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THE LAW OF ADOPTION: ANCIENT AND MODERN

LEO ALBERT HUARD*

I. ORIGINS AND DEVELOPMENT.

Adoption, however achieved, is essentially the factitious creation of blood relationship between persons who are not so related. Its ancient purpose was to prevent the extinction of a family.¹

Sir Henry Maine tells us that adoption is one of the oldest and most widely employed of legal fictions.² Without it, he asserts, society would scarcely have escaped its swaddling clothes.³ It commanded the approval of the greater number of archaic societies⁴ and has proven to be the most perdurable of all artificial relationships designed to prolong the continuity of family existence.⁵

The family is the basic group of most primitive societies.⁶ Those who were related by blood naturally gravitated to each other to form this first ring of society's organization. In the same way successively higher organizational units were also predicated on blood relationship between the members, *e.g.*, the house, the tribe and finally the state.⁷ Not every early society was actually formed by descent from the same ancestor but all those which achieved permanence were so descended or were assumed to be.⁸ This assumption was nearly always false since everywhere men of alien descent were admitted into families other than their own. The Greek states, Rome, the Teutonic aristocracies, the Celtic clan associations, the Slavonic Russians and Poles all practiced adoption.⁹

Primitive adoption had a deeply religious significance¹⁰ and the adoption was carried out by a solemn rite indicating the adoptee's admission into a new worship¹¹ as well as into a new family. The assimilation into the new religion cannot be separated from the artificial creation of the new blood tie.¹² It is clear that the "duty of perpetuating the domestic worship was the foundation of the law of adop-

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1. II KOCOUREK & WIGMORE, *EVOLUTION OF LAW, PRIMITIVE AND ANCIENT LEGAL INSTITUTIONS* 344 (1915).

2. *Id.* at 341, 344; MAINE, *ANCIENT LAW* 130 (10th ed. 1901).

3. *Id.* at 27, 130.

4. *Id.* at 194.

5. II KOCOUREK & WIGMORE, *op. cit. supra* note 1, at 341.

6. MAINE, *op. cit. supra* note 2, at 126.

7. *Id.* at 126-29.

8. *Id.* at 131.

9. *Id.* at 129-30.

10. II KOCOUREK & WIGMORE, *op. cit. supra* note 1, at 344, 345.

11. *Ibid.*

12. *Id.* at 341-46.

tion among the ancients."¹³ Adoption, as thus practiced, contemplated complete severance of relationship between the adoptee and his natural family and complete acceptance into the adopter's family.

Man's earliest codes of law contain references to adoption. We find the following proposition stated in the Code of Hammurabi approximately 2,000 years¹⁴ before the birth of Christ:

If a man take a child in his name, adopt and rear him as a son, this grown up son may not be demanded back.

If a man adopt a child as his son, and after he has taken him, he transgresses against his foster-father; that adopted son shall return to the house of his own father.¹⁵

Similar mention may be found in the Hindu Laws of Manu. This code is variously dated at 200 B.C. and 100 A.D.,¹⁶ but there is general agreement that the laws contained therein are of an earlier time—possibly as early as 1,000 B.C.¹⁷

The Hebrews and the Egyptians knew it and an adoption may be inferred from the biblical account of the episode between Moses and the Pharaoh's daughter: "and she adopted him for a son, and called him Moses, saying: Because I took him out of the water."¹⁸

It is in Rome, however, that adoption reached its widest acceptance and it is of Roman adoption that we have the most elaborate accounts. Cicero (106-43 B.C.) gives us a most interesting dissertation on the nature and legal incidents of adoption in his day.

What, gentlemen, is the law relating to adoption? Clearly that the adoption of children should be permissible to those who are no longer capable of begetting children, and who, when they were in their prime, put their capacity for parenthood to the test. What pleas, then, what considerations of family, of credit, or of religion justify an adoption in any individual case,—this is the question commonly asked by the Pontifical College. Which of these was looked for in your case? A man twenty years of age or even less adopts a senator. Is it because he desires a child? But he is in a position to beget one. He has a wife; he will still rear children by her; and the father by the act of adoption, will disinherit his son. Again why should the religious traditions of the Clodii be extinguished, so far as you can extinguish them?

.....

The age of the adopting party was never inquired into, as it was in the case of Gnaeus Aufidius and Marcus Pupius, who, as I recollect, in extreme old age, respectively adopted Orestes and Piso, and these adoptions, as in countless other cases, were followed by the adopted party inheriting the name, the wealth, and the family rites of his adopter. You

13. *Id.* at 344.

14. I KOCOUREK & WIGMORE, *EVOLUTION OF LAW, SOURCES OF ANCIENT AND PRIMITIVE LAW* 387 (1915); 11 *ENCYC. BRIT.* 135 (1947).

15. I KOCOUREK & WIGMORE, *op cit. supra* note 14, at 426.

16. *Id.* at 469; 14 *ENCYC. BRIT.* 830 (1947).

17. *Id.* at 387.

18. *EXODUS* 2:10 (Douay Version).

are not a Fonteius, as you should be by rights, nor have you become the heir of your father by adoption, nor have you entered upon the rites of the family into which you have been adopted, to take the place of the paternal rites you have resigned. So, with the subversion of sacred rites, the pollution of families, of that which you have left as well as of that which you have contaminated, and with the scouting of the legally prescribed terms of wardship and inheritance among our citizens, you have set nature at defiance, and have become the son of a man whose father you might have been, on the score of your relative ages. . . . I assert that your adoption did not take place in accordance with pontifical rules. . . .¹⁹

Gaius (*ca.* 130 A.D.) apparently wrote of the practice since it is prominently mentioned in the Institutes of Justinian (*ca.* 533 A.D.)²⁰ which were largely taken from the prior *Commentarii* of Gaius. Roman adoption took two forms, adoption in the strict sense which applied to children under the *patria potestas* and adrogation which applied to persons *sui juris*.²¹ Adrogation was the more ancient form and each case required the enactment of a specific law by the *Comitia curiata*.²² The adoption of Clodius against which Cicero so vigorously inveighs is a case of adrogation.

Perhaps we should pause here to note two very significant elements of early adoption. First, it must be observed that the primary purpose of adoption is the continuity of the adopter's family—there is here no visible concern for the "best interests" of the adoptee. His welfare seems almost irrelevant. Second is the religious emphasis which lies at the very foundation of the practice. The adoptee is cut off from the religion of his natural family and assumes the religion of the adopting family. Again, the sole concern is the adopter's religion without reference to the adoptee's prior beliefs. Since primitive adoption was a point of severance for all other relationships between the adoptee and his natural family, this treatment of religion was commendably logical. Both of these elements are now treated far differently in modern American adoption law.

