

MODERN ADOPTION PRACTICES AND ADOPTION CONTROLS

By

Marie M. Finerty, Ph. B.

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**A Thesis submitted to the Faculty
of the
Graduate School, Marquette University
in
Partial Fulfillment of the Requirements
for the
Degree of Master of Arts**

Milwaukee, Wisconsin

April, 1939



To

Cornelia D. Heise

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INTRODUCTION

The object of this adoption study is to present a composite picture of the many elements which enter into an adoption program.

Various phases of adoption have been studied and evaluated, the social, legal, and even the moral and economic phases by reason of relationship to other problems. Nevertheless, there appear to have been few attempts to bring these factors into an integrated study.

It seemed to be desirable to bring together in one survey many different aspects of adoptions.

The history of adoption was studied by examination of previous research in that field. The philosophy of adoption, a phase in which social workers are most interested and which serves as a very definite control in the placement of children, was investigated through the medium of books, magazines, children's codes, and other expressions of leaders in the field. The legal principles of adoption, based on ruling case law, are presented. Specific court decisions in adoption cases were chosen to determine something of the application of legal and social principles involved. The study of some adoption law provisions in selected states was made by an examination of the laws of those States. Observations made by public welfare department executives of the administration of the adoption laws

were requested.

As far as could be ascertained there was no comprehensive study of the adoption policies and procedures of public and private agencies, as a group, in Milwaukee and elsewhere in the State. Who are the children being placed for adoption? Into what types of homes are they going? Are the needs of all children who probably should be placed for adoption, being met in that way? These were some of the questions which deserved consideration and which could be answered only by the agencies themselves.

This thesis attempts to bring together these phases of adoption and to present them as an integrated whole.

The writer wishes to express her sincere appreciation to Dr. Paul Mundie of Marquette University, Miss Cornelia D. Heise of the Children's Division, Department of Outdoor Relief of Milwaukee County, Miss Mary Weaver of the Juvenile Department, State Board of Control of Wisconsin, Miss Marie Rohr of the Milwaukee County Home for Children, formerly with the State Public School at Sparta, Miss Evelyn Smith of the Wisconsin Children's Home Society, Miss Evelyn Murphy of the Catholic Social Welfare Bureau, and Mrs. Nelle Lane Gardner of the Children's Service Association, for their assistance and co-operation in the preparation of this thesis.

CHAPTER I

BRIEF HISTORY OF ADOPTIONS

Adoption is a practice of very great antiquity.

"The adoption of children began when the family became the unit of social life. The custom, instituted by primitive peoples, has been continued by those of widely different social, psychological and religious outlook, until the practice to-day is a part of the culture of almost every civilized nation."¹

"In the very earliest social life of which we have any knowledge the rites of adoption included weird and grotesque simulation of birth. These rites have been carried over into modern times and are even in vogue to-day among the Bosnian Turks and in Bulgaria. Particularly among people who embrace the religion of ancestor worship the institution of adoption has been considered of prime importance."²

Adoption appears to have been known to the Egyptians, Assyrians, Greeks, and Ancient Germans, and among the Hebrews the practice, although probably not recognized by their system of jurisprudence, was undoubtedly well-known.³

"From the earliest times to the present, official sanction has been required to give legal effect to adoption. The advantages of a legalized procedure for adoption were

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1. Gallagher, Eleanor, The Adopted Child, p. 19.
 2. Ibid., p. 20.
 3. Corpus Juris Secundum, "Adoption of Children," p. 370.

recognized in the earliest codification of laws on record."⁴

"The Babylonian Code reveals that the adoption of children was in common practice 4,000 years ago."⁵

The Babylonian Code of Hammurabi, compiled from 2285 to 2242 B. C., provided that "if a man has taken a young child to sonship and has reared him up, no one has any claim against that nursling." "If an artisan has taken a son to bring him up and has caused him to learn his handicraft, no one has any claim."⁶

"Adoption took root early in Egypt, and reference is made to it in the Book of Exodus. Other instances of Biblical adoption are those of Moses by Pharaoh's daughter, and of Esther by Mordecai. Paul, a lawyer profoundly instructed in Hebrew jurisprudence, assumed the doctrine to be well known to his readers, for no less than five times in his Epistles he uses the term 'adoption' to denote sonship and to illustrate matters of faith."⁷

"In Rome, since the religious headship of the family and the inheritance of property passed from father to son, the motive recognized by the law providing for adoption was the desire for an heir who would promote or continue the prestige of the family. The abstract rule was

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4. Gallagher, Eleanor, op. cit., p. 20.
 5. Towle, Charlotte, "The Evaluation of Homes in Preparation for Child-Placements," Mental Hygiene, XI (July, 1927) p. 460.
 6. Gallagher, Eleanor, op. cit., p. 20.
 7. Ibid.

that adoption should imitate nature, and in consequence the civil law required that the adopting parent must be at least fifteen years older than the child adopted and must not be a relative within the prescribed limits of consanguinity."⁸

This relationship was originally established by the authority of the people assembled in the Comita. Later, an imperial rescript was necessary to make the relationship one recognized under the law.

This idea of the paternal power is inconsistent with the fundamental principles of the common law. According to that law, a father's legal duty toward his child ceases upon the child's reaching the age of majority. After that the duties emanating from the relation of parent to child are moral, not legal, except in so far as specific legal duties have been created by statute as in the case of the Poor law. In the second place, under the Roman law the child had a property interest in his father's estate and could not be disinherited.⁹

Thus the civil law has recognized adoption proceedings from its earliest days, even before the time of Justinian, who reduced the system to a code which simplified the

8. Abbott, Grace, "Adoption," Encyclopaedia of Social Sciences, p. 459.

9. Nims, Eleanor, The Illinois Adoption Law and Its Administration, p. 9.

proceeding, and from which modern legislation on the subject has derived many of its chief features.¹⁰

In the time of Justinian a child (or man) took the name of the person who adopted him. He agreed to bear arms in behalf of his adopted father. It was through adoption that the Emperor Germanicus received his crown for he was adopted by Tiberius, by command of Augustus Caesar, and thereby became the grandson of Augustus himself.¹¹

Adoption was carefully considered in the preparation of the Napoleonic Code, and with limitations the Roman provisions were followed.¹²

Adoption was known in China and Japan.

According to the old Chinese custom which still prevails, when a person is childless, the eldest son of his nearest collateral relatives by blood becomes his son.¹³

"There is clear evidence that adoption was practiced among the ancient Germans. It was accompanied by military ceremonies and the placement of a weapon in the hand of the adopted son."¹⁴

In France the usage was lost after the first line of Kings, but subsequently was reestablished and remains today sanctioned by the provisions of the civil code.

10. Corpus Juris Secundum, p. 370.

11. Gallagher, Eleanor, op. cit., p. 21.

12. Abbott, Grace, op. cit., p. 459.

13. Gallagher, Eleanor, op. cit., p. 24.

14. Ibid., p. 22.

Adoption was also an incident of early Spanish law and was incorporated in the Code Napoleon.¹⁵

"Among the Anglo-Saxon tribes adoption prevailed but the practice disappeared in England.

Strange as it may seem, the old common law of England did not recognize adoption."¹⁶

"In English law the child had no absolute right to succeed to any part of the parent's property, but could be disinherited by will in favor of either relatives or strangers. It was possible, therefore, without resort to adoption for family ties to be continued and family estates kept together when there was no direct male descendant. Provision for care of dependent children by means of adoption was probably delayed by the development of the relation of master and apprentice. By means of this arrangement orphans and children of indigent parents could be bound out, while the right of the master and of the parent under the relationship were defined by law."¹⁷

In England, until January 1, 1927, it was impossible for a parent to surrender his rights in respect to his child through any such legal process. Under the statute which became effective in 1927, the jurisdiction is in the high court or, at the option of the petitioner, in the county court, or court of summary jurisdiction in the area in which the applicant or the infant resides. And, under the authority granted by the law, the Lord Chancellor may make rules providing for the hearing and determination of adoption orders otherwise than in open court or in the juvenile

15. Ibid., p. 21.

16. Ibid., p. 26.

17. Abbott, Grace, op. cit., p. 460.

court. The statute provides that a person at least twenty-five years of age and twenty-one years older than the infant can, with the consent of the spouse, adopt an infant. The consent of the parent or guardian must be obtained, except in cases in which the child has for more than two years been supported and cared for by the applicant as his own, in which case parental consent may be dispensed with, and the court must be satisfied that the nature of the order is understood by the parties and that the order will be for the welfare of the child. The court may, if uncertain, postpone the determination and make a temporary order giving the applicant custody of the child for a probationary period of not over two years. An "adopted-children" register is set up by the registrar-general, and direction that an entry be made in this register is an item in an adoption order. When an adopted child is identified with a child whose birth registration is already recorded, the word "adopted" is added to the birth record and the date of birth to the adoption registry. An index of the adopted-children register is to be open, and certified copies of entries are to be supplied as in the case of copies of birth and death registration.¹⁸

"In England, adopters who wish their adopted child to inherit property must make a will including and naming the child as legatee, and any benefit then passing to this child

18. Nims, Eleanor, op. cit., p. 8.

would be either exempt from or be liable only to the lowest rate of legacy or succession duty chargeable. In the event of no will or settlement in the child's favor, the child gets nothing. It is therefore urged upon the adopters that such a document be executed at the time of adoption."¹⁹

Adoption customs among American Indians are well illustrated by the fact that there are practically no orphan children among many tribes. When a child is orphaned or abandoned he is immediately adopted by other members of the same tribe.²⁰

"The first adoption law in the United States was enacted by Massachusetts in 1851. This first law, like other early laws, simply provided a means whereby a child could become a legal member of a family not his own; rights of inheritance were assured, but no attention was paid to the social significance of adoptions. Many of these early laws have since been amended, sometimes to the advantage of the child and sometimes not."²¹

With local modifications, the Massachusetts statute became the model for the laws which followed in other states; in Illinois, for example, in 1867, and in Kansas in 1868. Pennsylvania's legislature acted for the first time in 1855 and three years later Wisconsin provided a basis for adoptions in that state.

"Although the legal basis of the Institution of adoption has long been delayed,

19. Gallagher, Eleanor, op. cit., p. 27.

20. Ibid.

21. Hanna, Agnes K., "Some Problems of Adoption," The Child, Published by the Children's Bureau, Vol. I, No. 6, Dec. 1936, p. 6.

adoption statutes have been enacted throughout the country and to-day every state has made possible by statute the creation by adoption of the relation of parent and child.

The tendency of American law has been to enlarge the rights of the child and the measure of protection afforded him against ill-usage, exploitation and conditions affecting his health, morals and general well-being. While the laws of the different states and the judicial decisions interpreting them differ in detail, the following general principle is now quite widely accepted:

'The whole aim of protection in childhood is to see to it that the helpless and immature shall be nourished, trained, guided, that the infant grows into an adult capable of undertaking to solve his own problems and to be an independent contributing member of society.'²²

22. Gallagher, Eleanor, op. cit., p. 28.

CHAPTER II
GENERAL LEGAL PRINCIPLES

A. Ruling Case Law on Adoption.

I. Definition and Nature of Proceedings.

Adoption, in legal contemplation, is the act by which the parties thereto establish the relationship of parent and child between persons not so related by nature, and which, in many respects severs the natural relations existing between the child and its parents, although in a narrower sense it is restricted to the act of the person taking the child. Adoption also has a popular meaning apart from its use in the law. While generally the term has reference to some form of legal procedure, in common use it is frequently applied to taking a child, not one's own, into the family and rearing it.

Adoption in the Roman law was an act by which a person undertook to rear the child of another, and appoint such child as his heir.¹

"Roman adoption, or the act by which the relations of paternity and filiation are recognized as legally existing between persons not so related by nature, derived its original

1. Corpus Juris Secundum, "Adoption of Children," p. 367.

significance mainly from the existence of the patria potestas, which was peculiar to Roman citizenship, and involved, as between parent and child, relations of paternity and filiation peculiar to Roman law. A child born in lawful marriage was in the power of its father. 'That power includes not only the child born in wedlock, but also the child born to his son, and the one born to his son; that is, your son, grandson, great-grandson, and other descendants, are equally in your power.' (Just. I, ix, pp. 1-3)

"Roman adoption, until the legislation of Justinian, was the act by which an ascendant transferred his descendant, who was in his power, to the power of another descendant and thereupon the person so transferred was in the power of the adopting ascendant, as well as his actual children. The act was accomplished through prescribed formalities under authority of a magistrate. A person not in the power of an ascendant, but free from power, might be adopted by the form of adoption called 'arrogation.' In such case the adopter formally consented that the one to be adopted should become his lawful son, and the one to be adopted consented thereto. This change of relationship was accomplished originally by the authority of the people assembled in the Comitia, and later was established by an imperial rescript. Under either form the person adopted became, in early Roman law, subject to the patria potestas which a Roman father possessed over his descendants." (Just. Inst. I, tit. 2; Code VIII, 48, 10) Appeal of Woodward, 70A. 453. 457, 81 Conn. 152.

Adoption is a relation artificially created, and has in it some points not perfectly corresponding with the natural relations. The purpose of an adoption is to change the status of the child in relation to its adoptive parent. Irrespective of the fact that the statutory procedure for adoption requires, in many instances, the consent of the

parties, although a deed or declaration of adoption may be contractual in nature, the relation created by adoption is a statutory status, not a contractual relation, and, in the absence of statutory authority, it is not within the power of an individual to create the relation of parent and child by adoption. As adoption is a statutory status unknown to common law, adoption can be accomplished only in accordance with the statute, although in Missouri, this rule is subject to certain qualifications.² Although in this jurisdiction (Missouri) it has been recognized that adoption statutes, like all other statutes in derogation of the common law, should receive a strict construction, it has also been held that adoption statutes should be construed most favorably to the child, and not to defeat the intent of the law.

"While with us it is a statutory right, it is not to be considered as an infringement upon the natural rights of individuals, but must be regarded, like the statutes which regulate the distribution of the estates of individuals, as a declaration of governmental policy in a matter of purely legislative cognizance, to be construed with reference to the intention, object, and provision of the Legislature."³

Although it has been indicated that an adoption cannot be done legally in any way other than the statutory procedure, and that there must be a substantial compliance with all the

2. Ibid., p. 368.

3. Holloway v. Jones, (Mo.) 246 S.W. 587, 590.

essential requirements of the statute, it must be taken as a well settled rule in this jurisdiction that the rule of strict construction is not extended to the act of adoption itself. Accordingly, the statutory method of adoption is considered as merely permissive and does not prevent persons from adopting children in any lawful manner, and under the doctrine that two or more parties who are competent to contract may enter into any agreement or contract they see fit, if it is not in violation of morality and good conscience, an adoption may be accomplished by a fully executed, in the sense that the child was taken into the family and reared, contract of adoption, irrespective of the fact that the statutory provision for adoption was not followed. Accordingly, in this jurisdiction--irrespective of the fact that the statutory provisions are specific, such statutory provisions do not oust a court of equity of jurisdiction to determine the relation existing between the parties.⁴

In view of the fact that adoption is a statutory right, the status of the adopted infant toward the parent, as well as the latter toward the child, is necessarily governed by the statute of the forum creating the right of adoption, unless the status created is repugnant to the laws of the forum. In Missouri, where, as has been pointed out, the court will decree an adoption although the statutory procedure has not been followed, if the contract of adoption

4. Corpus Juris Secundum, p. 377.

has been fully performed on the part of the child, it has been held, where the parties agreed in another jurisdiction to adopt a child but failed to follow the statutory procedure therefor, and then subsequently moved into Missouri where the child performed its part of the agreement, at least in so far as property within the jurisdiction was concerned, that the court would apply the Missouri rule and declare the child to have the status of an adopted child.

The general rule is that, when a contract to adopt is made in one State to be performed in another, the essential validity of the contract is governed by the law of the place of performance.⁵

The extraterritorial law of adoption follows that of marriage. American law in force in extraterritorial countries provides for adoption and contains no restriction to American citizens. Hence it is held that, where the other requirements of the law are met, an American may adopt an alien child.⁶

As adoption of children lies within the control of the legislature, the legislature may provide for the adoption of a child by legislative act. In such an enactment a mere mistake as to the name of the child to be adopted is immaterial, where the identity of the child is clearly shown. A contract of adoption which is invalid because of the

5. Ibid., pp. 371-2.

6. Ibid., p. 372.

statute authorizing adoption may become a binding agreement upon the enactment of a legislative act of adoption validating the adoption. The legislative act itself is not the complete contract of the parties but is the expression of the final assent of the parties to the proposal and agreements, which are as much a part of the integral agreement as is the act.⁷

II. Statutory Provisions.

Since the subject of adoption has always been in the hands of the legislature, statutes relating to adoption have been uniformly held to be constitutional, except where they do not comply with a constitutional provision requiring that the title of a statute shall set forth its object, or where they interfere with vested rights, or deny due process, or abridge privileges and immunities of citizens.

Statutes which provide that the consent of the natural parent is not necessary if the best interest of the child requires adoption are constitutional, but the legislature has no power to authorize one person, whether acting from motives of charity, benevolence, or caprice, to transfer to himself at his own election the custody and control of the children of another. A statute by which a parent or other natural guardian could be deprived of his child without notice or opportunity to be heard would, without doubt,

7. Ibid., p. 372.

be held void as an unconstitutional deprivation of right without due process of law. It does not follow, however, that the legislature does not have power to deprive a parent, without his consent, of his right of custody and control of the child under all circumstances. Accordingly, the state in its role of protector of its inhabitants may, where the parent's conduct, such as habitual drunkenness, or his abandonment of the child, justifies the taking of the custody and control of the child away from him, properly enact legislation providing under such circumstances for the adoption of the child without the consent of its natural parent.⁸

A statute which fails to require notice to be given a parent who is living separate and apart from the parent having care, custody, and control of the child is not invalid, but a failure to give notice to parents who have not relinquished their right of care and control of their child is unconstitutional as a violation of the constitutional rights secured to the individual in his family relationship. The failure of the statute to require the summoning of a child under twelve as a party to a proceeding for his adoption does not render the statute invalid.⁹

"While the rights of the natural parents should always have full consideration, and be

8. Ibid., p. 373.

9. Ibid., p. 374.

carefully guarded and protected, the rights and interests of the child are paramount, and, where there is a conflict between the rights of the parent and the interests of the child, the state may act by and through appropriate legislation. Many and various circumstances may arise where the state may exercise jurisdiction over the child, not only for its interests and protection, but for the welfare of the community and state as well. Imposition of punishment upon parents, or deprivation of their rights, is not the purpose of the juvenile court acts, including adoption statutes, but rather the promotion of the welfare of the child. Practically all the states have statutes providing for the adoption of children, and in many of them the required consent is limited to the parent to whom a court of competent jurisdiction, as in some divorce or other proceeding, awarded the custody of such child. Our statute (Ohio) provides that the consent of the parent to whom custody has been awarded in a divorce proceeding is sufficient, if the court which entered the decree approves the same. The constitutionality of such statutory provisions has been sustained whenever challenged."¹⁰

Special acts of adoption are held constitutional in the absence of invalidating constitutional provisions.

A special act of adoption giving the child the right to inherit from the adopting parents does not violate a constitutional provision that no freeman shall be deprived of life, liberty, or property without due process of law, as it does not deprive the adopting parent of any property but merely provides for the descent of his property which is a valid exercise of legislative power.¹¹

Although, generally, adoption statutes should receive

10. State v. Robinson, 165 N. E. 574, 576, 120 Ohio St. 91

11. Corpus Juris Secundum, p. 374.

a strict construction, there is a modern tendency to construe such statutes so as to effect their evident purpose and to favor the child.

There appears to be a conflict of authority as to whether adoption statutes should receive a strict or liberal construction. This apparent conflict, however, may be explained by the tendency of the courts to construe adoption statutes to favor the child.¹²

For this reason the person who is making the contest and for what purpose it is made are important matters to be considered on the question whether a strict or liberal construction should be given.

As adoption is in derogation of the common law, generally speaking it may be said that adoptive statutes should receive a strict construction, particularly with respect to the jurisdiction of the court, or where the effect of the adoption would be to deprive a natural parent of the possession of his child. Also, a strict construction will be used when an attempt is made to deprive the child of its rights arising from its natural parents or relatives and nothing will be assumed, presumed, or inferred to reach that result.

While statutes authorizing adoption are in derogation of the common law, and for this reason are, in some respects, to be strictly construed, according to the more

12. Ibid., p. 374.

recent tendency, their construction cannot be narrowed so closely as to defeat the legislative intent which may be made obvious by their terms, and by the mischief to be remedied by their enactment.¹³

"The adoption of friendless, dependent, or orphan children tends to conserve the best interests of society and the state. All states of the Union now have adoption statutes. The right of adoption is not only beneficial to those immediately concerned, but likewise to the public. It is not the duty of the courts to bring the judicial microscope to bear upon such a case in order that every slight defect may be magnified, so that a reason may be found for declaring invalid the proceedings under a beneficent statute of this character. Courts are more inclined to abandon the old rule of strict construction, and to place a fair and reasonable construction on adoption statutes to the end that the adoption may be upheld and the assumed relationship sustained. There must be a substantial compliance with the provisions of statutes conferring jurisdiction, but the construction of such statutes is not to be so narrow or technical as to defeat the intention of the acts, or the beneficial results, where all material provisions of the statutes have been complied with."¹⁴

"Adoption statutes are construed liberally, to the end that the adoption may be upheld and the assumed relationship sustained."¹⁵

Accordingly, as the main purpose of adoption statutes is the promotion of the welfare of children, bereft of the

13. Ibid., p. 374.

14. Hopkins v. Gifford, 141 N.E. 178, 180, 309. Ill. 363, p. 375.

15. Ashlock v. Ashlock, 195 N.E. 657, 360, Ill. 115. P. 375.

benefits of the home and care of their real parents, wherever possible without doing violence to the terms of the statute, such a construction should be given adoption laws as will sustain, rather than defeat, this purpose.¹⁶

Although, as against the interest of the child, the proceedings must be strictly in accordance with the statute, there is a tendency on the part of the courts, however, where the adoption has been fully consummated, to construe the statute with a reasonable degree of liberality, to the end that the assumed relationship and the intention of the parties be upheld, particularly as against strangers to the proceedings collaterally attacking them. Also it has been held in some cases that such statutes should be given a liberal construction in order to support an adoption which was for the benefit of the adopted child, when the jurisdiction of the court has been later attacked on the ground that some statutory provision has not been precisely complied with.¹⁷

"While this court (Iowa) has never held an agreement of adoption to be enforceable as such where there was a failure to comply substantially with the essential provisions of the adoption statutes, our later decisions unmistakably disclose a tendency to construe the requirements of these statutes liberally, in order to carry out the intents of the parties and to protect the interests of a child who has been the subject of an attempted adoption

16. Corpus Juris Secundum, p. 375.

17. Ibid., p. 376.

and who has in every way complied with the adoption agreement and fulfilled the duties of an adopted child, as against collateral heirs whose only claim to the property of the adopting parents is that of blood relationship."¹⁸

Although the courts tend to construe adoption statutes to favor the child, it is also true, due to the respect paid the relationship of parents and child, that every intendment should be in favor of the claim of the parent, and where the statute is open to construction and interpretation, it should be construed in support of a natural parent who does not consent to the adoption.¹⁹

Generally speaking, as adoption proceedings are statutory, the statute must be strictly followed, particularly as to notice to the natural parents, or, if permissible under the statute, a finding that the child has been abandoned. As has been pointed out, however, there is a modern tendency to favor the child in the construction of adoption statutes, and in line with this view it has been held that a substantial compliance with the essential requirements of the statute is sufficient.²⁰

III. Persons Who May Adopt.

The adoptive parent or parents must be of the age

18. Shaw v. Scott, (Iowa) 252 N. W. 257, 243.

19. Corpus Juris Secundum, p. 376.

20. Ibid., p. 378.

prescribed by statute, but, in the absence of a provision to the contrary in the adoption statute, an advanced age will not disqualify. Corporations may not adopt under a statute limiting the right to natural persons, and under other statutes only persons who are, or may become, citizens may adopt, although under appropriate statutory provision an alien may adopt a citizen, and the child's right of inheritance in the adoptive parent's country is not essential to a valid adoption in the forum.

