
Adoption Law

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Abstract

Adoption involves legal, psychological, and social consequences for birthparents, adoptive parents, and adoptees. Efforts to achieve uniformity in adoption law have been in part thwarted by a lack of consensus about how to balance the varied interests of these parties in contemporary adoptions. This article explores the tensions between traditional and present interpretations of six principal elements in adoption and suggests that the law must gradually “reconstruct” these elements to better serve the needs of children and their biological and adoptive parents.

The legal process of adoption is regulated by a myriad of state, federal, and international laws. This complex regulatory system has produced great variation on even the most basic issues in adoption such as obtaining parental consent and ensuring confidentiality. Legal variation and complexity can make adoption needlessly difficult and uncertain. The premise of this paper is that more uniformity in adoption law is desirable and that securing this uniformity is thwarted not only by the multitiered regulation of adoption but also by persistent uncertainties about how to interpret and apply some of the basic elements of adoption in today’s complex social and family relationships. There is little or no consensus about how to balance the psychological and social needs of birthparents, adoptive parents, and adoptees. The basic elements of adoption must be reconstructed in light of the many different needs of today’s birthparents and adoptive families.

This article first provides an overview of contemporary adoption—who is adopting and who is being adopted—and next reviews briefly efforts at achieving uniformity in adoption law. Then discussion turns to the six principal elements of adoption and the uncertainties and controversies surrounding them today.

Overview of Contemporary Adoption

As a legal process, adoption in the United States creates the status of parent and child between individuals who are not each other’s biological parent or child. Although it was never unusual in this

country for some children to be raised by adults other than their biological parents, formal or legal adoption was not generally recognized before the 1850s.¹ Today, only state courts and, in some instances, Indian tribal courts, are authorized to grant adoptions. A judicial decree of adoption severs the legal relationship between a child and the members of the child’s biological fam-

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ily and causes the child to become, "for all purposes," the child of the adoptive parents.²

Adoption has psychosocial as well as legal effects. It facilitates the placement of children, whose biological parents cannot or will not raise them, in stable homes with adoptive parents who are willing to assume all parental rights and responsibilities. Although ensuring the best interests of children who might otherwise be homeless is the paramount consideration, it is not the only one. Adoption is also believed to offer significant advantages for three other parties: parents who are unable to care for their offspring, childless adults who want children to nurture and raise, and state governments ultimately responsible for the well-being of children. Despite evidence that adoptive relationships, like all other parent-child relationships, are sometimes problematic, the value of adoption is generally confirmed by research on its long-term consequences. (See the arti-

cles by Barth, Bartholet, Brodzinsky, McKenzie, Rosenthal, and Silverman in this journal issue, and the research cited therein.)

Types of Adoption

About 5 million adoptees are now thought to live in America; and each year, 100,000 adoptions—and perhaps as many as 150,000 to 160,000—are granted.³ The most striking characteristic of these adoptions is the variety of contexts in which they occur.

Intrafamily Adoptions

Half or more of all adoptions are by step-parents or other relatives. Since the 1960s, these intrafamily adoptions have increased more than any other kind of adoption, both proportionately and in absolute numbers. Intrafamily adoptions legally recognize an existing *de facto* custodial family, thereby allowing children to preserve ties to some members of their original families. Intrafamily adoptions are the least regulated type of adoption, yet they generate some of the most bitterly contested proceedings, especially when a non-custodial parent objects to a proposed stepparent adoption, grandparents seek to maintain contact with a child over the objection of a custodial parent and adoptive stepparent, or maternal and paternal relatives battle to adopt a child whose parents are deceased or legally unfit.

Adoptions of Infants by Unrelated Adults

In contrast to the increase in intrafamily adoptions is the sharp decrease, both proportionately and in absolute numbers, in adoptions of infants by unrelated adults. As is explained more fully in the articles by Kathy S. Stolley and Burton Z. Sokoloff, this decline does not result from any lack of interest by childless adults in finding adoptable newborns or from any reduction in out-of-wedlock births. It is more likely a consequence of the substantial drop in the percentage of children born out of wedlock who are voluntarily relinquished for adoption and of the reluctance by many prospective adopters to care for infants who may suffer from prenatal drug exposure, fetal alcohol syndrome, or AIDS. It remains to be seen whether more children will become available for adoption as funds for contraceptive research decrease and as more women are denied access to safe abortions in the wake of recent U.S. Supreme Court decisions constraining women's reproductive freedom.⁴

Adoptions of Foreign-born Children

Although adoptions of healthy American newborns by unrelated adults apparently continue to decline as a proportion of all adoptions, the number and proportion of adoptions by American citizens of children born in other countries are increasing more rapidly than any other type of adoption of unrelated children. Bartholet's article in this journal discusses the characteristics of international adoptions and the cultural, bureaucratic, and procedural barriers that often impede them.

Adoptions of Older Children by Unrelated Adults

Many thousands of children over the age of 2 or 3 years are adopted each year by unrelated adults, many of whom are nonetheless known to these children by virtue of having served for a year or more as their foster parents.⁵ The parental rights of the birthparents of a majority of these children were terminated for child abuse, neglect, or abandonment. Some parents relinquished their children to state agencies after being threatened with an involuntary termination action or after being convinced that their own mental or physical problems left them unable to provide adequate child care.

Many of the children who are placed in state custody spend years being moved from one foster placement to another before they are legally available for adoption. Not surprisingly, even the disappointingly small percentage of these children who are eventually placed have difficulty forming permanent attachments to adoptive parents.⁶ Whether or not these children qualify for the financial subsidies and other assistance authorized by the federal and state programs for children with special needs,⁷ most come to their adoptive parents with unresolved problems from their earlier years which may be exacerbated over time. Unlike the healthy infants eagerly sought by prospective adopters, many of these older children are not likely to be adopted unless agencies actively recruit adoptive parents for them and unless, as Bartholet, Silverman, and others recommend, racial and ethnic matching policies are discarded.⁸

Adoptions of Native-American Children

It is estimated that several thousand Native-American children are adopted each year by individuals who are not Native Americans and have no ties to tribal com-

munities.⁹ The appropriateness of these adoptions is a highly contested sociocultural issue, analogous to concerns about the wisdom of international and transracial adoptions.

Adoption law is complicated not only by virtue of the types of people and family arrangements involved but also by the number of governments which have authority for regulation of adoption.

Because of the unique and historic relationship between the federal government and Native-American tribes, Congress is empowered to regulate family law matters affecting tribal members. The Indian Child Welfare Act (ICWA) of 1978 governs many of the jurisdictional and substantive aspects of adoptions of Native-American children, superseding state laws that would otherwise be applicable.¹⁰ In construing ICWA's dual mandate to preserve tribal integrity and promote the welfare of Native-American children, state and federal courts have yet to achieve a comfortable balance among the potentially conflicting principles of tribal survival, child welfare, and parental autonomy. This conflict is especially troublesome when the parents of a Native-American child do not want the child placed with Native Americans or a tribe argues that a child who has not previously lived in a tribal community should be placed on a reservation.¹¹

Complexity of American Adoption Laws

Adoption law is complicated not only by virtue of the types of people and family arrangements involved but also by the number of governments which have authority for regulation of adoption. For the most part, adoption, like other family relationships, is subject to state rather than federal laws. Despite their common themes, state adoption laws are not and never have been uniform, nor have they been consistently applied by the courts, lawyers, or child welfare agencies. To this medley must be added a number of federal statutes and constitutional principles that now pertain to adoptions. As indicated above, the Indian Child Welfare Act (ICWA) governs the adoption of Native American children. Federal immigration

and naturalization laws regulate the entry into this country of adoptees who are born in other countries.¹² The federal Adoption Assistance and Child Welfare acts provide guidelines and reimbursements to the states for assisting families who adopt

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children with special needs.¹³ Other provisions in federal welfare, social security, and tax laws also affect adoptive relationships. Finally, many recent U.S. Supreme Court rulings have significant implications for adoption law and practice.