Our jurisprudence was largely acquired by inheritance from England. The English had an inordinately high regard for blood lineage and consequently the practice of adoption never acquired a foothold there. The primitive understanding of adoption required the adoptee to become a member of the adopter's family, to acquire a quasi-interest in the adopter's property while the latter lived and to succeed to such property upon the adopter's death. But to the English, heirs

19. WATTS, CICERO, THE SPEECHES, DE DOMO SUA, XIII, XIV (Loeb ed., 1923).

20. MOYLE, IMPERATORIS IUSTINIANI INSTITUTIONES 137-41 (5th ed. 1912); HUNTER, ROMAN LAW 203-21 (4th ed. 1903).

21. I COLQUHOUN, A SUMMARY OF THE ROMAN CIVIL LAW § 688 (1849).

22. *Ibid.* See generally, §§ 683-716 for an elaborate account of the Roman practice. A fine summary of the world history of adoption may be found in, Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922).

meant legitimate children who were heirs of the blood.²³ This was an unalterable maxim which early became a fixed part of the law of the realm: ". . . he is only heire which succeedeth by right of blood."²⁴

There was, therefore, no English law of adoption. Foster paternity, however, was not unknown. Strangers were accepted into English families and treated as if they were natural children. This relationship was not formalized by any legal procedure and foster-children had no separate legal recognition. They were not heirs of the blood and thus could not inherit from the foster-parent.²⁵ Adoption in the Roman sense of the term was not legally possible in England until the Adoption of Children Act of 1926.²⁶

It is possible to speculate, however, that, upon occasion, the English courts felt the need for a true adoption practice. At such times, the courts were wont to give an extraordinary effect to the presumption that a child born to a married woman was the legitimate child of her husband. An eminent pair of legal historians relate the remarkable instance of a child born to a married woman whose husband had been "beyond seas" for nearly three years—remarkable we say, because the child was reportedly held to be legitimate.²⁷

The poignant story of Grace of Saleby falls in this category also.²⁸ The harrowing misadventures of this unfortunate maiden could only be surpassed by those who create the melodrama for today's morning television programs. Limitations of space and time prevent the presentation of her tale of woe in this paper. It must suffice, therefore, to say that Grace was treated as the legitimate issue of Thomas of Saleby *et ux.*, even though it was quite clear that she was neither his child nor his wife's.²⁹ Occasions such as these led the great Bracton to state:

But spurious offspring, which are procreated of a condemned marriage by those, between whom matrimony cannot take place, are excluded from all benefit. But they are legitimated sometimes, as it were by adoption and with the consent and goodwill of the relatives, as if any one's wife has conceived by another man than by her husband, and although this is ascertained in truth, if the husband has taken the child into his house and has avowed and nourished it as his son, he will be his heir and legitimate, or if he has not expressly avowed him, provided he has not sent him away . . . such a child will be adjudged to be the heir and to be legitimate . . . provided it may be presumed, that he could have

23. I Co. LITT. 7b (First American ed. 1853).

24. II Co. LITT. 237b (First American ed. 1853).

25. As to the Roman use of wills to prevent descent from being wholly interrupted, see MAINE, *op. cit. supra* note 2, at 193-94; HANNAN, THE CANON LAW OF WILLS 19 *et seq.* (1934).

26. 16 & 17 GEO. 5, c. 29; 17 HALSBURY, LAWS OF ENGLAND §§ 1406-23 (2d ed. 1935).

27. II POLLOCK & MAITLAND, THE HISTORY OF ENGLISH LAW 398 (2d ed. 1911).

28. POLLOCK & MAITLAND, *op. cit. supra* note 27, at 391-92, 398-99.

29. *Id.* at 398-99.

begotten him. And the same thing may be said of a suppositious offspring, and so sometimes a common opinion is preferred to the truth.³⁰

One wonders if the fiction thus erected atop the presumption of legitimacy is socially preferable to the great fiction embraced in true adoption. It seems certain that in the cases cited the result was the same as if the child had in fact been adopted in the sense of that term in Roman civil law. This use of the presumption of legitimacy might also serve to explain some strange cases in our own reports. Grace of Saleby has almost certainly had a counterpart in the United States.

Despite these ingenious instances of devious circumvention of the law, it remains true that the English common law did not know true adoption. This absence of common-law precedent undoubtedly inhibited the initiation of the practice of adoption in this country. On the other hand, once the initial step was taken and adoption was decided upon, our legislatures were free to borrow from the other systems in forming their own policy and our courts were bound only by the terms of each particular legislative enactment.

One influence on United States adoption law can be traced to the Spanish and French law which acquired a firm and lasting *pied-à-terre* in Louisiana and Texas. French and Spanish jurisprudence was largely modeled on Roman civil law and adoption was a well established practice in those countries.

It is not surprising, therefore, to find cases of Roman-style adoption in the early volumes of the Louisiana and Texas case reports, long before the practice had been generally sanctioned elsewhere in the United States.

Typical instances may be found in the cases of: *Fuselier v. Masse*,³¹—an adoption by notarial act which failed because of improper procedure; *Vidal v. Commagère*,³²—an adoption by special act of the Louisiana legislature wherein the word adoption was held to be derived from the Roman law, *i.e.*, the adoptee became the child and heir of the adopter with all the rights of a legitimate child; and *Teal v. Sevier*,³³—wherein the adoption failed since the Spanish law then in force forbade an adopter who already had a legitimate child from adopting a stranger as co-heir with such child. This holding of the last named case is an interesting commentary on one of Cicero's objections to Clodius' adoption quoted earlier in this paper from the oration *De Domo Sua*.³⁴

The doctrine of *stare decisis* and the well-known resistance of common law courts to innovations of any kind probably combined with

30. I BRACON, DE LEGIBUS ANGLIAE f.63b, p. 503 (Twiss ed. 1878). (Emphasis added.)

31. 4 La. 423 (1832).

32. 13 La. Ann. 516 (1858).

33. 26 Tex. 516, 521 (1863).

34. See note 19, *supra*, and accompanying text.

other factors to prevent neighboring state tribunals from imitating the practice of Louisiana and Texas. Whatever the reason, adoption did not arise anywhere else in this country absent statutory authority.