"Adoption of a New York child by citizens of Ontario, Canada, would create a status not open to collateral attack." (In re Voluntary Adoption of Minor, 226, N.Y.S. 445, 130. Misc. 793.)²¹

While it would be inconsistent with the general scope and purpose of the adoptive statute to permit two or more persons representing different families jointly or concurrently to adopt the same child, ordinarily a husband and wife may jointly adopt a child, even though the statute makes no provision for such a joint form of adoption and even though the disability of the wife to make a contract has not been removed by statute.

"It would be inconsistent with the general scope and purpose of this statute to permit two or more persons representing different families to jointly or concurrently adopt the same child, but the objection, in our estimation, does not apply to joint proceedings by husband and wife

21. Ibid., p. 379.

for the adoption of a child. On the contrary, the better and more reasonable construction appears to be that a wife may unite with her husband in such proceeding as, from the very nature of things, the interests of the entire family are necessarily involved in the object sought to be accomplished by it. This is not only no consistency, but a manifest propriety, in the wife thus uniting with her husband, as, by doing so, the adopted child is made to assume, in a general sense, the same position in the family which it would occupy if it were the natural child of both born in lawful wedlock."²²

Although there is contrary authority, ordinarily, in the absence of any express statutory provision to the contrary, either spouse may adopt a child without the other joining, in which case the adoption creates no relation, rights, or duties as between the child and the spouse who does not join. Where, however, consent of the other spouse is required by statute, a married person may not adopt a child without the consent of the other spouse, and, under such statutes, it is doubtful if one spouse alone can adopt where the other is insane. Also, under a statute providing that (1) a single person, or (2) a husband and wife, may adopt a child, a married woman who has obtained a decree nisi of divorce, but which has not become absolute, is not entitled to adopt. Under specific provisions of the statute, a married woman legally separated from her husband may adopt a child without his consent, and, under

22. *Krug v. Davis*, 87 Ind. 590-594.

appropriate statutory provision, a married woman may adopt a child although if they are not separated his consent may be necessary; under such statutes an adoption by the wife does not make the child an adopted child of the husband.²³

In the absence of statutory provision to the contrary, an unmarried person may adopt a child.

In the absence of a statute to the contrary, a tutor or guardian may adopt his ward. Accordingly, under a statute allowing adoption to be had with the consent of the guardian, the fact that the guardian who consents is the person who makes the adoption, and that no guardian ad litem is appointed, does not render the decree of adoption void.

Nonresidents are disqualified as adoptive parents under a statute limiting the right to residents of the state. Under such statutes it has been held in some states that residents of other states temporarily resident within the state may adopt, while in other jurisdictions it is held that they may not. Adoption by non residents is permitted under statutes omitting the residence requirements and under statutes requiring appearance of nonresident petitioners in adoption proceedings.²⁴

23. Corpus Juris Secundum, pp. 379-80.

24. Ibid., p. 380.

IV. Persons Who May Be Adopted.

A statute which limits persons who may be adopted to minors excludes adults, and an adult, within the meaning of the rule, is a person not a minor at the time the adoption becomes effective. Statutes providing for adoption of a "child" are construed in some jurisdictions as limited to the adoption of minors even where a change has been made in the statute from "minor" to "child," but in most states such statutes are construed to permit adoption of adults. Of course, adults may be adopted under express statutory procedure therefor, and even in a state where adults may not be adopted under the general statute, adoption of an adult may be adopted by special legislative act. A statute which authorizes adoption of majors without providing the means of effecting it is defective and can have no operation.

"Where the only procedure for adoption is under the title of minors, it cannot apply to the adoption of majors as such would be in violation of a state constitutional provision requiring the object of every act to be expressed in the title."²⁵

The fact that an adult is married is no obstacle to his adoption under a statute permitting adoption of adults.

In the absence of statutory exclusion a child with living parents may be adopted, and such is the necessary

25. Succession of Pizzati, 75 So. 498, 141 La. 645.)

implication where the statute provides for the transfer of parental authority from natural to adoptive parents.

A child whose parents are unknown may be adopted under a statute requiring consent of the parents and further providing for consent by the guardian ad litem as a substitute therefor, and a child abandoned at birth may be adopted under a statute authorizing adoption of "any minor."

In the absence of a previous severance of the parental relationship as a matter of law, a legitimate child cannot be adopted by its own parent. Under some laws it is held that a person may adopt his own grandchild.

Under a special legislative act passed for that purpose an illegitimate child may be the subject of adoption by his father, and, under a statutory provision that any person may adopt another as his child except those illegitimate children whom the law prohibits him from acknowledging, and under a further statutory provision that a natural father or mother shall have the power to legitimate his or her natural children only when they are offspring of persons who at the time of conception could have contracted marriage, it has been held that a father might adopt his illegitimate child if at the time of its conception he could have legally contracted marriage with its mother, notwithstanding at the time of adoption such a marriage would have been illegal.

Under appropriate statutory provision the state may create the status of adoption in the case of an infant

actually within its limits, even though domiciled with the natural parents in another state, or born in another country and unnaturalized.

In the absence of statutory prohibition, the fact that the adopting parent and adopted child are of different races is no obstacle to adoption.²⁶

V. Consent of Parties.

Consent of parties to an adoption, where required by statute, is a jurisdictional fact and without it a valid order of adoption cannot be made; nor may an order of adoption, void for want of consent, be validated by failure of the parties to object, or even by consent subsequently given, especially where property rights of others would be affected thereby.

Necessity of consent by the adoptive parent depends on the terms of the statute. Where required, he must sign a consent and have the consent of the other spouse. In the absence of a statutory requirement for such, the consent of the other spouse is not required, and where adoption creates merely a right to inherit property, a wife having power to dispose of her own property by will may adopt a child without her husband's consent.

A judgment of adoption is not void or voidable because

26. Corpus Juris Secundum, p. 382.

of the sole fact that the adoptive parent was unsound in mind at the time.²⁷

"It is settled that the remedy of a person who asserts that an order directing the adoption of a child is invalid, because of the mental incapacity of the adoptive father, is in equity; that the judgment is not void or voidable because of the sole fact that the adoptive parent was of unsound mind at the time. It will only be set aside when it is affirmatively alleged and shown that there was fraud actual or implied, affecting the action of the adopting parent or the decision of the court."²⁸

In the absence of statutory requirement, consent of the child is not necessary. Where, by statute, the consent of the child to be adopted, if the child is over the prescribed age, is necessary, such consent must be given, and, while presumed in the absence of dissent, if proved not to have been given the adoption is void.

Ordinarily the consent of the natural parents, who have done nothing to forfeit their right and custody of the child, to the adoption is essential, and an act of adoption without the required consent is null and void and without effect.²⁹

"Where an order of adoption did not show that the necessary consent was obtained, but only that the child was a neglected child and that the petitioners were fit people to have care

27. Ibid., p. 382.

28. Hunter v. Bradshaw, (Ind.) 198 N. E. 73.

29. Corpus Juris Secundum, p. 383.

and custody of it, it was invalid, and in habeas corpus proceedings it will have the effect only of awarding care and custody to the purported adoptive parent."³⁰

While the right of the natural parents to the custody of their children is not a proprietary right in the same sense as if the child were a chattel, it has ever been regarded, even in primitive civilization, as one of the highest of natural rights, and the state cannot interfere with this right simply to better the moral and temporal welfare of the child as against an unoffending parent. Although there are some decisions which apparently grant or deny the adoption solely on the ground of the child's welfare, it must be noticed that in every case where a parent's protest to the adoption is unavailing, that parent has been guilty of conduct which would make it undesirable for such parent to have the care and custody of the child, and the welfare of the child to be promoted consisted in something more than mere pecuniary advantage.

"Unless the requisite consents declared by the act of assembly to be necessary are obtained, or there is a specific finding that both the father and the mother have abandoned them, a decree of adoption cannot be entered. The welfare of the child is not sufficient ground for the decree of adoption, unless based on the necessary consent of the adoption, or on the distinct finding that the parent or parents not consenting have abandoned the children. The fact that the adoption asked for may

30. Bailey v. Kenagy, 144 P. 636, 16, Ariz. 272, p. 383.

be advantageous to the children and for their material welfare is not to be considered by the court until the necessary prerequisites for such action exist."³¹

It is not to be understood, however, that a natural parent's consent to the adoption is necessary under all circumstances. This is not the case, and it is usually provided for by statute that the consent of parents guilty of certain conduct, or under certain circumstances, is not necessary to the adoption. Where certain facts obviate the necessity of the parent's consent, the existence of these facts must be shown. In some states, where the statute makes no reference to the consent of the natural parent, their consent is not required. Where the adoptive proceedings are purely unilateral, and where the consent of the natural parents is neither required nor contemplated, such consent, of course, need not be obtained. It should be noticed, however, that in these cases although adoption was upheld without a showing of consent on part of the natural parent, that in none was an adoption granted over the protest of a natural parent who had not been guilty of conduct warranting the taking of the child from the care and custody of such parent.

Where a parent is insane and can neither give consent to the adoption nor be guilty of such conduct as to dispense

31. (In re Sulewski, 173A. 747, 749, 113 Pa. Super. 301.)
p. 324.

with the necessity of consent, in the absence of a statute to the contrary, an adoption may not be had. Accordingly, it has been held that a father's act of adoption of a minor child, not signed by, nor in behalf of, its insane mother, was void as to her in the absence of evidence that her right to the custody after recovery had been cut off by compliance with a statute. However, under appropriate statutory provision, the consent of a natural parent who has been adjudicated insane is not necessary to the adoption.³²

A statute providing that the child's parents, if living, shall give consent to the adoption, or, if both parents be dead, or both have abandoned the child, then such consent shall be given by the mayor of the city, or the clerk of the district court, has been held not to authorize an adoption by a stranger or collateral relative over the objections and without the consent, of the grandparents of an orphaned child who have taken it into their home and properly cared for it.³³

Where the adoption proceedings had were void for lack of consent of the natural parents, the parents cannot subsequently confer jurisdiction on the court and validate the proceedings by giving their consent to the adoption.³⁴

In the absence of statutory provision to the contrary, the fact that persons had notice of, and participated in,

32. Corpus Juris Secundum, p. 384.

33. Ibid., p. 385.

34. Ibid., p. 385.

proceedings to commit the child to a state school as dependent cannot be substituted for their required written consent to the adoption.

Under appropriate statutory provision, a giving up in writing of a child for the purpose of adoption, to a charitable institution incorporated by law, will operate as a consent to any adoption subsequently approved by such institution, but, under a statute requiring an order of court approving the placing of the child by such an institution, in the absence of an approving court order, the placing of the child in a charitable institution does not dispense with the necessity of the natural parents' consent to the adoption. Also, where the consent required by the statute is consent to the particular adoption, a consent given to an orphanage to place the child in a good home "for adoption" is not a consent to an adoption by the persons designated by the orphanage.³⁵

In the absence of contrary statutory provision, the adoption of a child without its parents' consent cannot be based on the sole ground that the parents are unknown, although under appropriate statutory provision, where the residence of the parent is unknown, the consent of the parent to the adoption may be unnecessary.³⁶

35. Ibid., p. 385.

36. Ibid., p. 385.

The requirements as to consent, if the statute is mandatory in terms, must be strictly complied with; but it has been held under other statutes, particularly where they are liberally construed, that, where there has been a substantial compliance, mere irregularities may be disregarded by the court.

While mere silence with regard to an act of adoption cannot ordinarily be construed to be an acquiescence therein or a consent thereto, where the statute does not require that the consent of the natural parents of a child to its adoption be in writing, it has been held to be sufficient if such parent is present in court at the hearing of the petition for adoption, and makes no objection thereto.

Consent may be withdrawn at any time before adoption, even though given in writing, and accompanied by transfer of the custody of the child, and even though the natural parent had abandoned the child; and an adoption based upon a consent that has been withdrawn is void.³⁷

Consent of the natural parents to the adoption of an adult is not required.

Ordinarily, under the adoption statutes, the adoption of an illegitimate child requires the consent of the mother only; nor is the consent of the mother rendered unnecessary by the father's recognition of the child, nor the adoption invalidated by the fact that her consent was given when she

37. Ibid., p. 386.

was a minor.³⁸

"Where the marriage of a father was bigamous, his consent is not necessary to the adoption of a child of such marriage by persons who were acting with consent of the mother."³⁹

Adoption of a child abandoned by one or both of its parents does not require, under the statutes generally, the consent of the abandoning parent or parents, but the consent of the parent who has not abandoned the child is still a prerequisite before an adoption can be had. Likewise, where one of the parents has abandoned the child, the consent of the parent who is not guilty of abandonment is sufficient to support the adoption, without first securing a divorce from the abandoning parent.

To dispense with the necessity of consent, the abandonment must be shown to have existed at the time of adoption, and to have continued for the length of time prior thereto which the statute prescribes.

The rule applies in the absence of evidence of repentance and resumption of care and support of the child, and although opportunity for repentance may be given in the exercise of judicial discretion it should be based upon extenuating circumstances appearing in the record.

The legislature has wide discretion in determining the acts or conduct of the parent which shall dispense with the

38. *Ibid.*, p. 387.

39. *In re Mac Lean*, 179 N. Y. S. 182, 109 Misc. 479.

necessity of his consent to adoptive proceedings. Ordinarily, abandonment by a parent, to justify in law the adoption of his child by a stranger without his consent, is conduct which evinces a settled purpose to forego all parental duties continued for a prescribed period of time when the statute so provides.⁴⁰

"The statutory requirement of abandonment does not necessarily require the absolute desertion of the child, but it is satisfied whenever the parent shows a settled purpose to forego all parental duties and relinquish all parental claims to the child."⁴¹

"Where a father deserted his wife and infant child, and concealed his whereabouts, he was guilty of 'abandonment,' which means neglect and refusal to perform the natural and legal obligations of care and support, etc., a parent owes his child; and hence his consent was not necessary to the adoption of the infant, the mother's consent alone being sufficient."⁴²

"Where a mother, at the birth of her bastard child, placed it in hands of strangers, and made no serious effort to reclaim its custody, or to reassume parental duties and obligations, the person who had its custody was properly permitted to adopt it as an abandoned child."⁴³

Merely permitting the child to remain for a time undisturbed in the care of others is not such an abandonment, especially where the statutory conditions under which

40. Corpus Juris Secundum, p. 388.

41. Denny's Adoption, 11 Pa. Dist. & Co. 611.

42. In re MacLean, 179 N.Y.S. 182, 109, Misc. 479.

43. Knochemus v. King, 188 N.W. 957, 193 Iowa, 1282.

adoption without consent is permitted under such circumstances do not exist, or where the alleged abandonment is explained on grounds showing its nonexistence.

"A violation of an agreement of the parents to contribute to the support of their child left with another for over one year does not constitute abandonment within the statute permitting adoption without the consent of parents who have left their child in the care of another without an agreement or provision for support for a period of one year."⁴⁴

"If a parent leaves the child with another and at the time refuses to consent to its adoption, there is no abandonment permitting adoption without his consent."⁴⁵

On the other hand, conduct of the parents indicating a settled intention to leave the child permanently in the care of others constitutes an abandonment within the meaning of the statute.

"A gift of a son to his aunt, followed by relinquishment of custody, may constitute an abandonment authorizing an adoption without consent."⁴⁶

A written form of relinquishment given by the mother to the institution in which she placed her child, while not a consent to adoption, justifies the trial court in giving

44. In re Kelly 145 P. 156, 25 Cal. App. 651.

45. In re Bristary, 145 N.E. 70, 239 N.Y. 19, affirming order 204 N.Y.S. 599, 209 App. Div. 286, which reversed order 201 N.Y.S. 684, 121 Misc. 540. Corpus Juris Secundum, p. 368.

46. In re Dien's Will, 237 N.Y.S. 658, 135, Misc. 244.

more weight to the act of the mother than if it had been in less permanent form, and may even constitute an abandonment.

Abandonment is a question of fact which requires evidence that the parents at some time definitely gave up their parental interests in the child and their duties to it.

Whether an abandonment of a child, rendering unnecessary the parent's consent to an adoption, exists is a question of fact, depending largely upon the parent's intention, to be determined on competent evidence after notice to the parent.

Abandonment continues until parental care and support are resumed, and it does not follow that the purpose to forego all parental duties may not be repented of, and in a proper case all parental rights again acquired. When once the abandonment is shown to have existed, it becomes a judicial question whether it really has been terminated or can be consistently with the welfare of the child.

"Abandonment held to be terminated:

Subsequent acts of a mother who, by execution of a document of surrender of her child to a hospital had abandoned the child, in endeavoring to regain possession of the child and resume the performance of parental duties was held to have terminated the abandonment so as to make necessary the mother's consent to adoption of the child, especially where the mother's acts to regain possession of the child were begun within the six months period after the child was born and the document signed."⁴⁷

47. In re Cohen's Adoption, 279 N.Y.S. 427, 155, Misc. 202.

When a resumption of parental rights would not be for the best interests of the child, the court may lawfully deem the abandonment irrevocable, so far as the claims of the parent are concerned.⁴⁸

Under appropriate statutory provision the consent of a parent or parents to adoption of their child is not generally required where custody of their child has been taken from them permanently in legal proceedings after notice to the parent against whom the proceedings were directed, and where such proceedings appear of record; but the rule does not apply where the order of court temporarily deprives the parents of custody of their children with leave to reclaim them on a proper showing of reform of conduct.⁴⁹

Where the statute so provides, the adoption of a child of parents who have been divorced, or who have been separated requires the consent only of the parent entitled to custody. Such a provision is unaffected, in cases of divorce, by the fact that a decree was entered prior to the enactment of the statute, or that the parent entitled to the custody died before the final entry of the adoption decree. Where, however, an adoption is attempted without the consent of a natural parent because of a divorce, there must be a final

48. Corpus Juris Secundum, p. 329.

49. Ibid.

dissolution of the marriage, with no rights reserved to the parent deprived of custody. Consent of both parties in cases of divorce is necessary to adoption of their child where the statute requiring consent of both parents makes no exception, or where the statute does provide exceptions but the circumstances do not bring the divorced parent within them.⁵⁰

Ordinarily, where the parents are dead or have lost the custody of their child, the consent of a guardian is not essential, particularly where the adoption statute does not require it, although, under a statute providing that a guardian of minors shall have the same power and control over them that parents would have if living, it has been held that the guardian's consent to his ward's adoption was essential, notwithstanding the adoption statute did not require his consent. Under express statutory provision, the consent of a guardian duly appointed and qualified to act or of next of kin or of a next friend, if there are no next of kin within the state, is necessary. According to some authority, however, under statutes requiring consent of guardian or next of kin, such consent is not indispensable where the court, having obtained jurisdiction of the parties by their voluntary appearance, is satisfied that the interests of the child will be promoted by adoption.

As a guardian ad litem is appointed in the interest

50. Ibid., p. 390.

of the minor to assist the court in arriving at a just conclusion, the consent of a guardian ad litem to the child, adoption is not ordinarily necessary, but under the statute in some jurisdictions the court may appoint a guardian ad litem to give or withhold consent to the child's adoption.

Where consent to the adoption is given by a guardian, and the consent of a natural parent is not obtained, in the absence of other circumstances dispensing with the necessity of the consent of the natural parent, it is essential that the appointment of the guardian be valid.⁵¹

Where the statute so provides, the adoption of children in orphan asylums or institutions authorized by law to assume their custody and care, and to place them in homes for adoption, requires the consent of the officers of the institution authorized to act therefor, and consent given by such officers will be sufficient. An institution claiming the right to give or withhold consent to adoption must bring itself within the terms of the statute that permits it; it must qualify as an institution within the statutory description, and the officer consenting must be the officer designated by statute.

"A society, incorporated in Illinois, and having a superintendent for Pennsylvania who selects advisory boards in different places, and which is organized for the purpose of procuring children from their parents, or others in charge of them, and placing them with persons who will

51. Ibid., p. 391.

have them legally adopted, and which maintains no actual home or asylum for children in Pennsylvania, is not the next friend of a child; nor is it such 'a charitable institution' as is provided for in the act of May 19, 1887, authorizing institutions to consent to the adoption of a child."⁵²

The institution, standing in loco parentis, may make its consent conditional on an agreement of the adoptive parent or parents bringing up the child in a particular religious faith, and adoption will not be decreed without consent on such terms.⁵³

A statute empowering a charitable institution to give consent to the adoption where the parents of a child in its custody are unknown, or where the child's parents have surrendered the child to it in writing, does not give such an institution power to consent to an adoption where the child is taken from its parents by order of court because of the parents' unfitness to have the control and custody of the child.

In some jurisdictions, in the absence of a statute covering the subject, it is the practice to require not only the consent of the institution but the consent of the parents if they can be found, even though the custody has been surrendered by them to the institution for the purpose of adoption into a family of its selection.⁵⁴

52. In re Sleep, 6 Pa. Dist. 256, Corpus Juris Secundum, p. 392.

53. Corpus Juris Secundum, p. 392.

54. Ibid., p. 393.

In the absence of statutory requirement, consent of a public officer or board having custody of the child is not necessary to his adoption, nor proper where the statute requires consent of the natural parents and the parents are living; but where a statute requires it, and under the prescribed conditions, the consent of a public official or board designated by the statute is necessary to adoption of the child; nor in such case, can adoption of a child be legally accomplished with consent of an official other than the one designated by statute.⁵⁵

Whether natural parents, who have consented to adoption of the child, are entitled to give or withhold consent to its second adoption by other foster parents depends primarily on the terms of the particular statute. Where a statute in express terms authorizes an adoption directly from foster parents by another person in the same manner as from parents, the consent of the natural parents is not necessary to a second adoption, either during the lifetime or after the death of the foster parents; but under a statute which makes no provision for a second adoption, consent by the natural parents to the second adoption is necessary.

"Even where the natural parents consent to the original adoption and the adoptive parents consent to re-adoption by another, consent of the natural parents must still be secured to placing the child with the new parents."⁵⁶

55. Ibid.

56. In re Grove 28 Pa. Dist. 988, Corpus Juris Secundum, p. 394.

VI. Contracts or Agreements to Adopt.

In order to establish rights under a contract of adoption, such a contract must be shown to have existed. It is essential to an adoption contract that the person agreeing to adopt be competent to contract, and hence it was held that a married woman, in the absence of an enabling statute, could not validly contract to adopt a child.⁵⁷ Where one contracted with an orphanage to adopt a child, and a virtual, if not legal, adoption followed, a contention that the orphanage did not have power to contract for the child's adoption cannot be allowed, as the orphanage with the control and custody of the child acted for it in entering into the contract.

It is also essential to the validity of a contract of adoption that it be based upon a sufficient legal consideration. The surrender of the child by its natural parents to the persons agreeing to adopt it, the surrender, if the child is an orphan, by a relative authorized to act for the welfare of the child even though the relative was not the legally appointed guardian, the promise to adopt and make the child an heir, the performance of services by the child, the mutual benefits and obligations for both adopting and natural parents arising out of the arrangement, or the marriage to the adopting parent by the other party to the contract, has

57. *Bedal v. Johnson* 218 P. 641, 37, Idaho, 359.

been held to be sufficient consideration to support such a contract.⁵⁸

Contracts for the adoption of children are ordinarily not considered as opposed to public policy, although in Texas it appears that contracts to adopt are not favored and may be held to be contrary to public policy.

Neither party to a contract to take a child from a charitable institution for a period of time, at the end of which they are either to adopt the child, if the institution at that time approves it, or return the child, is required to agree positively as to definite future action, as such a contract would be void as against public policy since the primary consideration is the welfare of the child.