The Pursuit of Uniformity

To date, there have been several efforts to achieve more uniformity in adoption laws. Each has faltered. Only eight states enacted a version of the original Uniform Adoption Act of 1953, or its 1969 and 1971 revisions, as promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL).¹⁴ Fewer than 20 states have enacted the Uniform Parentage Act,¹⁵ which is not a general adoption code, but attempts to clarify the legal status of married and unmarried parents in adoption proceedings.

Every state and the District of Columbia have now joined the Interstate Compact on the Placement of Children (ICPC); but the ICPC's lack of uniform administration is well known, and critics allege that its stringent regulation of interstate adoptive placements is at times detrimental to the children whose welfare it purports to protect.¹⁶

Nearly all states have enacted procedures for the consensual disclosure of the identities of adult adoptees and birthparents, but these procedures vary from one state to another, many people are unaware of their existence, and Congressional attempts to enact a national registry for facilitating the consensual release of identifying information have stalled.¹⁷

In the 1970s, efforts by the federal government to draft a comprehensive model state adoption code were unsuccessful and eventually produced a more modest

"Model Act for the Adoption of Children with Special Needs."¹⁸ The Family Law Section of the American Bar Association (ABA) spent the 1980s working on a model adoption act, but it never won ABA approval.

Nevertheless, in the 1990s, interest in achieving greater uniformity remains widespread. With advice from the ABA, the American Academy of Adoption Attorneys, child welfare and adoption-advocacy organizations, and others, a NCCUSL committee is drafting an entirely new proposed Uniform Adoption Act (UAA) that addresses every type of adoption. In addition to permitting public and private agencies to make adoptive placements, the current draft of the UAA also allows birthparents to make placements directly with suitable prospective adoptive parents whom they have selected by themselves, with or without the assistance of a third party.¹⁹

Finally, the U.S. State Department is participating in a 3-year project of the Hague Conference on Private International Law to develop a Convention on Intercountry Adoption. Congress has acted to end discrimination against adopted children as social security recipients. Congress is still considering proposals concerning a national repository to facilitate the consensual exchange of information between adoptees and their original families; tax deductions or credits for adoption expenses; insurance coverage for adoption-related medical expenses; and incentives for recruiting adoptive parents for children with special needs.²⁰

The Six Principal Elements of Adoption and Why They Resist Uniform Treatment

Efforts to achieve uniformity in adoption law will likely continue to be unsuccessful until greater consensus is reached regarding how the legal system should respond to the changing psychological and social characteristics and needs of today's birthparents, adoptive parents, and adoptees. Adoptive relationships have traditionally had six principal elements. Some of these are legal requirements for adoption; others are desired social and/or psychological effects or consequences of adoption. Each of these principal elements is being chal-

lenged in contemporary adoption. The following analysis of the scope and continued viability of these elements reveals just how formidable is the task facing those who seek to reconstruct them to better serve today's birthparents and adoptive families.

1. Parental Consent or Appropriate Grounds for Waiver

The first element of adoptive relationships is a necessary condition for their creation: parental consent or a legitimate basis for dispensing with parental consent. For contemporary adoption, determining how to satisfy this requirement can be a very complex question.

A petition for adoption will not be granted unless a court determines that the birthparents have executed voluntary and informed consents or, alternatively, that the parental right to block a child's adoption has been forfeited because of a failure to exercise parental responsibilities. This requirement of parental consent derives from the principle of parental autonomy which, in turn, is a product of cultural traditions and theories of natural law and delegated duties that endow biological parents with superior rights to the possession and control of their offspring. Both common law and constitutional precedents incorporate aspects of these traditions and theories into the doctrine of family privacy or parental autonomy.²¹ Central to this doctrine is the presumption that parents are fit to decide how to raise their children and should be permitted to do so without interference by the state. Absent a voluntary or provable forfeiture of parental status, the state has no license to remove children from their parents in order to seek a "better" placement.²² Informal transfers of children to other relatives or unrelated caregivers are generally not regarded as sufficient proof of an intent to abandon parental rights.²³

Protection of parental rights is not dependent on a marriage relationship. Although a biological connection to a child is not by itself sufficient to give an unwed father the presumption of parental fitness, courts have recognized that this connection provides a unique opportunity to develop a full-fledged parental relationship with a child.²⁴ Once established, this relationship cannot be terminated without proof of unfitness on the basis of clear and convincing evidence.²⁵

Analysis of parental rights has become even more complicated in recent years, and this has implications for adoption law. Our courts and legislatures are increasingly uncertain about which mothers and fathers have a right to consent to, or to block, their child's adoption. Indeed, with the development of surrogate parenting and artificial insemination, the very meaning of "mother" and "father" is contested.²⁶

The questions surrounding parental consent today are many and varied. For example, are a father's interests in establishing a parental relationship with his child so substantial that they justify requiring the child's mother to identify him, even if she fears that he will be abusive once he learns about a pending adoption?²⁷ Are a mother's interests in placing her child and a child's interests in remaining with adoptive parents so substantial that they justify terminating the rights of a father who has been thwarted in his efforts to perform parental duties by the birthmother, an agency, or the adoptive parents?²⁸ How soon after a child's birth may a parent execute a consent and what procedures are likely to ensure that the consent is "informed" and "voluntary"? Should a birthparent have a right to separate legal counsel regardless of whether the parent relinquishes a child to an agency or places the child directly with adoptive parents? Once executed, should a consent or relinquishment be revocable

and, if so, for how long, for what reasons, and with what consequences for the custody of the child?²⁹ When is a child's own consent to adoption needed, and does it override the preferences of the child's birthparents? May children initiate their own actions to dispense with the right of their birthparents to block their adoption by foster parents or other caregivers?³⁰

2. Serving the Child's Interests by Placement with Suitable Adoptive Parents

The second element of adoptive relationships is the legal requirement that the prospective adopters are suitable parents and, above all, that the adoption will serve the best interests of the child. In contemporary adoptions, there is considerable disagreement about how to satisfy this requirement.

It would be unfortunate for children who are prospective adoptees, and especially for those who are difficult to place, if the current insistence on preplacement scrutiny leads to the imposition of a new batch of "suitability criteria."

As the articles by L. Jean Emery and Mark T. McDermott in this journal issue indicate, although there is some emerging consensus to give birthparents a role in selecting adoptive parents, there is little or no consensus about the specific issues of when and on the basis of what criteria agencies or other intermediaries may preempt parental choice. Although all but five states permit birthparents to make direct private placements of children, the degree of supervision of these placements varies greatly from one jurisdiction to another.³¹ The current draft of the proposed Uniform Adoption Act recognizes direct parental as well as agency-supervised placements, but, like a growing number of states, requires that all persons who seek to adopt must have a favorable assessment of their suitability as adoptive parents before a child may be placed in their home.³² In both direct and agency placements, a further prerequisite to the approval of an adoption is at least one favorable evaluation of the placement during the time between placement and the entry of a final decree.

It remains to be seen whether more "fitness" scrutiny will actually weed out unsuitable people from the pool of prospective adopters or merely discourage potentially excellent parents from undergoing elaborate and costly assessments that may have only questionable relevance to their parenting skills. Although some people may be presumptively disqualified from the pool of qualified adopters—for example, child abusers, rapists, psychotics, drug addicts, or chronic alcoholics—no trustworthy test of "suitability" exists. Indeed, many courts, legislatures, and child welfare agencies now acknowledge the unfairness of excluding people from consideration as adoptive parents solely on the basis of "unconventional" characteristics pertaining to their marital or financial status, age, race, ethnicity, sexual orientation, or ability to bear children.³³ It would be unfortunate for children who are prospective adoptees, and especially for those who are difficult to place, if the current insistence on preplacement scrutiny leads to the imposition of a new batch of "suitability criteria" which turn out to be as rigid as the more traditional ones that have so frustrated prospective adopters in the past.