However, we can again follow an interesting by-path which *might*, under different circumstances, have been used as a precedent by our state courts. It is recorded in history that many American Indian tribes practiced adoption. An unfortunately brief account of such a practice among Indians in Pennsylvania has been noted in a sister review.³⁵ The author tersely, and perhaps with tongue in cheek, deplores the fact that Pennsylvania courts have persisted in holding that adoption was unknown to the common law.³⁶ In the same spirit we can surely add that no law can be considered more "common" than the indigenous law of the country.

Ignoring these golden opportunities all our state courts (except Louisiana and Texas) ruled that adoption was unknown to the common law³⁷ and that they were, therefore, powerless to deal with the matter. However, once the relationship was permitted by enabling legislation, adoption was almost invariably held to make the adoptee the child and heir of the adopter. The early cases³⁸ usually contain rather extensive references to Roman civil law and tacitly incorporate the substantive effects of such law into their own new law of adoption. In this roundabout way a very ancient practice finally acquired an honorable estate in the new world.

The earliest adoption statute is variously reported to be that of Mississippi in 1846³⁹ and Massachusetts in 1851.⁴⁰ It seems clear that Mississippi did permit adoption as early as 1846 and that such adoption could make a stranger to the adopter's blood the heir of that adopter.⁴¹ This affront to the pride of Massachusetts should be somewhat assuaged by the fact that the Massachusetts law of 1851 seems to have been more complete.⁴²

The true genesis of our adoption laws, whatever their exact vintage, seems to lie in the increasing concern for the welfare of neglected and dependent children which became apparent at many points

35. Hutton, *Concerning Adoption and Adopted Persons as Heirs in Pennsylvania*, 42 DICK. L. REV. 12, 13-15 (1937). *But see*, *Non-She-Po v. Wa-Win-Ta*, 37 Ore. 213, 62 Pac. 15 (1900), where Indian customary adoption was ignored because of the common-law policy against adoption.

36. Hutton, *supra* note 35, at 15.

37. *Ross v. Ross*, 129 Mass. 243, 262 (1878); *Hockaday v. Lynn*, 200 Mo. 456, 461, 98 S.W. 585, 586 (1906); and *Woodward's Appeal*, 81 Conn. 152, 162 (1908), are generally considered classic examples.

38. *Ross v. Ross*, *Hockaday v. Lynn*, *Woodward's Appeal*, *supra* note 37.

39. McFarlane, *The Mississippi Law on Adoptions*, 10 MISS. L.J. 239, 240 (1938); *Woodward's Appeal*, *supra* note 37, at 162, where the statute is not specifically identified.

40. *Ross v. Ross*, *supra* note 37, at 262; *Kuhlmann, Intestate Succession By and From the Adopted Child*, 28 WASH. U.L.Q. 221, 222-23 (1943).

41. McFarlane, *supra* note 39, at 240.

42. *Ross v. Ross*, *supra* note 37, at 262-63.

in this country beginning about 1849.⁴³ Our statutes, therefore, took an immediate and radical departure from a basic concept of the Roman law in that the primary concern of our laws was the welfare of the child rather than concern for the continuity of the adopter's family.⁴⁴

The "best interests" formula has consistently been honored by our courts and is a uniquely American contribution to the law of adoption. This characteristic of our law has also become the focal point of one of the most troublous problems of modern day American adoption practice, *i.e.*, religion in adoption.

II. THE STATE OF AMERICAN ADOPTION LAW GENERALLY.

In spite of the somewhat eccentric history which we have outlined above, adoption law in the United States has been characterized by a steady development of its original purpose. Legislation and cases both show a firm and continued devotion to the best interests of the adoptee. In the more than a century since 1850 there has been a consistent over-all improvement in the manner in which the law has treated adoption. There has also been a parallel growth in the popularity of adoption and the respect in which the institution is held by society.⁴⁵

Writing in 1935, Chester G. Vernier stated that the most important development in adoption law was the fact that an increasing number of jurisdictions required a thorough investigation before placing a child for adoption.⁴⁶ Also, greater supervision of the adopter-adoptee relationship was then becoming apparent in numerous statutory provisions for trial periods before the adoption became final.⁴⁷ Happily both trends have continued.

Then, as now, the adoption of illegitimate, abandoned, dependent and neglected children was a most troublesome social problem.⁴⁸ Today an imposing array of community services are vigorously co-operating to erase this problem and have already succeeded in minimizing it to a considerable degree.⁴⁹ Although the problem is not solved, it is, at least, well-in-hand. Perhaps more important problems to social workers today are the black market-gray market in adoptions and the finding of adopters for "hard-to-place" children.⁵⁰

The legal, as distinguished, from the social aspect of adoption has

43. Kuhlmann, *supra* note 40, at 223-24.

44. *Ibid.*

45. U.S. CHILDREN'S BUREAU, DEP'T. OF HEALTH, EDUCATION & WELFARE, PROTECTING CHILDREN IN ADOPTION, REPORT OF A CONFERENCE, WASHINGTON, D.C., 5. (June 27, 28, 1955).

46. 4 VERNIER, AMERICAN FAMILY LAWS 279-80 (1936).

47. 4 *id.* at 280.

48. *Ibid.*

49. See generally, PROTECTING CHILDREN IN ADOPTION, *op. cit. supra* note 45.

50. PROTECTION OF CHILDREN IN ADOPTION, *op. cit. supra* note 45, at 5, 17-18.

been the subject of an astonishing amount of research and writing.⁵¹ Most of the articles have been localized, *i.e.*, they deal with the adoption law of a particular state. However, since our adoption laws are all based on the "best interests" formula, these articles have proved useful outside the self-imposed geographical limitations of their authors. Examination of these writings reveals a gratifying similarity in the law from state to state. Particular procedures may differ but the general approach remains fairly constant. We find, also that a great many of the legal uncertainties of adoption law have now been resolved quite satisfactorily.

The questions of who may adopt and who may be adopted, when the consent of the child is necessary and when the consent of others may be necessary, have been litigated and settled in most jurisdictions. The effect of adoption and the problem of inheritance by and from the adopted child are, in most places, no longer subject to doubt. The disposition of these and other questions has been attended with a surprising degree of uniformity from state to state.⁵²

The scope of this paper precludes a close analysis of the many similarities and the few differences in the adoption law of all the jurisdictions under the flag of the United States. In any event, Vernier's work, although it dates back to 1935, affords a complete comparison which remains essentially valid to this day.⁵³ In lieu, therefore, of a comparative statutory analysis which would necessarily suffer from over-condensation, we will discuss with some particularity, the substantive provisions of a single modern statute thought to be typical of today's enlightened legislation.