Where the adoption statute requires that adoptive parents be citizens of the United States, the fact that persons contracting to adopt a child are not citizens does not invalidate the contract to adopt as, if they are not citizens, it is their duty to become such in order to carry out their agreement as made.

Where a wife adopted a minor child without the consent of her husband, the husband's permitting the child to live as a member of the family is a ratification of the contract of adoption by him.

Irrespective of the general rule that the law of the place of the making governs the validity of a contract, the

58. Corpus Juris Secundum, p. 394.

courts, in their effort to protect and promote the welfare of the child, have given effect to a contract to adopt, where it has been fully performed on the part of the child, although it was invalid under the laws where it was made. For example, where the contract was made in Texas, where such contracts are considered void as against public policy, and the adoptive parents and child subsequently removed to New Mexico, where such contracts are valid, upon full performance by the child the courts of New Mexico recognized the validity of the contract, at least to the extent of permitting the child to share as a natural child in the estate of the adopting parent. Likewise, where the adoptive parent's promise was void in Texas because of coverture, or within the Texas statute of frauds, the courts of New Mexico applied the rules of their own jurisdiction to give effect to the promise.⁵⁹

A person seeking to share in the estate of another, by virtue of deceased's contract to adopt claimant, must establish the contract to adopt by clear and convincing proof.

"An instrument, while not effective as a statutory deed of adoption because not recorded in the county of the maker's residence as required by a statute then in force, was held to have evidentiary value to establish an agreement to adopt."⁶⁰

59. Ibid., p. 395.

60. Ahern v. Matthews, (Mo.) 85 S.W. (2d) 377. Corpus Juris Secundum, p. 396.

If the alleged contract is oral, or alleged to have been lost, the proof of it must be so clear, cogent, and convincing as to leave no reasonable doubt as to its existence and terms, and the proof must show not only that a contract existed, but that the particular contract alleged existed. Under this rule relief should be cautiously granted, and each case must rest on its own facts. This rule, however, does not prevent the establishment of a parol agreement to adopt by the acts, admissions, and conduct of the parties and inferences therefrom, as it may be, although there is no direct proof of the agreement or contract.

"Evidence of parol agreement:

Provision of an instrument apprenticing D to M during minority, whereby M 'covenants and agrees that when D shall have arrived at the age of 21 years he shall inherit in his, the said M's estate, share and share alike with his own children, and thereby makes him his legal heir,' is evidentiary of a previous parol agreement to adopt."⁶¹

In determining whether or not the proof adduced satisfies the proof required, the surroundings of the alleged adoptive parent must be taken into account, as well as the motive which actuated him in entering into a contract of adoption. A complete and absolute surrender of the child to the quasi-adoptive parents may be sufficient to show the contract of adoption, and the mere fact that the child after reaching majority abandoned or disregarded the filial duties

61. *Dellman v. Davison*, (Mo.) 239 S.W. 505, Corpus Juris Secundum, p. 396.

does not affect this rule. A mere declaration of an intention to adopt claimant is insufficient to show a contract of adoption.

One who claims that another not only agreed to adopt him but also agreed not to disinherit him, thereby placing him in a more favored position than that given a natural child, must clearly and convincingly prove such agreement.

"An agreement to adopt a child ('as our own' and provide for and rear him accordingly, although an agreement to make him an heir, could not prevent a free disposal of the property by will or deed."⁶²

Persons seeking to enforce a contract for adoption over the wishes of a natural parent or the person having the right to the child's custody are held to the clearest and most uncontrovertible proof of the contract.

An adoptive paper, although not proved or recorded, so as to constitute a legal adoption, may be competent evidence of a contractual relation between the quasi-adoptive parent and the child.⁶³

There being no right of adoption at common law, a contract of adoption made when there was no statute on the subject, in the absence of a clause saving existing contracts in subsequent legislation, was held ineffective to

62. *Pemberton v. Perrin*, 144 N.W. 164, 94 Neb. 718, Ann. Cas. 1915 B 68, Corpus Juris Secundum, p. 397.

63. Corpus Juris Secundum, p. 397.

give the child the status of an heir under the laws of inheritance.

On the other hand, however, where there is, as is usually the case, statutory procedure for adoption, under the principle that equity will consider that done which ought to have been done, the authorities very generally establish the proposition that a contract by a person to adopt the child of another as his own, accompanied by a virtual, although not a statutory, adoption, and acted upon by both parties during the obligor's life, may be enforced, upon the death of the obligor, by adjudging the child entitled to a natural child's share in the property of the obligor who dies without disposing of his property by will, particularly where the agreement confers upon the child the rights to inherit as a natural child. Under such circumstances the child takes a child's share of the estate as fixed by the statutes of descent and distribution.⁶⁴

In upholding such a remedy, the courts do not hold that the child is entitled to the right of inheritance as an heir. They do not undertake to change the status of either party, but merely to enforce a contract which has been fully performed on one side, and a case which denied the child the right to share in its quasi-adoptive parent's intestate property may be explained on this ground, in that the relief sought was to establish an adoption after the death of the

64. Ibid., p. 400.

parties agreeing to adopt, an altogether different proposition, since equity is not generally considered as having the power to decree an adoption, although it does have power to enforce a contract fully performed on one side.

The results that the child may share as a natural child in the undisposed estate of its adopting parent has been reached by holding that an agreement to adopt followed by a virtual adoption of the child worked an estoppel on the legal heirs of the foster parent to deny the validity of the adoption. It is immaterial under this view whether the statutory adoptive proceedings are by judicial proceedings or by deed or declaration.⁶⁵

Where the statutes provide that adoption may be by deed or declaration, there must be at least a substantial compliance with the statutory requirements. For example, a parol adoption is not a sufficient compliance with adoption statutes requiring appropriate writings made and recorded; nor under such statutes is an adoption effected by a mere surrender of the custody of the child, nor by oral declarations that declarant had adopted one as his heir, nor by merely recognizing and referring to a child as adopted child, especially where the reference is merely "descriptio personae" in an instrument given for a purpose other than adoption.

65. Ibid., p. 401.

In view of the fact that adoption is in derogation of common law and for that reason should strictly be complied with in all essential matters, as previously pointed out, it is ordinarily considered essential that a deed of adoption recite all the necessary requisites. It is not necessary, however, that the exact language of the statute be stated or quoted in the deed; it is sufficient if, from the terms of the declaration or deed, considered in the light of the statute, there is a substantial compliance therewith.

No contract for the custody of the person of the child is essential to the validity of a deed of adoption, and where a deed is not prescribed by statute or immemorial practice it may contain whatever conditions and consideration the parties may choose to insert.

Intention on the part of the natural parents, or those having the right to the care and custody of the child, to give the child for adoption, and on the part of the adoptive parents to take the child for adoption, being an essential requirement to a valid adoption, must be set out in the deed or declaration, although the exact language of the statute need not be used.⁶⁶

Facts necessary to give the court jurisdiction should be set out in the deed or declaration. Where everything required by statute is made to appear, the court acquires jurisdiction.⁶⁷

66. Ibid., p. 407.

67. Ibid.

VII. Judicial Proceedings in General:

The most common method for effecting an adoption is by a judicial proceeding. The action of the court is invoked by an application or petition, and the adoption is effected by the decree of the court. While the power of a court or judge under such a statute calls for the exercise of judgment, and is in that sense judicial, and the judge, in the performance of his duties under such a statute, exercises judicial functions, yet the proceeding is not a judicial proceeding in the full sense of that term. The power vested in the court or judge is no part of the judicial power mentioned in the Constitution and by it vested in the courts, as distinguished from any individual judge thereof. It seems, however, that it is within the power of the legislature to make the proceeding a judicial one, and that, in such case, the exercise of the power by the court is an exercise of the judicial power vested in it by the organic law.⁶⁸

It has been held that an adoption proceeding may be consolidated with a proceeding by the parent for custody of the child.

The proceeding is in the nature of a proceeding in rem, the purpose being to change the status of the child in its

68. American Jurisprudence, Bancroft-Whitney Co., San Francisco, 1936, p. 635.

relation to the adoptive parent, and the decree of adoption is a declaration by competent authority, operative to change the status of the child, and ipso facto render it the heir at law of the adoptive parent.

Jurisdiction of adoption proceedings is generally conferred upon the court having jurisdiction of probate matters variously designated in the different states as Probate, Surrogate, Orphans', and sometimes County Courts. In other states the right to conduct adoption proceedings is conferred upon courts of general jurisdiction.⁶⁹

There must be a compliance with the requirements of the governing statute in order to acquire jurisdiction of an adoption proceeding. The provisions of the statutes of different states vary in these requirements. Speaking generally, to give a decree of adoption full force and effect, jurisdiction must have been acquired by the court, first, over the person seeking to adopt the child; second over the child; and third, over the parents of the child.

The statutes of the different states contain varying provisions as to residence, some requiring a residence in the county where the adoption proceeding is had. Under a statute providing for the entry of a decree of adoption on the presentation of a petition by the person desiring to adopt any child in the proper court "in the county where

69. American Jurisprudence, p. 636.

he or she may be resident," temporary residence of the petitioner within the county is sufficient to give the court jurisdiction, although the petitioner is, at the same time, a citizen of another state, and it is doubtful whether the want of such residence is such an irregularity as will avoid the proceedings. If the minor or person adopted resides within the territorial limits of the jurisdiction of the court, the court has, so far as regards such person, jurisdiction to decree the adoption, and jurisdiction over the adoptive parent may be acquired by his voluntary appearance. So, too, the fact that a child, its parents, and the persons seeking to adopt it are all aliens does not deprive the court of jurisdiction of a proceeding brought before it for leave to adopt the child, where no such limitation is expressed in the adoption law.⁷⁰

The general rule regarding proceedings before a court of general jurisdiction is that performance of all steps essential to the jurisdiction of the court is presumed in the absence of a contrary showing, even though the record is silent as to such facts. This rule has been applied to adoption proceedings before a probate court which, in making an order of adoption, is regarded as a court of general jurisdiction whose judgments are entitled to the benefit of the presumption just mentioned. The modern

70. Ibid., p. 636.

tendency is toward this rule. The judgment or decree, in this view, necessarily implies a finding of all material facts not inconsistent with the record, and so, though a petition for adoption omits allegations of consent of the parents, or averments of facts excusing such omission, the entry of a decree implies that the court found the necessary facts, and the decree is therefore not impeachable collaterally.

Other courts regard adoption proceedings, even in a court of general jurisdiction, as being a special and summary power conferred upon the court not after the course of the common law, and therefore regard the action of such a court in adoption proceedings as being similar to that of a court of limited and special jurisdiction in that all jurisdictional facts must appear affirmatively by the record. There can be no presumption, in such case, that jurisdiction was obtained over the parent of the child if the record of the adoption is silent on the subject. Especially is this so if it appears that the parent was, at the time of adoption, a non resident of the state.⁷¹

VIII. Annulment.

It has been said that an order of a court which has entered a decree of adoption in due form, attempting to

71. Ibid., p. 637.

revoke and set it aside, is probably unauthorized by law, but the better view seems to be that such a decree may be vacated upon such grounds as would entitle the court to vacate any other order or decree. Following this principle, a decree of adoption may be vacated by a petition to the court which entered it, or by a suit in equity, for fraud in obtaining it, as where, at the time the decree was sought and entered, the adopting parent was of weak and unsound mind, and subjected to undue influence. A decree of adoption procured and entered in fraud of the rights of the minor adopted will be vacated upon proper bill for that purpose. The petition in such case is founded on the principle that a wrongdoer will not be allowed to profit by his own fraud, and that the only way of preventing the fraud is to revoke the decree of adoption. It has been said, however, that fraud practised upon the party to the adoption proceedings is not sufficient to render the decree open to attack on that ground, but that it must further appear that a fraud was practised upon the court in obtaining the decree.⁷²

More irregularities in an adoption proceeding which is entered into in good faith, or even matters of fact which, if called to the attention of the court, would have prevented the entry of the decree, will not entitle one of the

72. Ibid., p. 671.

parties, or his representatives, to annul the status thereby created, especially when the parties have acted on the faith of the proceeding for a long period of time.

The presumptive or natural heir of an adoptive parent ordinarily has no standing to attack by a direct proceeding the validity of an adoption order or decree. Such a person is either a stranger to the adoption proceedings, and therefore has no standing in court, or he is a privy in blood or in law and stands in the shoes of the adopting parent through and under whom he claims.

An order of adoption may be revoked by mutual consent of the parties, where, upon investigation by the court, such a course is found to be for the best interests of the child. But the fact that the child has become a prodigal and undutiful son affords no ground for revoking the decree at the instance of the foster parent while the child is still a minor, for the child cannot consent to a rescission of the contract, nor can anyone else waive his rights for him.⁷³

Proceedings to avoid a judgment of adoption are clearly of an equitable nature, and after the lapse of many years, during which time the status of the subject of adoption has been recognized as legally fixed by the judgment, by all parties, on whose motion the judgment was rendered, is in

73. Ibid., p. 672.

no position to appeal to equity to declare it void.⁷⁴

To warrant a finding of undue influence by one person in inducing another person to adopt a child, it must appear that the person exercising the influence so far dominated the will of the person upon whom it was exercised as to substitute his will for that of the latter, with the result that the action brought about by the influence was not, in reality, that of the person whose act it was in the form, but rather, was that of the person exercising the influence.⁷⁵

Where the jurisdictional requirements of notice, or consent, have not been met, the proceedings are void, and may be set aside. Accordingly, the order of adoption will be set aside or reopened where it is shown to have been procured without the consent of or notice to the child's parent, or, if required by statute, to the child's guardian.⁷⁶

"Where a father is deprived of the custody and control of a minor child without knowledge of any proceeding in that behalf and without a hearing, he is entitled to be relieved from the judgment or order taken against him because of surprise and through his excusable neglect."⁷⁷

Where final consent has been given by those authorized to give it, and the adoption order entered or judgment

74. Ibid., p. 673.

75. Ibid., p. 673.

76. Corpus Juris Secundum, p. 435.

77. Bell v. Krauss, 146 P. 874, 875, 169 Cal. 387.

thereon rendered, the natural parents or those authorized to give or withhold consent cannot have a change of heart and invalidate the adoption by revoking their consent.⁷⁸

"Where adoption proceedings have been completed, a new status is created which cannot be stricken down merely because of regret of the parent who consented thereto, although she now claims that she did not realize that she was consenting."⁷⁹

The welfare of the adopted child is ordinarily the controlling circumstance in applications to revoke an order of adoption, even though the application is upon the joint petition of the natural and adoptive parents. In determining whether or not to set aside the order of adoption, the fact that the natural parents have consented to the adoption, or that the child is opposed to having the decree set aside, is a matter not without weight to be considered by the court.

Where the foster parents took the child as their own, by permission of the court, when the child was of tender age, and have given it care and attention for a number of years, a strong showing is required before the court will take the child away from its foster parents, and such adoptive parents do not have the burden of showing that the natural parents are not fit persons to have the care and custody.⁸⁰

78. Corpus Juris Secundum, p. 436.

79. In re Young, 103 A. 344, 259 Pa. 573.

80. Corpus Juris Secundum, p. 436.

A statute relating the grounds upon which a child may be taken from an adoptive parent does not bar the court from exercising its discretion in placing the custody where the best interests of the child will be served.⁸¹

IX. Effect of Adoption.

The general effect of modern statutory adoption is said to create a status between the adoptive parent and adopted child which is identical with that existing between a natural parent and his child.

A statutory adoption by deed does not preclude the parties incorporating into the deed any terms upon which they may agree, in the absence of any controlling provision of the statute. Accordingly, while mere recitals of consideration in the deed impose no more burdens and confer no more rights than the statute itself gives, yet covenants contained in the deed will be enforced by the courts.⁸²

As the relationship of adoptive parent and adoptive child is like that of parent and child, the rights and correlative duties incident to natural parenthood are in general incident to adoptive parenthood.⁸³

As the adoptive parent, however, succeeds to no greater right than the natural parent originally had, this right

81. Ibid., p. 437.

82. Ibid., p. 446.

83. Ibid., p. 447.

of custody is not so absolute but that it will be disregarded when the welfare of the child clearly requires it, particularly where the custody given adoptive parents by the statute is not absolute. In determining the welfare of the child, the court will consider the adoption as a circumstance tending to show that the child's welfare can best be served by placing it in the custody of the adoptive parents.⁸⁴

The status of adoption, however, is only a civil or contractual one, for it is insisted that giving an adopted child a right to inherit does not make him a child in fact or change his identity.⁸⁵

Adoption does not deprive the adoptive parent of the power of disposing of his property by a later will to the exclusion of the adopted child, unless a statute prohibits the disinheritance of a natural heir, or the giving of the property to the named devisee to the exclusion of a child.

"Where a statute forbade requests to charitable institutions of more than one half of descendant's estate if he left a child surviving, an adopted child was held to be within the wording of the statute and a bequest beyond that amount was void as to him."⁸⁶

The power to dispose of property otherwise, however, may be lost due to a valid contract which stipulates that

84. Ibid., p. 447.

85. American Jurisprudence, p. 653.

86. In re Mawhinney's Will, 261 N.Y.S. 334, 146 Misc. 30, decree affirmed in re Mawhinney, 264 N.Y.S. 984.

the adopted child shall have a share of the property, or due to a decree of adoption which prohibits the disinheritance of the child. A contract not to disinherit must be clearly and definitely established.

"A special act of adoption designating a child 'as heir at law' would not constitute a contract preventing the foster parent from disposing of his property by will to the exclusion of the child."⁸⁷

"A petition of adoption to the effect that the adopting parent wishes to leave all property he may own at his death to the adopted children is not a contract preventing him from leaving his property by a later will to another, where the adoption decree recites that the adopted children are to become the heirs of the adoptive parent and 'inherit his property as if they were his children born in lawful wedlock.'"⁸⁸

The status of adoption, while creating ordinarily the incidents of the relation of parent and child between the adoptive parent and the adopted child, does not determine the status of the adopted child as a natural child as to a relative of the adoptive parents, or spouse of the adoptive parent who did not join in the proceedings. Likewise the fact of adoption does not create a relationship between the adoptive and natural parents.⁸⁹

In so far as the property of the adopting parent is concerned, an adoption may affect the rights of the relatives

87. *Kempe v. Hack*, 196, N.Y. 180, 157, Minn. 301.

88. *McLean v. McAllum*, 95 So. 309, 131 Miss. 234.

89. Corpus Juris Secundum, p. 449.

of such parent. For example, upon an adopting parent dying intestate, under appropriate statutory provision, he cannot be considered as dying without issue within the purview of a statute providing for inheritance by kindred upon decease without issue. Under a statute providing that when the relict of a deceased husband or wife dies intestate and without "issue" certain property should in part go to the next of kin of such deceased husband or wife, it has been held that a child adopted by such relict came within the meaning of the word "issue," even though the deceased husband or wife had not participated in the adoption.⁹⁰

Ordinarily, under the adoption statutes, an adoption has the general effect of terminating the legal relations between the child and its natural parents, and, where natural parents have consented to an adoption which deprives them of their legal rights in the child, they can claim no more interest in the child than can a mere stranger. Under such an adoption they are relieved of all parental duties and obligations, and the death of the adoptive parent does not restore the rights or duties of the natural parent or in any manner revive the relationship as it existed before adoption. This forfeiture operates as against those who claim under the natural parent. Accordingly a natural parent who abandoned the child, who was subsequently adopted by others, cannot recover custody of the child except on a

90. Corpus Juris Secundum, p. 449.

showing of the unfitness of the adopting parents and his or her own fitness.⁹¹

Under adoptive statutes which do not expressly destroy the relationship between the natural parent and child, however, the parent is not relieved of all parental obligations, nor are all parental rights relinquished. For example, where a natural parent consents to an adoption by a husband only, his wife not joining in the proceedings, the legal rights of the natural parent to the custody of the child are revived and restored after death of the adoptive parent as against the claim of his widow, and an adoption by act of the legislature does not deprive the natural parents of their prerogatives after the death of the adoptive parents in the absence of provisions, expressed or implied, to that effect.⁹²

An order of adoption which is invalid will not divest the natural parent of his rights in the child although he has acquiesced in such order for several years.⁹³

In the absence of express statutory provision to the contrary, adoption of a child does not destroy the relationship existing between the adopted child and his natural brothers and sisters, or his natural grandparents.⁹⁴

91. Ibid., p. 450.

92. Ibid., p. 450.

93. Ibid., p. 450.

94. Ibid., p. 451.

In the absence of a statute to the contrary, although a child inherits from the adoptive parent, he still inherits from or through his blood relatives, or his natural parents. In view of the tendency of the courts to construe adoption statutes so as to benefit the child, and also, in view of the fact that a statute severing the relation between parent and child is in derogation of common law and should for that reason be strictly construed, it has been held that an adoption statute providing that the natural parents shall be divested of all legal rights and obligations with respect to such child should not be construed so as to deprive the child of his right to inherit from or through his natural parents. Under such a statute it cannot be assumed that the adopted child cannot inherit from its natural parent unless there is an express legislative declaration to that effect.⁹⁵

In the absence of an express statutory provision regulating the matter, there is a conflict of authority as to the course of succession upon the death of the adopted child; some hold the estate to vest in the natural kindred, while others hold it to vest in the foster relatives.⁹⁶

95. Ibid., p. 454.

96. Ibid., p. 456.

B. Selected Case Rulings.

The writer has selected several summaries of court decisions handed down by courts in different states of the United States. The interpretations placed by the courts on the adoption statutes should be of special interest to children's workers, especially those engaged in child-placing.

In one, a Wisconsin decision, the question arose as to whether an aunt or a grandparent was the more suitable person to receive a child for adoption.

"Adoption: In re Jackson, 232 North Western Reporter (Wisconsin) 158, April 14, 1930.

The child, Ronald Jackson, was born October 10, 1927. On September 3, 1929, both parents were killed in an automobile accident. September 25, 1929, Mrs. Ulrick, a sister of the child's father, filed a petition in which her husband joined, asking that the child be given her for adoption. On October 4, 1929, the mother's parents likewise filed a petition asking for the child. Both petitions were set for hearing, and the State Board of Control was notified. The Board reported both homes suitable, and the court awarded the custody of the child to the paternal aunt, Mrs. Ulrick. The court weighed the advantages of the maternal grandmother's custody, moved as it would be by the sense that the grandchild was replacing her lost daughter, and considered the possibility of the Ulricks, who were a young couple married only two years and therefore likely to have children of their own, where this baby might seem a stepchild. The youth of the foster parents, however, really prevailed with the court. The grandparents appealed, but the judgment of the lower court was affirmed. To the plea of the grandparents that they were the natural guardians of the child, with the rights of a guardian the court said, 'In Wisconsin no one has rights in

the custody of a child superior to the right of the child to have its best interest and welfare provided."⁹⁷

The question in the next case decision, which was handed down by a Missouri court, was whether or not a child who had not been adopted in accordance with the requirements of the adoption act of the state but who had taken the place of an adopted child in the lives of her foster parents could be decreed an adopted child by the court of equity and as such could inherit from her foster parents.

"Constructive Adoption: Taylor v. Coberly, 38 South Western Reporter (2 d) (Missouri) 1055 (March 31, 1931).

After the death of his wife, John Miller gave his infant daughter, Zella, about five weeks old, to Mr. and Mrs. Walter Coberly. At first he wanted to pay them for her care, but they insisted that they wished to take her as their own and, as he was very poor, he finally agreed that she would be theirs and inherit from them and he never interfered with her afterward. The Coberlys had Zella registered all through school as Zella Coberly and spoke of her in very endearing terms as their daughter or adopted daughter. Zella was devoted to them and even after her marriage stayed with them a great deal. When Zella and her husband, Frank Taylor, moved from Missouri to Utah, the Coberlys followed her there and lived with her for some time. When Mrs. Coberly was dying in Lack Springs, Missouri, at her request Mr. Coberly sent for Zella, who came and cared for her until the end. At that time Mr. Coberly made a will which the doctor there heard read and which he signed as an attesting witness in which everything was left to Zella during her lifetime and then to

97. "Recent Court Decisions Relating to Social Welfare: Adoptions," Social Service Review, Vol. IV, No. 4, Dec. 1930, pp. 639-40.

her children. Mr. Coberly continued to make his home with Zella, but at the time of his death was visiting a brother in Oklahoma and his will in some way disappeared.