When an agency places a child, how much discretion should it have to "match" the child with prospective adopters? In many states, agencies are required or permitted "when practicable" to select adoptive parents of the same religious belief as that of the child, or to establish priorities for placement "which reflect consideration of the racial background, ethnic heritage, religion, and cultural heritage" of the child.³⁴ In addition to being of questionable constitutionality, placement policies based on racial or ethnic factors often harm the very children they are intended to protect by delaying their placements so long that they are at risk of being deprived of permanent adoptive homes. Without denying the value of efforts to recruit racially and ethnically "matched" adoptive parents for children in state custody, it is also important to acknowledge that empirical research does not justify the prevailing barriers to transracial or transethnic placements. To the contrary, research shows that transracial or transethnic placements do not harm children. (See the article by Silverman in this journal issue.) It also suggests that the most salient factors in achieving a successful adoption are a child's age and medical and social history at placement, and not the racial, ethnic,

or religious characteristics of the adoptive parents. Nonetheless, controversy about matching policies persists.³⁵

3. Adoption Is a Gratuitous Transfer

A third element of adoption surrounded by uncertainty today is that it be a gratuitous rather than commercial or financial transaction, analogous to a transfer pursuant to a will or the altruistic deeding over of real property. Birthparents are said to “bestow” their children directly upon the adoptive parents or to “surrender” them to child-placing agencies. Adoptions are not supposed to generate improper financial gain or be tantamount to “trafficking” in children.³⁶ “Solicitation” of children is deplored: no money or other valuable consideration is to be paid in exchange for a child or for the birthparent’s or agency’s consent. By statute or case law, all states decry baby selling, and most prohibit finder’s fees to agencies or other intermediaries.³⁷

The notion that adoption is not contractual is so powerful that it obscures the extent to which bargaining is intrinsic to a transfer of a child by a birthparent in exchange for a promise by adoptive parents or an agency to support and care for the child and thereby relieve the birthparent of these legal duties. Adoptions by stepparents, for example, often involve agreements to forgive a noncustodial parent’s child support arrears in exchange for the parent’s consent to the adoption. When newborns are adopted, most birthmothers prefer to deal with adoptive parents or agencies who will pay for pregnancy and birth-related medical and living expenses. Indeed, most states now recognize that, subject to court approval, adoptive parents may pay, and agencies and private intermediaries may charge, for adoption-related expenses, including legal and counseling fees, so long as they are characterized as “acts of charity” or compensation for professional services. Because these payments are not contingent on the birthparents’ consent or the completion of an adoption, prospective adopters assume the risk of not being reimbursed for expenses they have paid on behalf of a birthparent who does not consent to an adoption or who revokes consent.³⁸

When children with special needs (see the articles by McKenzie and Rosenthal in this journal issue for definition) are available for adoption, financial considerations

typically run in the other direction. It is not prospective adopters who, at least indirectly, induce birthparents or agencies to place children with them. Instead, agencies compete for limited public funds in order to offer subsidies and medical and other support services as inducements to prospective adopters of less “marketable” children.

The complete absorption of the child into the legal and economic web of the adoptive family presumably encourages the emergence of a lasting personal and psychological bond between the child and the adoptive parents.

To what extent should bargaining about financial and other aspects of an adoption be allowed to tarnish the notion that adoption is a donative transaction? Upon finding that a proposed adoption involves unlawful placement activities but is otherwise in the best interest of a child, many courts will approve the adoption and will leave the punishment of the unlawful activities to the criminal or licensing laws.³⁹ In some cases, however, the illegalities may be so egregious that a refusal to approve an adoption is warranted.⁴⁰

4. Adoptive Relationships as Substitutes for Biological Relationships

A fourth element of adoptive relationships is that they displace completely the child’s prior ties to the biological family and replicate within the adoptive family all aspects of an original parent-child relationship. This element as well faces new challenges in contemporary adoption. Traditionally, the child’s original birth certificate is sealed, and a new one is issued which substitutes the names of the adoptive parents for the child’s birthparents. The adoptive parents acquire the same rights to parental autonomy and family privacy that the birthparents once had. The complete absorption of the child into the legal and economic web of the adoptive family presumably encourages the emergence of a lasting personal and psychological bond between the child and the adoptive parents.

The notion that adoptive relationships should or can substitute completely for

biological ones is now being questioned. As several of the articles in this journal issue indicate, adoptive families and experts in child development are coming to understand that adoptive relationships are not identical to biological ones except in the sense of formal legal equivalence. For older adoptees, foreign-born adoptees, and children adopted transracially, an insistence on complete substitution makes the least sense. These adoptees apparently do best over time when their different heritages are acknowledged and accepted, not as evidence of second class status, but of a welcome and prized diversity. (See the articles by Bartholet, Brodzinsky, and Silverman in this journal issue.) The legal status of adoption does not erase the history of prior relationships from the memories of older children, nor does it resolve, by itself, the psychosocial conflicts these memories generate or perpetuate.⁴¹ Even infants enter adoptive relationships with a prenatal history that a decree of adoption does not obliterate.

Agencies may be liable for intentionally withholding or negligently misrepresenting information about a child's physical or mental condition.

Among the most important changes in contemporary adoption practice is the abandonment of the once-fashionable characterization of adoptees as "blank slates" whose lives and personalities can be shaped entirely by the personal and social environment provided by adoptive parents. As knowledge of the nexus between hereditary and environmental factors in personality development becomes more complete, greater attention is being paid to the medical, social, and genetic history of adoptees, including the quality of their prenatal care.⁴² The ability of adoptive parents to provide adequate care for a child may depend on how much of this information they have. Since the 1970s, most states have enacted legislation requiring agencies or intermediaries to share with adoptive parents all nonidentifying information that is "reasonably available" about a child and the child's biological family. These statutes further provide for the release of nonidentifying information to adoptees who request it

once they reach adulthood.⁴³ Even more dramatic evidence of the demise of the traditional view that knowledge of a child's background is unnecessary comes from the growing number of state court decisions that agencies may be liable for intentionally withholding or negligently misrepresenting information about a child's physical or mental condition.⁴⁴

Despite the awareness that adoptive relationships build upon, but do not displace, a child's heritage or previous experience, obstacles to learning about a child's background remain. In many states, the scope of statutory and regulatory provisions for obtaining background information is unclear. Child welfare workers and lawyer-intermediaries are generally not trained to compile reliable health or genetic histories, and birthparents are often reluctant to disclose even what little they may know about their own or their family's histories. Moreover, too much emphasis on background information may leave prospective adoptive parents with the misleading impression that they cannot face the inevitable mysteries and risks of parenting without having all kinds of information that most people who raise biological offspring never acquire.

5. Confidentiality and Anonymity of Adoption

For more than half a century, confidentiality has been an important element of adoptions in this country. Today, although few question the wisdom of keeping judicial hearings and the records of an adoption proceeding free from general public scrutiny, hardly anyone agrees about the degree to which confidentiality and anonymity may be waived between members of particular adoptive and biological families, either consensually, or by court order or legislative mandate. Two aspects of this controversy are discussed here: (1) the legal status of "open adoption" agreements by adoptive parents to allow a birthparent or another relative to maintain contact with a child after an adoption is final,⁴⁵ and (2) the circumstances under which adoptees who have reached adulthood and members of adoptive and biological families may obtain access to identifying information about each other from sealed records.