51. Here is an incomplete list of articles which have attracted the attention of the author. Hutton, *Concerning Adoption and Adopted Persons as Heirs in Pennsylvania*, 42 DICK. L. REV. 12 (1937); Limbaugh, *The Adoption of Children in Missouri*, 2 MO. L. REV. 300 (1937); McFarlane, *The Mississippi Law on Adoptions*, 10 MISS. L.J. 239 (1938); Note, Powell, *Adoption, Agreement to Adopt, Agreement to Leave Property, Enforceability by Child*, 17 TEXAS L. REV. 339 (1939); Kuhlmann, *Interstate Succession By and From the Adopted Child*, 28 WASH. U.L.Q. 221 (1943); Strahorn, *Adoption in Maryland*, 7 MD. L. REV. 275 (1943); Bugea, *Adoption in Louisiana—Its Past, Present, Future*, 3 LOYOLA L. REV. 1 (1945); Zacharias, *Judicial Review of Adoption Decrees*, 23 CHI.-KENT L. REV. 233 (1945); Silberman, *Adoption in New Jersey—An Analysis of Its Legal Effects and Consequences*, 1 RUTGERS L. REV. 250 (1947); Bugea, *Adoption in Louisiana—Its Past, Present, Future*, 23 TUL. L. REV. 38 (1948); Quarles, *The Law of Adoption—A Legal Anomaly*, 32 MARQ. L. REV. 237 (1949); Haertle, *Wisconsin Adoption Law and Procedure*, 33 MARQ. L. REV. 37 (1949); Note, Mordy, *Adoption—Right of Inheritance in Absence of Legal Adoption—Specific Performance of Contract to Adopt and Other Remedies*, 47 MICH. L. REV. 962 (1949); Strahorn, *Changes Made by the New Adoption Law*, 10 MD. L. REV. 20 (1949); Note, Merlin, *The Tennessee Law of Adoption*, 3 VAND. L. REV. 627 (1950); Miller, *The Lawyer's Place in Adoptions*, 21 TENN. L. REV. 630 (1951); Asch, *A Critical Appraisal of Adoption in New York State*, 20 BROOKLYN L. REV. 27 (1953).

52. 4 VERNIER, *AMERICAN FAMILY LAWS* 279-460 (1936). Some authorities feel that much can still be done with respect to uniformity, particularly procedural uniformity. Merrill & Merrill, *Toward Uniformity in Adoption Law*, 40 IOWA L. REV. 299 (1955).

53. *Ibid.*

The laws of the District of Columbia are the product of the Congress of the United States. As a result, the standard of legislative performance is usually, but not invariably, quite high. The local citizenry is alert and very, very vocal—and, in matters pertaining to family law, rather well-organized. This combination normally makes for sound legislation and the 1954 District adoption law is no exception. The purpose of the law is the threefold protection of:

- (1) the adoptive child, from unnecessary separation from his natural parents and from adoption by persons unfit to have such responsibility;
- (2) the natural parents, from hurried and abrupt decisions to give up the child; and
- (3) the adopting parents, by providing them information about the child and his background, and protecting them from subsequent disturbance of their relationships with the child by natural parents.⁵⁴

Any person may petition the court for adoption and any person, minor or adult, may be adopted (sections 16-211, 16-212). If the adoptee is a minor over fourteen years of age, a written statement of his consent must accompany the petition. If, however, the prospective adoptee is under fourteen, the statement of consent must be secured from both of his parents if they are alive, and are, or were, married. If one of the parents is dead, consent must still be acquired from the living parent. The statute also provides for consents in the cases of children born out of wedlock and children whose parents have lost their parental rights through appropriate court action. An omnibus clause authorizes the District commissioners⁵⁵ to consent in any situation not specifically provided for in the statute. Where a parent has abandoned the child, or cannot be located, provision is made to waive such parent's consent. And to make more certain that the child's welfare is a paramount consideration, the court is authorized to decree the adoption without the otherwise required consents, if it finds after hearing, that such consents are being withheld contrary to the best interests of the child. [section 16-213(a), (b) and (d)]. This is rather more elaborate than the average statutory consent provisions.

Upon filing of a petition, an investigation must be undertaken by the District commissioners or by a licensed child-placing agency. In either instance, the investigation must include a thoroughgoing

54. D.C. CODE ANN. § 16-208 (Supp. 1955). The entire law runs from § 16-201 through § 16-225 of the 1955 supplement of the code. Citations to the various sections will frequently be made parenthetically in the text. The draftsmen of the District law seem to have borrowed a great deal from prior recommendations of the federal Children's Bureau. See, *ESSENTIALS OF ADOPTION LAW AND PROCEDURE* (Children's Bureau Publication No. 331, 1949).

55. D.C. CODE ANN. § 16-213(b)(2)(g). (Supp. 1955). The District of Columbia is governed by a commission appointed by the President of the United States with the advice and consent of the Senate. For the powers and duties of the commissioners, see, D.C. CODE ANN. §§ 1-201 *et seq.* (1951).

inquiry into the environment, antecedents and assets of the adoptee, the home of the prospective adopter and all other circumstances and conditions which might have a bearing on the desirability of adoption in the particular case. When such investigation is completed, it must be reported to the court with a recommendation that the petition for adoption be granted or denied (section 16-216). The section obviously contemplates that a very exhaustive investigation will be made. A weakness may exist in the proviso for referral to the District commissioners for investigation. The commissioners, naturally, will not and cannot conduct such investigations in person and there is no guarantee in the statutory language that their agents will be competent social workers. It seems likely, however, that the commissioners will turn such investigation over to the Department of Public Welfare⁵⁶ which does have a staff competent to handle these matters. No other course of action seems practicable.

After due consideration of the petition, the consents and such other evidence as is available, the court may enter a final or interlocutory decree of adoption. No final decree of adoption may be entered unless the adoptee shall have been living with the petitioner at least six months. An interlocutory decree may then, however, be entered. Such decree must, by its terms, become final on a day certain not less than six months nor more than one year from the date of its entry. Interlocutory decrees may be revoked for good cause shown at any time before they become final and it is contemplated that a supervising agency will visit the adoptee during the period between entry and finality (section 16-218). There is no statutory provision for the annulment of a final decree and any attack on the validity of such decree, because of jurisdictional or procedural defect, must be made within one year of the decree's effective date (section 16-219).

All proceedings, records and papers with reference to adoption are to be deemed confidential. Hearings are to be held in a sealed courtroom with as little fanfare as possible (section 16-218). No one may inspect the records and papers except upon order of the court and "only then when the court is satisfied that the welfare of the child will thereby be promoted or projected." (section 16-221).

