adoption can be painful, hurtful, wounding to the people involved. As a lawyer with involvement over many years in adoption matters, I would agree. Normally, when a law or social policy is the cause of pain and distress to those involved, we ask the question: Is the law or policy wrong? Is it necessary? Is the pain and distress the price that has to be paid for some greater social good? Strangely, these questions are seldom asked about adoption.... We cannot change the past but we can change the future. Adoption is a creature of statute law and can be abolished by Act of Parliament ....Adoption attempts to strike from the record the child's original family and deems that they no longer exist. At a time when honesty and openness in human relationships is valued and encouraged, our adoption laws facilitate dishonesty and secretiveness. While adoption policy has succeeded in mitigating some of the negative effects of adoption, the structural flaws remain." p57

Source Robert Ludbrook 'Closing the wound- An argument for the abolition of adoption' in book *Adoption and Healing* 1997 pp57-60

OPPOSITION TO REFORM

Anti-Adoption

Griffith— To some people and organizations a movement to Reform adoption is seen as a threat to status quo. This is particularly strong among some adults seeking adopted children. The Intercountry adoption and the Adoption Reform debate has tended to become highly emotive and polarised. Some have reached the stage where anyone who takes a critical view of adoption practice and need for openness and reform is labelled "Anti Adoption". This has been very strong in the USA and this tactic have also been introduced to the New Zealand debate. KCG

USA National Council of Adoption

Lifton—"The extreme polarization of the adoption field began with and continues to be fostered by the National Council for Adoption (originally the National Committee for Adoption). It was founded in 1980 by the Edna Gladney Home and other traditional adoption agencies for the purpose of keeping adoption records sealed. It succeeded in getting proposals in the 1980 Model State Adoption Act for both open records and open adoption deleted from the final document. (See the Federal Register, October 8, 1981, and my book Lost and Found, pp. 265-67.) After convincing some state legislatures to set up passive registries that are virtually reunion-proof, the NCFA has busied itself trying to prevent the passage of open-records statutes by any of the states.

Adoption records remain sealed in all but two states (Kansas and Alaska), but the gradual opening of adoption practice in this country has sent the NCFA on the offense again. Part of its backlash strategy is to polarize birth parents, adoptive parents, and adoptees by labeling groups working for adoption reform as 'anti-adoption' while representing itself as pro-adoption. Mary Beth Seader, vice president of NCFA, used the tragic two-year court battle between the birth parents and would-be adoptive parents of two-year-old Baby Jessica to label the members of Concerned United Birthparents (CUB) 'predators' and to accuse those who support them of infiltrating the child-welfare system, creating an anti-adoption attitude" (Lucinda Franks, 'The War for Baby Clausen,' The New

Yorker, March 22, 1993). The escalation of language is part of the backlash tactics, so that words like war become the norm and terms like family preservation are called 'Orwellian.' (See 'The War on Adoption: New Battlefront,' *National Review,* June 7, 1993.)

The most recent battle has been an attempt to prevent the adoption search movement from facilitating reunions. In what was obviously a sting operation, two professional searchers-birth mothers Sandra Musser of the Musser Foundation of Florida and Barbara Moskowitz of Cleveland- were indicted and then convicted by a federal grand jury in the spring of 1993 in Akron, Ohio, for conspiring fraudulently to obtain confidential information from the Social Security Administration. Moskowitz, who plea-bargained, was let off with two months in a halfway house, two years' probation, and a $1,600 fine. Musser, who pleaded not guilty, was sentenced to four months in a federal prison in Florida, two months in house arrest with an electronic device, and three years of probation during which she was not to conduct any searches Musser based her defense on civil disobedience against unjust and illegal laws that sealed adoption records.

Two other birth mothers, Rita Stapf and Barbara Lewis, were also indicted and convicted in upstate New York with the charge of obtaining confidential information through the state's computer system. They were sentenced to five years' probation and ordered not to conduct searches for six months.

A statement issued in defense of the searchers by adoption therapists and social workers at the Fourth National Conference on Openness in Adoption (Traverse City, Michigan, April 30, 1993) read: 'We believe that what should be indicted is the system that led to the need to search secretly. Today adoption agencies no longer guarantee secrecy and anonymity. The adoptions of all the yesterdays deserve the same attention and consideration. Opening sealed birth records is the right of all who have been affected by this in this century. We believe that Musser and Moskowitz's actions need to be viewed from this vantage point and understood as acts of civil disobedience rather than criminality.'" B J Lifton pp303-304

Backlash to adoption openness

Lifton—"Elizabeth Bartholet, *Family Bonds. Adoption and the Politics of Parenting* (Boston: Houghton Mifflin, 1993). Bartholet's is one of the most vocal of the 'kill-the-messenger' genre of books being produced as part of the backlash caused by increasing openness in adoption practice. She erroneously interprets psychological reports of the effects of the closed adoption system on the child as an attack on the validity of the adoptive family, and advocates not opening adoption records until they can be seen as 'not of necessary and central importance to an adoptee's personhood or to parenting relationships.' Bartholet dismisses the literature on identity theory and interprets the recent societal interest in the importance of roots as a denigration of adoptive ties. Overly defensive as an adoptive parent, she is not able to empathize with the needs of the adopted child, to which the psychological literature is speaking and for which adoption reformers are working. From atop the nature-versus-nurture barricades, she declares with largess, 'I do not think we should jettison the biologic model of parenting,' but the reader is left with the feeling that if she could do it, she would." p311

Many adoptees active in law reform

Lifton—"Many of the reformers in the field are adult adoptees who have become mental health professionals and lawyers. Having grown up in the closed system, they hope to spare future generations of adopted children the psychological stress that they have experienced, and to gain the same civil rights for adopted people as others have. They have been joined in this struggle by birth mothers who hope to spare future generations of women the psychological pain of not knowing what became of their children, and by a growing number of adoptive parents who understand their children's need to know their origins. The adoption reform movement is also made up of a large number of social workers, psychologists, and lawyers who are aware of the need for legislative reform."p305

Source B J Lifton *Journey of the Adopted Self* 1994 pp303-305,311

POLITICS OF ADOPTION

Political questions

Benet— "More recent doubts about adoption stem from today's controversies over inequality, imperialism, and the nature of the family itself. These are political questions. They are not about the ability of an adoptive family to provide enough security and love for a growing child. They are about the matter of who adopts whom. Adoption has usually meant the transfer of a child from one social class to another slightly higher one. Today, as always, adopters tend to be richer than the natural parents of the children they adopt. They may also be members of a racial majority, adopting children of a minority; or citizens of a rich country, adopting children from a poor one. Adopters themselves feel bad about this." p12

Political dimension disturbing

Benet— "Many take the political dimension of adoption very personally, and have trouble justifying it to themselves or to their adopted children. They cannot bear to think about the situation of the natural mother, or to explain it to the child. Others seek in individual circumstances an escape from wider questions. They may point to the youth of the natural mother, or to her emotional problems, as evidence that their particular adoption was not associated with inequality or social injustice." p12

Political dimension ignored

Benet— "Most advice on the subject gives little help to adopters as they work their way through this dilemma. Indeed, the political dimension is usually ignored. Practical tips are given about agencies, telling the child of his adoption, identity crises, and inheritance, but the moral questions that torment so many adopters often shrink to a discussion of the charitable aspect of adoption. It used to be that the child himself was spoken of as fortunate in

being rescued by a kind family; now the family itself is considered fortunate to be allowed to adopt a child in conditions of scarcity." p12

Beyond psycho and sociological

Benet— "In many ways, psychological and sociological information carries implications for practice. The emotional needs of children, and the mechanisms by which a social group survives or disintegrates, can be studied with a view to making the system work better. But even when we have assembled both these types of information, we are not yet in a position to answer questions about the moral and political dimensions of adoption." p13

Do not fear the political dimension

Benet— "Adopters have often been unwilling, even afraid, to confront adoption as a political question. They say, 'I believe in individual solutions,' or 'At least one child will have a loving family and enough to eat.' In a sense, they are quite right: adoption has never been a wholesale operation, and no one would suggest that it can even begin to solve the enormous problems of poverty and homelessness facing the world today." p13

"But adopters need not fear that a look at adoption as a political phenomenon will cast them as the villains of the piece. To say that the biological parents of adopted children are to some degree victims of the social system is not the same as saying that adoption should stop. On the contrary,... the most egalitarian and efficient societies, in terms of providing for all their children, have always practised adoption on a far wider scale than any of the countries of the industrial West have yet dreamt of." p14

Source Mary K Benet 'The Character of Adoption' 1976

POLITICS OF NEW ZEALAND ADOPTION

Griffith— A whole book could be written on the politics of New Zealand Adoption. It began in 1881 when George Waterhouse introduced his Adoption of Children Bill, when he encountered some highly emotive opposition.

Highly loaded issues

Adoption raises a whole raft of legal, social and personal issues that may invoke political issues- Examples—

—Highly personal emotive issues that strike at the very core of the psyche of every person directly involved.
—Lots of people involved- 392,000 in adoption triangle.
—Human Rights, Racial, cultural and religious issues.
—Entitlement to, or possession of someone else's child.
—International issues re inter-country adoption.
—Citizenship rights.
—Premium Payments concerning an adoption
—Availability and supply of suitable children, to satisfy needs of adoptive parents.
—Implementation of UN Rights of the Child.
—Implementation of the Hague Convention

Any of the above issues may have strong political implications and evoke strong political reactions.

Political response to adoption issues

— Most, will listen to concerns of their constituents and may take matters up with appropriate authorities.
— Most, avoid public controversy on an issue with no voter payoff.
— On controversial social issues they tend to procrastinate to avoid turmoil, or practices the art of achieving political balance by promising one thing and doing the opposite.
— There are many ways to fob people or issues off.

Frustrations of adoption reform

— Promise a Review "Yes! We take the issue seriously and will have a comprehensive review". Sometimes the Review never happens, or if it does, the findings are never implemented.

— Select Committee Parliament refers the matter to a Select Committee, that calls for public submissions and reports back. The system can work well, but with adoption it has often failed and become a means to delay or dump reform.

— Adoption reforms rough ride in some Select Committees over the last 20 years—
—Committee did not get appointed.
—Gets appointed but it's terms of reference hobble it.
—Referred to an inappropriate Select Committee (Inter-country Adoption Bill referred to Commerce Committee)
—Membership is stacked to get a predetermined result.
—Endless delays leave little time to hear submissions.
—Time for submissions so short that they can't be made.
—Intimidation or abuse of persons giving submissions.
—Unable to agree on a Report- so there is no Report.
—Time runs out before they can Report back.
—Election is called- and the matter is not carried over.

Politics of Adoption— last 10 years
Adoption Reform

Ever since the late 1970's there have been calls to overhaul the New Zealand adoption legislation.

In 1985 the Adult Adoption Information Act was passed which gave people access under certain conditions to information. But further changes to the 1955 Act were put into the "too hard basket" by successive governments.

ICANZ and MOA

In the early nineties, two groups lobbied for law reform.