With regard to the first aspect, the studies summarized in the articles by Annette Baran and Reuben Pannor and by Marianne Berry in this journal issue indicate

how difficult it is to assess the long-term psychosocial effects of postadoption contact between adoptees and members of their birthfamilies. The studies do not justify a legal rule that would forbid private agreements by adoptive parents to allow adoptees to visit or communicate with members of their birthfamilies. But the studies are not particularly helpful for deciding whether requests for postadoption contact should be enforced over the objection of adoptive parents. When faced with these disputes, courts attempt to balance our societal commitment to the permanence of adoptive relationships, and the autonomy of adoptive parents to decide what is best for their children against concerns about the alleged benefits that adoptees may derive from maintaining ties to their birthfamilies. Some courts have responded to these disputes by upholding the validity of an adoption and affirming the legal right of adoptive parents to breach agreements for postadoption contact.⁴⁶ A few courts have enforced agreements despite the objection of the adoptive parents,⁴⁷ but others have vacated an adoption because of the alleged inconsistency between a birthparent's relinquishment of all parental rights and the retention of a right to visit the child.⁴⁸

A sensible approach is embodied in a recently enacted Washington statute and the current draft of the NCCUSL proposed Uniform Adoption Act (UAA). These provide that the validity of an adop-

tion cannot be challenged because the parties have agreed to postadoption contact. Nor can the adoption be challenged if the adoptive parents fail to abide by the agreement.⁴⁹ While the UAA draft is silent about whether the agreement may be enforceable in a separate civil action, the Washington statute specifically provides that it may be enforceable if in the best interests of the adoptee. In most states, however, the legal status of open adoptions remains unsettled.

As for the second aspect of the controversy about confidentiality, nonidentifying information in sealed adoption records is generally available to adoptive parents and to adoptees at age 18 or 21, but identifying information is not available, except upon a judicial finding of "good cause" or, in more than 40 states, upon the mutual consent of those seeking disclosure. In addition to being consistent with the "complete substitution" element of adoptive relationships, confidentiality is said to serve the privacy interests of birth and adoptive parents and the needs of adoptees to be free from the psychological confusion that is allegedly a consequence of learning the identity of birthparents.⁵⁰

Is it appropriate to maintain a permanent veil of secrecy between adoptive and biological families? Even if birth and adoptive parents initially prefer a "closed" adoption, their desire for anonymity may not be static or set for all time. At the time when an adoption takes place, the deter-

mination of some birthparents to preserve their anonymity and of adoptive parents to establish the autonomy of their new family is strongest, especially if it is an adoption of an infant by nonrelatives. As adoptees grow older, however, their interest in learning about their origins may grow and may even be encouraged by their adoptive parents, especially if the emotional ties within the adoptive family are secure. Moreover, the ability of adoptive parents to direct the lives of adoptees diminishes over time. Concomitantly, the interest of birthparents in maintaining the anonymity they once sought may also diminish over time. Indeed, most of the birthparents who are now placing children for adoption are apparently willing to have their identities released upon request from their children at age 18 or 21. Many parents who placed children in the past 30 to 40 years are similarly willing to disclose their identities.⁵¹

In fashioning a procedure for releasing identifying information, courts and legislatures should not overlook the interests of birth and adoptive parents but should give primacy to the needs of adoptees who, with few exceptions, had no say in any decision concerning their adoptive placement. Does this mean that, upon reaching adulthood, adoptees should have access, if they want it, to the names of their birthparents

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as contained in their sealed adoption records or to original birth certificates? Reports from the two states, Alaska and Kansas, where adult adoptees may request their original birth certificates, as well as from other countries with similar laws, indicate that there are relatively few complaints about these procedures.⁵²

Nonetheless, a uniform law allowing "open records on demand" may not be justified. Although "genealogical bewilderment" is experienced by an indeterminate number of adoptees, research remains inconclusive concerning the purported benefits and risks of disclosing identifying information as a "cure" for this bewilderment. It is difficult to obtain

reliable data on the numbers of adoptees and birthparents who actually search for each other, and accounts of successful reunions between adoptees and birthparents are typically based on self-selected samples.⁵³ Moreover, those birthparents who sought or continue to want anonymity should be able to rely on assurances that their privacy will be protected against unwanted disclosures.

Are there any alternative procedures that would recognize the legitimacy of the desire for identifying information, particularly when expressed by adoptees, but would stop short of access on demand? Table 1 lists the procedures currently offered by various states. In only 3 states (Alaska, Kansas, and Tennessee) are birth certificates available upon request of adoptees age 18 or older (see table 2). In all other states mutual consent is required. At least 17 states are trying some kind of "confidential intermediary" approach, as opposed to the more passive mutual consent registries that exist in approximately 20 other states. In these 17 states, if waivers of confidentiality are on file with a court or a public agency, a state-appointed intermediary may be enlisted to facilitate a meeting of the individuals who waived confidentiality. If no waiver is on file, an intermediary may be asked by an adult adoptee to locate birthparents and ask them if they are willing to disclose their identities. Some states allow members of the birthfamily, as well as adoptees, to seek information through an intermediary; others allow only adoptees to make an inquiry. If a birthparent prefers to remain anonymous, the adoptee is precluded from getting identifying information except through a judicial order for "good cause." If the birthparent agrees to release his or her identity, the adoptee may ask the intermediary to facilitate a meeting.

Proponents of the intermediary approach praise it for assisting adoptees who seek identifying information, while respecting the rights of those adoptees and birthparents who refuse to disclose their identity. By contrast, this approach is criticized by some as too confrontational and by others as an unwarranted bureaucratic interference with the alleged right of adults to contact each other directly. Because of the intensity of conflicts about the various procedures for consensual access to identifying information, the drafting committee for NCCUSL's proposed Uniform Adoption Act has yet to devise a pro-

Table 1

States That Allow Access to Confidential Adoption Records upon Mutual Consent	
A. States with Mutual Consent Registries	
Arkansas	Ark. Stat. Ann. §§ 9-9-501 to -508
California	Cal. Civil Code §§ 229.40 - .70 (eff. July 1991)
Florida	Fla. Stat. Ann. §§ 63.162, 63.165, 382.51
Idaho	Idaho Code § 39-259A
Indiana	Ind. Code Ann. §§ 31-3-1-5, -4-26, -4-27
Louisiana	La. Rev. Stat. Ann. §§ 40:91 et seq
Maine	Me. Rev. Stat. Ann. Title 22 § 2706-A
Maryland	Md. Fam. Law. Code Ann. §§ 5-4A-01 et seq
Michigan	Mich. Comp. Laws Ann. § 710.68
Mississippi	Miss. Stat. Ann. § 453.121
New Hampshire	N.H. Rev. State. Ann. § 170-B: 19
New York	N.Y. Pub. Health Law § 4138-b, -c, -d; N.Y. Soc. Serv. Law §§ 372, 373-a
Ohio	Ohio Rev. Code Ann. §§ 3107.39 - .41
Oregon	Or. Rev. Stat. §§ 109.425 et seq
South Carolina	S.C. Code Regs. § 20-7-1780
South Dakota	S.D. Codified Laws Ann. §§ 25-6-15.2, -15.3
Texas	Tex. Hum. Res. Code Ann. §§ 49.001 et seq
Utah	Utah Code Ann. § 78-30-18
West Virginia	W.Va. Code § 48-4A-1 et seq
B. States Releasing Identifying Information upon Mutual Consent Without a Formal Registry	
Delaware	Del. Code Ann. tit. 13 § 929
Iowa	Iowa Code Ann. § 600.16
Kansas	Kan. Adoption Act (New) § 12 (1991)
Massachusetts	Mass. Laws. Ann. Ch. 210 § 5c
New Mexico	N.M. Stat. Ann. § 40-7-53
Vermont	Vt. Stat. Ann. tit. 15 § 462