The District statute is almost Roman in its insistence that the adoptee be completely assimilated in the family of the adopter. A complete severance of the adoptee's ties with his natural family is effected.

A final decree of adoption shall establish the relationship of natural parent and natural child between adoptor and adoptee for all purposes,

⁵⁶ D.C. CODE ANN. § 3-102 (Supp. 1955). As indicated in the cited section of the code, the old Board of Public Welfare has been reorganized pursuant to Reorganization Orders No. 57 and 58; see appendix to Title I, D.C. CODE ANN., pp. 56, 60-61 (Supp. 1955).

*including mutual rights of inheritance and succession the same as if adoptee was born to adoptor. Such adoptee shall take from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if such adoptee had been born to such adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, shall be cut off, except that in the event one of the natural parents is the spouse of the adoptor, then the rights and relations as between adoptee, such natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, shall in nowise be altered.*⁵⁷ (Emphasis supplied.)

In this matter of inheritance between adopter-adoptee, adoptee-natural parents and both sets of collateral relatives, adoption law in the United States has shown some lack of uniformity. This has been caused by the interplay of the adoption statutes and the general provisions on descent and distribution. Generally speaking, the descent and distribution statutes are prior in time and are regarded as controlling by the courts unless clearly and expressly modified by the adoption laws.⁵⁸ The quoted language from the District act is clear and unambiguous. Our courts should have no difficulty in giving it literal effect. The cut-off of the adoptee from his natural parents is true to history and perfectly logical.⁵⁹

United States adoption laws are generally of high caliber and our courts have brought a very high standard of judicial competence to the interpretation of these laws and their application to concrete cases. Much still needs to be done in particular localities but the national picture is definitely encouraging.

III. RELIGIOUS BELIEF AND ADOPTION.

Few of us would question the desirability of considering the child's spiritual welfare as an element of the "best interests" formula. But, if spiritual elements are proper constituents of the formula, to what extent is a temporal judge competent to evaluate their importance? This conflict between the importance of spiritual welfare to the best interests of a child and the fact that a secular system of law lacks a suitable tribunal in which to try the matter has never been clearly acknowledged in the United States. As a consequence, the legal emphasis which should be placed on the religious beliefs of the parties in proceedings for adoption, custody and guardianship remains uncertain.

57. D.C. CODE ANN. § 16-222(a) (Supp. 1955): (Emphasis added).

58. 4 VERNIER, *op. cit. supra* note 52, at 408-12, 416-51.

59. Professor Vernier was not convinced that "complete substitution of inheritance rights from the natural to the adoptive family" was the wisest course. 4 *id.* at 412.

There are two primary reasons which suggest that religious belief should never be considered a proper issue in a civil court of the United States. The first is that most of our judges are by training and education temperamentally unsuited and professionally unqualified to assess disputed spiritual values. Our courts have no heritage of ecclesiastical precedent to turn to for guidance. We have always rejected the idea that they have fallen heir to the spiritual jurisdiction of the English ecclesiastical courts. Our judges can only look to their own individual religious beliefs for aid in deciding issues which involve spiritual elements. Such frank reliance on personal bias is foreign to our belief in an impartial judiciary.

The second, and perhaps, more fundamental reason lies in a strongly developed national sense of the impropriety of submitting religious belief to legislative or judicial determination. The overwhelming majority of United States citizens, whatever their religious persuasion, want it that way. We have, from the birth of this nation forward, insisted that our legislatures and our courts restrict their operations to matters of temporal concern.

This does not mean that we are irreligious, antireligious or even religiously neutral. On the contrary a numerical majority of Americans are adherents of an organized, established church. At this very time, a revival of religion is sweeping the United States and the world. In addition, the document which forms the cornerstone of our Government shows a keen awareness of a higher law, a divine law.⁶⁰ It is perhaps because we so jealously guard our freedom to worship as we please that we have so determinedly kept spiritual matters free from entanglement with legislatures and the courts.

It should be noted that we are not here contending that a specific constitutional limitation prohibits the evaluating of religious beliefs in legislative assemblies or court proceedings. Our contention is broader; it is simply that the spirit of our national life, our constitutions and our laws militate against such evaluation. The mere thought of legislative and judicial bodies weighing matters upon which learned theologians cannot agree is an affront to this widespread understanding.

Present Legislation.

Despite all this, some forty-three states have enacted laws which make religious belief pertinent to the judicial determination of adoption, custody and guardianship.⁶¹ In general, these statutes provide

60. The Declaration of Independence, July 19, 1776, speaks of the "Laws of Nature and of Nature's God" and of the "unalienable Rights" with which all men "are endowed by their Creator." It is signed "with a firm reliance on the protection of Divine Providence. . . ."

61. Note, *Religion as a Factor in Adoption, Guardianship and Custody*, 54 COLUM. L. REV. 376, 396-403 (1954); Note, *Religious Factors in Adoption*, 28 IND. L. J. 401, 402 (1953).

that the adopter, custodian, or guardian be of the same religious belief as the child whenever practicable.⁶² It is clear that these statutes contemplate some evaluation of the religious beliefs of the parties by the judge of the court in which the proceeding is filed. If such a statute does not contemplate some unexpressed degree of religion-evaluation it has no meaning at all.

It has been said that these statutes are legislative attempts to prevent the otherwise inevitable intrusion of the judge's personal religious bias in cases where differences of religious belief exist among those contesting for custody, or among the adopter, the adoptee and the latter's natural parents. On other occasions, they have been described as legislative findings that the temporal welfare of children is best secured if they continue to be trained in the religion in which they were previously reared. Perhaps the statutes constitute official recognition that religion is an important factor in our culture and civilization. On a less solid footing is the suggestion that these statutes recognize the church as a separate personality independent of the state.⁶³

These elements are all significant but they do not necessarily reflect the true genesis of the "religious-protection" laws. It might well be concluded that they are hesitant expressions of an inchoate legislative "feeling" that religious belief should not be excised from the "best interests" formula. Having but one way to insure consideration of this "feeling" by the courts, the legislature took that way and enacted the "feeling" into law. In this view, the "religious-protection" laws are merely directional signals indicating that religious belief, as distinguished from nonbelief, is an element to be considered with the many other elements which go to make up the "best interests" of a child. This seems most consistent with the fact that Americans are, and have long been, a God-loving people and, the equally important fact, that Americans are very reluctant to allow the law to intrude into their religious beliefs.

Judicial Interpretation.