ICANZ *(Intercountry adoption NZ)* wanted the government of the day (National) to change the law so they would be officially authorized to facilitate intercountry adoptions (ICA) for NZ prospective adoptive parents.

MOA *(Movement Out of Adoption)* At the same time, another group of lobbyists, spearheaded by M.O.A. wanted a complete overhaul of all adoption legislation, with some of its members advocating an abolition of the concept of adoption, and replacing it with long term guardianship.

Departmental tension

Within government departments, there appeared from time to time tension between the various departments dealing with aspects of adoption. The Department of Child Youth and family is responsible for administering the actual adoption processes, while Department of Justice is responsible for any changes to adoption legislation.

Moves to appoint Private Agency

In 1993 the government attempted to pass new regulations via an supplementary order paper which would allow ICANZ to operate legally as approved service provider for ICA. (Inter Country Adoption).

The Labour opposition strongly opposed this, and the attempt failed. The following year on 31 May 1994, the Justice Minister introduced the Adoption Intercountry Amendment Bill No.2.

It was rushed through its Select committee stages using the Commerce select committee, which made opponents comment that the Select Committee choice was a cynical reflection of the government's attitudes to ICA. It appeared from the attitude of some Select Committee members that the outcome was a forgone conclusion.

Adoption (Intercountry) Act 1997

When the Bill was reported back to the House, recommending it be passed into law with a few minor changes, the SC report also strongly recommended that the 1955 Act be overhauled. The Minister of Justice (Doug Graham) kept avoiding the issue, until shortly before his resignation he sidestepped it again by referring the matter to the Law Commission for review. The ICA Act (1977) was passed despite strong opposition from the Labour party. Labour's position appeared to be clear: Adoption processes should remain fully controlled and executed by a government department.

Law Commission Review

Following the recommendation the Select Committee the Law Commission undertook a Review of Adoption. It took until September 2000 for the Law Commission to publish its report. When it came to Parliament it was referred to a select Committee for consideration, with the intention that the select committee would make a recommendation to Parliament regarding implementation of the Report.

Select Committee on LC Review

During the Select Committee sittings, there appeared a reasonable goodwill towards the report from all sides, but at the end of its deliberation, some influential members of the National caucus intervened, and instructed the national MPs on the committee to vote against any recommendations. The committee was split down the middle, and reported back to parliament with no recommendations at all. National, having commissioned the report, didn't want to accept the recommendations from the Law Commission, and appeared to prefer the status quo of the 1955 Act.

Of course, vested interests played a role. Some members of the national caucus during the nineties, specifically John Banks and Maurice Williamson, had themselves adopted children, and were strongly in favour of adoption. ICANZ has at least a hundred members with vested interests in ICA, in that they wish to adopt or have adopted children from overseas. They mounted organised letter writing campaigns supporting their cause.

The other side is less clearly defined. Some people who lost their child to adoption are opposed to adoption because they want to spare others the pain and grief. Some people who are adopted have objections to the practice. And yet others object to the principle of adoption on the basis of their belief that a child should if at all possible remain with its natural parents because removing them causes emotional and psychological harm to the child. But the lobby opposing adoption in its old form, and advocating law change is less organized and has less strong motivation than those supporting adoption.

Implementing Adoption (Intercountry) Act 1997

The new Labour Government started implementing the 1997 Act, by instructing the Department of CYF to write regulations about the accreditation process. However, CYF was aware of ongoing opposition from some members of the public, and when after two years they finally produced a booklet that laid out the interim guidelines for the accreditation process with standards that had to be met by applicants (e.g. ICANZ) they decided not to publicly announce the availability of the booklet, nor to consult anyone outside the relevant government departments on the content. When eventually it did come to the notice of those opposing ICA, it was criticized heavily as being inadequate. CYF eventually acknowledged flaws in the document that had to be addressed. Although this was about three years ago, to date no revision of this publication has been produced.

Some of the process outlined in the publication is subject to an investigation by the Ombudsman.

ICANZ Accreditation application

Late 1999, ICANZ Applied for accreditation. One of the few things that the opponents to ICA (Inter Country Adoption) succeeded in at the time the Act was passed was to include a clause that obliged the Department to notify the public of the application for accreditation, and to ask for public submissions on it.

The notification was in the form of a very small advertisement in one national newspaper.

Several members of the public asked for more information about the application, in order to make an inform submission. Two asked specifically for a copy of ICANZ application. The department refused to hand this over, on grounds of "Commercial sensitivity".

The submitters objected and sought assistance of the Office of the Ombudsman. After many months, the Ombudsman ruled in their favour, and the ICANZ papers were released.

The ICANZ application showed clearly that ICANZ had been (and was planning to in future) advising to clients that they had to pass a large sum of money to ICANZ' Russian contractors for so-called "administrative costs' and "donations to orphanages".

Several people making a submission opposing ICANZ application argued that this practice was directly in contravention with the Hague Convention and the UN Convention on the Rights of the Child, and that on these grounds ICANZ application should be declined.

The initial signals from CYF were that they were keen to accredit ICANZ. However, under significant pressure from

opponents to ICANZ, CYF decided to tread more carefully, and appointed a "Panel of experts" to assess the application.

In April 2001, four years after the Act was passed, and 18 months after the Application was received, the panel recommend in strong terms that ICANZ' application for accreditation be declined, essentially on the grounds that were raise by the opposing submissions. The CEO of CYFS endorsed this recommendation and ICANZ was declined.

ICANZ decided to challenge the matter in the District Court. Six months later, the Department was involved in a mediation process, the presumed outcome of which was to be that ICANZ would be accredited after all. When parties opposing ICANZ pointed out that on basis of the Panel's report, adopted by the CYF CEO, this was simply not a possible outcome, the Department dropped the mediation. ICANZ was advise that they could always put in a new application for accreditation.

New ICANZ Application. A new application was made in the middle of 2002, and its is currently still pending.

Government ambivalence re Private Agencies

Throughout this entire process since 1997, it appears that within the Labour party there are widely differing views on the matter of private intercountry adoption providers. The Government representatives on the select committee in 2001, which considered the Law Commission Report Wrote in their interim report: "We believe that private agency have no role to play in the intercountry adoption Process, except maybe some education and support functions." The Minister of Social Services, when receiving concerns about the process, reassured a constituent by stating "You will be aware of the position taken by the labour caucus in parliament on the ICA Act in 1997" Implying that they were opposed to private ICA services (as expressed explicitly by Labour during the debates on the ICA Bill.)

Yet about 18 months ago, the Minister of Justice was quoted as saying that he was willing to re-look at the issue of private services in ICA.

Efforts to clarify the issue in the form of letters by a member of the public to the Prime Minister, have been in vain. The request, passed on to the associate Minister of Justice Ms Lianne Dalziel, avoided a specific answer, but merely say "we are working on it".

Russian adoptions dispute

In November 2000, CYF alerted the Minister (of S.S.) that because of changes to Russian adoption legislation, it had received advice that further cooperation with ICANZ programme of Russian adoptions may be in contravention with NZ's obligations under the Hague Convention and The UN Convention on the Rights of the Child.

Crown Law Office CYF asked the Crown Law Office for an opinion, and CLO supported their concern, stating that in their view NZ would be definitely in contravention of the two Conventions. The Minister, on this advice, ordered a halt to Russian adoptions.

Foreign Affairs and Trade Unasked for, Foreign Affairs and Trade intervened, stating that in their view NZ was NOT in contravention with the Hague Convention, but, "if the Minister would want to halt Russian adoptions, it could be argued that NZ was in contravention of UNCROC".

CLO reiterated that in its view NZ was definitely in breach of the Conventions.

Six days later, without any evidence of any legal or other opinions or documents to counter CLO's opinion, the department of CYF reinstated its cooperation with Russian adoptions by ICANZ. This was with full knowledge of the interim report on the ICANZ application for accreditation, which stated clearly that in the view of the panel of experts, ICANZ had a long history of questionable ethical practice in intercountry adoption.

Throughout the entire process since 1997, members of the public have been consistently thwarted by CYF in their efforts to obtain information about both the ICANZ accreditation as well as the legal opinions on NZ allegedly breaching the two international Conventions.. It is largely through the Office of the Ombudsman that the information was finally been brought into the open.

Anyone wishing to follow up on this matter in detail contact Kees Sprengers. <Kees.s@paradise.net.nz>

Source *'NZ Adoption Law- Opening up of Adoption Changes and Challenges'* Lecture Otago Law School- K C Griffith. 1/10/2002

INTERDEPARTMENTAL POLITICS

Justice and CYF Duplex *Griffith—*

Justice Department is responsible for administrating the Adoption Act. Its primary concern is the 'law', and the courts administer the law re adoption orders etc.

Child Welfare now CYF is responsible for the Adoption Acts implementation in terms of social practice, policy, service and accountability. Its primary concern is 'people' and 'social welfare'. Both Departments have played important roles in our long history with adoption, but there have also been some tensions and frustrations.

Tensions and difficulties—

Ever since the establishment of the Child Welfare Department in 1925 there has been some tension between the Departments. This tension is caused by several factors—

Differing focus- Justice sees adoption as primarily a legal matter, its focus is on the letter of the law. CYF see adoption as primarily a social welfare issue.

Differing expertise- Justice staff have a high expertise in law but very limited experience of the social realities of adoption. CYF has a high expertise in the social, psychological, cultural and practical realities of adoption, and is in touch with what is happening at the coal face.

Conservatism Justice Department, by its very nature has been traditionally conservative. CYF, is more pro-active trying to find solutions to the people-problems of the day.

* The Justice Department strongly opposed the move to

open up of adoption in the 1975-85. The Reform Movement gathered momentum.

*** Webb Report 1979**. The Justice Department set up "A Review of Law on Adoption" to carried out by Patricia Webb a retired senior advisor to Justice. She consulted very widely, including all parties in the adoption triangle. She finished her report in 1979. The Report advocated many changes including an endorsement the movement toward openness. The Minister of Justice was upset by the Report and refused to release it, when he eventually did, he issued a statement distancing himself and the Government from the Report.

Conflict of Principle The Adoption Act administered by Justice, stands in complete contradiction to the principles and philosophy of the Children, Young Persons and Their Families Act 1989, administered by CYF, with its focus on the importance of maintaining birth family connections. To some extent this reflects a conflict of policy principle of the Departments.

Power The question of who holds the power? The fact the Department of Justice administers the Adoption Act leaves it, on legal matters with the balance of power. Thus when considering adoption law review or reform it clearly holds the balance of power. It may initiate, facilitate, stall or block adoption law reform. Determining adoption law amendments is mainly a matter of researching and weighing up the arguments to reach a consensus. However, Justice has the power to stonewall on issues if it chooses and has done so at times.

Conclusion A strong case can be made for switching administration of the Adoption Act to CYF. They already have an excellent track record with the Children, Young Persons and Their Families Act 1989. I believe it would speed up adoption reform and implementation.