Table 1 (continued)

C. States with Search and Consent Process Through Confidential Intermediary Services	
Alabama	Ala. Code § 26-10A-31 (1990)
Arizona	Ariz. Rev. Stat. § 8-134 and -135
Colorado	Colo. Rev. Stat. §§ 25-2-113.5 and 19-5-304
Connecticut	Conn. Gen. Stat. Ann. § 45-68e-m
Georgia	Ga. Dom. Rel. Code § 19-823
Hawaii	Haw. Code Ann. § 578-15
Illinois	§ 750 ILCS 50/18.1-5
Kentucky	Ky. Rev. Stat. Ann. §§ 199.570 et seq
Minnesota	Minn. Stat. Ann. §§ 259.49, -.47(3)
Missouri	Mo. Stat. Ann. §§ 453.120 - .121
Nebraska	Neb. Rev. Stat. §§ 43-130 - 43-146
North Dakota	N.D. Cent. Code § 14-15-16
Pennsylvania	Pa. Cons. Stat. Ann. § 2905
Tennessee	Tenn. Code Ann. § 36-1-141
Washington	Wash. Rev. Code Ann. § 26.33.343
Wisconsin	Wis. Stat. Ann. § 48.93
Wyoming	Wyo. Stat. § 1-22-201 et seq

Table 2

States with Access to Birth Certificates upon Request from Adult Adoptee	
Alaska	Alaska Stat. § 18.50.500 (uncertified copy of original birth certificate available to adoptee age 18 or older)
Kansas	Kan. Stat. Ann. § 65-2433 (original birth certificate available to adoptee age 18 or older)
Tennessee	Tenn. Code Ann. 36 § 36-1-141 (if, after search procedure, biological parent cannot be located, original birth certificate may be released to adoptee age 21 or older)

cedure that is likely to be acceptable to a majority of states.

6. Permanence of Adoptive Relationships

Finally, a sixth element of adoption being challenged in many contemporary adoptions is their permanence. Adoptions are not subject to revocation because of incompatibility between the adoptive parents and the child, or because the former parents want to have the child returned to them. Adoptive parenting, like biological parenting, is generally regarded as “for keeps.” Nonetheless, adoptive parents, like biological parents, may relinquish their child voluntarily for adoption by others. They may also jeopardize their rights as adoptive parents if they mistreat or abandon the child. In other words, adoptive parents have no more, and no fewer, rights than biological parents typically have with respect to shedding their parental roles.

In the absence of fraud or some other fundamental irregularity, adoption decrees are final and irrevocable, and affect future generations as well as the present one.

In the absence of fraud or some other fundamental irregularity, adoption decrees are final and irrevocable, and affect future generations as well as the present one. In the rare instances in which adoptive parents are permitted to set aside an adoption, the consent of all parties and a judicial proceeding are required, just as consent and a judicial proceeding are essential prerequisites to the creation of an adoptive relationship in the first place.

Recent attention to the alleged increase in the number of “disrupted” adoptions raises doubts about the permanency of adoptions.⁵⁴ It is not surprising that among the rapidly increasing number of adoptions of older children with special needs, some placements prove so problematic that even the most dedicated adoptive parents find they cannot meet their child’s multiple needs.⁵⁵ A few states have statutory provisions that allow an adoption to be set aside for a developmen-

tal or mental “deficiency” existing or unknown at the time of the adoption.⁵⁶ Legislators and agencies should devise humane procedures for unwinding some adoptive relationships, not to relieve adoptive parents of an unanticipated burden, but to find a more appropriate placement for the child.

What is most impressive about contemporary adoptions, however, is not that some of them are troubled but that the vast majority of them are successful, especially when contrasted with the experiences many children would have had if they had not been adopted. Because hardly anyone questions the value of permanency in adoptive relationships, it behooves policymakers to support laws and practices that are likely to reduce the incidence of disruption:

- At a minimum, arbitrary impediments to early placements should be removed: birthparents who have made an informed consent should be permitted to place children directly with adoptive parents;
- Children in public custody should be reunited expeditiously with their original families or be legally freed for adoption;
- Constitutionally suspect policies and empirically unfounded beliefs about the outcome of transracial adoptions should not be permitted to delay the permanent placement of children who are waiting to be adopted;
- Support services should be available for all adoptive families and especially for the adoptive families of children with special needs.⁵⁷

Conclusion

The six principal elements of adoption outlined above are most frequently associated with adoptions of infants by unrelated childless couples. Because most adoptions are no longer of this type, the relevance of these elements to the diverse functions served by contemporary adoption is less clear. The first and second elements—the parental consent and best interests requirements—are being challenged in situations where the constitutional rights of mothers and fathers to maintain custody and control of their children appear to conflict with the best interests of their children. Similarly, the scope of public regulation of adoptions is being questioned for its alleged interference with the “rights” of individuals to enter into families and ac-

quire children.⁵⁸ The traditional elements of "complete substitution" and confidentiality are at odds with the desire of many adoptees to learn about their own heritage, the demands of adoptive parents for more information about the medical and social histories of their children, and the gradual acceptance of the belief that more openness in adoptive relationships is beneficial for all parties. The insistence that adoption is a gratuitous transfer is giving way to a recognition that specified birth-related, counseling, and legal expenses should be compensable to facilitate certain adoptions. Finally, even though the special needs of some adoptees may threaten the permanency of their adoptive relationships, our societal commitment to the element of permanency may spur the creation of legal and social policies that will reduce the incidence of disruption.

Within the social context in which adoptions now take place, two of the traditional goals of adoption are less harmo-

nous than they may have been in the past. The first of these goals is the one stated explicitly in most adoption statutes: to serve the best interests of children by providing permanent homes for those who might otherwise remain homeless. The second goal, embedded more in the social history of adoption than in specific statutes, is to provide children for childless adults. In achieving these goals, the interests of a child's biological parents and our fundamental commitment to family autonomy must somehow be reconciled. Although in theory, these two goals are consistent with each other, tensions often exist between them, and it is not always clear how adoption laws and practices can resolve these tensions.

Lawyers and child welfare professionals who are involved in adoptions would do well to keep these goals and these tensions in mind as we work to reconstruct the six elements of adoption discussed in this article.

1. For an overview of the history of adoption in America, see the article by Sokoloff in this journal issue. See also Hollinger, J.H. Introduction to adoption law and practice. In *Adoption law and practice*. J.H. Hollinger, ed. New York: Matthew Bender & Co., Inc., 1988; Supp. 1989-92 (hereafter cited as *Adoption law and practice*).
2. Stepparent adoptions are an exception to the general rule of complete severance. A child adopted by a stepparent remains the legal child of the custodial biological parent, who is the spouse of the adoptive stepparent. In some states, the child also remains entitled to inherit from and through the noncustodial parent whose parental rights are terminated by the stepparent's adoption. See, for example, Uniform Probate Code 2-114(b) and (c); 2-705(c).
3. The article by Stolley in this journal issue discusses the obstacles to obtaining accurate data about the numbers and types of adoptions.
4. A woman's constitutionally protected right to an abortion, as recognized in *Roe v. Wade*, 410 U.S. 113 (1973), has been significantly impaired by *Webster v. Reproductive Health Serv., Inc.*, 109 S. Ct. 3040 (1989); *Ohio v. Akron Center for Reproductive Health*, 110 S. Ct. 2972 (1990); *Hodgson v. Minn.*, 110 S. Ct. 2926 (1990); *Rust v. Sullivan*, 111 S. Ct. 1759 (1991); and *Planned Parenthood of Southeastern Pa. v. Casey*, 112 S. Ct. 2791 (1992).
5. Data on the numbers and percentages of foster parents who become adoptive parents are cited in the articles by Stolley and McKenzie in this journal issue.
6. See, for example, Wald, M.S., Carlsmith, J.M., and Leiderman, P.H. *Protecting abused and neglected children*. Stanford, CA: Stanford University Press, 1988 (children placed in foster or preadoptive homes between the ages of 5 and 10 are often reluctant to form permanent attachments to new caregivers and object to the loss of all contact with their biological parents, even when their biological parents have mistreated them). After decreasing in the 1980s, the number of children in foster or other out-of-home care is again increasing rapidly. Current estimates range as high as 500,000 children, roughly half of whom are black, Hispanic, and Native American. *No place to call home: Discarded children in America*, H.R. Rep. No. 101-395, 101st Cong. 2nd Sess. 8 & 9 (1990). See also the article by McKenzie in this journal issue.
7. Bussiere, A., and Segal, E.C. *Adoption of children with special needs*. In *Adoption law and practice*, note 2. See also the article by Rosenthal in this journal issue.
8. Bartholet, E. Where do black children belong? *University of Pennsylvania Law Review* (1991) 139:1163. The politics of transracial placement: A special report. *Reconstruction* (1992) 1:22. See also the article by Silverman in this journal issue.