Most courts have interpreted the statutes in the light of the thought last expressed. They have usually refused to consider religious belief as a controlling factor unless the temporal welfare of the child was equally well secured by those competing for his custody or adoption.⁶⁴ The statutory directive tips the scale only when the temporal

62. Note, *Religion as a Factor in Adoption, Guardianship and Custody*, 54 COLUM. L. REV. 376, 396-403 (1954); Note, *Religious Factors in Adoption*, 28 IND. L. J. 401, 402 (1953).

63. These suggested justifications may be found in Pfeffer, *Religion in the Upbringing of Children*, 35 B.U.L. REV. 333, 374-75 (1955), and authorities cited therein.

64. Pfeffer, *supra* note 63, at 373.

interests are in balance.⁶⁵ In all probability most courts would place exactly the same emphasis on religious belief even without statutory authority.

These decisions, although sound in principle, avoid the fundamental controversy lying dormant within these statutes. A recent Massachusetts case⁶⁶ has brought this basic controversy into sharp focus. The issues have been defined and debated, and the highest court of Massachusetts has stated its position in the clearest possible terms. We shall not here challenge the court's disposition of the constitutional issues.⁶⁷ We will concentrate on the merits and wisdom of "religious protection" by statutory or decisional law in the light of the basic considerations set out earlier in this paper.

The Massachusetts statute involved in the case referred to reads in pertinent part as follows:

In making orders for adoption, the judge *when practicable* must give custody only to persons of the same religious faith as that of the child. *In the event that there is a dispute as to the religion of said child, its religion shall be deemed to be that of its mother.*

If the court, with due regard for the religion of the child, shall nevertheless grant the petition for adoption of a child proffered by a person or persons of a religious faith or persuasion other than that of the child, the court shall state the facts which impelled it to make such a disposition and such statement shall be made part of the minutes of the proceedings.⁶⁸

Shortly after the passage of this law, the Goldmans, a Jewish couple, petitioned to adopt a pair of illegitimate three-year old twins who had been in their custody almost since birth. The natural mother of the children consented to the adoptions, in writing, on the petitions. She knew that the petitioners were Jewish and that the children would be raised in the Jewish faith. The mother was nominally a Catholic, at least she claimed to be a Catholic— and there was no evidence of record that she claimed membership in any other faith. It should be noted, however, that the children had not been baptized as Catholics and that the consent given by the mother could not in conscience be given by a Catholic.⁶⁹ In addition, the natural mother had secured a civil divorce from her husband, whom she had married before a priest, and had cohabited with another.⁷⁰ This whole course

65. *E.g.*, *Purinton v. Jamrock*, 195 Mass. 187, 199-200, 80 N.E. 802, 804-805 (1907).

66. *Petitions of Goldman*, 331 Mass. 647, 121 N.E.2d 843 (1954), *cert. denied*, 348 U.S. 942 (1955).

67. See Pfeffer, *supra* note 63, at 379-93. *But see* 43 GEORGETOWN L.J. 305 (1955).

68. MASS. ANN. LAWS c. 210, § 5B (1955).

69. AYRINHAC, MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW 293-95, 334-35 (Rev. Lydon ed. 1949); IV DAVIS, MORAL AND PASTORAL THEOLOGY 70, 214-16, 231 (6th ed. 1949); II DAVIS, MORAL AND PASTORAL THEOLOGY 72 *et seq.* (6th ed. 1949).

70. *Petitions of Goldman*, *supra* note 66, at 649, 121 N.E.2d at 844; Pfeffer, *supra* note 63, at 382.

of conduct is quite inconsistent with a sincere profession in the communion of the Catholic Church and can be considered substantial evidence of a virtual abandonment of Catholicism.

A guardian *ad litem*, appointed by the probate court, alleged that the children's religion was in "dispute" and that consequently they *must* be considered members of the mother's church. The probate court accepted this allegation as true and denied the petition on the ground of the dissimilarity between petitioners' religion and that of the unbaptized adoptees'. The Supreme Court of Massachusetts affirmed even though it found that the petitioners could provide for the best interests of the children in all other respects.⁷¹

The opinion is open to technical criticism in that it appears to treat the "when practicable" provision in a highly cavalier fashion. It disposed of this proviso on the ground that many Catholic couples had filed applications with the Catholic Charities Bureau to adopt children of this "type."⁷² The record indicates, however, that none of these applicants had ever seen the twins.

The court also ruled in passing, that, as to very young children, the religious faith of such children is the religious faith of their parents. Since the faith of the mother expressly controls in the event of a dispute, this means that in adoption proceedings, very young children are conclusively presumed to belong to the mother's church. The effect of this interpretation of the statute is to subordinate the "best interests" of very young children to the natural mother's nominal religion.⁷³ The language of the statute does not require this interpretation, and, furthermore, the interpretation seems out of harmony with the reasons which have heretofore been advanced to justify this type of legislation.

The opinion is understandable only on the basis that the court found itself in a dilemma of its own making. One horn of the dilemma was formed by the decision that the children's religion was in dispute, the other by the statutory direction that the natural mother's religion then controls. The only reasonable way out of this impasse was by determining what the mother's religion actually was at the time the petition was filed. To do this the court would have had to be prepared to determine when a Catholic is no longer in good standing in his church—a serious matter even for a Catholic theologian, an impossible matter for a layman, Catholic or non Catholic. The only other way out—and an unreasonable way—was to hold that once

71. Petitions of Goldman, *supra* note 66, at 648-51, 121 N.E.2d at 844-45.

72. Petitions of Goldman, *supra* note 66, at 650, 121 N.E.2d at 844, 845; Pfeffer, *supra* note 63, at 380.

73. Petitions of Goldman, *supra* note 66, at 652-53, 121 N.E.2d at 846; Pfeffer, *supra* note 63, at 380, 381. The Massachusetts court has since affirmed that the Massachusetts statute binds the court to give controlling effect to identity of religious faith when practicable. *Ellis v. McCoy*, 124 N.E.2d 266, 268 (Mass. 1955).

a Catholic; always a Catholic, a proposition that the Catholic Church itself would not accept without reservation. Nevertheless the court, in effect, so decided. This emphasis on religion by a secular court is distinctly improper and out of place. However, as long as religious protection statutes are couched in terms similar to the Massachusetts law, results such as this will remain possible.

The Catholic Position Analyzed.

Some Catholics have applauded the Massachusetts statute and its application. This has created an unwarranted impression that Catholic belief *requires* all Catholics to support such laws and decisions. Nothing could be further from the truth; each Catholic is free to question the wisdom and propriety of these laws as so interpreted.