After his death, his brother and two sisters claimed his property, and Zella Taylor then filed a complaint alleging that she was in reality the adopted child and that the Coberlys had declared that she should inherit all their property at their deaths.

The court held that since the proof was so convincing as to leave no reasonable doubt that the girl had taken the place of an adopted child in the lives of the adopting parents, a court of equity could take jurisdiction and decree that she was an adopted child and as such could inherit from her foster parents."⁹⁸

A case in Maryland is concerned with a mother's attempt to regain custody of her child.

"Adoptions--An Act under the Statute Irrevocable in the Absence of Fraud or Duress: Backus v. Reynolds, 152 Atlantic Reporter (Maryland) 109 (October 19, 1930).

Mrs. Clemens, while separated from her husband, whom she later divorced, found herself unable properly to care for her little four-year-old daughter, whom she had been boarding with Mrs. Reynolds. She then consented to Mr. and Mrs. Reynolds' adopting the child, and this was done on July 26, 1929. In November of that year she remarried, and she and her husband in December of that year instituted proceedings to have the adoption decree annulled, alleging mistake, fraud, duress, and misrepresentation.

It was too late, however; none of these charges was substantiated, and, in a statement of some length, the court showed itself powerless to do anything but affirm the decree. If the mother but six months before had been able to

98. Ibid., Vol. 6, No. 2, June, 1932, p. 287.

find help in keeping the child, or if there had been someone able to help in this situation while the divorce proceeding was being determined, or if any of these courts dealing with such vital family problems had been a true family court, the mother might have retained or regained her child."⁹⁹

The question in the following case, decision in which was handed down by a Missouri court, concerned the necessary consent of parents to an adoption.

"Rochford v. Bailey, 17 South Western Reporter (2d) No. 941 (1929).

In this case a child was born out of wedlock, December 1, 1925. The parents subsequently married, and the child was given the father's name. A fortnight later, the mother was called to her mother's home in Oklahoma, placed the child with a nurse, to whom the father agreed to pay \$25.00 a month, and remained until August, 1927, believing that the father was paying for the child. She had given the nurse a fictitious name, had not told her of leaving home, and returned to find that the father had not made the stipulated payments, that the nurse had turned the child over to an institution, and that a decree of adoption had been entered by the juvenile division of the Jackson County Circuit Court on April 9, 1927. An order of publication was filed with the unverified adoption petition on which was the notation that the parents had "absconded and absented themselves from their place of abode." The Court held that sufficient effort had not been made to find the parents, that the notice to the mother was therefore not sufficient, and that the adoption decree was therefore invalid.

1. The court held that the adoption statute, being in derogation of the common law, is to be strictly construed, and that

99. Ibid., Vol. 5, No. 2, June 1931, p. 306.

2. The parent's consent given in writing or presumed from non-appearance after notice is a condition precedent to the jurisdiction."¹⁰⁰

A decision handed down by a Texas court concerns a mother's voluntary relinquishment of a child's custody by a void instrument.

"Sears et ux. v. Davis et ux., 19 South Western Reporter (2d) (Texas Civil App.) 159.

The facts in this case were that a child was born April 21, 1925, and a few hours later was sent to Hope Cottage in Dallas. A week later the mother signed an instrument saying that one Richard Jones was the child's father and empowering Hope Cottage to find a home, possibly an adoptive home for the child. About a month later the child's parents were married. On July 7, 1925, defendants in this action adopted the child. About two years later the parents sought to recover the custody of the child, but their claim was denied by the lower court and the parents appealed. There was no question of relative fitness; both the natural parents and the adoptive parents were entirely fit. It was therefore a question of the effect of the mother's transfer to Hope Cottage, when she did not have a special adoptive family in mind for the child she was giving away. There is great diversity of opinion with reference to the parental right of custody, and many cases are cited in this opinion. The lower court denied the mother's claim, but on appeal this decision was reversed and the mother's right was recognized.

A mother's voluntary relinquishment of the child's custody therefore by a void instrument was not equivalent to a proper transfer, and her lack of valid consent voided the adoption proceedings."¹⁰¹

100. Ibid., Vol. IV, No. 1, March, 1930, p. 83.

101. Ibid., p. 82.

In a Missouri decision the main question was whether or not the Court of Appeals had jurisdiction in habeas corpus proceedings to determine the custody of a child.

"Jurisdiction in Adoption Proceedings under the Missouri Act: Child Saving Institute v. Knobel et al., 37 South Western Reporter (2d) (Missouri) 920 (April 7, 1931)

Mr. Gus Pollard by written agreement had given the Child-Saving Institute in Omaha the custody of his two children, Alice Louise and Albert, with the request that, if possible, the children be placed together. Mr. and Mrs. Knobel from Missouri visited the institution and took the two children on trial, with the understanding that they were to be kept together and if they were returned, the institution was to be given thirty days' notice.

The applicants returned Albert without notice and refused to return Alice Louise. Later, they adopted her without obtaining the consent of the institution or sending any notice of proceedings. The institution found a home that would take both children and then took out a writ of habeas corpus for the custody of Alice Louise. The Court of Appeals transferred the case to the Supreme Court because of the lack of jurisdiction. The Supreme Court held that the Court of Appeals had jurisdiction to hear the case by constitutional authority and by decision of another Court of Appeals, but since the case had been transferred, the court would hear the case. The court decided that the written relinquishment by the father to the institution of all claims to the children gave the institution legal custody of them. A decree of adoption rendered without written consent of a notice to the legal custodian of the child was binding on the foster parents, but was not binding on the legal custodian who had received no notice and therefore the custody of the child was restored to the Child-Saving Institute."¹⁰²

102. Ibid., Vol. 6, No. 2, June 1932, p. 294.

An Iowa decision concerns the legality of a deed of adoption.

"In re Wadst's Estate, 229 North Western Reporter (Iowa) 835 (1930).

On December 24, 1875, Anna Strom was born in Des Moines, Iowa. Thirteen days after her birth Anna's mother was adjudged insane and on September 8, 1876, she was committed to the Hospital for the Insane at Mt. Pleasant, Iowa. Anna was taken to the home of Mr. and Mrs. Peter Wadst; and on March 19, 1877, Peter Wadst and Andrew Strom, the father of Anna, entered into a deed of adoption, which was filed for record in Polk County immediately after its acknowledgment. Anna remained in the Wadst home until her marriage. She had no recollection of ever seeing her natural parents and was told by the Wadsts that her mother was dead and that Wadst had never seen her father since the time of the signing of the adoption papers. The Wadsts always treated her as their daughter, and on the death of the adopting father an action was brought to determine who was entitled by right of inheritance to his property. The administrator assumed an indifferent attitude as between the contesting parties, and Anna Johnson (formerly Anna Strom) claimed title to the property on the ground that she was the adopted daughter of the deceased. Two sisters and the surviving children of another sister of the deceased claimed that they were the only heirs. The trial court found in favor of the adopted daughter.

The question raised was as to the sufficiency and legality of the deed of adoption and was determined under the statute which provided that any person competent to make a will was authorized to adopt as his child the minor child of another and thus to confer on the adopted child all the rights, privileges, and responsibilities of a natural legitimate child. The consent of the parties, if living, was necessary, but if they were divorced or separated the parent lawfully, who provided for the child, might consent or if either parent was dead, the consent of the survivor was necessary. The appellants contended that the deed of adoption was insufficient because it was signed and acknowledged by the father only and

that the father and mother were not divorced. However, the deed specified that her parents were then separated for the reason that her mother was mentally deranged and was in the asylum. And the court held that the deed of adoption signed and acknowledged by only the father of the child, specifying that the parents were separated for the reason that the mother was mentally deranged and in a lunatic asylum was sufficient to constitute a valid deed of adoption. The sections relating to the guardianship of minor children providing that the 'parents are the natural guardians of their minor children and are equally entitled to the care and custody of them' and that 'either parent dying before the other, the survivor becomes the guardian' were given special weight."¹⁰³

The legal principle decided in a New Jersey court decision was that a "child adopted by a decree of a New Jersey court may take personal property by descent from a parent domiciled in New Jersey."

"In re Finkenzeller's Estate, 146 Atlantic Reporter (N.J.) 656 (1929).

The parents, domiciled in New Jersey, petitioned the Surrogate's Court of the county and state of New York for the adoption of an infant put then in the care of an institution in New York County and a decree was entered May 4, 1920. The parents and the child after that time resided in New Jersey until March 2, 1926, when the adoptive mother died, leaving a will in which no provision was made for the disposition of her personal estate. This would go then to the administrator, who was the husband and adoptive father in this case. Under the New Jersey statute an administrator is entitled to all the personal property of a deceased person and is required to file an inventory of the estate only if on the request of a person interested in the estate the court orders it to be done. On petition of the adopted daughter, the Orphans' Court ordered the father to file an inventory, and he appealed from

103. Ibid., Vol. IV, No. 3, Sept. 1930, pp. 478-79.

the order on the ground that the New Jersey statute of distribution applied only to natural and not to children adopted under the laws of another state. The plea was, however, against the great weight of authority and was denied."¹⁰⁴

A striking decision in an adoption case has been handed down by the Supreme Court of Minnesota. It is a decision that breaks with all precedent and lays down a principle that if followed in other jurisdictions will have wide implications.

"A long line of decisions by courts of final jurisdiction in many different states holds that where a method of adoption has been provided by statute, adoption cannot be effected in any other way than by the statutory method. The recent Minnesota decision goes contra to this rule and holds that where no court action to adopt a child has been taken in accordance with statutory provisions, nevertheless conduct and admissions may express a contract which creates the relationship of parent and adopted child."

The case in point was that of a child who, at the age of three, was living in the Bethany Home in Minneapolis. His parentage was unknown to the Home, but it is believed that his parents perished in a great forest fire. A man and his wife, seeking a child to adopt, came to the Bethany Home; they took the child home with them. Their attitude toward the new member of their family from that time on was the attitude of parents toward a son. They took him to their church and had him baptized under the name of his foster father; they told the minister they had adopted him. They

104. Ibid., Vol. IV, No. 1, March, 1930, p. 84.

announced to their friends they had adopted him; they continually referred to him as their son. The foster father took out upon the boy's life an insurance policy in which he designated himself as father. They did not let the boy know he had not been born to them.

When the boy grew up, steps were taken to teach him a trade. Thereafter he turned over most of his earnings to his foster parents. When the World War came he served as a soldier in the American army. The foster parents received as parents an allotment from his pay as a soldier. Later the boy married and when the marriage ended in divorce, the custody of his five-year old child was awarded to the foster parents as "grandparents." Also after the divorce the young man returned to live with them. He took care of them during illness as a son might be expected to do.

There was evidence in the case that it was the custom of Bethany Home to require persons to adopt children when they took them from the Home. However, the foster parents never did adopt by any court proceeding the boy they took from the Home and whom they treated through the following years as their son.

The foster mother died following the death of her husband, and left no will. Her four sisters thereupon came into court, denied the boy was her lawful heir, on the ground that he had never been adopted, and claimed for themselves as heirs her property, amounting to about \$8,000.

The case reached the Supreme Court in Minnesota. That court, laying down a new principle of law in regard to adoptions, says in part in its opinion:

"The facts set out above all indicate that there was an agreement to adopt respondent. They repeatedly stated that they had adopted him. . . . We are of the opinion that the status of William as an heir was properly before the Probate Court and that conduct and admissions expressed a contract which created the relationship of parent and adopted child."¹⁰⁵

"It is not for child welfare workers to question or perhaps to even comment upon the legal soundness of this decision. They may, however, express pleasure that Minnesota's highest court did not permit legal technicalities to thwart the manifest purpose of foster parents, nor to deprive a foster child of his share in the property of those to whom he had been in all essentials a son--property which probably he had assisted them materially in accumulating."¹⁰⁶

105. Dow, Charles E., "New Ruling in Adoption Cases," Child Welfare League of America Bulletin, Vol. 15, No. 7, September, 1936, p. 3.

106. Ibid., p. 3.

CHAPTER III

STUDY OF SOME ADOPTION LAW PROVISIONS AND ADMINISTRATION IN SELECTED STATES

"The country as a whole seems to have become adoption conscious. In no other procedure relating to the field of human relations is there as much need for the safeguards that law, medicine, psychology, and plain common sense can provide than in adoptions, and yet in it more than anywhere else in social work are theory and practice apt to be so far apart.

In a few states the legal transfer of a child from one family to another is still in its essence the same as if it were the transfer of a piece of property or like the registry of a deed. But the public's interest is awake to the implications of the problem.

Fortunately, in our forty-eight state experiment stations some lessons are being learned that are likely to result in the acceptance of a few of the essential steps that need to be taken. The two outstanding factors are the helplessness of the child in most cases, and the strong sentiment that attaches to the whole problem of adoption.

It certainly seems essential that all the facts that can be made available regarding the motivation of both parents and foster parents concerned in an adoption, and the opportunities that the child is likely to have in his new environment should go before the judge. Without these injustice is likely to be done.

It seems also as if a trial period under supervision of preferably a year previous to the completion of adoption might save many a child from getting permanently into the wrong family and many a family having sore disappointments.

Some states have created central supervision of procedure because of the great variety of case work standards that have been applied in the various courts. While the state department recognizes that the court makes the decision, it also recognizes that the court must have the available facts."¹

"Adoption is essentially an administrative function in that determination as to the wisdom of giving a child in adoption to the petitioners is based on considerations of a social rather than of a legal character. It is therefore fitting that the responsibility for approving adoption petitions should rest with an administrative agency such as the Department of Public Welfare. Given such a responsibility, the Department would be in a unique position to guide the development of methods and standards of child care, including the practice of the courts in disposing of adoption petitions. The courts would thus be required to exercise a purely judicial function by giving legal effect to the relationship established and approved through the administrative agency. Such a separation of function places upon each agency the duty to do that which it is peculiarly organized and empowered to do, while at the same time it insures the co-operation essential to an effective and closely integrated organization through which the adoption act can function."²

"The greatest progress made in safeguarding adoption has been made within the past two decades. The newer legislation provides for a social investigation in order that the court may know about the child and his background as well as the social situation in the family home into which he is to be adopted. It also provides that the child live for a trial period in the proposed home and that formal consent to the adoption be given by the natural parents or other guardians. Other related protective measures incorporated in the adoption law or provided for elsewhere are restrictions on

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1. Carstens, C. C., "Safeguards for Adoption," Child Welfare League of America Bulletin, Vol. XVI, No. 9, (Nov. 1937) p. 4.
 2. Nims, Elinor, The Illinois Adoption Law and Its Administration, pp. 97-98.

parental transfer of custody, authorization to change a child's birth record when he is adopted, and prohibition of placements by unauthorized parents."3

Of the forty-eight states and the District of Columbia, twenty-two make no provision for an investigation in adoption cases. This does not mean that investigations are not made in all cases, but it does mean that such investigations are not compulsory and hence sufficient safeguards are not provided by law. These states are Washington, Montana, Idaho, Colorado, Nebraska, Oklahoma, Missouri, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Georgia, Florida, West Virginia, Maryland, New Jersey, Connecticut, New Hampshire.

Eleven states and the District of Columbia require investigations by the State Department. These are Oregon, California, New Mexico, North Dakota, Minnesota, Arkansas, Alabama, Louisiana, Massachusetts, Delaware, Rhode Island.

Twelve states require the court to arrange for or make investigation. They are Arizona, Texas, South Dakota, Kansas, Iowa, Wisconsin, Michigan, New York, Virginia, North Carolina, and South Carolina.

In three of the states investigation is authorized but not required--Maine, Pennsylvania and Ohio.

"The social worker thinks that, whenever the custody of a helpless child is transferred

3. Hanna, Agnes K., "Some Problems of Adoption," The Child, Vol. I, No. 6, (December 1936) p. 6.

from one person to another, there should not only be some final public and authoritative action giving the child security, but all possible care should be taken to insure satisfying adjustment of the child and the new home to each other. And she believes this is possible only when there is an antecedent investigation or social study and later a trial period of the child in the home under supervision."⁴

Some states not only do not provide for the preliminary investigation but neither do they provide for the subsequent trial period. Illinois, for example, makes no such provision. Time and again an unsuccessful attempt has been made by special workers for amendments which will provide adequate safeguards in adoption of children. These proposals have been resisted by the judicial committee to whom submitted. This committee is composed almost entirely of lawyers.

"The Illinois law provides no restrictions as to the type of child who can be adopted or as to the persons who may adopt a child. There is no provision for the annulment of the adoption, and it is therefore impossible to obtain from the court records any information which would indicate how adoptions in which no social agency has participated turn out.

That more than a fifth of all adoptions are unknown to any social agency emphasizes the need for a central supervisory authority so that every child may benefit from the protection of the state in anything which affects his welfare so vitally as does adoption."⁵

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4. Jones, Elizabeth N., "The Administration of the Adoption Law in Cook County, Illinois," Social Service Review, Dec. 1937, Vol. XI, No. 4, p. 665.
 5. Ibid., pp. 691-2.

"We need to gather, study, and evaluate the laws dealing with the subject of adoptions. They are different in essentials as well as details in every state. Uniformity is probably not desirable, but it is desirable to learn what safeguards are present and what are lacking in these laws.

In a goodly number of states shocking practices are being revealed. Infants and young children are given away without consideration of their best interests and in some instances are even given for cash."⁶

A study of 1051 adoptions in New Jersey made by the Committee on Standards in Child Adoption of the New Jersey Conference of Social Work shows that New Jersey does not afford adequate protection:

- "1. To the natural parents.
Natural bonds are often severed hastily with lasting unhappiness for child and parent.
2. To the child.
No social investigation is required to determine the physical, mental and emotional needs of the child, and the suitability of the home to meet those needs.
3. To the adopting parents.
No physical or mental examination of the child is required to determine whether he would be suitable for the home which is offered him and no trial period to prove that he fits in satisfactorily."

Proposed legislation plans to regulate adoption of children in New Jersey for the protection of the natural parents, the foster parents and the child, by requiring that:

6. "Adoptions," Child Welfare League of America Bulletin, Vol. XVI, No. 9, November, 1937, p. 3.

1. Social investigations be made to determine the advisability of severing natural bonds.
2. Physical and mental examinations of the child be made before adoption.
3. Study by a qualified agency be made of the home offered by the adopting parents.
4. Probationary period of one year under supervision of a responsible agency elapse before adoption becomes permanent.
5. There be a central registration of adoptions, listed under the names of both the natural parents and the adopting parents.
6. Records be kept confidential, and open only to persons with a legitimate interest in the case.

The New Jersey Conference of Social Work cites the following as an example of an adoption case in its state:

"The Browns had never had any children of their own. They adopted the wistful little Edith, on whom they devoted all their indulgent affection and pride. Edith did not learn to walk at the customary age, and as she grew older, her speech continued to be babyish and disjointed. Now she is 22, but she has the mind of an eight year old child. A spinal deformity has interfered with her physical development, and her foster parents have spent all of their resources in a futile effort to help her.

A physical and mental examination and a trial period of a year might have prevented this tragedy. Edith would have been cared for in

another way, and a normal child might have had the benefit of the love and devotion of this unusual family."⁷

"In the United States it is only within the last twenty years that there has been statutory recognition of the need for State participation in adoption and that the State welfare departments have been made responsible by legislation for the investigation of adoption cases and for the general protection of the child placed for adoption. Likewise, legislation authorizing State departments to supervise the work of child-placing agencies has provided another State service in the interests of children placed for adoption."⁸

"The extent to which the States have accepted their full responsibility for services providing adequate protection for the child being adopted is not fully known. There has been little uniformity in the State programs of interpretation and in the leadership given even when specific legislation has made these the duties of a State department. Greater possibilities for education and service were provided recently when several States made it one of the general duties of the department of public welfare to give 'protection to the child placed for adoption.'"

"Leadership is far more important than laws, although well-integrated legal provisions are important factors in any State program for child welfare. The State department responsible for adoption is in an excellent position to point out inconsistencies, weaknesses, and omissions in the statutes, and to assist in drafting legislative measures that will meet the particular needs of children throughout the State."⁹

7. "Adopting Children--And How!" New Jersey Conference of Social Work Bulletin, 1931.

8. Colby, Mary Ruth, "Responsibility of the State in Child Adoption," The Child, Vol. 2, Nos. 9 and 10, March and April, 1938, p. 194.

9. Ibid., p. 198.

The writer includes here a study made of some of the provisions of the laws of the eleven states and the District of Columbia which require investigations by the State Department, and of one, Wisconsin, which authorizes the Court to arrange for investigations. Observations made by the Department executives of the administration of these laws were requested during the process of the study.

These states were chosen as their laws embody many of the most desirable features of the newer adoption legislation. As will be noted from the comments made by many of the State Departments representatives, "perfection" has not yet been attained, and several of the problems mentioned in the adoption programs seem to be almost "universal."

Alabama:

Before the present Adoption Law was passed in 1931 Alabama was one of the three states that retained an archaic adoption law. It was so simple that adoption could occur with little trouble and, if need be, revoked with equal ease. Consent of natural parents or legal guardian was not even required. The right of parents to the child in question, their obligation to the child, the child's right to natural and normal family relationships, his fitness as a subject for adoption, and the suitability of the foster parents to have the care and training of a child were all minor points

subservient to the desires of the foster parents.¹⁰

The right of the foster parents to adopt a child is a matter which ultimately should be decided by a court of law. Prior to 1931 Alabama courts rendered decisions concerning child adoption without adequate equipment on which to base these important decisions. Because of a growing dissatisfaction on the part of thoughtful judges, poorly protected foster parents and other persons interested in the protection of children, the Alabama Legislature enacted an adoption law which has been designated as a model act by national authorities.¹¹

The present Adoption Law provides protection to the child, the natural parents, the foster parents, the institutions and agencies authorized by the State to accept children for adoption, and the State itself on all points mentioned above.¹²

Alabama is one of a number of states having an adoption law which through a social investigation conducted by a central state authority insures a source of protection to children who are deprived of growing up in their own homes. These states have recognized that it is the responsibility of the state to safeguard the rights of a minor child to live

10. Alabama Social Welfare, July 1937, p. 12.

11. Ibid., March 1938, p. 8.

12. Ibid., July 1937, p. 12.

with his own parents, or, if this is impossible to have a foster home which offers financial security, proper care, supervision and training.¹³

In 1919 there was established by act of Legislature the State Child Welfare Department. This Department offered to Alabama children the first generalized public service available in the State. Since that time this public service has been built up with special emphasis on the preventive aspects of child welfare. Laws expressing some of the essence of the parental nature of the State have been placed on the statute books. These laws are protective measures which have served as a model to other states. The administration of these laws is through a central State authority with some administrative control placed in county departments. When in 1935 the State Child Welfare Department expanded and grew into the State Department of Public Welfare, none of the laws were repealed; on the other hand services for children were expanded and made to embrace a greater scope.

Today there is located in every county in Alabama a department of public welfare which is assisted and helped through the resources of the State Department. Interested lay people with special knowledge of public welfare facilities compose the sixty-seven county boards of public welfare. The county departments are staffed by trained personnel qualified and equipped under the regulations

13. Ibid., March 1938, p. 8.

prescribed by the State Board of Public Welfare.¹⁴

It is the responsibility of the State Department of Public Welfare or an agency authorized by this department to search out the facts surrounding the removal of a child from his own home and to report these facts to the one of the sixty-seven probate courts in which the petition is filed. In other words, the State Department of Public Welfare is the agent of the court when it is conducting its inquiry concerning the adoption petition filed by foster parents. The final responsibility of the decision is, however, rightly fixed in the court.¹⁵

During a six year period following the passage of the adoption law, July 17, 1931, 1,234 petitions have been filed in the probate courts. Nine hundred and thirty-eight or seventy-six per cent of this number have been reported on favorably and have been acted upon accordingly by the court. One hundred and forty-seven or eleven and nine-tenths per cent of the petitions filed have been withdrawn by the foster parents and automatically dismissed by the courts. One hundred and one or eight and two-tenths per cent of the number have received an unfavorable report by the social agency. Out of the one hundred and one unfavorable reports the courts in only seventeen instances failed to accept the findings of the social agency. In the

14. Ibid., November 1938, p. 6.

15. Ibid., March 1938, p. 8.

majority of these cases there was a difference of opinion as to the definition of abandonment.