9. Although the U.S. Bureau of Indian Affairs is supposed to be notified of adoptions completed under the Indian Child Welfare Act, data on the number of these adoptions are not reliable.
10. 25 U.S.C.A. sections 1901 *et seq.*
11. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989) (any state court ruling that would “permit individual Indian parents to defeat the ICWA’s jurisdictional scheme is inconsistent” with Congressional intent to ensure tribal survival); *In re Holloway*, 732 P.2d 962 (Utah 1986) (tribal community has interest “distinct from but on a parity with the interests of the parents” of Indian children; primacy of tribal sovereignty in resolving custody and adoption disputes “cannot be minimized”); but see *In re Adoption of Infant Boy Crews*, 825 P.2d 305 (Wash. 1992) (limits scope of agency’s duty to investigate if child is an “Indian child” for purposes of ICWA). See also, Hollinger, J.H. Beyond the best interests of the tribe: The Indian Child Welfare Act and the adoption of Indian children. *University of Detroit Law Review*(1989) 66:452. And Watts, S. Voluntary adoptions under ICWA: Balancing the interests of children, families, and tribes. *Southern California Law Review* (1989) 63:213.
12. 8 U.S.C. section 1101, sections 1151 *et seq.*; 8 C.F.R. Sections 204 *et seq.* See also the article by Bartholet in this journal issue.
13. 42 U.S.C. sections 620-28 and 670-76.
14. The 1953 proposed Uniform Adoption Act and its revised versions have been withdrawn. An entirely new and more comprehensive proposed Uniform Adoption Act (UAA) is being drafted by a NCCUSL committee and is likely to be submitted to state legislatures by 1994. NCCUSL (the National Conference of Commissioners on Uniform State Laws) is a nonprofit organization of state legislators, judges, lawyers, and law professors appointed by the governors of every state to draft proposed uniform legislation on topics subject to state legislative authority. Some NCCUSL proposals—for example, the Uniform Commercial Code, the Uniform Partnership Act, and the Uniform Child Custody Jurisdiction Act—have been enacted by nearly every state. Others—including the Uniform Parentage Act, the Uniform Probate Code, and the Uniform Marriage and Divorce Act—have not been uniformly enacted, but have nonetheless significantly influenced state laws.
15. *Uniform Laws Annotated* (1979) 9A:590.
16. The Interstate Compact on the Placement of Children (ICPC) is a procedural statute administered by the American Public Welfare Association and the Departments of Social Services in the various states. NCCUSL has never considered or approved the ICPC. Concerns about ICPC’s scope and administration are raised in Hollinger, J.H. *Adoption law and practice*. 1992 Supp. to Appendix III-A, note 2; Hartfield, B.W. The role of ICPC. *Nebraska Law Review* (1989) 68:292. See also, *In re Zachariah Nathaniel K.*, 6 Cal. App. 4th 1025, 8 Cal. Rptr. 2d 423 (1992) (ICPC provision conferring continuing “jurisdiction” on “sending agencies” is not a grant of judicial authority and must yield to the state and federal statutes that empower courts to exercise jurisdiction in adoption and custody cases); *Yopp v. Batt*, 237 Neb. 779, 567 N.W.2d 868 (1991) (rejects ICPC administrators’ interpretation of what constitutes an interstate placement); *In re Adoption No. 10087*, 324 Md. 394, 597 A.2d 456 (1991) (ICPC administrators’ disagreement about whether sending or receiving state’s law governs validity of consent impedes adoption and is contrary to best interests of child); *In re Jennifer M. v. Scott B.*, 7 Cal. App. 4th 728, 9 Cal. Rptr. 2d 428 (1992) (criticizes “extraordinary slowness” of ICPC administrators which needlessly delayed child’s placement).
17. See the discussion in notes nos. 50-53. See also Hollinger, J.H. The aftermath of adoption: Legal and social consequences. In *Adoption law and practice*, note 2.
18. 46 Fed. Reg. 50022-39 (1981).
19. NCCUSL is described in note no. 14. Copies of the latest draft of the proposed Uniform Adoption Act may be obtained from NCCUSL, 676 North St. Clair St., Suite 1700, Chicago, IL 60611. Final approval of the proposed Act by the NCCUSL membership is not anticipated before 1994. Even if approved, the Act will then have to be considered by each state.
20. Lawson, C. Congress considers bills to aid adoption. *New York Times*, March 28, 1991, at B1.
21. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Mass.*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982).
22. See, for example, *in re Corey L. v. Martin L.*, 45 N.Y.2d 383, 391, 380 N.E.2d 266, 270 (1978) (merely because “someone else might rear the child in a more satisfactory fashion” has never by itself been grounds for removing a child from its parents); *In re Adoption of Baby*