Basically, a Catholic believes that his religion is the only right religion. The Catholic Church is the custodian of the law of God and obedience to that law is the only path to eternal salvation. It is mandatory, therefore, for a Catholic to seek to promote identity between this divine moral law and the secular law. Every Catholic citizen of the United States must use all lawful means at his disposal to make the secular law correspond to the divine law. The emphasis, of course, is on *lawful means*. The Catholic Church does not encourage revolution or subversion of our constitutional form of government. Its members, like all other citizens of the United States, are limited to registering their preferences and objections by voting, by running for public office and by petitioning the legislature.

Catholicism also imposes definite demands on Catholic parents. The United States Catholic will maintain that every Catholic has a moral obligation to insure the Catholic upbringing of his children. Each individual Catholic will insist on his right to this measure of control over his children and will resist, with all the strength at his command, any attempt to take this right from him.

These are fundamental premises to which all United States Catholics readily subscribe. However, our Catholics differ sharply among themselves as to the proper manner of promoting a better understanding of the law of God and of encouraging its incorporation into secular law. We note, in passing, the existence of two schools of thought.⁷⁴

The first of these takes a position which, in lay language, can be described as traditional or classical. It is beautifully simple and easily stated: The State has the obligation to recognize the Catholic Church as the true religion and to legislate in the light of Catholic teaching. Secular laws, and their judicial interpretations, are thus *per se* desirable if they foster an immediate advance of the Catholic faith.

⁷⁴ See generally, Weigel, *The Church and the Democratic State*, 27 *THOUGHT* 165 (1952).

The second school approaches the problem of Church-State relations in a significantly different manner. They first deny any obligation to change the American democratic system. They do not seek the aid of the law to advance Catholic teaching; they ask only that the law does not hinder them. In the United States the law and national policy unite to guarantee freedom to worship without hindrance. In this religiously pluralistic atmosphere, the Catholic Church has flourished and the long-range good of the Church demands that this status be preserved.

It is submitted that both schools of thought should object to the religious protection laws discussed herein. It has perhaps not been sufficiently noticed by Catholics that these measures may be two-edged swords. If, for example, under the facts of the *Goodman* case, the status of the parties had been different, all Catholics might well have united in opposing the law and the decision. Suppose the prospective adopters were Catholic, the children were baptized, the father a Catholic and the mother a non-Catholic, then even though she were to give consent to adoption by the Catholic adopters, the *Goodman* rule would call for denial of the petition and placement of the children with a non-Catholic agency. The children would thus be deprived of their Catholic heritage and training. This possibility should always be borne in mind when evaluating the religious protection statutes.

Earlier in this paper, we pointed out that most people would agree that the child's spiritual welfare is a part of his "best interests." Since this is so the law must take account of it. This the law could do in adoption, custody, and guardianship proceedings by requiring: (a) that the religion of all parties be ascertained; (b) that the natural parents be apprised that their consent to the adoption, custody or guardianship is necessary, if they have not already been deprived of their parental control by operation of law; (c) that like consent be secured from the child himself, if he has personally become a member of a particular faith and is of an age to understand and appreciate the basic tenets of that faith, e.g., ten, twelve or fourteen years of age.

The legal procedures would then be freed from the binding effect of the *Goodman* case, and, under law, neither opposition nor encouragement would be manifested toward the particular religion of any party. The secular court would then be at liberty—as it should be in a country where religious pluralism is the rule—to give the religion of all the parties the weight it deserves in determining the best interests of the adoptee.⁷⁵ In such a society no legislative act should

75. In the 1954 District of Columbia statute, discussed earlier in this paper, the matter of religious belief is drawn to the attention of the court by a requirement that the petition for adoption state the religion of the adoptee or his natural parents and the religion of the petitioner. D.C. CODE ANN. § 16-214 (Supp. 1955). This would seem to be sufficient.

ever bind a court of law to give the religion of any party conclusive effect. And it should not be possible for a court of law to treat the religion of any party in such a manner. This we understand to be consonant with intelligent Catholicism and sound citizenship in the pluralistic society of these United States. If this allows the religious bias of individual judges to enter into their deliberations—so be it! This is the lesser of two evils and it can be cured by selecting better judges.

While avoiding the danger should the *Goodman* rule operate against him, the Catholic citizen can, under the statutory scheme suggested above, fulfill his moral obligation easily through the use of private agencies. Since there are a great many Catholic adoption agencies which will place Catholic children only in Catholic homes, the Catholic citizen would thus be able to take advantage of legal procedures for adoption without compromising his religion and without advocating a "religious protection" law.

Indeed, in adoption cases, and to a somewhat lesser extent in custody and guardianship cases, the problem of religious belief is more properly considered and disposed of at the placement level. Public and private placement agencies should seek to place children in families of the same religious belief as their natural parents. Catholic placement agencies are bound by Catholic belief to place Catholic children with Catholic families.⁷⁶ The evidence is that secular and non-Catholic agencies usually try to place children in families of the same religious belief as the natural parents.⁷⁷ A law requiring the court to ascertain the religion of the parties and to obtain the consents of the natural parents and the child, as outlined above, is the maximum protection to which any religion is entitled under the law of the United States. It is also the wisest course to follow since it minimizes the evaluation of religious belief which has proven to be such an impossible and unpleasant task for our civil courts.

IV. MISCELLANY AND CONCLUSION.

Among the ancient Greeks, a symposium was a convivial meeting for drinking, conversation and intellectual entertainment. Unfortunately, symposia of this kind are now largely extinct and those which survive are restricted to greek letter fraternities and similar organizations. One wishes with the wistfulness of advancing years, that this

76. See note 69, *supra*, and accompanying text. It should be noted that there is no Catholic Canon Law of adoption. The Canons (1059, 1080) refer to adoption only with respect to the fact that it can be an impediment to valid marriage. AYRINHAC, MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW 97, 188 (Rev. Lydon ed. 1949); IV DAVIS, MORAL, AND PASTORAL THEOLOGY 114, 166 (6th ed. 1949).

77. Note, *Religious Factors in Adoption*, 28 IND. L.J. 401, 402-05 (1953). See particularly the communications quoted in footnotes 9, 24-27 inclusive of this Note.

were not so! However, *this symposium* is of the more prosaic, modern kind—a collection of articles on a single topic; in this case, the law of the family.

Our particular segment of this broad subject has been the law of adoption. As we have indicated before, much has been written, and well written, concerning the many diverse phases of adoption law.⁷⁸ We have sought, therefore, to present general observations concerning the origins, development and present status of that body of law. We have singled out, and discussed at some length, what seemed to us to be a legal problem of present importance. These we conceive to be the purposes of a symposiac article. No conversation, no drinking, only a deplorable paucity of intellectual entertainment is the ascetic fare of today's symposia!