Justice + CYF + MIA Tri-xity

With the increase in Intercountry adoption and the increasing use of 17s of the Adoption Act, the Ministry of Internal Affairs has become an important player in adoption. In effect s17 provides a by-pass route for Intercountry adoptions that avoids the scrutiny of New Zealand courts, and limits the scrutiny of CYF. The Ministry of Internal Affairs decides who may use the by-pass on strictly legal criteria with very little accountability.

Overseas adoptions Section 17 was intended to be a conflict of laws provision to ensure that immigrants to New Zealand who had adopted children in their State of origin would have the adoption recognised in New Zealand... Section 17 simply applies a formal test of the legal consequences of the adoption under the laws of the State where the adoption took place.

Sec 17 accords recognition to an overseas adoption where: • the adoption is legally valid in the State where it took place; • the adoptive parents acquire, under the law of the State where the adoption took place, a right of custody of the child superior to that of the natural parents; and • either the adoption took place in a certain named State or the adoptive parents acquire specified rights in respect of property of the adopted child.

Section 17 is now being used for purposes far removed from the original intentions of the 1955 legislators- It is primarily used by persons habitually resident in New Zealand to adopt children habitually resident in countries that have not ratified or implemented the Hague Convention. Once recognition is granted, such children are deemed New Zealand citizens by descent.

This provision creates difficulties

It does not require any assessment of how well that country's legal system protects the welfare and interests of the child. Examples-

- *Russian* adoptions and do not conform with the Hague Convention as there is no clear process for matching.
- It does not give New Zealand any discretion to refuse to recognise an adoption made overseas.
- It does not pay heed to competent social work practice.
- It does not conform with New 'Zealand's international obligations. UNCROC, Hague Convention on Intercountry Adoption, UN Declaration on Child Placement.

Lack of protection

The lack of protection for children adopted by New Zealanders using this route is in marked contrast to the assurances that must he sought from Hague Convention countries.
This anomaly was pointed out to the Select Committee during its examination of the Adoption (Inter-country) legislation but it refused to address the issue.

Source *'NZ Adoption Law- Opening up of Adoption Changes and Challenges'* Lecture Otago Law School- K C Griffith. 1/10/2002

ADOPTION LAW ANOMALIES

'Adoption is anomalous in a culture and kinship sysyem organised by biological reproduction.' *Barbara Melosh*

Adoption is an odd concept

Griffith— An adoption order seeks to transmute biological and genetic links by legal decree. A rather incredible undertaking that not even God has attained.

"It is a legal oddity in that it creates and perpetuates a falsehood. Fictional parenthood is bestowed by legal decree. Adoption is odd, too, in human terms. It creates a 'pretend' family and the child instantaneously acquires a whole set of new family members. Legal links with the old family are irrevocably erased. In legal and human terms adoption is a curiosity. It does not fit easily into existing concepts of family law. In fact it is more easily explicable in terms of property law.." Ludbrook

Legal adoption an ingenious device

As at 1955— "Legal adoption brought benefits to the birth parents, the child and the adoptive parents.
—The birth mother was relieved of the shame and degradation which a punitive society heaped upon the unwed mother. She could dissociate herself from the living evidence of her disgrace. Her child would have advantages and opportunities that she herself could not offer.

—The child was laundered. The adoption process washed away the stigma and legal disadvantages of being

born illegitimate. It created a new identity and new family by Court order.

—The adoptive parents became instant parents. Often they were not able to have children of their own and the adoptive process allowed them to know the joys and responsibilities of parenthood. They could integrate the child into their family in the knowledge that the child could not be taken away from them.

—There were benefits to the community at large in having children who had been deserted by their birth parents brought up by a substitute caregiver rather than become a charge on the State."

Source Ludbrook's Family Law Service Ch14 14-5, 1991. [The decrease in stigma and opening up of adoption has forced change to many of the above ideas.]

Property Law

Adoption has more in common with property law than family law.

(a) A baby to be adopted is not seen as a party to the transaction but primarily as the goods transferred.

(b) By signing a consent to adoption the owners of the child transfer all their right, title and interest in the child to new parents. The adopting parents acquire indefeasible title which is registered in a government registry (Register of Births). They acquire naming rights to the child. The transferrers (biological parents) lose all their rights in relation to the child and can be ejected as trespasses if they are seen to be interfering with the owner's rights. *Ludbrook.*

Welfare principle?

"Nowhere does the Adoption Act state that the welfare of the child is the first and paramount or even a primary consideration. It is true that an adoption order can only be made if it will promote the welfare and interests of the child but this is only one of the criteria for making an order and the reference to welfare and interests is misleading because (a) the biological parents are legally out of contention having signed the adoption consent; (b) by the time the matter is considered by the court the child is likely to have bonded with the adoptive parents; (c) usually no alternative care arrangements are presented to the court." *Ludbrook*

Conflict of principle The Adoption Act stands in complete contradiction to the principles and philosophy of the Children, Young Persons and Their Families Act 1989, with its focus on the importance of maintaining birth family connections. The Guardianship Act requires that the child shall be the paramount consideration, whereas the Adoption Act 1955 relegates it to a lesser consideration.

Conflict of direction What the law extinguishes, open adoption policy encourages. In law, adoption severs the legal and family ties between child and parent so the parent becomes a stranger to the child. Open adoption policy seeks to maintain links between the birth parents and child.

Conflict of Treaty Adoption is a totally alien concept contrary to the laws of nature in Maori eyes. Children are taonga. The Adoption Act is in breach of the Crown's obligations under the Treaty of Waitangi. There is similar conflict with Pacific Island cultures.

Breaches UN Rights of the Child

Art 21 Requires the best interests of the child shall be the *paramount* consideration.
Art 12 Requires that children be given the opportunity to express their views freely in matters which affect them.
Art 9 Where children are separated from their parents- all interested parties shall be given the opportunity to participate in proceedings and to make their views known.
Art 9.3 The right of the child who is separated from parents to 'maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'.

Legal Fiction

Legal fictions are feigned statements of fact authorised by statute and practice of the courts. "It is a certain rule, that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted." Oxford Dict.Vol 5. Legal fiction is now almost obsolete except in adoption.

Legal fiction in adoption attempts to provide a simple solution to transfer parental rights from birth to adoptive parents '*as if*' the child was born to them in lawful wedlock. For most legal purposes all the adopted persons birth relatives cease to exist *'as if'* they never existed.

Fiction procreates fiction Fictions create complications in personal relationships, courts and statutes. To uphold a fiction we have to create more fiction. The legal '*as if*' born to fiction generates multiple fictions.

Fictional relations in non relative adoptions—

— *Adopted persons* are the natural child of their adoptive parents, when in fact they are not.
— *Adopted persons* have a blood rela tionship with the adoptive parents when in fact they do not.
— For *adoptive parents* that the adopted child was naturally born to them, when in fact it was not.
— That *adoptive parents* have a blood relationship with the adopted person when in fact they do not.
— For *birth parents* the fiction they never gave birth to the child, when in fact they did.
— For *birth relatives* that they have no biological relationship with the adoptee, when in fact they do.
— For *adoptive relatives* that they have a biological relationship with the adoptee, when in fact they do not.

Legal fiction as part of the adoption foundation creates some unresolved tensions. Truth and fiction can't be welded into a consistent whole. Legal fiction turns into general fiction creating a web of pretence and denial.

Fictional rebirth 'Juridical Parthenogenesis,' occurs when the adopted person is by law re-birthed, and given a new birth certificate to prove it.

Fictional blood For various purposes the adopted person is regarded as: (i) Having blood of the birth parents alone. (ii) Having blood of adoptive parents alone- their natural blood all dried up. (iii) Having blood of both birth

and adoptive parents. Further, to add to confusion *they can be deemed to be in all three states at one and the same time. An* ultimate form blood transfusion confusion

Fictional marriage When a single parent, never married, adopts a child , the child is deemed to be a marital child of that single adoptive person! The Adoption law imputes a fictional marriage to a single adoptive parent.

Fiction-secrecy-link Sustaining fiction often requires concealing the factual evidence. Thus secrecy became and important part of the Adoption Act 1955.

Counterfeit coin Legal fiction it like a coin. On one side is your *deemed* 'born to' parents, on the other the *actual* 'born to' parents- To flip your lid, flip the coin.

Conclusion Society and the Legislative/Judicial System should not resort to legal fiction concerning adoption. No amount of legal fiction can alter facts. Stick to the facts and let the truth prevail. Legal fictions have no place in the area of family and interpersonal relationships.

Family Relationships

De mothering The women who carried the child in her womb for nine months, becomes, in law, a complete stranger to her child and is disqualified from any further involvement. She becomes a 'non-mother'.

De relating Relatives can be deprived of their status without consent or consultation. By signing the consent form, birth parents sever completely not only their own relationship with the child but also the child's relationship with siblings, grandparents, aunts, uncles.- *fiat accompli.*

Genealogical metamorphosis The legal pruning and grafting of family trees. Occurs in acute form when you are adopted by your grandmother, she becomes your mother, your birthmother becomes your sister, your aunts and uncles become your siblings, your birth mother's other children that were your siblings now become nephews and nieces. A product of *legalitis*, and *whakapapa pakaru*.

False Birth Certificates?

1881-1915 all adopted persons had only one birth certificate with their birth names and birth parents names.

Since 1915 the birth entry of adopted persons are re-registered in the new adoptive names and the adoptive parent's names replace the birth parent's names.

Until 1962 the names of parents on the new birth certificate were listed as 'Adopting Parents'. Since 1962 the words 'Adopting Parents' may be omitted from copies of the birth entry if adopting parents request. This concealed the adoption, and created a false impression that the named parents are in '*fact*' birth parents, whereas they are '*fictional'* birth parents. Some countries regard such certificates as false, but within New Zealand the re-birth entry certificate has full legal status by Statute.

Marriage Prohibited Degrees

The Marriage Act has 20 prohibited relationships for men, 20 for women. Where parties to a marriage are related to one another within the prohibited degrees of consanguinity or affinity, whether through whole blood of half-blood, the marriage is void ab initio. A marriage governed by New Zealand law is void ab initio, whether or not an order declaring it to be void has been granted, if the parties are within the prohibited degrees of relationship and no order is in force dispensing with the prohibition. Dispensation can only be granted by a Court for relationships of affinity, not consanguineous (blood) relationships.

Void marriages Occur where the parties have been through a ceremony of marriage, but did not derive there from the status of married persons because of some impediment. There is no marriage at all, either in law or fact. Since a void marriage is void ipso jure and ab initio. [*ipso jure* means 'By law itself, or operation of the law.
ab initio means 'From the beginning'.]

Onus on adopted persons The Law places the onus on all persons- including adopted persons to search all their own relationships of affinity and blood to ensure they are not marrying within the prohibited degrees.

Adoptee double list For purposes of the Marriage Act, adopted persons are deemed to have relationships of affinity and blood with both their birth and adoptive families, doubling the number of prohibited relationships.