- Girl C.*, 511 So.2d 345 (Fla. Dist. Ct. App. 1987) (adoption cannot be granted simply because prospective adopters would be better parents for the child than the nonconsenting biological parents); Developments in the law: The Constitution and the family. *Harvard Law Review* (1980) 93:1156.
23. See, for example, the classic Cardozo opinion in *In re Bistany*, 145 N.E. 70 (N.Y. 1924) (evidence is insufficient to justify a finding of abandonment by immigrant parents of a child they had left for nearly 5 years in the custody of a well-to-do childless couple: "We cannot say that silence and inaction were prolonged to such a point that an intention to surrender becomes an inference of law").
 24. The scope of constitutional protection of the interest of unwed fathers in developing a parental relationship to their children is analyzed in *Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Caban v. Mohammed*, 441 U.S. 380 (1979); *Lehr v. Robertson*, 463 U.S. 248 (1983).
 25. *Santosky v. Kramer*, 455 U.S. 745 (1982); current draft of proposed Uniform Adoption Act, article 3, part 7.
 26. For example, the ability to separate genetic from gestational mothering means that it is no longer clear that a woman who gives birth to a child is the child's legal mother; *Anna J. v. Mark C.*, 6 Cal. App.4th 521, 286 Cal. Rptr. 369 (1991), pet. for review granted, 822 P.2d 1317 (1992). Similarly, the status of "presumed," "putative," and "biological" fathers in custody and adoption proceedings is far from settled; *Michael H. v. Gerald D.*, 109 S. Ct. 2333 (1989).
 27. See, for example, *In re Karen A.B.*, 513 A.2d 770 (Del. 1986) (mother cannot be forced to name putative father; child's needs for adoptive home outweigh unknown father's potential right to participate in adoption proceeding); but, compare *Augusta Co. DSS v. Unnamed Mother*, 348 S.E.2d 26 (Va. Ct. App. 1986) ("fair play" requires that a mother be stopped from controlling the placement of her child for adoption in situations where she refuses to name the father). The current draft of the proposed Uniform Adoption Act does not require a birthmother to identify her child's father, but does require a diligent effort to ascertain the name and whereabouts of the father, not only to notify him of a pending adoption but also to obtain information about his health and social history.
 28. For sympathetic treatment of fathers who have been thwarted in their efforts to assume parental responsibilities, see *In re Kelsey S.*, 1 Cal.4th 816, 4 Cal. Rptr.2d 615, 823 P.2d 1216 (1992) (Uniform Parentage Act distinction between the "consent" rights given to presumed fathers and the "notice and opportunity to be heard" rights given to unwed alleged fathers in adoption proceedings is unconstitutional when applied to an unwed father who has "sufficiently and timely demonstrated a full commitment to his parental role"); *In re Raquel Marie X*, 76 N.Y.2d 387, 559 N.Y.S.2d 855 (1990) (unwed father who is unable to develop custodial relationship with newborn child because mother and child are living with mother's husband is entitled to veto his child's adoption if he acts promptly to establish legal and emotional bond to his child); *In re Adoption of Clark*, 393 S.E.2d 791 (N.C. 1990); Appeal of H.R. 581 A.2d 1141 (D.C.App. 1990) (private agency's role as state agent in adoption process subjects its actions to constitutional scrutiny; failure to advise unwed father who was citizen of another country of his procedural rights in adoption proceeding is due process violation and invalidates adoption). The significance of these and other recent "thwarted father" cases is discussed in Hollinger, J.H. Consent to adoption. In *Adoption law and practice*, note 2.
 29. The drafting committee of NCCUSL's proposed Uniform Adoption Act remains uncertain about how best to resolve these questions; see Comments to current draft of proposed Uniform Adoption Act.
 30. See, for example, the case of the 12-year-old boy who had spent all but 7 months of the past 8 years in foster care and who successfully sued to "divorce" his parents in order to be adopted by his most recent foster parents. DePalma, A. Court grants boy wish to select his parents. *New York Times*, September 26, 1992, at A1; Wingert, P., and Salholz, E. Irreconcilable differences. *Newsweek*, September 21, 1992, p. 85.
 31. The five states are Colorado, Connecticut, Delaware, Massachusetts, and Minnesota. A sixth state, Michigan, is on the verge of enacting a version of the proposed Uniform Adoption Act which would recognize direct parental as well as agency-supervised placements.
 32. See the current Draft of proposed Uniform Adoption Act, article 3, part 2. States that require preplacement certification for direct private as well as agency adoptions include Arizona, Florida, Kentucky, Montana, Nevada, New Mexico, New York, North Dakota, Washington, and Wyoming.

33. Marital status, by itself, is generally no longer a bar to becoming an adoptive parent; see the article by Stolley in this journal issue. Many states bar categorical exclusions of prospective adopters and require a specific factual determination of whether placement with a particular individual is appropriate for a specific adoptee. See, for example, *In re Adoption of W.A.T.*, 808 P.2d 1083 (Utah 1991) (polygamous marriage does not necessarily disqualify individual from adopting); 1992 draft of proposed Uniform Adoption Act: "if determined to be in the best interests of the adoptee, any individual may adopt another individual and any individual may be adopted." With regard to sexual orientation, a few states (for example, Arizona and New Hampshire) prohibit homosexuals from adopting, but a number of state courts have ruled that sexual orientation should not, by itself, be a reason for precluding an individual from adopting; see, for example, *In re Adoption of Charles B.*, 50 Ohio St.3d 88 (1990); *Seebol v. Farie*, 17 Fam. L. Rep. (BNA) 1331 (Fla. Cir. Ct. 1991). Some courts have approved a child's adoption by a "de facto stepparent" who is the gay or lesbian partner of the child's biological parent; *Matter of Evan*, 583 N.Y.S. 2d 997 (Surr. 1992), and cases cited therein; *In re Petition of L.S. and V.L. for Adoption*, 17 Fam. L. Rep. (BNA) 1523 (DC Super. Ct. Fam. Div., Nos. A-269-90 & A-270-90, 1991). Other courts have permitted two gay or lesbian partners to adopt a child unrelated to either of them; *In re Adoption of R.C.*, 18 Fam. L. Rep. (BNA) (Vt. Prob. Ct. Addison Dist., # 9088, 1991).
34. See, for example, Ill. Ann. Stat. ch 40 Section 1519 ("when possible," same religious belief); N.Y. Dom. Rel. Law Section 113; Soc. Serv. Law Section 373(7) (in ascertaining child's religious faith, agencies shall abide by wishes of parent who relinquished child or whose rights were otherwise terminated). Section 222.35 of the California Civil Code requires that adoptive placements by agencies reflect consideration of the racial background, ethnic heritage, religion, and cultural heritage of the child. See also ICWA preferences for placement of Native American children with relatives or in tribal community, 25 U.S.C. section 1915. Compare the current draft of the proposed Uniform Adoption Act: unless contrary to the best interests of an adoptee, an agency shall give preference to a relative or foster parent with whom the child has resided, and then to any other suitable individual who wants to adopt the child. However, placement may not be delayed or changed in order to find a prospective adopter whose racial, ethnic, or religious affiliation is the same as the adoptee's.
35. See articles cited in note no. 8 and the article by McKenzie in this journal issue.
36. The specter of illegal baby selling has loomed periodically throughout the history of American adoption, even when the demand for adoptable children was much lower than it is now. See Zelizer, V.A. *Pricing the priceless child*. New York: Basic Books, 1985; Comment, Moppets on the market: The problem of unregulated adoption. *Yale Law Journal* (1950) 59:716; Baker, N. *Babyselling: The scandal of black market adoptions* (1978); Pressman, S. The baby brokers. *California Lawyer*, July 1991, p. 30. Many of the state prohibitions against finders fees referred to in this article were enacted in the wake of Congressional investigations of baby selling in the 1950s and the 1970s.
37. See, for example, Cal. Penal Code section 273(a); N.Y. Soc. Serv. Law section 374(6); current draft of proposed Uniform Adoption Act, article 9.
38. The 1992 draft of the proposed Uniform Adoption Act permits adoptive parents to pay a number of expenses incurred in connection with an adoption, including medical, travel, and living expenses related to the mother's pregnancy and the child's birth, as well as counseling and legal expenses of the biological and adoptive parents. All payments must be reported to, and approved by, the court.
39. See, for example, *Yopp v. Batt*, 237 Neb. 779, 467 N.W.2d 868 (1991) (although it is unlawful to place a child without a license, violation may be a misdemeanor and is not basis for setting aside an adoption that is in interests of child); *In re Anon.*, 16 Fam. L. Rep. (BNA) 1165 (Surr. Ct. 1990) (adoption approved despite excessive and unlawful fees charged by out-of-state agency); *In re Adoption of a Child by I.T.*, 397 A.2d 341 (N.J. Super. Ct. App. Div. 1978) (petition for adoption cannot be dismissed on sole ground that prospective adoptive parents or their attorney may have violated Interstate Compact; controlling standard is child's best interests).
40. *In re Adoption of P.E.P.*, 407 S.E.2d 505 (N.C. 1991) (adoption invalidated because of serious irregularities, including blatant violation by adoptive parents and their attorney of statute prohibiting compensation for child placing).
41. Recent research suggests that the reality of the biological family "is uppermost in the mind of the [older] adoptive child and his functioning as a person at peace with himself cannot go forward until his questions are answered and his psychological universe is in order," *In re Patricia W.*, 89 Misc. 2d 368, 371-372, 392 N.Y.S.2d 180, 183 (Fam. Ct. 1977); Garrison, M. Why terminate parental rights? *Stanford Law Review* (1983) 35:423,472. The psychological difficulties many adoptees experience, especially in adolescence, are discussed in