There remains but little time or space for discursive comment upon quasi-legal matters. One such matter, inseparably fused to the purely legal side of adoption must, however, be noticed. This is the widespread traffic in infants commonly called the black market and gray market in adoptions.⁷⁹

We know that there are upwards of 90,000 petitions⁸⁰ for adoption filed in the United States each year. We also know that there are approximately 150,000 children born out of wedlock each year.⁸¹ Of all the petitions filed perhaps fifty per cent seek the adoption of children born out of wedlock.⁸² This leaves approximately 100,000 illegitimate children whose adoption has not been sought through legal channels. The great majority of these children probably remain with their parents or find their way into the families of relatives and are informally absorbed there. Many others are taken into orphanages or foundling homes and some of these eventually become adoption statistics. The evidence is that unknown thousands of children are sold each year to persons eager to have children in their families. No one knows how well these irregular adoptions work or, conversely, how much harm they do to society.

The problem is so grave that it has been the subject of congressional

78. The latest worthy compilation is an excellent symposium on the subject of adoption alone. 40 IOWA L. REV. 225-63 (1955).

79. This has commanded a great deal of attention in the popular press; see, e.g., Eliot, *Black Market Adoptions Place Risk on Babies*, *The Sunday Star*, (Washington, D.C.), Dec. 4, 1955, p. E-9, col. 1; David, *Babies for Sale*, *The American Weekly*, April 1, 1956, p. 6. Better annotated and generally more temperate comment can also be found in at least one legal periodical. Note, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L.J. 715 (1950).

80. Perlman and Wiener, *Adoption of Children, 1953: A Statistical Analysis*, 40 IOWA L. REV. 336 (1955).

81. U.S. CHILDREN'S BUREAU, DEP'T OF HEALTH, EDUCATION & WELFARE, *PROTECTING CHILDREN IN ADOPTION, REPORT OF A CONFERENCE*, WASHINGTON, D.C., June 27 and 28, 1955 at p. 8.

82. Perlman and Wiener, *supra* note 80, at 341.

investigation⁸³ and has commanded the serious concern of the conferees at a recent national conference on the protection of children.⁸⁴ Corrective measures seem to be headed in several directions simultaneously: (a) a federal law making it a federal offense to engage in interstate commercial dealing in children; (b) education of the professions which deal with some phase of adoption; (c) sharing of information among these professions; and, (d) extension of services to unmarried mothers in each community.

There is general agreement that the last three measures in the above list are desirable and that all three should be vigorously pushed. The participants at the national conference, however, took a generally unfavorable view of the enactment of a federal criminal law as a cure for the black market. More efficient administration of state laws was generally regarded as a more effective deterrent to this unsavory practice.⁸⁵ However, a federal bill of the kind objected to is currently pending in this Congress.⁸⁶

Statistical analysis also demonstrates that most adoptive children born in wedlock come from homes broken by divorce, desertion or separation.⁸⁷ This suggests again the need for renewed intensification of the search for better procedures, legal and social, to resolve problems of marital discord. Our continued failure to do this is a national scandal which is daily becoming more dangerous to our society.

Throughout this paper we have noted that courts place the greatest emphasis on the best interests of the child.⁸⁸ Two major deviations from this rule, are, however, occasionally apparent: one occurs when a blood relative is seeking to adopt the child; and the other when religion is involved. The latter we have discussed at considerable length. The former merits some attention also.

Some courts have tended to scrutinize adoptions by blood relatives of the adoptee less closely than adoptions by strangers. These tribunals have seemingly been impressed by the cliché that blood is thicker than water and that prospective adopters are almost bound to love an adoptee of their own blood. This is, of course, untrue and life in the home of a cruel, or even, indifferent relative can be very

83. *Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary*, 84th Cong., 1st Sess. (1955).

84. PROTECTING CHILDREN IN ADOPTION, *op. cit. supra* note 81, at 8-16, 18-20, 36-37.

85. PROTECTING CHILDREN IN ADOPTION, *op. cit. supra* note 81, at 36-37. See Note, *Moppets on the Market*, *supra* note 79, at 735-36.

86. S. 2281, 84th Cong., 1st Sess. (1955). The Bill makes commercial dealing with minor children in interstate commerce a crime punishable by \$10,000 fine or 5 years imprisonment, or both. An expanded version of this bill was reintroduced in the second session on January 23, 1956. S. 3021, 84th Cong., 2d Sess. (1956).

87. Perlman and Wiener, *supra* note 80, at 342.

88. A more proper allocation of emphasis is shown in the new District of Columbia statute which seeks to take into account the interests of adopter, adoptee and natural parents. D.C. CODE ANN. § 16-208 (Supp. 1955).

miserable. It has been suggested that the character and personality of the individual adopter must always be focused upon. Successful adoptions are made when the adopter is prepared and able to offer love and affection to the adoptee and the latter is prepared and able to reciprocate. It is unrealistic to believe that relatives naturally love each other. It is not even true that all parents love their children or that all children love their parents. A stranger to the adoptee may be able to offer him more affection than anyone else, and, conversely, the adoptee may offer his affection to the stranger more readily than to his natural parents or his blood relatives.⁸⁹

This calls for a greater emphasis in all cases on the emotional adjustment between adopter and adoptee and less emphasis on purely temporal welfare. It calls for close and skilled examination of the motivations of the adopter and his emotional reaction to children in general, and the adoptee in particular. The adopters will daily reflect the values of their society, their religion and the way they were brought up. These will be the greatest influences on the development of the child and will be the determining factors in the success or failure of the adoption.⁹⁰

There is little or nothing which can affirmatively be done in this area by the enactment of a law. We noted, with respect to religion, which is, in part, an emotional value, that statutory command may sometimes be positively harmful. All that can be done is to urge the judiciary to pay more heed to emotional values and to make increased use of personnel, skilled in psychology in pre-adoption investigations.

We have taken great strides forward since the days of primitive adoption. Future progress lies principally in increased community responsibility, particularly with respect to the care and handling of the unmarried mother. There are still deficiencies and lacunae in the law of adoption but substantial improvement of adoption practice can be achieved even with the law as it exists today. With an increase in community responsibility, with a greater awareness of public duty, whatever change is needed in the law will speedily follow.

89. Martire & McCandless, *Psychological Aspects of the Adoption Process*, 40 IOWA L. REV. 350, 356 (1955).

90. See, Martire and McCandless, *supra* note 89, at 350-51.