Secrecy While the onus to search is placed on the adopted person, law and society often deny them access to the required information. Celebrants can access adoption records but with no birth father's name or birthmother family relationships, it's almost impossible to identify prohibited relationships.

An inevitable consequence of adoption secrecy is that some adopted persons innocently enter into incestuous, or prohibited marriage relationships, because of the ignorance imposed by both Statue and society. This dark side of adoption nobody wants to hear; Society, professionals, adoption agencies, church and State will not face the issue.

The chances of adopted persons entering a prohibited marriage relationship are small but the social and legal consequences are horrendous.

If an adoptee in ignorance marries within the prohibited *consanguineous* blood relationships, the marriage is void as from the date of contracting. Even where the ignorance is imposed by statute, they have no right of appeal to any Court, the marriage is retrospectively voided. Any continued sexual relationship in case of brother/sister is incest. Legislatively enforced ignorance is no excuse. The interests of the couple and welfare of their children become irrelevant, the immediate destruction of the consanguineous marriage becomes the paramount consideration of the law.

Death Certificates

Adopted out child can't be acknowledged

On a Death Certificate the ages and sex (but not names) of all living children born to the deceased are entered. However, in the case of an adopted out child, the age and sex of child cannot be entered, even with consent of all parties concerned. Although the child was in fact born to the deceased, by legal fiction it was born to the adopting

parents. Under Statute legal fiction takes precedence over statements of truth and fact, the child must be treated as not born to the deceased.

Child Stereotype of Adopted persons

The whole emphasis of adoption is on the child transaction, adult adoptees continue to be treated as children.

*The Adoption Act defines 'Adopted child' as 'any person concerning whom an adoption order is in force.' Irrespective of age an adoptee is an adopted child for life.

* Any non-adopted adult has access to their birth name as of right whereas an adult adopted person does not.

* Most adopted persons in New Zealand are now adults. As at 2002, 85% are adults 15% are children. Likewise, 95% of birth parents are not young frightened teenagers but are now well matured mid to latter aged adults.

Adults not bound by child contracts

A contract requires the consent of the parties involved. When a party is a child, a guardian is appointed to act on their behalf. The contract only remains binding until the child reaches the age of majority, when its continuation requires their "adult" consent. The Adopted person is the only party to the adoption who had no voice in the arrangements, signed no documents, pledged no secrecy and is denied any access to a copy of the contract. Adopted persons should have the same legal rights as all other adults, in access to all legal documents pertaining to them

Discharge of Adoption Order
Almost impossible to discharge

1. To discharge of an adoption order, an application must be made to the court with the permission of the Attorney-General. The court can only discharge an adoption order where the order was made as a result of a mistake as to a material fact or by a material misrepresentation to the court or to any other person concerned. Adoption Act 1955 s20.

2. Where no legal ground exists to discharge an adoption order, a person may seek to have the adoption discharged by a Private Act of Parliament.

No escape from irretrievable adoption

When an adoption suffers irretrievable breakdown, even on mutual petition by all parties, as adults, it is almost impossible to discharge the adoption.

1 The general objection to allowing an adoption order to be discharge is that normal parents and children cannot "divorce" one another. This is a somewhat simplistic argument and ignores the fact that adoption differs from natural parenthood, and that by consenting to an adoption, birth parents are in effect divorcing themselves from their children.

2 Furthermore, the court can remove a parent's rights as a guardian. 3. You can discharge a irretrievable marriage but not an irretrievable adoption.

3 Recommendation of the Law Commission

"We recommend that applications for the discharge of an adoption order should be made directly to the Family Court. We recommend that the circumstances in which an adoption order may be discharged should be extended to allow an adopted person to apply in special circumstances, where:

—the person applying is an adult; and

—the adoptive relationship has undergone a significant and irretrievable breakdown.

If the adoption order is discharged and the application is supported by the birth parents, the adopted person will become a member of the natural family as if the adoption had not occurred. *If the adopted person becomes a member of the birth family as if the adoption had not occurred. This could be either or both sides of the birth family. The Family Court would be able to re-establish legal relationships with the members of either side of the birth family only to the extent that they consent. The adopted person should not be able to challenge any testamentary disposition made before the time that the adopted person had his or her legal relationships with the birth family re-established.

If the adoption order is discharged and the adopted person is not supported by his or her natural parents, the adopted person will become a legal orphan, with no legal relationship to the adoptive family or natural family." Law Commission Report No65/2000. pp163-165

Secrecy

Concealment of truth from the person directly concerned should have no place in the judicial process. The court is a place where the truth should prevail and be upheld, not concealed or replaced by fiction.

Secrecy can be imposed in an attempt to cover the reality of the fiction. Key documents are restricted or unavailable to the persons directly involved, making it almost impossible to ascertain the truth. While such secrecy is intended to safeguard the parties concerned, it at the same time conceals judicial proceedings. The court can in effect become a secret court with no ultimate check on its functioning and accountability. Particularly, where the person transacted is denied any access to the documentation of their own case. For adopted persons the Law makes it very difficult for them to unravel the facts and fiction of their own adoption.

Source *'NZ Adoption Law- Opening up of Adoption Changes and Challenges'* Lecture Otago Law School- K C Griffith. 1/10/2002

Changing family dynamics

Griffith— The strength of a society rests on the effective functioning of its basic family unit, be it nuclear, extended, whanau, agia, or solo. All these models have the potential to be functional or dysfunctional. If the family unit is dysfunctional then society becomes dysfunctional. The present adoption law is patterned on the nuclear family, which now constitutes only about 50% of families. Adoption law needs to be relevant to the range of family structures models that exist today. KCG

Reforming adoption law A.10

Trapski— Demands for adoption law reform have reached a crescendo, reflecting a widespread conviction that 40 years on, the Adoption Act has become anachronistic,

failing to take account of changes in community attitudes. In 1996 the select committee considering the Adoption Amendment Bill (No 2) reported to Parliament. While acknowledging that adoption in many instances can be successful and positive, it commented that "for many New Zealanders it has a negative impact on their lives". The committee strongly recommended that an urgent inquiry be undertaken into adoption practices in New Zealand and that this be followed by an immediate review of the Adoption Act 1955.

Barriers to reform A.10.01

Trapski— The difficulties in the way of adoption law reform include the following:

(a) There is a need to harmonise adoption law with the principles of the Family Proceedings Act 1980, the Guardianship Act 1968, and the Children, Young Persons, and Their Families Act 1989. This will not be easy as there is a need to reconcile the welfare principle, the children's rights principle, and the whaj= principle. See A.2,3.

(b) There is a need to introduce a bicultural or multicultural perspective into adoption law. The difficulty is that many Maori see adoption itself as alien to deeply held Maori cultural values. See B.13.

(c) Adoption law reform, judging from past experience, unleashes very strong feelings in individuals who have experienced adoption, and from the special interest and support groups representing the interests of different members of the adoption triangle.

(d) There will be strong pressure to abolish or severely restrict step-parent and relative adoptions or to introduce some new legal status for non-parental carers such as custodianship (as in ss 33 to 46 Children Act 1975 (UK), now repealed) or parental responsibility orders (as introduced in ss 3 and 4 Children Act 1989 (UK)).

(e) The structural framework of the Adoption Act has been allowed to deteriorate for more than 40 years and has become so antiquated and creaky that it may be beyond repair.

(f) There are complex social, legal, and philosophical issues involved in any comprehensive law reform (for example the issue of open adoption), and there has been little public consultation or debate on these.

(g) Adoption services have been given a low priority and are under-resourced, and any major reform has significant resource implications.

(h) There is divided responsibility between the Ministry of Justice, which is responsible for legislation, and the Department of Social Welfare, which is responsible for implementation of the statutory provisions. There is a lack of consensus as to the nature and extent of any reform.

Areas for urgent reform A.10.02

Trapski— The areas identified by the interdepartmental working party in 1987 and the Adoption Practices Review Committee in 1990 in need of urgent reform are:

(a) The whanau should have the right to be involved where the adoption of a Maori child is in issue. See *Working Party Report* ch 1.2; Review Committee Report ch 12; and note the difficulties encountered in *Re Adoption 17/88* (1989) 5 FRNZ 360, also reported as *T v S (No 1)* [1990] NZFLR 411; *B v DGSW* (1997) 15 FRNZ 501; [1997] NZFLR 642, also reported as *Barton-Prescott v DGSW* [1997] 3 NZLR 179. See the United Nations Convention on the Rights of the Child (in Annexure Al). Article 21(a) appears to envisage that the consent of relatives should be required where they have some status in relation to the child.

(b) Adoption by a parent and step-parent should, as a general rule, be prohibited, as should adoption by a relative. See *Working Party Report* ch 2.2, 2.12; Review Committee Report ch 15; B.8,9; D.19,20; and the remarks of Judge Pethig in *Re Application by Nana* [1992] NZFLR 37, 46.

(c) Adoptions by one birth parent alone should no longer be permitted. See *Working Party Report* ch 2.11; B.7.

(d) Unmarried couples should be given clear statutory powers to make joint applications to adopt. See *Working Party Report* ch 2.19; B.5.

(e) The current provision that prevents a single male applicant adopting a female child should be dropped. See *Working Party Report* ch 2.24; B.4.

(f) The age at which a person can adopt a child should be reduced. See *Working Party Report* ch 2.31 and note the age discrimination provisions in the Human Rights Act 1993; B.10.

(g) There should be no adoption of children over the age of 15. See *Working Party Report* ch 3.4, 3.5; C.1.

(h) Children aged 12 and over should have to give their consent to their adoption. See *Working Party Report* ch 3.8; E.2.

(i) A birth mother should not be able to give a valid consent to adoption until after 28 days from the child's birth. Alternatively, the present 10-day limit should remain but with a further 21-day period during which the consent can be revoked. See *Working Party Report* ch 4; E.13.

(j) The circumstances in which consent of an unmarried father has to be obtained should be widened. See *Working Party Report* ch 4.33; E.9.

(k) The right of a birth parent to impose a religious condition should be removed. *Working Party Report* ch 4.36; E.15.

(l) The grounds for dispensing with parental consent to adoption should be altered and expanded. See Working Party Report ch 4.38-46; E.22-34.

(m) The procedure by which interim and final adoption orders are made should be simplified and, perhaps, a one-step process introduced. See *Working Party Report* ch5.7-12; G.1,12.

(n) Private adoptions should be limited and the provisions regarding the placement of children with a view to adoption should be clarified and extended. See *Working Party Report* ch 5.13-20; D.14,17.

(o) Private adoption agencies should be permitted to provide specialised adoption services for groups such as children with disabilities or children of particular ethnic

groups. See *Working Party Report* ch 5.25; D.14.

(p) There should be a panel to review social workers' decisions as to the suitability of applicants seeking to adopt. See *Working Party Report* ch 5.28; D.7.

(q) The High Court should be empowered to authorise the marriage of a natural child to an adoptive sibling, and of others related through adoption. See *Working Party Report* ch 6.13; G.22.