It is plain that the courts, with the co-operation of social agencies and foster parents, are in a position to try to insure to children in foster care in Alabama the highest measure of protection.¹⁶

It is noted that the Alabama adoption law specifically provides that the State Department may use qualified public and private agencies to make investigations. The law places no time limit on the investigation and outlines in some detail the problems to be investigated. There are definite advantages in defining the scope of the investigations in the law when responsibility for investigations is not vested in a central authority.

"Upon the filing of a petition for the adoption of a minor child a copy of such petition, together with a statement containing the full names and permanent address of the child and the petitioners shall be served by the court receiving petition within five days on the State Child Welfare Department of Alabama by registered mail or personal service. It shall then be the duty of the State Child Welfare Department, through its own field agents, or through such other agencies and institutions in the county licensed by the Department for the care and placement of children, or through the county child welfare superintendent of the county of the court hearing petition, or the probation officer of the juvenile court or court of like jurisdiction of the county, under the department's supervision, to verify the allegations of the petition, to make a thorough investigation of the matter and to report its findings in writing to the court. The report shall show among other things: (1) Why the natural parents, if living, desire to be relieved of the care, support and

16. Ibid., March 1938, p. 13.

guardianship of such child; (2) Whether the proposed foster parent, or parents, is or are financially able and morally fit to have the care, supervision and training of such child; (4) The physical condition and also the mental condition of such child insofar as this can be determined. Upon the day so appointed the court shall proceed to a full hearing of the petition and the examination of the parties in interest, under oath, with the right of adjourning the hearing and examination from time to time as the nature of the case may require. If the report of the State Child Welfare Department or its duly authorized agents, as provided herein, disapprove of the adoption of the child, motion may be made to the court to dismiss the petition."¹⁷

The Alabama law also provides for an interlocutory order in effect for one year before granting the final decree.

"If the court is satisfied that the natural parents have just cause for desiring to be relieved of the care, support and guardianship of said child, or have abandoned the child, or are morally unfit to retain its custody, that the petitioning foster-parent or parents is or are financially able and morally fit to have the care, supervision and training of such child; that such child is suitable for adoption in a private family home, and that such change of name and guardianship is for the best interest of such child, it shall make an interlocutory order setting forth the facts and declaring that from the date of the final order of adoption in such case, if such final order be afterwards entered, as hereinafter provided, such child, to all legal intents and purposes, will be the child of the petitioner or petitioners and that its name may be thereby changed. Such final order of adoption shall not be granted until the child shall have lived for one year in the home of the petitioner and shall have been visited during the said period at least once in every three months by an agent of the State Child Welfare Department or its duly

17. Alabama, Code of 1923, Amended 1931, Section 9302.

authorized agents as provided herein. At any time before the entry of such final order of adoption, the court may revoke its interlocutory order for good cause, either of its own motion or on the motion of the State Child Welfare Department or its duly authorized agents as provided herein, or on the motion of the natural parent or parents of such child, the original petitioner or petitioners, but no such revocation shall be entered unless ten days notice in writing shall have been given to the original petitioner or petitioners (unless he or they make the motion), or unless the original petitioner or petitioners shall have been given an opportunity to be heard."¹⁸

Mrs. Edward Gresham, Director of the Child Welfare Bureau of the Alabama State Department of Public Welfare states:

"We have had many opportunities through the administration of our Adoption Act to observe the means of protection it affords children and families. The social investigation before any action is taken by the Court, the waiting period before an adoption is finally consummated and the provision for the issuance of a new birth certificate, are some of the elements which we believe to be beyond dispute so far as a total program of child protection goes."¹⁹

Arkansas:

In 1937 the State Department of Public Welfare was established in Arkansas. Section 7 of Act 41, entitled "Activities of the State Department" includes the following:

18. Ibid.

19. Gresham, Mrs. Edward, Letter to Writer, March 31, 1939.

"Administer or supervise all child welfare activities, in accordance with the rules and regulations of the State Department, including: (a) the regulation of the importation of children; (b) licensing and supervising of private and public child-caring agencies and institutions and boarding homes for children; (c) the care of dependent, neglected and delinquent children, and children mentally or physically handicapped, in foster family homes or in institutions; (d) the care and supervision of children placed for adoption; (e) the care and supervision of children of illegitimate birth; (f) the supervision of the Juvenile Court Department."20

The following provision for investigation and trial period is made in the Arkansas Adoption Law:

"Section 4. Investigation by State Juvenile Court Department, or its duly authorized agents.

For the purpose of aiding the court in reaching a proper determination but without limiting its power, it shall be the duty of the clerk of the court within five days after the petition is filed, to notify the State Juvenile Court Department by registered mail, inclosing with such notification a copy of petition. The Department shall then verify the allegations of the petition, ascertain why the natural parents, if living, desire to be relieved of the care, support and guardianship of such child; ascertain whether the natural parents have abandoned such child or are morally unfit to have the custody; ascertain whether its foster parent or parents is or are financially able to have the care, supervision and training of such child; ascertain the physical conditions and also the mental conditions of such child in so far as this can be determined; and make recommendations as to advisability of adoption of the child. The Department shall designate the probation officer of the county in which the petition is filed, and if there be no probation officer in said county some other suitable agency or person to make such investigation. The Department shall

20. Arkansas, Act 41 of the General Assembly of the State of Arkansas, 1937.

furnish forms for such investigation to the end that such investigation shall be uniform throughout the state.

The probation officer or the duly designated agency or person shall report the results of such investigation to the State Juvenile Court Department at such time as said Department may specify. The results of such investigation shall be embodied in a full report in writing which shall be submitted to the court at or prior to hearing upon the petition but not later than thirty days after receipt by the State Juvenile Court Department of copy of petition and notice of filing of same unless for good cause shown, the court shall grant an extension of time. Such report shall be filed with the records of the proceedings and become a part thereof.

In the event that Department recommends the petition be not granted, the court may act upon such recommendation and without further hearing deny the petition, but if the petitioner shall request a hearing the court shall hold such a hearing. At such a hearing the probation officer, or the designated agency or person making the investigation may present evidence regarding the proposed adoption. The court shall notify the State Juvenile Court Department of the time and place of such hearing at least ten days before the time of such hearing.

Section 5. Period of Probation. No petition shall be granted unless the child has lived for six months in the home of the petitioner; provided, that this requirement may be dispensed with upon good cause shown in the discretion of the court, when the court is satisfied that the home of the petitioner and the child are suited to each other."²¹

Miss Beth Muller, Director of Child Welfare of the State of Arkansas Department of Public Welfare explains part of the adoption process as carried on in that state:

21. Arkansas, Act 137 of 1935 as amended by Act 328 of 1937.

"The State Juvenile Court Division, as mentioned in the Acts, has become a part of the State Child Welfare Division and the field work in adoptions is carried as a part of the work of the Child Welfare Consultants, who cover the state in six districts. These are all professional persons and efforts are being made to have social studies made both of the prospective foster parents and of the child. The Juvenile Court Supervisor in the state office makes her recommendations on adoptions on the basis of the social studies. As will be noted, there is a provision in the adoption act which allows Judges to proceed with the granting of orders at their own discretion without action by the Juvenile Court Division. The Child Welfare Consultants are in touch with the courts of all of the counties and are using every opportunity to do an interpretative piece of work on child placing and adoptions.

In the election in November an amendment to the State Constitution to transfer all Probate matters (including adoptions) from the County Court to the Chancery Court was passed by the voters. This matter is now before the Legislature for confirmation and we are not sure at the moment just where jurisdiction lies. This matter will be decided in the near future. The county judges in Arkansas are the fiscal agents for the county and do not need to be persons with legal training. Many of them are interested in matters concerning children but the pressures of bridge building and other financial matters can too frequently crowd out problems of children. The county judge is still the juvenile court judge."22

California:

The Civil Code of California provides for two very distinct types of adoption--

22. Muller, Beth, Letter to Writer, January 19, 1939.

1. The ordinary adoption of a child which is covered by Civil Code provisions 221 to 229 inclusive.

2. The adoption of an illegitimate child by what is termed a public acknowledgement by the father of such child, which is provided for under Section 230 of the Civil Code.²³

For many years adoption proceedings were not considered as judicial facts but were regarded as legislative proceedings. In 1905 Section 226 of the Civil Code was amended and adoption matters were legally determined to be judicial matters within the jurisdiction of the Superior Court.

For many years no official supervision was given to those persons and agencies engaged in the placing of children for adoption.

In 1911 Chapter 569 of the General Laws provided for the licensing of those agencies placing children for adoption by the State Board of Charities and Correction. Later this licensing power was conferred upon the State Department of Social Welfare, where it still remains.

At present two organizations, the Children's Home Society of California and the Native Sons and Native Daughters Central Committee on Homeless Children, are the only agencies licensed to place children.²⁴

23. Biennial Report of the Department of Social Welfare of the State of California, July 1, 1934 to June 30, 1936, p. 59.

24. Ibid.

In 1927 the Civil Code of California was amended so that the responsibility of investigating and reporting to the court on all adoption matters was placed upon the State Department of Social Welfare.

In the present adoption procedure, a child may be placed for adoption in one of two ways:

1. By relinquishment to an agency licensed by the State Department of Social Welfare to engage in child placing.
2. By direct placement by the parent of the child in a home which the parent selects.

Of the two plans, the first is the one which provides better protection to all concerned, in that every right of parent, child, and foster parent will be served and safeguarded by thorough investigation and supervision. In those cases which come under the second of these plans, investigation is made directly by agents of the State Department of Social Welfare. The State Department of Social Welfare has endeavored to carry on this work to the best of its ability, having in mind only the best interest of the child involved.²⁵

In 1931 the adoption law of California was changed so that step-parent adoptions were eliminated from those needing the investigation and report of the State Department of Social Welfare. However, in 1933 Section 227a was added

25. Ibid., p. 59.

to the Civil Code and the responsibility for step-parent adoptions so far as investigation and report is concerned, is placed upon the juvenile probation officer of the county in which the petition is filed.²⁶

Provision 226 of the Civil Code of California indicates the responsibility of the State Department of Social Welfare in adoption matters.

"Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petition resides and the clerk of the court shall immediately notify the State Department of Social Welfare at Sacramento in writing of the pendency of the action. In all cases in which consent is required, except in the case of an adoption by a step-parent where one natural parent retains his or her custody and control of the child, unless a society licensed by the State Department of Social Welfare to find homes for children and place children in homes for adoption joins in the petition for adoption, the consent for adoption must be signed in the presence of an agent of the State Department of Social Welfare on a form prescribed by such department and filed with the clerk of the superior court, in the county of the petitioner's residence; provided, that if such department fails to submit its report to the court within one hundred eighty days after the filing of the petition, then the court may allow the signing of consent in open court; provided, however, that the court may allow such additional time for the filing of said report as in its discretion it may see fit.

Such consent, when reciting that the person giving it is entitled to the sole custody of the minor child, shall, when duly acknowledged before such agent, be prima facie evidence of the right of the person making it to the sole custody of the child and such person's sole right to consent.

26. Ibid., p. 60.

In all cases of adoption in which no agency licensed to place children for adoption is a party, except in the case of an adoption by a step-parent where one natural parent retains his or her custody and control of the child, it shall be the duty of the Department of Social Welfare to ascertain whether the child is a proper subject for adoption and whether the proposed home is suitable for the child, prior to accepting the consent of a natural parent to the adoption of the child by the petitioner.

If the Department of Social Welfare refuses to accept the consent of the natural parent, for adoption, on the ground that the best interests of the child will not be promoted by the proposed adoption, said parent may appeal from said refusal to the superior court of the county in which the petition is filed, in which event the clerk of the court shall immediately notify the Department of Social Welfare which shall within ten days file a report of its findings as to refusal to accept consent. After the filing of said findings, the court may allow the signing of consent in open court.

In all cases in which consent is not necessary and no society licensed to place children for adoption is a party to the petition, the State Department of Social Welfare must, prior to the hearing of the petition, file its consent to the adoption with the clerk of the superior court of the county in which the petition is filed. Such consent shall not be given by the Department of Social Welfare unless the child's welfare will be promoted by the adoption.

Except in the case of the adoption of a child by a step-parent where one natural parent retains his or her custody and control of the child, it shall be the duty of the Department of Social Welfare to submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition within one hundred eighty days after the filing of the petition.

In case of an adoption of a child by a step-parent where one natural parent retains his or her custody and control of said child, the consent of either or both parents may be signed in the presence of and filed with the clerk of the superior court of the county where the petition

is filed and the clerk shall file a certified copy of such consent to adoption with the State Department of Social Welfare.

If the father or mother of a child to be adopted resides outside the State of California, his or her consent may be signed before a notary and in such case the consent of the Department of Social Welfare will also be necessary."²⁷

The California law makes no provision for probationary residence period of the child in the adoptive home.

Delaware:

In the State of Delaware the State Board of Charities is designated by law to make investigation in adoption cases.

"Upon the filing of the petition, the Court shall by appropriate order in the form of an Order of Reference direct an agent of the State Board of Charities, or some person accredited by the State Board of Charities, to make a careful and thorough investigation of the matter and report his or her findings in writing to the said court within sixty days from the date of such order of reference and in such investigation shall make the inquiries required by the act of the General Assembly."²⁸

"An extension of the time within which to file said report by the investigator may be extended by the Judge of the Court upon request of said investigator showing the cause or reason therefore.

The person so directed to make such investigation shall make inquiry, among other things, as to:

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27. Laws Relating to the Department of Social Welfare,
California Adoption Law, Civil Code, Prov. 226.
28. Welfare Laws of Delaware, November 1937, 3550. Sec. 3,
p. 24.

a. Information why the parents or guardians of the child or children desire adoption.

b. Whether or not such parents or guardians have abdicated control over the child or children, or whether conditions would make this advisable.

c. Whether any person, organization, or agency of any sort which has had any part in the negotiations has received or expects to receive any fee in connection therewith except for the due professional performance of legal or medical services.

d. Information regarding the foster home; to include the emotional, moral, financial, intellectual, and health standards of such home, and religious affiliations.

e. Data on the physical and mental conditions of the child or children.

f. Summary on the suitability of the child to the home, including suitability of religious affiliations.

g. Whether the placement is for the best interests of the child."²⁹

The law provides for an interlocutory order of adoption, effective for a period of one year from the date of hearing. This is followed by the final order for adoption.

"The final order of Adoption shall not be granted until the child or children shall have lived for one year in the proposed home under the care and protection and as the child in fact, of such petitioner or petitioners; and shall have been visited during said period as often as within the discretion of the State Board of Charities is deemed necessary, by the person who was previously designated by the Court

29. Ibid., p. 25.

to make the investigation required by this Section; if such person is unavailable for any reason, then by a person having the same qualifications as such person, provided, however, that in the event the child has lived in the home of the petitioner or petitioners for a period of one year or more prior to the filing of the petition for adoption, the State Board of Charities may recommend that the issuance of the Interlocutory order of Adoption be waived and the Final Decree issued forthwith in the Court's discretion, when in such instance the necessity for a visit during the Interlocutory period, as hereinbefore provided, shall likewise be waived. At any time before the entry of the final order of adoption the Court may revoke its interlocutory order for good cause either of its own motion or on the motion of the natural parents or guardians of such child or by the original petitioner or petitioners or the child itself by its next friend; provided, however, no such revocation shall be entered unless and until ten days notice in writing shall have been given to the original petitioner or petitioners (unless he or they make the motion), or have removed from the State or unless the original petitioner or petitioners, if residents of the State, shall have been given an opportunity to be heard; and further provided, that desire to withdraw consent once given as part of the petition in the proceedings shall not be considered good cause for revocation of the said interlocutory order."³⁰

Provision is made for annulment and here it is noted that the State Board of Charities or some person accredited by the Board is required to make investigation.

"If, at any time after the final order of the court permitting such adoption and change of name the adopting parents, the child himself if of 21 years of age, or any individual or agency believes that for just cause an adoption should be revoked, the Judge of the Orphans' Court

30. Ibid., 3551, Sec. 4, pp. 28-9.

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shall require an agent of the State Board of Charities or some person accredited by the State Board of Charities, to make a complete investigation of the reasons for annulment and submit his findings in writing to the court, which shall then bear the testimony of all concerned. If it shall appear, based on these findings and giving due consideration to the intention of this Act to provide a means whereby Adoption shall create a permanent and lasting relationship not to be placed in jeopardy, nor terminated except for obvious and grave causes, that the revocation sought is manifestly just and proper and for the best interests of the child, the Court may, in its discretion, vacate said final order of Adoption and change of name. Thereupon, such child shall be restored to the position and name which it held before such final order of adoption.

And the Court shall see that all the property rights of such child, as well as of the person or persons adopting it, are protected, and may make such order as may be proper in the premises so that no injustice may be done."³¹

Sixty-three applications for adoptions were handled by the Board during the year. Fifteen final decrees, were issued and eight applications were withdrawn or other arrangements made. Thirty-nine adoptions were pending on June 30, 1938. The majority of adoption placements was made by physicians or lay persons, but a considerable number was made by responsible child caring agencies.³²

Mr. C. Rollin Zane, Executive Director of the

31. Ibid., 3551. Sec. 4, p. 31.

32. Annual Report of the State Board of Charities of Delaware, Covering the Fiscal Year Ending June 30, 1938, p. 21.

State Board of Charities makes the following comment about the "operation" of the law in his state:

"One problem which bothers us in Delaware is the fact that, under the present laws, there seems to be no way to control the placement of children for adoption by irresponsible persons. By that, I mean placement by persons with no special training for that kind of work. Although the placement must be passed upon by the State Board of Charities before an adoption decree will be granted, the State Board of Charities is placed in a position of breaking up an established home oftentimes if it disapproved of the placement. Another possibility is that the child would continue to live in the home without being adopted as I doubt whether the State Board has the authority to remove such a child from a home unless the child was being abused to such an extent that the Society for the Prevention of Cruelty to Children laws would apply.

We have attempted, in Delaware, to corroborate our work with a responsible private child placing agency by which it would handle all adoption placements. A worker of this agency becomes the agent of the State Board of Charities for the purpose of making a report to the Court."³³

District of Columbia:

On August 25, 1937, the Congress of the United States passed the following Act to regulate proceedings in adoption in the District of Columbia:

"Jurisdiction is hereby conferred upon the District Court of the United States for the

33. Zane, G. Rollin, Letter to Writer, Jan. 24, 1939.

District of Columbia to hear and determine petitions and decrees of adoption of any adult or child (hereinafter called adoptee) with authority to make such rules, not inconsistent with this Act, as shall bring fully before the court for consideration the interests of the adoptee, the natural parents, the petitioner, and any other properly interested party. No petition shall be considered by the court unless petitioner's spouse joins in the petition or consents to the adoption.

Jrusidiction is conferred if either of the following circumstances exist:

(1) If petitioner is a legal resident of the District of Columbia;

(2) If petitioner has actually resided in the District of Columbia for at least one year.

The petition shall state, so far as known, the name, age, race, occupation, and address of the natural parents, when known, and of the petitioner, whether the petitioner is married or single, the age and sex of the adoptee, the property owned by the adoptee, and such other facts as the court may require.

The court shall thereupon, if the adoptee is under twenty-one years of age, issue a rule with copy of the petition attached, which shall be served in such manner as the court shall therein direct, directed to all parties to the petition who do not appear and consent to the adoption, and to the Board of Public Welfare to verify the allegations of the petition, to make a thorough investigation for the purpose of ascertaining if the adoptee is a proper subject for adoption and if the home of the petitioner is a suitable one for the adoptee and within a period not in excess of sixty days to report its findings with recommendations to the court. If an investigation already has been made by a social agency approved by the court, the Board of Public Welfare shall accept it instead of making one itself: Provided, That the foregoing provisions of this section relating to investigations and reports by the Board of Public Welfare or an approved social agency shall not apply, if an investigation has already been made by a recognized religious or fraternal organization, having under its care

minors for adoption, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and if such organization appears in the proceeding and reports to the court the results of its investigation and its recommendations with respect to the adoption.

Sec. 2. If adoptee is under twenty-one years of age, no decree of adoption shall be made unless the court shall find that the following persons have consented to the adoption: Adoptee, if fourteen or more years of age; and the natural parents or adoptive parents by a previous adoption, if living. The consent of the father of an adoptee born out of wedlock shall not be necessary unless he has both acknowledged the adoptee and contributed voluntarily to its support. The consent of a parent who is a minor shall not be voidable because of that minority.

If adoptee shall have attained the age of twenty-one years or over, the only consents which shall be required are those of such adoptee, and its spouse, if any.

The consent of a natural parent, or parents, or adoptive parents by a previous adoption, may be dispensed with (1) where after such notice as the court shall direct it shall appear to the court that such person or persons cannot be located; (2) where they have been permanently deprived of custody of the adoptee by court order; (3) where it shall appear to the court that they have abandoned the adoptee and voluntarily failed to contribute to his or her support for a period of at least one year next preceding the date of filing of the petition; or (4) where investigation has shown to the satisfaction of the court extraordinary cause why such consent should be dispensed with.

Sec. 3. After considering the petition, the consents, and such evidence as the parties and any other properly interested person may wish to present, the court may enter a final decree of adoption if it is satisfied (a) that adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner; (b) that the petitioner is fit and able to give the adoptee a proper home

and education; and (c) that the change will be for the best interests of adoptee.

No final decree of adoption shall be entered unless the adoptee shall have been living with the adoptor at least six months prior to the filing of the petition. If, however, it shall appear in the interests of the adoptee, the court may enter an interlocutory decree for adoption, which decree shall by its terms automatically become a final decree of adoption on a day therein named, which shall not be more than six months from the entry of such interlocutory decree unless such decree shall be set aside for cause shown. If it shall appear in the interests of the adoptee, the Board of Public Welfare shall visit the adoptee during the period of the interlocutory decree at regular intervals.

Sec. 4. Notice of a final decree of adoption shall be sent to the Bureau of Vital Statistics of the Health Department. This Bureau shall cause to be made a new record of the birth in the new name and with the names of the adoptor and shall then cause to be sealed and filed the original birth certificate with the order of the court and such sealed package shall be opened only by order of court.

Sec. 5. Entry of a final decree of adoption shall establish the relation of natural parent and natural child between adoptor and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adoptor, except that adoptee shall not inherit from collateral relatives of or the parents of adoptor although such collateral relatives and parents of adoptor shall have the right of inheritance from adoptee. All rights and duties including those of inheritance and succession between adoptee, his or her natural parents, their issue, collateral relatives, and so forth, shall be cut off. In the event one of the natural parents shall be the spouse of the petitioner, then the rights and relations as between adoptee, such natural parent, and his or her parents and collateral relatives, including mutual rights of inheritance and succession, shall in nowise be altered.

The family name of the adoptee shall be changed to that of the adoptor unless the decree

shall otherwise provide, and the given name of the adoptee may be fixed or changed at the same time.

Sec. 6. Records and papers in adoption proceedings, after the petition is filed and prior to the entry of a final decree, shall be open to inspection by the parties or their attorneys and members of the Board of Public Welfare or their agents, upon order of the court. Upon the entry of a final decree the Board of Public Welfare and the clerk of the court shall seal all papers in the proceedings. Said seals shall not be broken, and said papers shall not be inspected by any person, including the parties to the proceeding, except upon order of the court. Application for leave to inspect papers in adoption proceedings shall be by petition and shall be granted only for extraordinary cause shown. The court may appoint a master to consider and investigate the facts upon which such a petition is based, who shall make his findings and recommendations to the court.