- Brodzinsky, D., and Schecter, M. *The psychology of adoption*. New York: Oxford University Press, 1990; McRoy, R.G., Grotevant, H.D., and Zurcher, L.A. *Emotional disturbance in adopted adolescents*. New York: Praeger, 1988.
42. Blair, M. Lifting the genealogical veil: A blueprint for legislative reform of the disclosure of health-related information in adoption. *North Carolina Law Review* (1992) 70:681.
 43. See, for example, Cal. Civil Code section 222.13, section 224.70; N.Y. Soc. Serv. Law section 373-a; current draft of proposed Uniform Adoption Act, section 2-106.
 44. See, for example, *Burr v. Stark Co. Bd. Comms.*, 491 N.E.2d 1101 (Ohio 1986); *Michael J. v. Los Angeles Dept. Adoptions*, 201 Cal. App. 3d 859, 247 Cal. Rptr. 504 (1988); *Meracle v. Children's Serv. Soc.*, 437 N.W.2d 532 (Wis. 1989); *M.L.B. v. Dept. Health & Rehab. Serv.*, 559 So.2d 87 (Fla. App. 1990); *Roe v. Cath. Char.*, 588 N.E.2d 354 (I. App. 1992); *M.H. & J.L.H. v. Caritas Family Services*, 488 N.W. 2d 282 (Minn. 1992); *Gibbs v. Ernst*, 615 A. 2d 851 (Pa. Comm. Ct. 1992); Blair, M. Getting the whole truth and nothing but the truth: The limits of liability for wrongful adoption. *Notre Dame Law Review* (1992) 67:851.
 45. Cook, L.W. Open adoption: Can visitation with natural family members be in the child's best interest? *Journal of Family Law* (1992) 305:471. For analysis of court-ordered visitation in intrafamily adoptions, see Comments to current draft of proposed Uniform Adoption Act, article 4; 1992 Supp. to *Adoption law and practice*, note 2.
 46. *In re M.M. et al.*, 266 Ill. App.3d 302, 589 N.E.2d 687 (1992) (it would be inconsistent with the state's law on termination of parental rights to require adoptive parents to permit some kind of continuing relationship between an adoptee and a birthparent); *In re Gregory*, 74 N.Y.2d 77, 544 N.E.2d 1059, 544 N.Y.S.2d 535 (1989) (regardless of whether ongoing contact would be beneficial, courts should not allow an adoption to be contingent on adoptive parents' willingness to allow continued contact with a birthparent); *In re Adoption of Ridenour*, 574 N.E.2d 1055 (Ohio 1991) (grandparents have no standing to request legally enforceable visitation after adoption by nonrelatives).
 47. *Loftin v. Smith*, 590 So.2d 323 (Ala. Civ. App. 1991) (child's mother and adoptive stepfather are held in contempt for failure to abide by agreement to allow postadoption visitation by paternal grandparents in exchange for father's consent to stepfather's adoption); *Michaud v. Wawruck*, 209 Conn. 407, 551 A.2d 738 (1988) (creation of adoptive relationship is not necessarily inconsistent with enforcement of agreement to permit birthmother to visit older child adopted by nonrelatives); *Weinschel v. Strople*, 466 A.2d 1301 (Md. 1983) (visitation agreement between noncustodial parent and adoptive stepparent not contrary to public policy if in best interest of child).
 48. *In re Adoption of C.R. Topel*, 571 N.E.2d 1295 (Ind. 1991) (execution of visitation agreement at same time as execution of consent to adoption vitiates father's consent to adoption of child); *In re Jennifer*, 142 Misc. 2d 912, 538 N.Y.S.2d 915 (1989) (court cannot accept non-custodial parent's consent to stepparent's adoption if it is contingent on being able to visit his child).
 49. Current draft of proposed Uniform Adoption Act, articles 1-2; Wash. Rev. Code Ann. 26.33.295.
 50. For a more complete discussion of the history and contemporary status of confidentiality and an analysis of different procedures for obtaining access to identifying information in sealed adoption records, see Hollinger, J.H. The aftermath of adoption. Chapter 13 in *Adoption law and practice*, note 2 and App. 13-A; Caplan, L. *An open adoption*. New York: Farrar, Straus, & Giroux, 1990; Comments to Article 9 of 1992 draft of proposed Uniform Adoption Act.
 51. Michigan's Department of Social Services reports, for example, that nearly 5,000 mothers and 1,000 fathers of children born before the state began its mutual consent registry in 1980 have filed consents to the disclosure of their identities. Fewer than 150 mothers and 60 fathers have filed refusals to consent. More than 80% of the mothers and nearly 70% of the fathers of children born and placed for adoption in Michigan since 1980 have consented prospectively to the release of their identities when their child attains the age of 18. Most states now provide that birthparents be given an opportunity to indicate, at the time of relinquishment or at any later time, whether or not they are willing to have their identities released upon request from their adult children. See, for example, Cal. Civil Code section 222.15; 224.73; current draft of proposed Uniform Adoption Act, section 38(e).
 52. See note no. 50, Hollinger; see also Triseliotis. Obtaining birth certificates. In *Adoption: Essays in social policy*. P. Bean, ed. London: Tavistock, 1984. The countries in which adoptees, 18 or 21 years of age, may generally obtain their original birth certificates include Australia, England, Finland, Israel, New Zealand, Scotland, Sweden, and Wales.

53. Sachdev, P. *Unlocking the adoption files*. Lexington, MA: Lexington Books, 1989; Campbell, L.H., Silverman, P.R., and Patti, P.B. Reunions between adoptees and birthparents: The adoptees' experience. *Social Work* (1991) 36:329 (most questionnaire respondents were active in pro-search organizations); Silverman, P.R., Campbell, L.H., Patti, P.B., et al. Reunions between adoptees and birth parents: The birth parents' experience. *Social Work* (1988) 33:523; Stein, L.M., and Hoopes, J.L. *Identity formation in the adopted adolescent*. Child Welfare League of America, 1985 (finds substantial interest among adoptees in learning about their heritage, but questions extent of actual "searching").
54. Barth, R.P., and Berry, M. *Adoption and disruption: Rates, risks, and responses*. New York: Aldine de Gruyter, 1988; Sachs, A. When the lullaby ends: Should adoptive parents be able to return unwanted children? *Time*, June 4, 1990, p. 82; see also the article by Rosenthal in this journal issue.
55. Whether or not they seek to set aside an adoption, some adoptive parents find themselves unprepared to cope with their children's serious physical or emotional difficulties. See, for example, Fishman, K.D. Problem adoptions. *The Atlantic* (1992) 270:37; Blakeslee, S. Parents fight for a future for infants born to drugs: Adopting drug babies. *New York Times*, May 19, 1990, at A1; Dorris, M. *The Broken Cord*. (Native-American children with fetal alcohol syndrome.) New York: Harper & Row, 1989.
56. See, for example, Cal. Civil Code section 228.10 (the action can be brought for up to five years after the adoption is final); *Christopher C. v. Kay C.*, 228 Cal. App. 3d 741, 271 Cal. Rptr. 907 (1991) (adopted child has no constitutional right to prevent her adoptive parents from bringing an action to set aside an adoption even though the agency did not negligently or fraudulently conceal information).
57. See the articles by Barth, Brodzinsky, McKenzie, Rosenthal, and Silverman in this journal issue. See also proposals for different kinds of counseling of adoptive families at critical stages of their lives. Rosenberg, E.B. *The adoption life cycle*. New York: Free Press, 1992.
58. But see *Griffith v. Johnston*, 899 F.2d 1247 (5th Cir. 1990) (individuals have no constitutionally protected or "fundamental right" to become adoptive parents).