(r) Adoption orders should be able to incorporate provisions for future contact between the birth parent(s) and the child, with a power given to the Family Court to give directions. See *Working Party Report* ch 7.10; Review Committee Report ch 10; H.3-7.

(s) There should be a greater focus on the needs of the child, but not an overall provision that the welfare of the child is paramount. See *Working Party Report* ch 8.4; E.31, F.15.

(t) Medical examination of the child before adoption should be optional. See *Working Party Report* ch 9.2; D.5.

(u) Financial assistance to adopters should be considered in some instances. See *Working Party Report* ch 9.4; D.15.

(v) There is a strong case for separate legal representation of children in adoption matters despite the resource implications. See *Working Party Report* ch 9.6-8; Review Committee Report ch 17.6; C.7.

(w) The appeal provisions need clarification. There is uncertainty whether the Adoption Act 1955 provisions supersede the more general provisions in the District Courts Act 1947. In particular, it is not clear whether an appellant can rely on the time limit in the District Courts Act and whether the High Court has the power to extend the time for appeal: see J8.01. In Craig v Craig [1993] 1 NZLR 29; [1993] NZFLR 1 (CA), Anderson J described (at p 37; p 11) the legal situation as "convoluted and obscure".

Proposals for abolition of adoption A.10.03

(1) Adoption law questioned *Trapski—*

The very concept of legal adoption is being questioned. In Issues Paper 9: New South Wales Law Reform Commission Review of the Adoption of Children Act 1965 (NSW), May 1993, the commission asks at p 15:

> "Could it be argued that adoption is fundamentally flawed? Critics have argued that adoption involves a form of deception; a denial of the biological facts and a pretence that the child is the child of the adoptive parents. Some might see the use of law to promote such a deception as fundamentally wrong. Another argument might be that adoption is based on a rigid and simplistic view of the nuclear family; the law should instead recognise the importance of extended family members, and the fact that many Australian children experience a variety of other family forms. To restate this argument, adoption is sometimes seen as an adult-centred and possessive institution, based on a view that children should be regarded as property, with adoption law determining that the adoptive parents `own' their children."

On one view, the commission suggested, adoption law might simply be abolished and the Family Court given the power to make orders about some or all of the matters associated with adoption, such as new birth certificates and changes in child support and inheritance rights. Instead of a single inflexible adoption order, the Court could assemble a package of legal orders to suit the individual circumstances of the child and the family.

For further discussion of this Topic, see I Johnston, "Is adoption outmoded?" (1985-88) 6 Otago LR 15; *Adoption: Should it be Abolished?*, YELP discussion paper, Auckland, Youth Law Project, ca1991; A Baran and R Pannor, *It's Time for a Sweeping Change,* 1990; *Issues Paper 9: New South Wales Law Reform Commission Review of the Adoption of Children Act 1965* (NSW), May 1993, p 15; R Ludbrook, "Children's rights and adoption" in P J Morris (ed) *Adoption: Past, Present and. Future,* Auckland, University of Auckland Centre for Continuing Education, 1994; R Ludbrook "Children's rights in adoption" in Has Adoption a Future?, Proceedings of the 1994 Australian Adoption Conference, Post Adoption Resource Centre, NSW, 1994, p 494; R Ludbrook, "Closing the wound: An argument for the abolition of adoption" in *Adoption and Healing,* NZ Adoption Education and Healing Trust, 1997, pp 57-58.

(2) Support for existing scheme

Trapski— However, many commentators still support adoption as a means of providing children with a sense of certainty and security: J Caldwell, "Adoption: Keeping options open" (1994) BFLJ 86. With pressure for significant change to adoption laws and policies it should not be overlooked that the Adoption Act 1955 still remains on the statute books and has not been rendered obsolete. *In Re M (adoption)* [1994] 2 NZLR 237, also reported as *Re Application for Adoption by R R M and R Y M* (1993) 11 FRNZ 245, at p 238; p 247, Williams J referred to the view expressed in some quarters that adoption has become an anachronistic concept and has such major disadvantages in contemporary society as to justify a restrictive approach to adoption orders. He indicated that he did not share that view, and that while the Adoption Act remained on the statute books it could not be regarded as obsolete. In his view, changing attitudes to adoption could be reflected in the over-arching concept of the welfare and interests of the child.

(3) Parental responsibility orders proposed

Trapski— In 1994, the Social Policy Agency of the Department of Social Welfare issued a draft discussion paper which suggested that the department's preferred option for adoption law reform was to replace the Adoption Act 1955 with new legislation providing for parental responsibility orders. These orders would define parental responsibilities towards the child but would not sever the child's links with his or her family of origin. The paper considered other options including: (a) modification of adoption law so that the legal link between biological parent and child would not be severed; and (b) abolition of adoption, and reliance on the Guardianship Act 1968 to give rights and responsibilities to non-parental carers: see *Adoption: A Proposed New Direction*, Department of Social Welfare discussion paper, Wellington, August 1994.

(4) Law Commission discussion paper

Trapski— In its discussion paper, *Adoption: Options for*

Reform, NZLC PP38, October 1999, the Law Commission asks the question “Should the institution of adoption be retained?” and presents for consideration two options:

(a) Retain a modified version of adoption; and

(b) Abolish adoption and use guardianship instead.

The discussion paper floats the idea of a new status of “legal parenthood” allowing the Court to appoint “legal parents” of the child and confer upon them all parental rights and responsibilities. Legal parenthood, unlike guardianship, would confer rights of succession. The status of legal parenthood would not terminate upon marriage or on the child attaining majority at 20 years of age. An order appointing a legal parent would not conceal the existence of the birth parents but simply relieve them of the rights and responsibilities that normally flow from parenthood. The discussion paper proposes (at paras 39 to 47) that on conferring legal parenthood the Court should have a range of options that would meet the needs of the individuals involved rather than be restricted to the “all or nothing” status that constitutes adoption today.

(5) Law Commission Report

Trapski— In its final report *Adoption and Its Alternatives: A Different Approach and a New Framework*, NZLC R65, September 2000, the Law Commission opted to retain the concept of adoption, but significantly alter the legal effect of adoption so that it bestowed sole legal parental rights and responsibilities on the adoptive parents while continuing to acknowledge the child’s family links with the birth parents and family of origin.

The Commission proposed that the term “adoption” be retained because it was well understood, because the public would be likely to continue to use the term, and because the community might see “legal parenthood” as having an inferior status to adoption.

Law Commission review of Adoption Act A.10.04

Trapski— When reporting back the Adoption Amendment (No 2) Bill 1996, the Commerce Select Committee strongly recommended that an inquiry be immediately held into adoption practices in New Zealand over the past 50 years, followed by a review of the

Adoption Act 1955. The Minister of Justice did not adopt the recommendation for an inquiry into past adoption practices but in early 1999 asked the Law Commission to advise the Government on reforms to the Adoption Act 1955.

The terms of reference require the Law Commission to review the legal framework for adoption in New Zealand, as set out in the Adoption Act 1955 and the Adult Adoption Information Act 1985, and to recommend whether and how the framework should be modified to better address contemporary social needs.

The Law Commission released its ground-breaking report *Adoption and Its Alternatives: A Different Approach and a New Framework*, NZLC R65, September 2000. The report argues that adoption should be seen as one of a range of legal options available for people who care for other people’s children. It proposes that the available options should be included in a new Care of Children Act that would include a reformulated statement of the legal consequences of adoption removing the elements of legal fiction. The report also proposes setting out in some detail the parental rights and responsibilities which flow from the making of different orders in respect of children.

Other recommendations of the Law Commission are detailed in the relevant sections of this text.

The Law—Commission’s recommendations for reform were considered by a Parliamentary Select Committee, the Government Administration Committee but there was a division between government and opposition members of the Committee and no agreed recommendations emerged from the Committee. The present government seems committed to reform and an inter-departmental committee is working on new legislation. It is believed that there are delays as a result of the differing views of the Ministry of Justice and the Department Child, Youth and Family Services. Any adoption amendments will be introduced as a separate Bill rather than as part of the Care of Children Bill to be introduced to amend the Guardianship Act.

Source *Trapski’s Family Law* Vol.5 ‘Adoption’ A.10.01-A.10.04. 24/10/2003

Some basic issues for reform groups

Griffith— Brief reply to email asking for some guidance.

1 Liaise with wider groups I think you are on the right track bringing on board other groups in your quest for the abolition of vetoes. The advantage will be that when your case is presented- (a). It represents the wider adoption circle and cannot be dismissed as a beef by birth mothers or adopted persons acting alone in self interest. (b). While this approach will take more time an energy I believe it is worth the effort.

2 Evaluate approaches to reform Too many persons or groups re vetoes in other countries have tried to fast track law change by either

(a) ‘Jumping up and down saying someone should “do something about it” but no one does!. or

(b) They simply send a protest letter to a politician or Government seeking law change- normally to nil effect.

(c) Petitions: Some send a Petition to Parliament. But, too often (i) the signatures all comes from a narrow interest group. (ii) There is often no really convincing substantive case stated in the petition for the law change.

I believe that any effective petition must
(a) attract a wide range of petitioners- including wider law reform, civil liberties and professional persons beyond the adoption circle was well as from within it.
(b) There must be a substantive compelling case for law change stated by the Petitioners. And this requires a lot of work and effort by a team of people...

The question of making a convincing substantive argument for abolition of vetoes. My thoughts are along the lines of treating vetoes within the bigger picture of Adop-

tion Law Reform.

1. My basic argument would be- A stated case for Adoption Law Reform based on-

(a) Openness, honesty and integrity of all parties concerned.
(b) That every member of the adoption circle have the same rights and privilege as any other Australian citizen- without any discrimination.
(c) That such a reform be based on the principles of the UN Rights of the Child and other relevant UN Conventions. These arguments would need to researched and spelt out in detail.

On adoption secrecy *Griffith*—
and withholding of important personal information from the persons directly concerned... In some cases this is contrary to Human Rights Acts and UN Conventions etc., because it involves a discrimination on grounds of their status of adopted persons and birth parents... Access to original birth certificate is denied on grounds of status. Important personal, psychological, genealogical, religious and medical information is withheld in various ways. (Note genetic information can be very important to diagnosis, prognosis and treatment etc ignorance can be life threatening)

Put specific questions to groups in society.
Griffith— Example: Does your organization- religion- political party, profession etc

(a) Endorse the principles and practice of openness, honesty and integrity?

(b) Support the principle that all Australian citizens should have the same rights and privileges without any discrimination on grounds of race, status. or creed?

(c) If your organization- religion- political party, profession etc supports continued discrimination of adopted persons and their birth parents, on grounds of their status, could you please spell out your justification in terms of your religious- political - ethical- beliefs that justify this continued discrimination...
Source Extracts from my reply to letter from ARMS (Support Group for Natural Mothers) South Australia. email <MCraig@workcover.com KCG.