The clerk of the court shall keep a docket of all adoption proceedings which shall only be inspected upon order of the court upon the same conditions hereinabove set out for the inspection of papers.

Sec. 7. Section 395 (title 15, sec. 1, New Code) of the Code of Law of the District of Columbia is hereby repealed. The provisions hereof shall have no retroactive effect and shall not be construed as affecting in any way the rights and relations obtained by any decree of adoption entered heretofore, and all proceedings instituted and pending on the date of this enactment shall be carried to their final determination in accordance with the provisions of section 395 as if this Act had not been enacted, and all orders and decrees entered therein shall remain valid and binding on all parties thereby affected.³⁴

Miss A. Patricia Morss, the Chief of the Division of Child Welfare of the Board of Public Welfare was asked to

34. Public. No. 370, 75th Congress, Chapter 774, 1st Session,
S. 2281.

give an evaluation of the application of the adoption act. Some of the difficulties encountered are brought out in her recent letter:

"I do not think that our adoption act has been in effect long enough for us to give you any careful evaluation of its application. The Board of Public Welfare did not receive any appropriation for personnel to provide these services and being already badly understaffed it has been only with great effort and overtime that we have been able to comply with the requirements of the act for social investigation and reports. Added to this difficulty is the fact that the interval of sixty days provided in the act between the filing of the petition and the report and recommendation from the Board of Public Welfare is found to be far too short a time to make a careful study. This is particularly due to the fact that the District of Columbia does not have other social protective measures for children of unmarried parents such as would regulate unnecessary separations of mothers and children and prevent indiscriminate passing on of responsibility by the parents of such children to other persons.

It not infrequently happens that all of the sixty day period is necessary to even establish identity of the child named in the petition. Many of the children are placed in homes of the adopting parents through commercial boarding homes who after contacting the mother, promise protection from unnecessary disclosure of her problem by having her sign a fictitious name to the consent for adoption and omitting very important identifying information from the birth registration."³⁵

Louisiana:

In Louisiana a Bureau of Child Welfare was created within the State Department of Public Welfare in July, 1938.

35. Morss, A. Patricia, Letter to Writer, Feb. 1, 1939.

The activities of this department in reference to Child Welfare are set forth under Section 7, Act No. 344 of 1938 Public Welfare Laws--

(8) Administer and supervise all public child welfare activities relating to children who are dependent, neglected, delinquent or in danger of becoming delinquent or physically or mentally handicapped; to establish, extend and strengthen services for such children in parish or district departments; to license and supervise public and private agencies, institutions and individuals caring for children, under the rules and regulations of the State Department; and to provide such other services for children as may be authorized by law."³⁶

The Adoption Act of Louisiana, passed in July, 1938, provides for participation by the State Department of Public Welfare.

Section 2. A petition for adoption shall be presented to the Juvenile Court of the parish in which the adoptive child or the adoptive parent or parents are domiciled. Such petition shall state the full names, address, ages, occupation, and marital status of the petitioners and the name and the approximate age of the child to be adopted, and the name and address of the parent or parents or tutor of the child to be adopted, through what means the child entered the petitioner's home and information as to the status of the child to be adopted.

A copy of said petition so filed shall be served on the State Department of Public Welfare, through the Commissioner of Public Welfare, which is required to submit a report to the Court of jurisdiction, setting forth the complete findings regarding the proposed adoption, provided, that a copy of the petition shall be served on each of the living parents of the child to be adopted, unless the child has been legally surrendered or

36. Public Welfare Laws of Louisiana, Section 7, Act No. 344, 1938.

the child has been removed from their custody or has been declared legally abandoned by a Court of competent jurisdiction. If the addresses of either or both parents are unknown, the State Department of Public Welfare shall make efforts to locate the parents if possible and obtain the necessary consent to the proposed adoption. In the event that neither parent can be located, the said petition shall be served on the person having custody of the child to be adopted. The Court shall set a time and place for the hearing of said petition not less than thirty days nor more than sixty days after service of the petition.

Section 3. When the Court shall have received the report of the State Department of Public Welfare, it may enter an interlocutory decree awarding temporary custody. After the interlocutory decree has been entered, the State Department of Public Welfare, through the Bureau of Child Welfare or its authorized agents, shall maintain supervision of the proposed adoptive home and shall visit the child not less than four times before the final decree, the time of the fourth visit being not less than ~~one~~ month before the final decree of adoption, and shall report its findings of these visits to the Court.

Section 4. Any person who has been granted an interlocutory decree of adoption in accordance with the provisions of this Act may at the end of a period of not less than six months from the date of rendition of said interlocutory decree apply for a final decree of adoption of said child; provided the child has lived in the home of the person granted the interlocutory decree for a period of not less than one year. Upon the filing of said application for a final decree of adoption, the Court shall appoint a time and place for hearing not less than thirty days and not more than sixty days after the filing of the application. A copy of said application shall be served on the State Department of Public Welfare through the Commissioner of Public Welfare. The Department of Public Welfare, through the Bureau of Child Welfare or any agent thereof duly authorized in accordance with the provisions hereof, shall present to the Court a report of its findings, certifying that a full investigation has been made of the desirability of the adoption and certifying that supervision has been

given since the interlocutory decree. The findings of said report shall be based on the moral and financial fitness of the person petitioning for such adoption, the conditions of the proposed adoptive home with respect to health, adjustment of the child, and other advantages or disadvantages to the said child in the said proposed adoptive home and the suitability of said child in the said proposed adoptive home, and the suitability of said child for adoption in said home, this report to set out the relevant facts in detail.

If after the lapse of thirty days from the service of such application on the State Department of Public Welfare, no objections to said application are filed, the Court, after taking into consideration all the information concerning the adoption coming to it from the State Department of Public Welfare and other sources, as to the best interests of the child may, if satisfied that the adoption is for the best interests of the child, enter a final decree that said child to all legal intents and purposes is the child of the petitioner or petitioners. In the event objection is filed within said period by any party to the original proceedings, the case may be set for trial, and if at the trial such evidence is adduced that it is to the best interests of the child that a decree of adoption be entered, the Court may enter such decree of adoption. The name of the adopted child may be changed in said decree of adoption.

Section 5. At any time before the entry of such final decree of adoption, the Court, for good cause, may revoke its interlocutory decree awarding the temporary custody, either on its own motion, or on the motion of the State Department of Public Welfare, or its duly authorized agent, or on the motion of the parent or parents or of the original petitioner, but no such revocation shall be entered unless ten days' notice in writing shall have been given to petitioner and the State Department of Public Welfare or its duly authorized agent, or unless petitioners and the State Department of Public Welfare or its agents, have an opportunity to be heard.³⁷

37. Ibid., Act. No. 428, pp. 17-9.

Section 8. It shall be the duty of the State Department of Public Welfare to make a full investigation of all persons desiring to adopt any child and shall give a certificate, if after such investigation, in accordance with provisions of Section 3 hereof, it finds said petitioner to be a fit person to have the custody of said child, and that it is to the best interests of the child, that the custody be awarded to the petitioner. After an interlocutory decree has been entered, the State Department of Public Welfare through the Bureau of Child Welfare or its authorized agents shall maintain supervision in accordance with Section 2 and shall report the findings of said supervision as required in Section 3, setting out whether or not it finds the proposed adoptive parent or parents to be proper persons to adopt said child. That the proceedings provided herein shall be heard by the Judge in Chambers, and no one shall be admitted to such hearings except the parties in interest, their attorneys and officers of the Court, nor shall any publication of such proceedings be permitted except on written authorization of the Court, and the Court shall have authority to punish for contempt of Court anyone violating this provision.³⁸

The Director of the Bureau of Child Welfare of the State Department of Public Welfare summarized their practice in adoption cases in a recent letter:

"SOCIAL STUDY

The social studies made for the court and the supervisory visits to the child placed in a foster home following the Interlocutory Decree are the responsibility of the State Department of Public Welfare through its Bureau of Child Welfare. The staff who conducts the social studies are entirely members of the State staff. All records of such social studies are forwarded to the Judge to whom the petition for adoption has been made with copies of that study for the

38. Ibid., p. 20.

permanent files in the State Department of Public Welfare. A series of four supervisory visits are demanded by law. If the material which the social study reveals is normal and uneventful, the State Department forwards it to the Judge without previous conference. Should the study reveal serious reason to question the desirability of the foster home, a conference is arranged with the Judge in which the social worker discusses her findings and gives the Judge her reason for feeling that the approval of the Department should be withheld. If the Judge wishes to continue the study further or prefers to set a time for a hearing, the material is forwarded to him and the hearing is scheduled without the social worker's presence. It is our philosophy that we provide the courts with constructive assistance, but we do not place ourselves in a position of controversy and opposition. We are free to approve or withhold our approval. The court can override our approval. In the six months during which we have made studies for the courts in various parts of the State, we have not been overruled nor has our disapproval been disregarded by the court. In cases where we disapproved, conferences have been held with the prospective foster parents and the petition for adoption has been withdrawn by the foster parents.

SUPERVISION:

The law specifies that we make four supervisory visits to the foster home after the initial social study has been made and the Interlocutory Decree has been granted. The content of these visits is similar to the content of supervisory visits in foster care work. The law stipulates certain points which we must be aware of during our supervisory relation. Our social practice incorporates the intangibles that surround the points specified by law. The complete report is on file in the State office and available to the Judge in full or in summary at any time he wishes. During the six months period in which these supervisory visits may occur, conferences are again arranged with the Judges in the event question arises concerning the suitability of the child for the home or the security and stability of the home itself. In this way we believe that we have given the most adequate service possible to the court as well as to the

foster parents and child involved in the adoption. A final report is presented to the Judge at the date of the final hearing. Again the State Department does not appear at the hearing even though we should disapprove of the home and recommend that the final decree of adoption not be granted. We believe that our casework relation to the foster home and court during the period between the granting of the Interlocutory Decree and the final hearing, which may not be less than six months, but may in the discretion of the court be extended beyond six months, affords ample opportunity for constructive discussion of differences and that nothing could be gained by our appearing at the final hearing when the Judge and foster parents are already aware of our position and recommendations in the case.

Louisiana law is based on the Napoleonic Code rather than the Common Law and many of our laws affecting children are determined by the influence of the Napoleonic Code and our cultural pattern."³⁹

Massachusetts:

In 1931 chapter two hundred and ten of the General Laws of the Commonwealth of Massachusetts was amended so as to provide for investigation by the Department of Public Welfare in adoption cases.

Section 5A. Upon the filing of a petition for adoption of a child under the age of fourteen, notice shall be given to the department of public welfare which shall make appropriate inquiry to

39. Frank, Paula M., Director of the Louisiana Bureau of Child Welfare, Letter to Writer, January 31, 1938.

determine the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to determine whether the petitioners and their home are suitable for the proper rearing of the child, due regard being given the race and religion of the child and of the petitioners. The department shall submit to the court not later than thirty days after receipt of such notice, or within such further time as the court may allow, such written report as will give the court full knowledge as to the desirability of the proposed adoption. The court may require such further investigation and report by the department as may be necessary. All reports submitted hereunder shall be filed separate and apart from the other papers in the case, and shall not at any time be open to inspection except by the parties and their attorneys, unless the court, for good cause shown, shall otherwise order. No decree shall be made upon such a petition until such report has been received, nor until the child shall have resided for not less than six months in the home of the petitioner; provided that for good cause shown the court may, in its discretion waive the requirement of residence. This section shall not apply in the case of a petition for adoption presented, sponsored or recommended by any charitable corporation organized under general or special laws of the commonwealth for the purpose of engaging in the care of children and principally so engaged.⁴⁰

As will be noted from the statute, investigation is required in all cases where the child is under fourteen years of age except when the adoption is "sponsored or recommended by any charitable corporation organized under general or special laws of the Commonwealth for the purpose of engaging in the care of children and principally so engaged." There are comparatively few organizations in this Commonwealth which may claim exemption, and in some cases, the right to

40. General Laws of the Commonwealth of Massachusetts,
Chapter 210, Section 5A.

exemption has been waived because the organization preferred to allow the Department to make the usual investigation and report findings to the Court.

It is noted that the law requires that a child should be in the home of the petitioners for at least six months before the petition for adoption is entered in the Probate Court. If the child placed is under two years of age and not placed in the home of blood relatives, it is required that the placing be reported to the Infant Department. Such a child is visited quarterly by a registered nurse from this office until the adoption is allowed or the child passes two years of age.

When a petition for adoption is filed in the Probate Court, the Court notifies the Department, sending a notice and copy of the petition as well. Each individual case itself determines the extent of investigation required, and in some cases it is necessary to make a very extensive investigation. The importance of physical and mental examinations of the child by competent doctors before the adoption is allowed cannot be stressed too strongly.

In 1930 a law was enacted providing for the change of birth records of illegitimate children only, but in March of this year an act was approved extending this law to include the change of birth records of legitimate children after legal adoption.⁴¹

41. Keneran, Willifred A., Director, Division of Child Guardianship of the Dept. of Public Welfare of the Commonwealth of Massachusetts, Letter to the Writer, Jan. 26, 1939.

Miss Willifred A. Keneran, Director of the Division of Child Guardianship, makes the following observation:

"After seven years' experience in this work we feel that the ideal law governing supervision of adoptions would be one which would provide for investigation as to the suitability of an adoption before the petition is filed in the Probate Courts. Although we are most grateful for the constantly increasing cooperation of the Courts with this Department in this matter of adoptions, we realize it is very difficult to disapprove a situation which has existed long enough to reach the final legal step."⁴²

Miss Keneran's belief that the ideal law would provide for investigation before the filing of the adoption petition was also expressed in the 1937 annual report of the Department of Public Welfare.

"During the past six and one-half years we have investigated 4,796 cases of proposed adoptions which were referred by the probate courts. So many gratifying improvements have been made during that period that it might seem wise to allow matters to proceed as they are at present. The judges of the probate courts realize that our reports are without prejudice and they usually accept our recommendations. We submit the complete facts in each case. As a result of this practice, no longer in this Commonwealth are adoptions consummated where children are found in extremely poor homes or with vicious or immoral persons. There are, however, no provisions for removing children from such unsuitable homes.

Despite all the progress which has been made, the ideal will never be realized under present conditions. We should be sure that persons seeking children are the proper ones to be entrusted with their care before such placements are made. It is too late to correct these conditions years, or even months, after placement. In other words, the present system should be reversed. Investigation

42. Ibid.

of prospective parents, their homes, and the children should precede the placement. This weakness in our present system has been pointed out in several previous reports.

No real standard of efficiency can be reached so long as the present haphazard placing continues. Is not the question of finding a home in which a child may be placed for adoption of far greater importance than selecting a home in which a child may be boarded, and from which he may be removed at any time? Trained social workers are recognized as necessary in placing and supervising all boarded children but when it comes to children for adoption, it would appear that such precaution is not necessary and any one is competent to find a home.

Necessary care in placement is used where the children are under the supervision of public or private agencies. An adoption sponsored by an agency is a most serious act and all will agree that it should be so considered but why should all the protection be given to children who are fortunate enough to be cared for by these agencies?

Since it is agreed that there are more applications from persons desiring to adopt than there are babies to be placed, we believe there is a way to prevent many poor adoptions. There should be a central bureau to whom persons with problems may go for help. This Division has been giving advice along these lines for many years, and we know that those who come to us are satisfied. Some help in placing children has been given but it has not been regular.

Of even greater importance than making investigation for adoption after the petition has been presented is the need of investigating the home previous to the placement of a child for adoption."⁴³

43. Annual Report of the Department of Public Welfare of the Commonwealth of Massachusetts for the Year Ending November 30, 1937, p. 36.

Minnesota:

In Minnesota the State Board of Control is authorized to make investigations of adoption petitions:

"Investigation by the State Board of Control-- Upon the filing of a petition for the adoption of a minor child the court shall notify the state board of control. It shall then be the duty of the board to verify the allegations of the petition; to investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption; and to make appropriate inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing, with recommendation as to the granting of the petition and any other information regarding the child or the proposed home which the court shall require. If the report of the board of control disapproves of the adoption of the child the board of control may move the court to dismiss the petition. No petition shall be granted until the child shall have lived for six months in the proposed home. Provided, however, that such investigation and period of residence may be waived by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other."⁴⁴

As will be noted the Minnesota law allows the court to waive the investigation upon good cause shown, but this is not a desirable feature.

New Mexico:

In New Mexico the Department of Public Welfare is designated by law to make adoption investigations for the

44. Minnesota, Mason's Statutes 1927 (Laws through 1935) Section 8625.

court. The adoption law provides:

"2-108. APPROVAL OF ADOPTION BY BOARD OF PUBLIC WELFARE - Temporary custody. Upon the filing of such petition or application for the adoption of a minor child, the district court shall notify the state board of public welfare, transmitting to the board a copy of the petition or application. It shall then be the duty of the board of public welfare to verify the allegations of the petition; to investigate the condition and antecedents of the child, for the purpose of ascertaining whether the child is a proper subject for adoption; and to make appropriate inquiry to determine whether the proposed foster home is a suitable one for the child. As soon as practicable after the receipt from the district court of the copies of the petition and the notice of filing of the same, and in any event within six months after such notice has been received by it, the board shall submit to the court a full report in writing, giving its reasons why the petition should or should not be granted by the court. The court may place the child directly in the proposed foster home for temporary care, pending investigation by the board of public welfare, and prior to the final granting of the petition of adoption. No petition shall be finally granted until the child shall have lived six months in the proposed foster home, nor yet until the recommendations of the state board of public welfare shall have received by the district court, provided that the six months' period before final adoption may be shortened by the district court, but only after notice of application for reduction of time shall have given to the said board and hearing thereon had, at which the said board shall be represented and heard. (L. '25, Ch. 5, Sec. 2.)

2-109. PROCEEDINGS AFTER ADVERSE REPORT BY BOARD OF PUBLIC WELFARE. In the event the board of public welfare shall recommend the petition not be granted, the court may act upon such recommendation and, without further hearing, deny the petition, but if the person or persons petitioning shall request a hearing, then the court shall hold such a hearing. At such hearing an authorized representative of the state board

of public welfare may present the views of the board regarding the proposed adoption. (L. '25, Ch. 5, Sec. 3.)⁴⁵

The report sent by the Department of Public Welfare to be kept by the court gives the following information:

I. Placement

Date child was placed in adoptive home--year, month and day.

By whom was child placed?

Age at placement.

Investigation before placement. By whom?

Date of adoption petition. Where and by whom?

Date referred to DPW. By whom?

Time under DPW supervision.

Legal Custodian of Child--how secured? When? Where?

Consent for adoption given by, date and place.

II. Child to be Adopted

Child's Name

Birthdate--year, month and day (specify if verified).

Birthplace--county, town, state.

Sex

Nationality

Race

Religion

Health (verified)

Mentality--if mental test given, state by whom, result, date.

Attitude toward Foster Parents

Attitude toward Own Parents

Attitude toward Adoption

III. Child's Parents

A. Mother

Name

Birthdate (Specify if verified)

Birthplace

Nationality

Race

Religion

Education

45. New Mexico Laws, '25, Ch. 5, Sec. 2 and 3.

Occupation
 Health
 Mentality
 Present Whereabouts
 Marital Status (If child is of illegitimate birth,
 do not make reference to item in this report.

B. Father

Same information as for Mother.

C. Reasons for giving up the child for adoption.

D. Attitude towards Adoption.

IV. Foster Parents

A. Foster Mother

Name
 Birthdate (Specify if verified).
 Birthplace
 Nationality
 Race
 Religion
 Occupation
 Health (verify present). Give name of doctor.
 Mentality
 Personality
 Marital Status (verified)
 Relationship to child to be adopted.

B. Foster Father

Same information as for Foster Mother.

C. Children

Number of children in this family
 Ages
 Whereabouts

V. Findings

- A. Economic standing
- B. Physical condition
- C. Mental Condition
- D. Community Standing
- E. Family relationships
- F. General

VI. Recommendations to the Court--Date sent.

Adoption granted or not granted. Reasons.

Time for supervision extended, keeping adoption pending.

Reasons.

Other.

North Dakota:

Under the provisions of Chapter 150 of the 1923 Session Laws of North Dakota, the Children's Bureau was charged with the responsibility of performing services for the Board of Administration in connection with adoptions. These services include:

1. Investigation of homes receiving children for permanent care or adoption.
2. Withdrawal of children found to be in unsuitable homes.
3. Investigation of petitions for adoption of children, where such petitioners are referred by courts of competent jurisdiction; and reports to such courts as to the suitability of the home and the child, each to the other.

Table III is a result of a study of 132 petitions filed with the Board of Administration during the biennium, 1936-1938.⁴⁶ The figures are undoubtedly incomplete. This is due to the failure of some courts to file petitions of adoption with the Children's Bureau, as well as instances where the parents themselves place the child in foster homes unaware of the necessity for adequate investigation of the home.

46. Public Welfare Board of North Dakota, Biennial Report, 1937-1939, On the Administration of the Adoption Law, p. 13.

This study does not reveal whether adequate supervision was given to the child and the foster parents during the probation period before adoption was completed. Where children have been placed by licensed private agencies it is assumed that the agencies' representatives have made a minimum of four visits a year. There are, however, placements made by relatives or unauthorized persons where the investigation of the foster home and the probation period have been waived by the court and information is not available as to the kind of adjustment being made by the child or foster parents. A study of Table III shows placements were made by licensed child placing agencies in only one-half of 134 cases. The employment of trained child welfare workers by each of the counties should secure a better understanding of the services available through the Division of Child Welfare; persons who desire to place their children in foster homes will then seek these services rather than attempt their own placements.

The social investigation to determine the propriety of adoption should be the responsibility of the Division of Child Welfare, with cooperative arrangements among child placing agencies and juvenile commissioners.⁴⁷ It is necessary that children be studied before placement and here the

47. Ibid., pp. 14-6.

facilities of child placing are of utmost importance. The recent appointment of a psychologist on the staff of the Division of Child Welfare will assist in securing both an adequate and reliable study of a child placed for adoption, and an adequate study of the proposed foster home to ascertain if there is actual desire to be of help to the child who otherwise would be handicapped. Consideration must be given to the emotional stability of the adopting parents and their relationships; their economic and cultural level, and the probability of continued security. All these things can be learned only as the family becomes known to the trained worker.

When the child is placed in the foster home there must be a study of the adjustments being made by both child and foster parents, and consideration of the child's development mentally and physically. Such a study requires a long period of time, and it is recommended that the trial period be lengthened from six months to a year so that there might be a reliable basis for assuring the child's acceptability for adoption. It will be noted in Table III that almost two-thirds of the 134 children were born out of wedlock; that the number of fathers upon whom adequate information is available is very small. This means that there must be a strong enforcement of laws relating to the establishment of paternity of these children, as well as the fulfillment

of paternal obligations.⁴⁸

Adoption is in no case to be regarded as necessary simply because of the parent's financial inability to care for the child. Through funds made available under the "Aid to Dependent Children" Act, a grant can be made to a parent or a relative which will enable them to provide for the child in their own homes. It is therefore expected that many children born out of wedlock will no longer be placed for adoption solely because of the mother's inability to support the child.⁴⁹

48. Ibid., p. 14.

49. Ibid., p.15.

Table III--Petitions filed with the Children's Bureau for the biennium July 1, 1936 to June 30, 1938.