The law must be consonant with life
Judge Weatherford— "The law must be consonant with life. It cannot and should not ignore broad historical currents of history. Mankind is possessed of no greater urge than to try to understand the age-old questions- "Who am I ?". and "Why am I?" Even now the sands and ashes of the continents are being sifted to find where we made our first steps as man. Religions of mankind often include ancestor worship in one way or another. For many the future is blind without sight of the past. Those emotions and anxieties that generate our thirst to know the past are not superficial and whimsical. Thev are real and they are "good cause" under the law of man and God."
Source Hon. Wade Weatherford, S. Carolina Circuit. USA Court Judge. *The Triad Tribune* Canada Vol.13 Issue1 1999 p1

Access to Adoption Information
Submission by the Privacy Commissioner to the Law Commission in relation to Chapter 15 of the Law Commission's discussion paper Adoption: Options for Reform 1 March 2000

Suggested approach to law reform
Adoption arouses strong emotions in those personally involved whether as adoptees, birth parents, adoptive parents or other family members. Individuals have often been particularly anxious to preserve their privacy in adoption processes. In the past, adoption had often also been associated with ex-nuptial births, orphaned children or circumstances of poverty, each of which can represent personal trauma for the people concerned. The process itself, usually in the post-natal period and involving the legal and physical separation of child from mother, can be emotionally fraught. Of course, not all adoptions arise in emotionally unfavourable circumstances - most recently the planned use of the process in relation to offspring born through artificial human reproduction techniques and surrogacy come to mind. In any circumstances, issues surrounding conception, pregnancy, infertility, parentage and family dynamics are intensely personal.

Adoption law was designed as a humane response to the plight of orphans and "illegitimate" children. Later, the "closed adoption" process was favoured, with its attendant secrecy, to better serve those humane impulses. However, professionals in the adoption area now believe that total secrecy is not the best approach given the continuing human urge for adopted persons to know their origins and the desire of birth parents to know something of their offspring. Accordingly, from 1986 New Zealand has granted all adopted persons a qualified right to have access to their "original birth certificate" (that is, showing the person's birth mother, and possibly birth father, rather than the adoptive parents shown on the "amended birth certificate").

The 1985 reforms, although widely welcomed, were somewhat piecemeal. The Adoption Act 1955 remains on the statute books as the primary piece of adoption legislation notwithstanding that it was enacted in the period of closed adoption. Its ethos does not sit comfortably with the 1985 reform. Furthermore, the 1985 Act, with its principal focus upon register information and with veto provisions, remains a restrictive piece of legislation in information terms and largely fails to address wider issues such as access to adoption information in departmental files and the position of other relatives. Young adopted persons have no rights under the 1985 Act. Older adopted persons, subject to a pre-1986 adoption, may never get access to information about their origins if a veto is lodged.

A continuum could be drawn from a tightly closed adoption process to a completely open one. There are bound to be tensions in privacy terms, when dealing with information about more than one person, regardless of the point on the continuum that law is placed. The privacy interest in having access to information

about one's self, as represented by information privacy principle 6, is bound to come into conflict with the privacy interest in controlling the disclosure of information about one's self, as represented by principle 11. It would be arrogant to say that there is a single "correct" way to resolve these issues. Although it is possible to go some way to reconcile the competing interests, any resolution is almost certain to elevate one interest over another at some point. My tentative view is that it is appropriate to put the adopted person at the centre of consideration and elevate its interests over that of other parties in the event of most conflicts of rights or expectations. This generally relates to giving precedence to the adopted person's right of access over a desire by other parties to constrain disclosure.

Although this approach represents an inroad into any expectation of confidentiality held by birth parents in the closed adoption period, this may nonetheless be seen as reasonable given modern thinking that the best interests of the children are served by allowing them, if they wish, to have access to information about their biological origins. Nonetheless, any change in approach would need to be implemented with care to protect vulnerable people who were involved in adoption processes in an earlier era.

Source *See* Privacy Commission Website for full 11 page Paper.
http://www.privacy.org.nz/people/accadopt.html

ADOPTION RESEARCH

RESEARCH

Difficulties with adoption research *Chart*

Adoption research epistemology *Delany—*

Abstract
Expert status
Distortions
Distortion legitimised
Success of positivist value free science
Uncompromising faith in science
Limitations of positivistic analysis
Search for universal laws
Underpinned unstated, theoretical orientations
Conspiratal or altruist motivations
Those consumed by the process negated
Truth as guiding light in a sea of darkness
Legislation and policy
This consumed by the process negated

Use of research findings in court *Thoburn—*

Relevance of research to particular situations
The key point
Two important research conclusions

1969 Research survey *J.M. Sagar*

What research is about *L.Hood—*
Denial in adoption triad impedes research *N.Verrier—*

Research evaluation of adoption
Marshall and McDonald—

A matter of judgement
Value of adoption as an institution
In broad terms, it has been successful
Overwhelmed by conflicting material
Researchers measured tones v experience
Adopted person
Looking at gains and losses
The ‘if onlys’
Failure to compare adoptive with non-adoptive
Commonly held beliefs about adopted persons
Adoptive families are extraordinary

RESEARCH

All studies of adoption reflect a particular aspect of the reality for different people, in different circumstances, at different times and places and under different social conditions. It is within this framework therefore that we should look at some of the research evidence.

Understanding adoption: epistemological implications

[*Epistemology* - "Theory of Knowledge esp. the critical study of its validity, methods and scope" *Collins Dict*.]
Denys Delany—

Abstract Knowledge and power are linked. In order to reveal the nature of the knowledge/power nexus and its relationship to the process of adoption, we must not only ask what we know about adoption but "more importantly, ask how we come to know what we know about adoption. When we do this it becomes clear that adoption in Australia has been misunderstood and misrepresented. Until we are able to relocate and reposition our understanding of adoption as a social construct, understanding of adoption's inherent contradictions and the nature and origins of the knowledge positions and political projects of each set of stakeholders will remain beyond us. As will meaningful reunion, reconciliation, healing and an adequate understanding of the true potential of the process. p115

Expert status

Delany—"Social researchers, social workers, mental health professionals, policy makers and members of the legislature are assigned the privileged status of 'expert' in Australian, and other western industrialised societies. They hold a powerful, mainstream position as creators and arbiters of knowledge. Consequently their understanding of adoption has particular influence on the way it is presented and represented both theoretically and as practice." p115

Distortions

Delany—"It will be argued here that various discursive, 'mainstream' understandings of the social institution of adoption have not been based on conclusions arrived at through relevant, inclusive systematic study but rather have emerged as a result of distortions of the knowledge process. <u>These distortions are products of the power/social nexus whereby power validates certain kinds of knowledge by promoting certain narratives and silencing others.</u> The effect becomes the acceptance and adherence to sets of philosophical positions that often define the object of the social sciences in such a way that effectively legislates away their most important problems. These distortions emerge as scientifically derived knowledge discovered as the result of the application and acceptance of poor theory, personal bias, exclusionary sampling, inappropriate research methods, including problematic measurement instruments. These distortions, as well as mere chance, have been posited as 'value-free science' and this has served to assist in defining our understandings of adoption." p115

Difficulties with Adoption Research

Verrier— One of the difficulties in doing research in adoption is that members of the adoption triad frequently use denial and avoidance as defenses against painful feelings.

These defenses must be understood as unconscious on the part of the person who is using them.

It is not as if one decides to deny or avoid something. Although one can certainly do that, when we speak of denial and avoidance as defense mechanisms, we are speaking of something which happens automatically in the unconscious: the blocking out of painful experiences in order to cope with one's situation.

This is why it is so difficult to get through or overcome these defenses: One is totally unaware that one is employing them!

Source Nancy Verrier 'Prinal Wound' Gateway Press. 1993 p50.

Distortion legitimised

Delany— "Very often the discursive, 'mainstream' knowledge positions that have emerged are more reflections, in a variegated and mediated form, of the values and beliefs inherent within the dominant culture. These are understandings that are human products that have emerged within a particular time and context rather than as the result of the systematic application of value-free, scientific methodologies. However, through primary, secondary and tertiary socialisation processes, knowledge distortions are often legitimated as emerging from value-free science and they become manifest as the 'correct' way of knowing. Statements about the 'real' nature of adoption become 'everyday' knowledge discourses and these in turn become objective 'architectural monuments' for judging the 'truth' about adoption and its effects..." p115

Success of positivist value free science

Delany— "An archaeology of knowledge may reveal positivist, value-free science as the central tenet of modernity because of its success in revealing the secrets of nature. Universal laws have been discovered involving physics, chemistry, astronomy, and biology and it has been assumed that the same value-free, scientific approach could be applied to understanding questions about collective human existence. Modernity has embraced and elevated value-free scientific knowing to the pinnacle of the hierarchy of knowledge and privileged the academic/scientific professions as the ultimate knowing and acting agencies, without earthly equal. The uncompromising belief in the power of value-free science to provide answers about the 'real' nature of collective human existence and to help human kind evolve and harness nature is central to beliefs about enlightenment, progress and freedom." p116

Uncompromising faith in science

Delany—"This uncompromising faith in science and the belief that it will eventually provide answers to everything has become institutionalised, habitualised, authoritative dogma that demands unquestioning belief. The habit

of understanding social phenomena with our unquestioned beliefs (because they are scientifically legitimate) instead of first attempting to understand the nature and origin of those beliefs is especially evident when we take an holistic and reflexive view of the social sciences." p116

Limitations of positivistic analysis

Delany—"Traditionally, the primary task of the social sciences has been the explanation of social systems, processes and in general, social phenomena. However, in order to understand complex social systems and social phenomena it has often been the habit to examine processes that are internal to the system. This has involved the examination of component parts or units that are at a level below the system such as its individual members. The desired outcome has been to provide understanding about behaviour of the system by recourse to the behaviour of its parts. This internal analysis of systems behaviour has concentrated on utilising particular 'legitimate' positivistic, [1] analytical methodologies that embrace aggregation and the representative agent. [2] However, it can be argued that positivistic methodologies have not fulfilled their original promise. An analysis of the history of the application of positivistic methods, as 'the' appropriate means for the investigation of social issues reveals a methodology that has not been successful in unifying social thought or in providing a consensus on appropriate schemes for social and political reconstruction and healing. Arguably, what value-free, social science has accomplished is the maintenance and replication of the fundamental values and beliefs that are implicit within the dominant culture and that underpin particular kinds of social organisation and social power." [3] p116

Search for universal social laws

Delany— "Much of our understanding of the process of adoption in Western industrialised countries in the past 100 years has evolved within a social/cultural environment where faith in the so called 'value-free, positivistic, theoretical methodologies to answer social questions has been paramount. However, this scientific approach to understanding has tended to ignore the premise that understanding of social phenomena as social systems, processes, problems or needs relates specifically to how those systems, processes, problems or needs are defined and analysed and by what standards. The belief that the discovery of universal social laws through objective observation can be realised so long as the subjective role in constituting concepts, theory and methods is denied has become a pervasive characteristic of modernity." p116

Underpinned unstated, theoretical orientations

Delany—"In the 'scientific' study of the social, positivistic monistic, [4] methodology has been applied in an attempt to find answers to social questions without acknowledging or identifying the basic theoretical and value-laden assumptions that is fundamental to all social research. Adoption research has more often than not been underpinned by an unstated, theoretical orientation that assumes that social facts could be discovered by application of methodologies applicable to the physical sciences and that social realities can be understood as something external to the researcher and the researched. Positivistic, value-free, scientific social research designs have been constructed in ways that have attempted to completely eliminate subjectivity in favour of objectivity." p116

Conspiratorial or altruistic motivations

Delany—"Some would have us believe that the primary motivating force behind much excluding, value-free social research has been conspiratorial, that it has been little more than a premeditated and conscious desire by the powerful to control the less powerful. However, when one examines the history of social research and adoption it becomes evident that the motivating force has often been altruistic and the desire of the researcher has been to discover social facts in order to minimise alienation. Unfortunately, the possibility of discovering social facts has been seen as conditional upon removing the discrepancy between subjective understanding and objective reality." p117

Truth as guiding light in a sea of darkness

Delany—"In other words, reason as objective, absolute truth has been seen as the guiding light in a sea of darkness, that will reveal hidden social 'facts' and provide control and prediction. Models of the approximations of social events have emerged that are testable, reproducible and verifiable. However, the nature of confirmation and verification is social and there are unstated social forces at work that underpin social research and are also implicit in the formations of claims about value-free, objective social knowledge." p117

Legislation and policy

Delany— "Positivistic theoretical and methodological approaches to discovering and developing knowledge about adoption have resulted in particular understandings that have also been utilised as the basic conceptual and theoretical premises for the justification of the creation and implementation of ameliorative measures in the form of legislation, policy and practice. What has not been acknowledged is that these ameliorative measures have been based on—

(i) Conceptual understandings that depend entirely on the basic causative assumptions brought to the problem by the investigator, [5] the researcher and those involved in the creation, administration and implementation of legislation and policy.

(ii) In many incidences these understandings or ontological positions have been accepted as valid and legitimate by mental health and other professionals and applied as a 'common sense', scientifically derived, therefore legitimate conceptual framework for attempting to deal with the unwanted and unintended effects of adoption.

(iii) In other words much of our knowledge of adoption has been knowledge generated from certain positions [6] and then applied in practice and policy contexts.

(iv) However, these knowledge positions have tended to deny us access to the nature of adoption's social construction, its effects and the origins of the massive social con-

tradictions inherent within it.

(v) Worse still, the acceptance, legitimisation and application of objectified, positivistic notions about the 'real' nature of adoption have denied us access to the multi-level experiences of those who have been subjected to it." p117

Those consumed by the process negated

Delany—"Moreover, blind faith in the power of positivistic social science has further resulted in the institutionalised devaluing and belittling of those suffering its effects.

(i) Those individuals who have been, in some way, consumed by the process and who have spoken out loudly about their experiences have been viewed as little more than emotionally charged, angry and therefore irrational and out of touch with reality.

(ii) Their subjective, and therefore illegitimate, expressions of their experiences of the process have been systematically reduced and they have been categorised and labelled as people who are either psychologically underdeveloped, pathological, maladjusted and/or deviant.

(iii) These reductionist and deterministic attitudes do not stop at the mere devaluing of the individual however, they go on to place and fix the ultimate responsibility for the adoption related problem squarely with the individual. In other words not only has the individual been blamed for the socially created, contradictory, unintended and unwanted effects of the process but they have also been systematically alienated, ridiculed and stigmatised." p117

NOTES

1. The term "Positivism" is used here to describe a sociological approach that operates on the general assumption that the methods of the physical sciences can be carried over into the social sciences. It involves the expectation that scientific knowledge will formulate logically interrelated general propositions grounded in statements about basic social facts derived from observation.

2. Coleman, J.S. (1994) *Foundations of Social Theory*, Belknap Press, Cambridge. **3.** Foucault, M. (1961) *Madness and Civilization: A History of Insanity in the Age of Reason,* Vintage Books, New York. **4.** Monistic, the belief that there is one and only one objective reality. **5.** Donovan, F. & Jackson, A. (1991) *Managing Human Service Organisations*, Prentice-Hall, New York. **6** McIntyre, J.J. (1995) "Achieving Social Rights and Responsibility: Towards a Critical Humanist Approach to Community Development," *Communication Quarterly,* Victoria. p.22.

Source Denys Delany* 'Understanding adoption: epistemological implications' in book '*Adoption and Healing*' pp115-117. *PhD studies University of South Australia.

Use of research findings in court

Thoburn—"It is the duty of expert witnesses to produce evidence which points in each direction for each option, as indeed should social workers and guardian *ad litem*. All those who are giving evidence must give *all* the evidence, even if it doesn't support the conclusion which they are advocating. We all know how difficult it is to include evidence which supports the opposite of what we think will be best for the child, but the role of those charged with treating the child's welfare as paramount must be to seek to ensure that *all* relevant evidence, including relevant research findings, is available to the court. If, for instance, evidence is being presented about the pros and cons of fostering and adoption, it is important to present what research says about both options- and then, if one option is preferred, to explain how fine the balance is and the reasons why some research findings are stressed and others given less weight in the particular case. Just leaving 'inconvenient' findings out of the report should not be an option for social workers, guardians *ad litem*, or expert witnesses." p94.

Relevance of research to particular situations

Thoburn—"Some crucial questions that we should address in seeking to answer this—
Who carried out the research and were they appropriate qualified to do so?
—Where was the fieldwork for the research conducted?
—When was the study undertaken?
—What was the size of the sample?
—How were the sample cases identified and how representative are they of the total population being studied?
—What research methods were used and were the appropriate tools for exploring the question to be examined?
—What variable were being measured?
—What outcome measures were used?
—Where the methods used in the analysis appropriate and did the data reported support the conclusions drawn? p94

The key point

Thoburn—is that it is essential to get hold of the actual research article or book in order to use it in an ethical way in court, or if it is known that another expert will be using it and there will be a requirement to comment on their evidence. The questions posed above are key ones to consider in relation to any research study- an area of preparatory work which is not always thoroughly undertaken by witnesses." p94-95. Text contains examples of use of research data.

Two important research conclusions —

Thoburn—Fostering v adoption:—Recent studies suggest that, when other variables are held constant, there are no advantages either way, at least as far as placement stability is concerned." p103

Birth family contact:—Research findings point overwhelmingly in one direction- towards continued contact being in the interests of most children, in that it appears to be associated with greater stability of placement as well as other positive outcomes." p103.

Source June Thoburn* 'Use and abuse of research findings in contested cases' Ch 8 book 'Contested Adoptions' Ed. Murray Ryburn 1994 Arena England. pp91-104. *Professor of social work, University of East Anglia, Norwich England.

1969 Research survey

J.M. Sagar— Thesis. Contains a comprehensive survey of adoption research literature as at 1969. The aim of the reading study was to examine available literature on adoption and to attempt to draw conclusions as to the differ-

ences, if any, between adopted and non-adopted groups of children and their parents. It also considers in detail many aspects, limitations, summaries and results of many adoption research projects prior to 1969. A helpful study for anyone contemplating undertaking adoption research. See Supplementary material p..... for material from this

Source Sagar J M. Thesis 'Adopted Children and Their Families' A Reading Study for Diploma in Educational Psychology. University of Auckland.

What research is about

Hood— "This is what research is about: asking questions. Important questions, trivial questions, silly questions, unlikely questions for which the answer is obvious, questions for which there is no answer at all. This injunction should be engraved into every researcher's consciousness: question everything."

Source Lynley Hood 'Minnie Dean' PenquinBooks 1994 p63

Denial in adoption triad impedes research

Verrier—"One of the difficulties in doing research in adoption is that members of the adoption triad frequently use denial and avoidance as defenses against painful feelings. These defenses must be understood as unconscious on the part of the person who is using them. It is not as if one decides to deny or avoid something. Although one can certainly do that, when we speak of denial and avoidance as defense mechanisms, we are speaking of something which happens automatically in the unconscious: the blocking out of painful experiences in order to cope with one's situation. This is why it is so difficult to get through or overcome these defenses: One is totally unaware that one is employing them!" p50

Source Nancy Verrier 'The Primal Wound' Gateway Press 1993.

This denial often found in the adoption triad could easily skew answers to research questions. It is a complicating factor seldom taken into account. Persons in denial may filter, distort or suppress reality. KCG

Research evaluation of adoption

Marshall and McDonald—A great many factors could influence the ultimate outcome for each individual adjustment and these multifarious factors were often less questions of overt fact or circumstance than of subtle emotional attitudes. p202

A matter of judgement

Marshall/McDonald—Has adoption been successful in terms of the benefits that it has brought to those who were adopted or has it been, as is sometimes alleged, a failed experiment in social engineering? The answer depends on how you define success, on what you are looking at and from what perspective. It may be in the end that only the individual concerned can make that judgement. p202

Value of adoption as an institution

Marshall/McDonald—The questioning of the value of adoption as an institution has been largely fuelled by accounts of the effects of relin-quishment on the lives of many birth mothers. Since the adoption decision at the time was influenced by the generally accepted belief that adoption was in the best interests of the ex-nuptial child, can it now be claimed that in that sense the sacrifices made were worthwhile? Has the adoption of children into non-relative families been successful? p202

In broad terms, it has been successful

Marshall/McDonald—Despite the current rhetoric, and the confusion and ambivalence expressed by many adoptees, the evidence suggests that, in broad terms, it has been successful. Those who may find this surprising, even untenable, need to consider what is being measured and evaluated. At present in Australia there is a polarised and highly emotional environment in which these matters are discussed, with, at each extreme, extravagant claims for and against adoption. It is undoubtedly difficult in such an environment for reason to prevail and a balanced assessment made of the evidence. p203

Overwhelmed by conflicting material

Marshall/McDonald—The effects of adoption and studies of adoption outcome have been of abiding interest to many researchers over the last fifty years. It is easy therefore to feel overwhelmed by the sheer mass of material available, the apparently conflicting conclusions of different studies, and the wide range of interpretations given subsequently to these conclusions. It is possible to quote impressive longitudinal studies, studies of adopted adults and epidemiological studies, which show that despite significant problems in adolescence, particularly for boys, adopted adults in their twenties and early thirties compare favourably with contemporaries reared in intact biological families. In these terms adoption may be judged successful. If, however, the high personal and emotional cost to some individuals of their experience of adoption is explored, then it may be queried whether in such cases the best interests of those people were served. p203

Researchers measured tones v experience

Marshall/McDonald—The relatively disinterested view and measured tones of the researcher often contrast strongly with the accounts given by those who are describing and generalising from their own personal experience, or by clinicians whose views are derived from their contact with troubled adoptees. Adoptee and psychologist, Betty Jean Lifton. in her book "Lost and Found" has provided a detailed account of the underlying conflicts besetting the emotional life of her adopted clients. The impact of this discription is to make the reader wonder how anyone carry such burdons couldhave sufficient residual energy to get on with life. pp204-205

Adopted person—'Who are we anyway? Where do we fit on a scale from who we think we are, inside our own skins, to who other people think we are?