Number of petitions filed		132
Number boys involved	58	
Number girls involved	76	
Number petitions involving one child each	130	
Number petitions involving two children	2	
Status of Children:		
1. Born in wedlock		46
Parents living together	5	
Others*	41	
2. Born out of wedlock		81
Paternity acknowledged or established	58	
Paternity not acknowledged or established	21	
No mention of paternity in petition	2	
3. Unknown		7
Age at Filing of Petition		
Under three months	27	
Three months to one year	40	
One to six years	45	
Over six years	22	
Period of Time in Foster Home before Petition Filed:		
Less than three months	68	
Three months to one year	39	
Over one year	27	
Placement Made By:		
Licensed Child Placing Agency	69	
By relatives (including mother)	46	
By authorized persons	12	
By unauthorized persons	6	
Unknown	1	
Social investigation in completion of adoption:		
Waived by courts	20	
Made prior to placement	71	
Made after placement	43	

* Includes children of separated parents, divorced parents, or one or both parents dead.⁵⁰

In a recent letter to the writer, Miss Theodora Allen, Supervisor of the Child Welfare Division, expressed her views of the administration of the adoption law in North Dakota and explained some of the procedures of the Division:

"We are not at all satisfied with the administration of our adoption law. According to our adoption law, the district courts are required to notify the Board of Administration of all petitions for the adoption of children together with a copy of said petitions. It is then the duty of the Board of Administration 'to verify the allegations of the petition; to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption; and to make proper inquiry to determine whether the proposed home is a suitable one for the child. The Board shall, as soon as possible, submit to the court a full report in writing with a recommendation as to the granting of the petition and any other information regarding the child or the proposed foster home which the court shall require, and no petition shall be granted until the child shall have lived for six months in the proposed foster home; provided, however, that such investigation and period of residence may be waived by the court. . . .'

When the court petition is sent to the Board of Administration, it is referred to our office and we request either the county child welfare worker or the juvenile court commissioner, or the district field supervisor of the Public Welfare Board, to make an investigation of the proposed foster home and to write a narrative history of the child. We generally refer it to the worker in the community or the district whom we think is best qualified to make a report. We do not have anyone on our staff whose work is confined entirely to making investigations in adoption cases.

When the report is sent to our office, the members of my staff review the adoption and submit it to the Board of Administration for their approval. Although the law states that we should submit to the court an investigation report, we

merely send the clerk of court and the judge a letter stating that an investigation has been made of the proposed foster home and that the home is considered a suitable one for the child. We feel that many of the investigations which we make are futile since the investigation of the foster home and a study of the child are generally made after the child has been placed in the foster home, and in most cases it would be very unwise to remove the child. There is little we could do but to approve the adoption.

We do have a number of petitions for adoption filed in our office in which the judge has waived all investigation of the Board of Administration. We are contemplating that during the next session of our legislature we shall be able to have our adoption law amended in such a way that the court cannot waive investigations in adoptions.

When a child comes to our attention who is to be placed for adoption, we endeavor to get the judge to give the guardianship of the child to one of the three licensed private agencies in the State. The private agencies generally keep the child in their receiving home for a certain period in order to study the child before placing him in a permanent foster home. The private agencies send in investigation reports on all prospective adoptive homes which they intend to use if they are approved by our department. When the private agencies have improved their standards of social services, we do not intend that they should have all investigations of adoptive homes approved by this office before placing children in them.

When a private agency places a child in a foster home for adoption, the child is placed for a probationary period of at least one year before the adoption is completed. The private agency attempts to visit these homes at least four times a year or more before recommending to the Board of Administration that the adoption be completed."⁵¹

51. Allen, Miss Theodora, Supervisor, Child Welfare Division, Letter to Writer, Jan. 13, 1939.

Oregon:

A baby girl was taken for adoption when less than two weeks old. When she was six, her foster father deserted. When she was sixteen, he returned. This child entered a maternity home this biennium for care as an unmarried mother. Her foster father is the father of her unborn child.

A boy of ten was adopted. Less than three years later his foster mother died at the State Hospital, a syphilitic patient, and the foster father was dead of tuberculosis. One motive in taking this child was the one of "getting the foster mother's mind off herself."

Another Oregon child, a "sprite of six," was neglected and finally deserted by both parents. The mother, whose reputation was far from desirable, placed the child for adoption in the home of one of her close friends whose reputation reflects the mother's. Though the child has relatives of excellent standing able and willing to raise her, the adoption by her mother's friend was consummated.

These examples of Oregon adoptions vividly portray the reason back of the Oregon law providing for reports to the courts regarding the status of the child and the suitability of the foster home concerned in an adoption petition. Needed improvements in the present law are an increase in the time between the serving of the adoption petition on the Child Welfare Commission and the date of the adoption hearing,

the requirement of a probationary period in the foster home before the adoption decree is granted and prohibition of advertising children for adoption.⁵²

The Commission was able to file reports within twenty days on only 45 out of 166 petitions in 1933 and on only 60 out of 145 petitions in 1934. Twenty days is the maximum period which the law now provides between the date of filing of an adoption petition and the date of the hearing on the petition. It is woefully inadequate period in which to verify information about parentage, especially in cases of illegitimacy or of married parents separated for years, to assemble information about relatives at a distance, to consult vital statistics of the adopting parents and be in a position to report to the court of jurisdiction authentic data about previous matrimonial ventures of one or both of the petitioners who may have lived formerly in a distant state. Some courts grant continuances on request, but when attorneys for the petitioners are pressing to bring the case to a hearing, judges find it more difficult to delay such hearings. The Commission repeats its recommendation that an amendment be made to Section 33-401 changing the maximum period between serving of notice to the Commission and date of the adoption hearing from twenty days to six months. Provision for six months' advance notice would

52. "Child Care in Oregon," Eighth Biennial Report of the State Child Welfare Commission of Oregon for the Biennial Period Ending June 30, 1934, p. 32.

place the Commission in a position to do a more thorough piece of work in assembling and verifying pertinent information on which decision regarding an adoption petition should rest.

Such an increase in time between the filing of a petition to adopt and the adoption hearing would also directly increase the period of care in a foster family before adoption, a requirement which is conspicuous by its omission in the Oregon law. The safeguarding of the interests of all parties concerned, the child, the natural family and the foster family, is accomplished by such a probationary period in the foster home, which is a minimum of a year where approved practice is applied. Certainly if valid reasons against adoption are to develop, they should have adequate attention in advance of the decree of adoption. They often appear only after close association in the foster home and often after a considerable period of time there. If temperaments of two members of a foster family or between one member of the family and the foster child clash and experience shows them to be irreconcilable, the adoption needs to have further consideration. If a child appears unhappy or presents problem behavior, the reasons should be studied carefully before the adoption hearing. 57 of the adoptions in 1933 were consummated before the children had spent three months in the foster home and 117 out of 166 before a year had elapsed. The figures for 1934 show 27 under three months

and 88 out of 110 before a year of residence with the foster home.⁵³

Licensed institutions seem to be increasing their care in selection of foster homes, yet too frequently instances come to the Commission's attention where a child has been placed in a home not visited in advance by a staff member of the institution or by a qualified local social agency at the institution's request. The State, however, is without authority to require that this be done except as the courts having jurisdiction of adoptions require it. When it is not required, the child takes the risk. Increasing the field staffs of children's institutions and installing case work service where it is not provided will help to correct this situation so full of hazard to helpless children.⁵⁴

The advertising of children for adoption is a practice so dangerous to children that the law should prohibit it here, as it does in other states. The hazards involved to the children are enormous and are entirely unnecessary because there are enough approved children's agencies and institutions available to meet the needs of children without exposing them to the dangers of foster homes indiscriminately selected. The Oregon law governing placing needs

53. Ibid., pp. 32-3.

54. Ibid.

strengthening by prohibiting the advertising of children for adoption or the advertising of adoptive homes. This is legally prohibited in several other states.

The placing of children for adoption by unauthorized individuals is gradually being reduced as people come to appreciate the tremendous values at stake in the permanent transfer of custody of a child from a natural to a foster home. 50 of the 175 children adopted during the year ending September 30, 1933 were placed by unauthorized persons while the number had decreased to 21 out of 150 in the nine months' period ending June 30, 1934.⁵⁵

According to the latest published report of the Child Welfare Commission (1936) there is still no provision in the Oregon Law for a probationary period of residence of a child in an adoptive home before the granting of the adoption.

Section 33-401 of the Oregon Adoption Law which delegates to the Child Welfare Commission power of investigation provides:

"Any person may petition the county court for leave to adopt a child and, if desired, for a change of the child's name, but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein. Such petition may be filed in the county where the petitioner resides, if a resident of Oregon, or in the county where the parent or guardian resides; or, where the petition is for the adoption of a child committed to any institution incorporated under the laws of this state that cares for dependent or delinquent

55. Ibid., pp. 33-4.

children, in the county where such institution is located. A copy of such petition, together with a statement containing the full names and permanent address of the petitioners, shall be served on the state child welfare commission of Oregon by serving the president or secretary thereof, by registered mail or by personal service, and no petition for adoption shall be granted by any court until said commission has been given twenty days from the date of filing of such petition in which it may file for the consideration of the judge before whom the petition for adoption is pending such information regarding the status of the child and evidence as to the suitability of the proposed foster home as the child welfare commission shall desire to submit."⁵⁶

Rhode Island:

In Rhode Island, all adoption petitions are filed at the Probate Court in the Town or City in which petitioners live. If there is no Probate Court, the Town Council acts in its behalf.

The Probate Court then notifies the State Department of Public Welfare who, in turn, has assigned the duty of investigation of petitioner's home to the Children's Bureau. The worker on adoptions makes a complete investigation of the home and circumstances of petitioners, and tries to obtain, insofar as is possible, the family history and background of the child in question. This report is sent to the Director of the State Department of Public Welfare with the recommendation of the Children's Bureau and the Director submits the report to the Probate Court.

There are several authorized Children's Agencies in

56. Ibid., p. 87.

Rhode Island, licensed by the Children's Bureau, who place children in foster homes and also for adoption. If at the time of adoption proceedings the case is active with the agency by whom placed and the child has been under their supervision, the Children's Bureau accepts the report of the Agency and makes but one visit to the petitioner's home.

If the child has been placed by an out-of-State Agency, the Children's Bureau is usually notified by the Agency of the plans of such a placement, and its worker makes a complete investigation of the home and reports back to the Agency in question her approval or disapproval of such a placement. Periodic visits are then made by the visitor to the home and a record kept of adjustment and progress of the child, the Agency notifying the Children's Bureau of the time of placement.

In the case of a mother's own child being adopted by stepfather, the Children's Bureau does not know of such a case until the notification of the petition having been filed.

Since the laws of other states are not uniform with those of Rhode Island, there are isolated cases of placement without the knowledge of the State Department of Public Welfare from other states. In calling attention to its laws, however, the Department had the utmost cooperation at other times.

In the case of State Wards, who come under the

supervision of the Children's Bureau, the Social Worker who has placed the child in the home, supervises the home until the probationary period is over. She then draws up the investigation report which is submitted with the petition to the Director of the State Department of Public Welfare, who signs the petition, as legal guardian, giving his consent to the adoption. The petition is then filed in the Probate Court.⁵⁷

The adoption law of Rhode Island provides for a period of residence of the child in the adoptive home.

"No petition shall be granted until the child shall have lived for six months in the proposed home; Provided, however, that such period of residence may be waived and such petition granted by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other. If, after investigation and upon hearing, the court shall be satisfied as to the identity and relations of the persons and that the petitioner or petitioners are of sufficient ability to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of its parents, and that it is fit and proper that such adoption should take effect, a decree shall be made setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner or petitioners. (As amended Pub. Laws, 1926, Ch. 852) (39 R.I. 48)."⁵⁸

58. State Department of Public Welfare, Rhode Island Children's Bureau, Relating to the Adoption of Children, pp. 5-6.

Wisconsin:

One of the important aspects of adoption legislation is the place in which the court has jurisdiction.⁵⁹

In Wisconsin the only court that may grant adoption decrees is the one having jurisdiction in the county or town where the petitioners reside.

Adoption of children by persons living a long distance from the locality in which the adoption takes place has been a serious handicap to sound adoption procedure and has resulted in many hurried and undesirable adoptions. That adoption should be surrounded with secrecy for the benefit of the child is contrary to all accepted principles of good child placement and tends to perpetuate an idea which thinking people have discarded. The requirements of a social investigation and of a period of residence in the foster home before adoption tend to reduce the number of nonresident adoptions even when adoption may take place in another part of the State.

In limiting jurisdiction to the county or counties in which the petitioner resides, it should be recognized that there may be occasional instances when it would be desirable to authorize adoption in another jurisdiction. In order to prevent the possibility that an adoption will be declared void on grounds of jurisdiction, it would seem to be wise to consider the possibility of authorizing waiver of jurisdiction in the place of residence of the petitioner and acceptance of jurisdiction by another court, if the investigation shows the desirability of this procedure.⁶⁰

59. Children's Bureau, Memorandum on Problems to be Considered in Adoption Legislation as Illustrated by the Laws of Selected States, October, 1938, p. 1.

60. Ibid.

The importance of a social investigation cannot be overemphasized, as it is the means of presenting to the court the interests of the child, who is unable to speak for himself.

The Wisconsin law authorizes the judge to arrange for investigation. The law also provides for a six-months probationary period of residence.

Investigation; probationary residence--
(1) Upon the filing of a petition for adoption of any minor child the court shall cause an investigation to be made of the former environment and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption and of the home of the petitioner to determine whether it is a suitable home for the child. Such investigation shall be made either by the licensed child welfare agency or county home for dependent children which placed the child in the home of the petitioner or by a probation officer or by some other suitable person designated by the court, or if the court shall so desire, by the state board of control. The results of such investigation shall be embodied in a full report in writing which shall be submitted to the court at or prior to the hearing upon the petition and which shall be filed with the records of the proceedings and become a part thereof. The report shall contain a statement of facts found in the investigation, and shall show that the investigation included an actual inspection of the proposed home and that a careful personal inquiry was made as to the suitability of the proposed home. Such inquiry shall be made of at least two responsible citizens residing in the same community as the petitioner, and of the pastor of the congregation or parish, if any, to which the petitioner may belong. In case the parental rights of the natural parents of such child shall have been terminated by a juvenile or other court of competent jurisdiction, the report shall contain a summary of such proceedings and shall note any irregularities therein.

(2) No petition for the adoption of any minor child shall be granted until the child shall have lived for six months in the home of the petitioner; provided, that this requirement may be dispensed with upon good cause shown in the discretion of the court when the court is satisfied that the home of the petitioner and the child are suited to each other.⁶¹

Wisconsin places a time limit of thirty days on the investigation. In actual experience it has been found that this is too short a time, especially when information must be obtained from out-of-state agencies.

Only a summary of the complete investigation is given to the court. Some States, notably Minnesota and Alabama, authorize the State Department to make recommendations to the court regarding desirability of adoption.

"The laws of all but one State require that consent of the parents must be filed with the court. In transferring parental responsibility from the natural parents of a child to adoptive parents, every possible safeguard should be given to parental rights. The primary concern of the court in adoption proceedings is to decide upon the desirability for the child of adoption by the petitioner. All cases in which questions of the fitness or ability of the parents to give consent to the adoption are at issue, should have been determined in a previous court action in which the whole question of parental rights has been considered. The special values of this plan are that it eliminates the necessity of publication of notice of adoption with its resultant undesirable publicity and that it provides, through separate court action, an opportunity for more thorough consideration of all the problems and factors involved, uncomplicated by

61. Wisconsin Statutes, 1935, Sec. 322.02.

the desires of the prospective adoptive parents. A few States, notably Washington and Wisconsin, have incorporated this principle in their adoption laws.⁶²

"A feature of many laws that should be considered is the provision that the parent who is divorced and lacks custody of the child, who is imprisoned, or who has failed to maintain contact for a period of time with the person or agency caring for a child forfeits all parental rights or need to give consent to adoption. The circumstances which have resulted in divorce or imprisonment may have no connection with the relationship of the parent to the child, for whom he may have great interest and affection. Parental rights should not be terminated in such cases without court action in which proper consideration is given to all the factors involved."⁶³

"Guardianship of a child by an agency may be acquired through court commitment or through relinquishment of a child to an agency by his parents. Both these methods of terminating parental rights should be safeguarded by proper provisions in the adoption law as well as in juvenile-court laws and laws relating to the rights and duties of agencies caring for children. A court commitment to an agency of a child to be placed for adoption should clearly indicate that the guardianship conferred includes the right to place him for adoption and that parental rights have been terminated. Unfortunately many juvenile-court laws and most adoption laws fail to define the term commitment. Wisconsin is one of the few States that have defined clearly in the adoption law (sec. 322.04 (2)) the conditions under which an agency may consent to the adoption of a child committed to its care."⁶⁴

62. Children's Bureau, op. cit., p. 3.

63. Ibid., p. 3.

64. Ibid., pp. 3-4.

The statute provides:

"(2) Consent shall not be required of parents whose parental rights have been terminated by order of a juvenile or other court of competent jurisdiction; provided, however, that in such case adoption shall be permitted only on consent of the state board of control, or of the licensed child welfare agency, or county home for dependent children, to which the permanent care, custody or guardianship of such child has been transferred by a juvenile or other court of competent jurisdiction."⁶⁵

Wisconsin is one of a group of nine states that prohibits the transfer of parental rights except through court action.

One of the significant developments in adoption legislation is the steady increase in the number of States that have recognized the principle that consent to the adoption of a child should be given by a parent or legally appointed guardian or, in those occasional instances where the child has no natural or appointed guardian, by a public or private agency having thorough understanding of the child's situation as a result of having made a social investigation.⁶⁶

The laws of Wisconsin specify that the State Board of Control shall give consent to the adoption of a child under certain conditions. The Wisconsin law is most comprehensive since it provides that consent may be given by the State Board of Control when the child's parents are not

65. Wisconsin Statutes, 1935, Sec. 322.04.

66. Children's Bureau, op. cit., p. 4.

living or are non-residents.

"(3) If such a child has no living parent or if such parent be a nonresident and shall have executed a written release of the custody of such child which shall have been valid at the time of its execution in the state in which made, adoption shall be permitted on consent of the legal guardian of the child or if there is no guardian, by the state board of control.

(4) In the case of a child not born in lawful wedlock, the consent of the father shall not be necessary but in such case adoption shall not be permitted without the consent of the licensed child welfare agency, if any, to which the care and custody of such child has been committed or transferred by a court of competent jurisdiction, or if there be no such child welfare agency, then by the state board of control."⁶⁷

Wisconsin authorizes representation from the State Board of Control in all cases of annulment of adoption. An adoption may be annulled if the child develops certain mental or physical disabilities from conditions existing before the adoption, if the conditions were unknown to the adoptive parents. The conditions defined would in most cases be discovered before adoption if the social investigation included a thorough study of the suitability of the child for adoption.

"In Wisconsin only five cases have been brought before the courts for annulment since 1929, and in only two of these cases was the adoption annulled. Improvement in standards of child placing and the requirement of

67. Wisconsin Statutes, 1935, Sec. 322.04.

thorough investigations before adoption have practically eliminated the need for special annulment provisions in adoption laws."⁶⁸

In an interview with Miss Mary Weaver, Consultant on Adoptions, Juvenile Department of the Wisconsin State Board of Control, specific questions in regard to the adoption program and the administration of the law in Wisconsin were raised by the writer. These with a discussion of the answers are included here:

1. Inasmuch as child-placing agencies in Wisconsin are vitally connected with adoptions, how does the State Board of Control enforce the responsibility of the agencies to the child and to the State?

All Child-placing agencies in Wisconsin are licensed by the State Board of Control. Periodical examinations of the records of the agencies are made so that the Board may be kept in touch with the quality of the work done. These agencies continue to acquaint themselves with suitable standards of adoption placement. No agency is licensed to place children for adoption that does not have qualified casework service on its staff or in cooperation with some bureau or agency. The agencies themselves, in cooperation with the Board, are continually working to improve their standards and to acquire competent personnel.

68. Children's Bureau Memorandum, op. cit., p. 8.

Where an agency fails to meet the standards which are considered essential in any good child-placing program, the State Board of Control gives assistance in bringing the work up to suitable standards. The Board, after reviewing the records in individual cases, might ask the agency to obtain more information, might suggest to the agency consultation with agencies or individuals on the case, or might make its own supplementary investigation.

2. Should there be more flexibility in the adoption law in Wisconsin, permitting annulment on grounds other than those now listed?

Rather than a more flexible adoption law in regard to annulment it would be better to have more resources for handling children's problems. When an adopted child becomes decidedly maladjusted the objective should be a meeting of the problem with social service rather than relieving the adoptive parents of their responsibility. A real social study of the situation would be desirable, with some social treatment where it was indicated, rather than a purely factual investigation, as it is understood in many counties in the state. This, of course, does mean that there would have to be social workers available, but this seems to be becoming more possible. Child guidance clinics, and mental hygiene clinics are also some of the facilities which might well be offered and made available for helping with problems

which arise. If more of these facilities were available there would be much less need for a flexible annulment provision.

In two cases mentioned where annulment was started, and where (by law) the State Board became a party to the proceeding, plans other than the original ones were worked out. In both cases problems had arisen in so far as the children were concerned, which the adoptive parents felt incapable of handling. In one of these there was actually no legal cause for annulment, since epilepsy, feeble-mindedness, insanity, were not present. In the other, the child was actually declared by the court to be feeble-minded, although the institution superintendent gave his opinion that the child had a normal mentality. The children were referred to a children's agency and placed in boarding homes; in one case the adoptive parents paid the board, and in the other, the county.

3. To what degree are the recommendations made in adoption investigations followed by the Court?

Generally the judges follow the recommendations or the conclusions to which the investigation obviously points. In a few cases do they ignore the facts presented and grant an adoption or deny an adoption which would seem contrary to the findings presented. By and large the judges are in accord with the philosophy of social investigations, but

some do not believe the information obtained by the State Board of Control is always necessary.

4. In cases where the State Board of Control believes an adoption would be inadvisable, what does it do?

Rather than a denial of consent as soon as the investigation has been completed, the State Board in co-operation with the court attempts to work out some other plan. This might be the working out of some plan with the parent or parents who had consented to the adoption, or the State Board would hope to help the petitioners so think the situation through, that if the adoption is not best, they have arrived at the decision with the Board. This, of course, might have to be done slowly and over a rather long period of time. The Board feels that more harm than good is sometimes done by removing a child from a home suddenly. It has been found that most of the children have been in the homes quite a while and a bond of friendship has been built up which cannot be severed suddenly without undesirable results.

It is the general policy of the State Board of Control to deny adoption in cases where a step-father is the petitioner only if the conditions are such as to warrant removal of the child from the home, and the making of another plan.

A total of 1763 adoptions were known to the State Board of Control between August 31, 1929 and October 31, 1938. These were cases in which either the Board itself had

made the investigations for the court or its consent was necessary with some other agency making the investigation. Included in this number are the adoptions being carried by the State Public School, since all its reports go to and are approved by the Juvenile Department before they go to the Board of Control.

Out of this number there were approximately twenty-five denials.

The question was raised as to whether a court ever granted an adoption in which the Board's consent was necessary and consent had been denied. The answer was in the affirmative. This happens in a few cases, however. In one case mentioned as an example, the Board denied consent because of the hazards to the child in the adoptive home, where conditions were very undesirable. The judge who heard the case claimed that the "consent required was not constitutional."

5. What machinery does the State Board of Control have for removing a child from a potential adoptive home, where an adoption is denied or considered inadvisable?

The State Board of Control is authorized to make investigations of homes in which children under twelve years of age are placed and where they are not related to the "foster" parents and where no relative is living in the home. On the basis of the investigation a boarding-home

permit is granted or denied. In a case where an adoption has been denied or considered inadvisable, and the conditions in the home are considered hazardous to the child, the Board may make a written request that the child be removed from the home in the absence of a boarding-home permit, or the State Board of Control can "order" the Juvenile Department of the Board to go in and "take" the child. If the person or persons who have the child in their home refuse to release him, the State Board then may appeal to the local court, showing that the child is in the home illegally. The "bad" conditions must be such, however, that they are obvious even to the local court.

The method used by the State Board would depend entirely on the case. Actually, denials have been rendered and attempts have been made by legal action to remove such children. In other cases, the removal has been attempted by other methods. This may be a long drawn out process, or it may be done promptly, depending on the resources and the need of the particular case.