Looking at gains and losses

Marshall/McDonald—We need to look at gains and losses, costs and benefits of adoption, at the possibilities that life held for these children, and at the ways in which their lives were affected by the social climate in which

they grew up. Adoption was never going to provide happily-ever-afters for everyone concerned, any more than it can be assured for biological families, but this unrealistic expectation has un-doubtedly fed into the sometimes harsh judgements now made of adoption as an institution. p205

The 'if onlys'

Marshall/McDonald—It would be fair to say that in those years when adoption was seen as the convenient answer to the problems of illegitimacy and infertility, and to the needs of the large population of illegitimate children in institutions, in reckoning the profit and loss account the emphasis was very much on the profit with too little recognition of the loss.

One of the most valuable outcomes of contermporary opening up of adoption is adopted persons are now speaking and writing about their first hand experience.

The 'if onlys' and 'yes buts' clearly illustrate the inevitable pain and loss associated with adoption. p205

Failure to compare adoptive with non-adoptive

Dire accounts of families who had unsatisfactory and ungrateful adopted children almost invariably failed to refer to the non-adopted families whose children equally were causing heartache.The public view of adoption as a charitable and altruistic undertaking led to the belief that adopted children should be grateful. This view failed to recognise that adopting parents were equally recipients, that adoption was meeting their needs as well. p207

Commonly held beliefs about adopted persons

— They should be grateful that someone took them in.
— They are bad/disloyal if they questioned their heritage or searched have no right to know
— They now have a better life than their immoral mother could have provided
— Adoptive parents are the saviour of these poor children are to be respected and esteemed by them.
— The is now in an ordinary family- when in fact it is in an extraordinary family. p207

Adoptive families are extra-ordinary

Marshall and McDonald— The lack of recognition and understanding of the special needs of the adopted child reflected the belief expressed in evidence to the Law Reform Commission Inquiry that the child would benefit from 'having an ordinary family', a denial of the reality that the adoptive family was indeed extraordinary. In the mixed family which Mackay described, denial seemed to have been an expression of the adoptive parents'.. apparent confusion about their parental role in relation to this; different child, as well as of the pain, expressed by so many parents, of acknowledging that this dearly loved child was note born to them.

that adoptive parents were on their own when the time came to break the news to their child that he had not always been theirs, and they did not find it easy'

Source A.Marshall and M. McDonald 'The Many Sidded Triangle' Melbourne University Press 2001 p208

Long term adoption reunions

Browning Research 2005

Conclusions, Reflections & Connections

This study has sought to present the thoughts, observations and experiences of adoptees in their own words <u>to illuminate the relationship forged in post-reunion contact exceeding ten years.</u> The themes discussed arose out of the motifs identified in previous studies and the interview material gathered. These themes were applied to this study to retain a focus that the participants determined was most suited, and best described their post-reunion experience.

Previous studies

Many studies have focussed on the search, reunion and immediate post-reunion phase (Haimes & Timms, 1985; Howe & Feast, 2000, 2001; Bailey & Giddens, 2001; Brodzinsky & Schechter & Henig, 1992; Howarth, 1988; Sobol & Cardiff, 1983; Sanders & Sitterly, 1995; Affleck & Steed, 2000; Pacheco & Eme, 1993; Gladstone, 1998; Gladstone & Westhues, 1992; Campbell & Sliverman & Patti, 1991; Wrobel, 2004; Andersen, 1989; March, 1995a, 1995b, 1997; Carsten, 2001; Bergin, 1995). These studies stress the importance of setting expectations and boundaries between reuniting people to achieve a "successful" and "mutually satisfying" reunion. Bergin speculates that the rule rather than exception is that post-reunion relationships benefit from the passage of time. She suggests that less than one year represents very little time in which to develop a relationship. "After three years and more realistically around five or six, significant turning points are reached and a sense of resolution may ensue for both parties" (1995:25).

Degree adoptees immerse into birth family

This study sought to investigate these long-term reunion experiences of adoptees to uncover information about the actual relationships established. It has delved into deeper themes to do with belonging, identity and family relatedness to gain an understanding about the nature of the relationship with biological families. The primary question of this thesis, ("To what degree does an adoptee immerse into their birth family, as a family member?") sought to establish how adoptees make meaning of, and navigate this perceived membership.

Reunion a life long diversity of experience

Post-reunion relationships are a life-long journey that requires the redefining of each person's needs along the way. Reunited relationships, like all other relationships, vary in nature and experience highs and lows, varying degrees of intensity and change over time. My evidence shows that the relationship forged follows no defined pattern and is unpredictable and variable from the onset. Earlier research has suggested setting expectations prior to reunion results in happier and mutually satisfying relationships. In contrast, there was no evidence in this study that setting or not setting clear expectations had any bearing on the outcome of post-reunion.

Relationships- negotiation and compromise

Furthermore, there was very little evidence from this study to support Bergin's speculation that over time, five to six

years, resolution for adoptees and birth parents is attained. In contrast, the idea that growing a shared history resolves all issues falls short in terms of the experiences presented in this study. The evolution of the relationship continues on past the death of the birth parents as in Suzanne's experience, and then new dimensions to the relationship with remaining birth family members arise. Every milestone overcome in the adoptee/birth-family kinship process is a building block in the relationship, but the outcome remains unpredictable and variable with no specific guidelines or blue-print to assist in the process.

Lack of clear rituals and norms

Post-reunion relationships are not unlike any other emotionally significant relationship where both parties are continually negotiating and compromising in an attempt to meet each other's needs, sometimes successfully and sometimes not. Unlike other significant relationships though, adoptee/birth-family relationships are marked by a lack of clear rituals and norms. The taken-for-granted assumptions of everyday family life for social situations are not applicable in the adoptee/birth-family situation. There is much less clarity around the boundaries and terms of the relationship, hence, there is ongoing reassessment of the social interaction between the two parties.

Findings of this study

Findings from this study build upon our knowledge of post-reunion outcomes in a number of ways.

1 Little change in intimacy over time

(i) The long-term view that is emerging from this study is one that reveals little change takes place in the level of intimacy or closeness in the relationship over time.

(ii) This study has elicited similar challenges as outlined in short-term post-reunion studies (Carston, 2000, 2001; March, 1995a, 1995b; Andersen, 1989; Campbell, 1991; Howe and Feast, 2001; Pacheco & Eme, 1993; Affleck & Steed, 2001; Sobel & Cardiff, 2001; Wrobel, 2004; Gladstone, 1998).

(iii) The key themes of distance and geography and fear of upsetting the other person hinder the ability for some reunited people to develop a closer relationship.

(iv) For others, where a close relationship has developed, the fear of losing the forged tie remains, so adjustments are made to fortify the relationship, but the path is trodden carefully.

2 Adoptive family remains primary

(i) In most instances, adoptees in long-term reunion maintain their adoptive family as their "primary" family and accept the birth family as an extended family that provides a new dimension to their overall family structure.

(ii) The birth family is perceived as "family" in the absence of a more appropriate term. This is reconciled on the basis of a belief that genetic relatedness has more meaning than non-genetic friendship, despite the fact that in practice non-genetic adoptive family seems to have more meaning and retains stronger affectional bonds.

(iii) Time in reunion does not significantly change the status or perceived roles of the birth family even if these roles are not defined or communicated between the adoptee and the birth family.

3 Outcome not dependant on contact regulatity

(i) The variable outcomes and degree of satisfaction with the relationship had no bearing on the regularity of contact or level of involvement in the birth family. For some participants, distance was not perceived as an obstacle. In some instances, those who live close to their birth family maintain by choice less contact than others living at greater distances.

(ii) Degree of perceived immersion into the birth family varied from person to person and had two main dimensions: (a) a sense of acceptance by the birth family as a family member and (b) the desire to be a family member.

However, the ambivalence of reunited relationships was identified when participants commented, "I am like them", "I'm not the same as them" indicating a sense of not being "fully fledged". Apart from Ethan, participants were clear in their own minds that their strongest "family obligations" remained firmly with their adoptive family; their primary family. To be fully fledged may require a severance of the bond between the adoptee and adoptive family, such as in the instance of Ethan's story or by the death of the adoptive parents. Based on this group of participants, the change in balance from contact with the birth parents versus the adoptive parents as a result of death is unknown, it has not happened yet, but future research may establish that closer ties and degree of immersion in the birth family changes as a result of death of the adoptive parent (assuming birth parents survive them).

Triangle replaced by interlocking circles

This study has also highlighted that the image of the triangle for describing the relationship between the adoptive, birth parents and adoptee becomes less applicable in post-reunion experiences. Instead, the interlocking circles represent a more congruent depiction with the relationship structure experienced by the adoptees in this study. These images represent scenarios where the birth and adoptive parents have a relationship and when they don't, which highlights that variations exist, but the adoptee remains as the connection between the two families.

Sense of obligation explored

Because the social tie of a shared history with the adoptive family remains, the participants indicated they felt little sense of obligation to the birth family, but were acutely aware of not wanting to upset their birth mother. The interpretation of obligation was problematic when it was understood by the participants to mean "something you do, but don't necessarily want to" and was expressed as "no I don't feel obligated, I enjoy doing it". Clarification was required in these instances during the interview process to determine that "obligation" was not necessarily associated with a sense of "unwillingness", but rather related to the social practices of family membership. Participants had developed practices of reciprocity from sending birthday cards to attending funerals and family gatherings. This illustrated their "willing obligation" and the associated social reciprocal processes that were being undertaken.

Non anticipation of long term relationship

The participants did not originally intend to pursue a long-term relationship with their birth mother post-reunion, and so this was an unpredictable outcome of their meeting. Some agree that guidance or assistance would have been helpful to experience a smoother and more satisfying relationship, but others believed setting expectations may lead to disappointment. The challenges remain in defining the appropriate roles for both the adoptee and birth mother and this is highlighted by the absence of appropriate language in which to describe these roles. For example, confusion arises when the label of birth mother conflicts with the role associated with it; and although the roles may be defined and agreed within the adoptee/birth mother pair, expectations about these roles from outsiders create added pressure to the relationship.

Blood ties v Social ties

For some, the resumption of their relationship reflects a biological bond forged pre-birth and exists from a "blood tie" disposition. So, are the ties of blood more compelling than the social ties of a shared history? The participants in this study have shed light on this question by illuminating the importance of a sense of genetic relatedness and identifying with similarities and likeness. However, by retaining a primary relationship with their adoptive parents, they have also highlighted that the social ties forged in childhood, and a shared history, are more important. Nonetheless, it is clear too that biological relatedness with the birth family is more than a set of rediscovered relationships. Adoptees and birth families, in this group of participants, persist with the relationship regardless of the level of satisfaction attained...

Source Julee A Browning. Thesis 'Blood Ties- The labyrinth of Family Membership in long term Adoption Reunion' Massey University, Albany, Auckland, New Zealand 2005 212pages
This selection pp189-194