The State Board of Control would follow through in its responsibility to the child by getting a children's agency to take guardianship.

6. Is the State Board of Control appointed by the Court in many cases to make adoption investigations?

A review of the seventy-one counties in Wisconsin shows that the Board makes investigations of cases in most of the counties where it has to give consent, and is also appointed in many cases to make investigations where it does not have to give consent. As far as is known, the courts in the different counties appoint the investigators here listed.

County

Adams--Where State Board of Control has to give consent it makes its own investigations; it probably makes all the investigations in other cases as well.

Ashland--Except where an agency makes placements, the State Board makes investigations.

Barron--Where State Board has to give consent, it makes its own investigations.

Bayfield--Cases sometimes found pending where the State Board, even though consent was required, was not notified; hence, some cases may go through "unknown."

Brown--Where the State Board has to give consent it makes its own investigations; it also makes investigations on the request of the Court when its consent is not necessary. The Green Bay Apostolate and the Children's Home Society make their own investigations.

Buffalo--Local agencies (individuals) make investigations of practically all the cases.

Burnett--A child welfare worker on the staff of the State Board of Control makes the investigations.

Calumet--State Board makes investigations. The Green Bay Apostolate has made some investigations in cases where the State Board's consent was required.

Chippewa--County Child Welfare makes investigations. One-half of her salary is paid by the County and the other half by the Children's Home Society, a private agency.

Clark--Members of the County Children's Board make investigations.

Columbia--State Board makes practically all the investigations "even though the judge doesn't believe in them."

Crawford--County nurse is usually appointed by the judge to make investigations.

Dane--There has always been a variety of investigators appointed, and although the State Board of Control has made some investigations all through the years, there are still individuals appointed to do this.

Dodge--Until Jan. 1, 1939, a State Board of Control "part-time Children's worker" made investigations; now the State Board, if no other agency is active.

Door--Where State Board has to give consent it makes its own investigations; it also makes some investigations at the request of the court. The Children's Home Society makes some investigations.

Douglas--County children's worker, paid by the County, makes investigations. She is supervised by the State Board of Control, and paid by the County.

Dunn--Where the State Board has to give consent, it makes its own investigations.

Eau Claire--The State Board now makes practically all the investigations. Until recently, an adult probation officer made investigations. The Children's Home Society makes investigations of the children in places.

Florence--State Board probably makes investigations in most cases.

Fond du Lac--A child welfare worker, one-half time on the staff of the children's board and one-half time on the staff of a local children's home, would be appointed for almost all cases, except in cases where the Catholic Social Welfare Bureau and the Children's Home Society make its own investigation.

Forest--A children's worker makes the investigations, under the supervision of the State Board. Her salary is paid, not by the county, but by the State Public Welfare Department.

- Grant--A children's worker in the county usually makes all the investigations. She is a recent appointee; previously the State Board made all investigations.
- Green--Where the State Board has to give consent, it makes its own investigations. It also makes investigations in other cases when appointed by the court, as do members of the County Children's Board.
- Green Lake--State Board probably makes all investigations.
- Iowa--County nurse probably makes all investigations.
- Iron--State Board makes all investigations.
- Jackson--State Board has been making all the investigations for the past two months.
- Jefferson--State Board makes all investigations.
- Juneau--State Board makes all investigations.
- Kenosha--The Kenosha Service League and the Probation Department make all investigations.
- Kewaunee--State Board makes all investigations.
- LaCrosse--County Probation Office makes all investigations.
- LaFayette--Possibly the State Board of Control makes most of the investigations.
- Langlade--A children's worker, on the staff of the State Board one-half time, makes the investigations.
- Lincoln--Until recently the county nurse made all investigations. The State Board is making investigations now.
- Manitowoc--County Probation Department (Juvenile and Adult) makes investigations.

Marathon--State Board makes all investigations.

Marinette--Until recently County Probation officer made investigations. The State Board is making investigations now.

Marquette--A children's worker, one-half of whose salary is paid by the State Board and the other half by the State Welfare Department, makes investigations. She is a recent appointee.

Milwaukee--The Children's Division of the Department of Outdoor Relief makes all investigations where no private agency is active.

Monroe--The State Board makes all investigations.

Oconto--Where the state Board has to give consent it makes its own investigations. A probation officer makes other investigations.

Oneida--A city nurse makes investigation. The State Board makes investigations in some cases where its consent is necessary.

Outagamie--State Board makes all investigations, except where an agency has placed the child.

Ozaukee--The State Board makes all investigations.

Pepin--County Children's Board makes investigations.

Pierce--Where the State Board of Control has to give consent it makes its own investigations. The court sometimes appoints a minister, or a lay person to make other investigations.

Polk--Until recently, a children's worker (not on State Board staff) made investigations; some were also made by the County Public Welfare Department. The State Board is now making some investigations.

Portage--A field worker for the State Board makes all investigations.

Price-- A "part time" probation officer makes all investigations.

Racine--County probation officer makes all investigations.

Richland--County Children's Board makes all investigations.

Rock--The State Board makes some investigations as does the Family Welfare Agency in Janesville (a public agency) and the Family Welfare Association in Beloit (a private agency)

Rusk--Where the State Board has to give consent, it makes its own investigations.

St. Croix--Until recently a probation officer made investigations. The State Board makes them now.

Sauk--The State Board makes all investigations.

Sawyer--The State Board makes all investigations.

Shawano--A children's worker, who is on the State Board staff one-half time and on the State Public Welfare Department staff one-half time, makes all investigations.

Sheboygan--A county children's worker makes all investigations.

Taylor--A local "lay" person probably makes all investigations. When a children's worker was employed (one year) she made them.

Trempealeau--A county nurse makes all investigations.

Vernon--A children's worker on the staff of the State Board, paid from federal funds, makes all investigations.

Vilas--The State Board now makes investigations where it has to give consent. The State Board does not know who makes other investigations.

Walworth--A children's worker on the county staff, under the Juvenile Judge makes some investigations; the State Board also makes some investigations.

Washburn--The County Children's Board and a probation officer make investigations.

Washington--The State Board and the County Children's Board make investigations.

Waukesha--Until recently a field worker on the staff of the State Board made all investigations. Now a children's worker, one-half of whose salary is paid from Federal funds and one-half by the county, makes them--(Hence, on State Board staff)

Waupaca-- Investigations are now being referred to a local worker supervised by the State Board of Control.

Waushara--The State Board makes all investigations.

7. Do the adoption investigations made by others than staff members of the State Board follow the policies of the State Board?

It has found that a number of the agencies or workers

making adoption investigations do follow the policies of the State Board very well. There are some, however, who do not. Much of the information obtained in the adoption has to be supplemented, either by the State Board, or by a request to the worker or agency to obtain additional information. Sometimes when a lay person has been appointed by the court, the report contains only a statement that "the child and petitioners and their home are fit." The judge may know both and "may appoint a like person."

Volunteer board members believe they "know" their local people. If they were professional people and had this knowledge, then interpretations would be of greater value. They go "on rumor" and do not verify facts; they base their judgment on a whole family rather than on individual members; they consider a "general reputation" rather than whether a husband and wife are well adjusted, and can take a child and adjust with it.

In some cases it is the judge who does not follow the legal rules. In one Wisconsin county the judge hearing adoption cases, allows the adoption in cases where the law requires that consent by the Board be given, whether the State Board of Control consents or does not consent.

8. To what extent do out-of-state children play a part in the adoption program?

Figures were not available as to the number of out-of-state children adopted in Wisconsin. However, the number would be a small percentage of the total number of adoptions.

CHAPTER IV

PHILOSOPHY OF ADOPTION AND ADOPTION PROCEDURE

A. Paramount Importance of the Welfare of the Child.

The fundamental rights of childhood are normal home life, opportunity for education, recreation, vocational preparation for life, and moral, religious, and physical development in harmony with American ideals and the educational and spiritual agencies by which these rights of the child are normally safeguarded.

Upon the State devolves the ultimate responsibility for children who are in need of special care by reason of unfortunate home conditions. Particular legislation is required to insure for such children the nearest possible approach to normal development.¹

Adoption should never be planned in haste nor decided upon in an emergency. Ample time for consideration should be allowed the child's relatives, and every possible assistance offered to enable them to rear him, before he is placed with a view to adoption. No temporary or superficial situation should ever lead to the adoption of a child. No child should ever be separated from a parent because of poverty alone.

1. U. S. Children's Bureau Conference, Series No. 2, Bureau Publication No. 62, "Minimum Standards for Child Welfare--Adopted by the Washington and Regional Conference on Child Welfare," 1919, p. 11.

Some tests to apply before an adoption plan becomes a finality are:

1. If one or both the parents are living, is it certain that, given the right kind of help, they can not care for the child now or at some future time?

2. If the reason for the separation is physical or mental disease of a parent, what about possible recovery? Also, may not permanent surrender of the child have a harmful effect on the parent?

3. If there is moral failure on the part of parents, have they been given every possible chance and incentive to improve? What will be the effect of depriving them of their child? Will the child suffer present harm from the association with them? Does adoption represent an escape from responsibilities which could be discharged properly by the parents?

4. If the parents have abandoned the child, has an honest effort been made to trace them and learn the cause of desertion? Is it reasonably certain that they will not return to claim the child even after the provisions of the law have been complied with?

5. Is poverty the real reason for separation or abandonment?

6. If both parents are dead, is it certain that there are no relatives able and willing to give the child proper care?

7. Will adoption unnecessarily separate the child from brothers and sisters?

8. Is the child known to be physically and mentally fit for adoption?

Relatively few children will be found proper subjects for adoption, if their qualifications and the family circumstances are thus carefully considered.²

If a decision is reached that adoption for a child is best for him, the question for solution then is proper placement.

The problem of placement for adoption is the problem of the selection of the most suitable home available for a given child.³

"It is true that any child in whom trustfulness has been bred by his environment is likely later, to meet with betrayal of faith in any of its myriad forms. Nevertheless, experienced parents will probably agree with students of psychology that every child needs to be equipped for later struggle and disappointment with the sort of confidence which grows normally out of the soil of a happy home. Individuals who have worked their way up to wise and beneficent adulthood out of conditions destructive of such faith are of course to be found. But no one who can control the environment of his own child would deliberately subject him to conditions likely to destroy his faith in human nature; and those who are genuinely concerned for homeless children will continue

2. A. B. C. of Foster-Family Care, "Wanted--A Child to Adopt," p. 38.

3. Jenkins, Dr. R. L., "Adoption Practices and the Physician," The Journal of the American Medical Association, Vol. 103, No. 6, August 1934, p. 408.

to seek for them a home setting which will preserve or restore such faith."⁴

"... There is a power over and above that of either the natural parents or the adopting parents. This power is in the hands of the state which has taken unto itself the power of the father in relation to minor children. It is under such power that the disposition of any child ceases to be a private matter and becomes a matter of interest to the state."⁵

In the study previously mentioned made by Epstein and Witmer of adopted problem children, the chief question raised by the cases that represented failure in adoption was whether the difficulties could have been anticipated. They state:

"It may be argued, of course, that the situations described were no worse than many others coming to the attention of a child guidance clinic. The answer to that argument is that when the state has an opportunity to pass upon the suitability of parents for its wards it has a moral responsibility to do all in its power to avoid placing them in homes that will handicap their development. The period during which the adoption is being considered by the court would seem to be the most appropriate time for careful study of the prospective parents' potentialities for rearing children."⁶

"The child should at all times be the focus for the adoption worker. The desires and needs of the foster parents are relatively unimportant as compared with those of the children. The conscientious agency will take its full share of responsibility in what it does for the child and to the child. It will as best it can provide for the child's basic need--find some one who will love him and give him opportunities for physical and spiritual growth. The organization which is

4. Sayles, Mary Buell, Substitute Parents, p. 309.

5. Nims, Elinor, The Illinois Adoption Law and Its Administration, p. 85.

6. Epstein, Ruth, op. cit., p. 380.

primarily concerned with the welfare of the child will not place a handicapped child for the purpose of being relieved of expense and responsibility, nor will it keep a promising child under care in the hope that his achievements will bring credit to the institution nor will it delay the placement of a child for adoption merely for the purpose of keeping a full quota in the institution or boarding home.

Every normal child who has no own family with whom he keeps up a relationship and who is legally eligible for adoption, theoretically is entitled to new family relationships which will give him a sense of belonging and ample opportunities for development. In facing the problem realistically, however, there are many factors to be considered. There are usually the various physical needs revealed by careful physical examination and laboratory tests. These can be treated and corrected while the child is under temporary care and do not necessarily make the child permanently ineligible for adoption. The psychometric tests give an indication of mental traits and capacity and can be used as a guide in making a decision as to what prospective home might be suitable. The child's age, color, race, religion and other facts are also among the realities which determine placeability, largely because of the restricted number of foster homes available for certain types of children. The child's family background, needless to say, should be known and evaluated. It is important, of course. But the laws of heredity are complicated and care must be taken not to let a little knowledge be taken for granted that every bit of scientific knowledge that is available concerning predispositions due to heredity, physical findings, and psychometric ratings, should be used as a guide in estimating the needs of the child and in planning for his placement, but even in the science with which social workers are concerned few findings are absolute and the worker has to guard against too facile and simplified conclusions. On the other hand, dependable data must be given weight. Workers have to have imagination about potentialities of children and their capacity to grow and develop, and a conviction that change is inevitable. This does not mean that they should achieve a belief that anybody can take a child and make anything he chooses of him. But we do know that children can and do expand and grow, each in his

own individual way, to an amazing degree under favorable circumstances. A child is primarily a human being and has to be understood and worked with as an individual person.

The worker who begins with the idea that dependent children are of a different clay than that of other children, starts with a false premise. They present individual differences, but as a group are hardly distinguishable from other children except, perhaps, by the degree of their family misfortunes. In practical adoption work it is the child's own readiness to accept new relationships and his capacity for relating himself emotionally to his new parents that determine his placeability more than any one other factor."⁷

"The child's own fundamental makeup must be understood. He may have appeared docile about change he had to meet in his earlier experiences, or he may have protested. He may resent the agency which tries to help him. There are endless ways in which he may react. All these attitudes, expressed or unexpressed, give the worker a clue of what the child is like below the surface and what may be expected in an adoption adjustment."⁸

"With the development of social service, the group of children to be placed for adoption has decreased while the requests for children continue to come in large numbers. There are just as many families as ever who are anxious to enrich their own lives by taking an active part--a parent's part in the care of a little child. The prospective adoptive families are as varied in position, health, mentality, personality development, as the families from which children come. There are intelligent, healthy, stable, well adjusted couples applying for children as well as those who are immature, neurotic, unhappy, and unstable. The motives for a doption in the latter cases are frequently selfish and sometimes unconsciously

7. Theis, Sophie Van Senden, "Social Aspects of Adoption," Child Welfare League of America Bulletin, 1937, pp. 5-6.

8. Ibid., p. 7.

cruel. A complete study of the prospective adoptive home to gain a knowledge of the personalities of the home, their motives in desiring a child, and their ability to give the child a normal life should be made to determine whether or not a home can be used. Any foster home in which a child is placed should be presided over by a father and mother whose relationship is characterized by maturity, affection and mutual understanding. If an unhappy marriage relationship has even remotely influenced the child's separation from his own family, every care should be taken to protect him from another such experience--an experience which few children can be subjected to without serious harm to their characters and personality development."⁹

"The case work agency that accepts adoption placement as its function, or as one function for which it is responsible, is subject to two kinds of pressure--one from within itself, another from without. From within comes the pressure to adhere to its case work philosophy, developed through years of practice and training, and often through prejudices superimposed on training and practice. From without comes the pressure of the community to meet its needs--the needs of families wanting children for adoption, the need of parents determined to place their children for adoption; and the general feeling of the community that it is right in demanding that these needs be met, because they are inherent in certain phases of human relationships. Are these two pressures inimical? We think not. If they are, children will continue to drift into adoption homes through chance, sometimes with good luck, sometimes with bad luck, but in any event without any real assumption of responsibility for their placement. If children's agencies do accept adoption placement as their responsible function, they must face the problem honestly. Case work is concerned with realities in any situation, and the case worker representing an agency is constantly trying to deepen his ability to recognize these realities. If we accept this as fundamental, we shall have

9. Dowling, Anna, "Safeguarding Children and Foster Parents in Adoption Proceedings," Proceedings of the Eighteenth National Conference on Catholic Charities, 1932, p. 109.

no difficulty in seeing its application in adoption placement. Our first step toward responsible activity will be an awareness of the limits of our own skill."¹⁰

"Children's agencies are in touch with the children they have placed for adoption for only a short time, and are, therefore, limited in their knowledge and experience with adoption placements. This lack of experience is probably due to the fact that many adoptions, probably most of them, turn out satisfactorily for children and foster parents. There are, however, some adopted children who come to the attention of children agencies, child guidance clinics, etc., because of poor adjustments, behavior difficulties and other problems. Agencies have had an opportunity to study the circumstances of these adoptions and have learned something of how adoptions should not be done. The mistakes of the past have guided children agencies' thinking in regard to the matter of adoptions and have led to some conclusions which will influence them in making plans for children entrusted to their care. It is to be regretted that this knowledge has had to come to agencies through experiences that have involved unhappiness in the lives of so many children and foster parents."¹¹

"It is because the family circle, with its mother and father persons, is interwrought with the emotional coloring essential to the conditioning of an individual to the experiences of life, whether these experiences be intellectual or physical, that the home is preferable to the institution. Since every experience has a certain emotional value for the individual, this factor of emotional coloring, by which his responses become conditioned, is of prime significance, for the intensity and nature of the attendant emotion will determine whether or not his reactions will be on a constructive or a destructive level. A

10. Pendleton, Ora, "Agency Responsibility in Adoption," The Family, Vol. 19, No. 2, April 1938, p.35.

11. Dowling, Anna, op. cit., p. 109.

normal family, in which the parental relationships as well as the interdependent relations of the children, are wholesome, will provide an emotional background that will condition a child who fits into their scheme of life to a constructive reaction to his experiences. If, however, there are emotional maladjustments in any of the family relationships, the adopted or boarded child will be conditioned to react on a destructive level to certain experiences, the degree, nature, and extent of the emotional maladjustment determining the number, degree, and nature of the destructive reactions. An institution, therefore, can be preferable to a home when that home is heavily fraught with emotional maladjustments. Hence, it is obvious that we should carefully evaluate not only the physical and mental but also the emotional factors in each and every family situation before placing a child."¹²

12. Towle, Charlotte, op. cit., p. 462.

B. Investigation as a Protective Measure.

"The Talmud states: 'The blessed man that doeth righteousness at all times is the man that brings up an orphan.' Throughout the ages, the individual who has opened his home to the child of another has instantly been set apart as having special merit. It has, therefore, been difficult to launch a program for the scientific study of the family, because not only the families themselves, but the committees chosen from the public have the idea that families so imbued with altruism should not, unless there are gross moral or extreme financial disabilities, be refused, nor should they be subjected to the objective scrutiny of science! In this sentimental plight of fancy have been rooted innumerable maladjustments, which have wrought an injustice, not only upon the children, but upon the parents involved."¹³

"With the investigation of each case it would be possible to check ill-conceived separations of parents and children and bring to bear upon such problems those facilities within the state which exist for keeping children with their own parents."¹⁴

The legal adoption of children into foster families is an effective plan of treatment for certain types of children found in certain social situations. It involves the severing of natural bonds which are essential to the best development of a child's personality and character, and the substitution of another family wherein the child will have the same security and opportunities for development as a child born of that union. Because of the permanence of the plan,

13. Ibid., p. 461.

14. Nims, Elinor, op. cit., p. 97.

and its far-reaching effects on the lives of foster parents and children, it should be carefully worked out, and the decision based on a complete knowledge of the child's own family situation and the possibilities for the development of the child in another family. The placement of a dull child in a professional man's home is a serious wrong to child and foster parent; likewise, the placement of intellectually superior child in a home where he will not be given educational opportunities will probably not result in a very satisfactory adoption. It is apparent that there should be a complete knowledge of the child's family background and his own potentialities in order to make an adoption plan which will be successful.¹⁵

"In selecting an adoption home for a particular child, all the qualities of the foster home under consideration must be weighed against the needs of the child available for adoption. His physical needs are easily determined with the aid of good medical service. His mental and spiritual requirements are difficult enough to foresee, even with the fullest information about him. All that is known as to his personality should be supplemented by the most complete possible picture of his background, and by studies of his mentality and temperament by competent persons."¹⁶

It is necessary to write into the laws of the states certain safeguards that have grown out of experience. These

15. Dowling, Anna, op. cit., p. 109.

16. A B C of Foster-Family Care, p. 36.

safeguards relate particularly to the licensing of the placement agency, the examining of petitions for adoption and a period of time for the child to remain in the home previous to adoption.¹⁷

Commercial maternity homes and adoption nurseries charitably supported rarely know much about the parentage or the suitability of the home into which the child is to be adopted. They lend themselves easily to the traffic in babies.¹⁸

The better equipped agencies have failed to realize that the public has had but little opportunity to learn of pitfalls in adoptions and they will, therefore, need to reconsider their procedure for the purpose of discovering whether they have moved too far ahead of public opinion and whether without sacrificing essential safeguards, their technique can be modified.¹⁹

"Although the development of desirable placement practices is one of the most important factors in the promotion of more satisfactory adoptions, further protection for the child is provided when the State Department has direct responsibility for making adoption investigations and reports to the court."²⁰

17. "Adoptions," Child Welfare League of America Bulletin, Vol. XVI, No. 9, November 1937, p. 3.

18. Ibid.

19. Ibid.

20. Colby, Mary Ruth, op. cit., p. 196.

"In some States investigations are made by members of the staff of the state department; in others by local agencies assisting the State department.

"It should not be necessary to reinvestigate the adoptions of the children placed and supervised by authorized agencies, provided the State department is acquainted with the child-placing activities of the agencies. However, the department has a double responsibility for the protection of children in adoptive homes who have not been placed and subsequently supervised by a child-placing agency. The report to the court should not ignore the practical aspects of the situation if the respect and co-operation of the judge are to be retained, but it must provide a basis for granting or rejecting the adoption petition, always with the welfare of the child in mind.

Many puzzling questions must be considered carefully before any recommendation is made to the court. Should a child be permitted the security he can obtain from adoption by a family of which he has long been a part, even though to all outward appearance the family has little to offer? Is the department justified in disapproving an adoption without making an alternate plan for child? Should the department take the responsibility for making other plans for a child when adoption cannot be approved or refer the matter to a co-operating public or private agency? If the case is referred to another agency for action, should the department be assured that action has been taken before finally closing the case?"²¹

"In regard to the selection of a permanent foster home, the same care should be used as is used in the selecting of a child to be placed in that home. A complete investigation of the foster home should be made to determine whether or not it can be used as an adoptive home and if so for what type of child. The foster home should be the same race and religion and ordinarily the same

21. Colby, Mary Ruth, op. cit., p. 196.

nationality as the child placed in it. The foster parents should be about the same age as the child's natural parents would be--foster parents who take children to adopt when they are older find it difficult to cope patiently with the problems of adolescence which younger and more vigorous people handle with greater ease. The age, mentality, health, personality development of each member of the prospective foster family is of utmost importance to the agency planning to place a child in their home, as well as the financial security, standing in the community, educational and recreational opportunities offered in the home."²²

The adoption of a child, like other human acts, proceeds from a motive. The motive at times may be but dimly recognized by the prospective parents. Children are adopted to fill a need or to serve a purpose in the lives of those who adopt them. In judging the situation of prospective adoptive parents, an estimate of the motive for desiring a child is essential. An attempt should be made to judge the probable effect on the child of the emotional attitudes indicated by this motive.

To estimate motives requires an adequate acquaintance with the prospective parents to sense the goals, values and frustrations that determine their attitudes and color their lives.²³

Perhaps the crucial criterion is the ability of the parents to see in the child something more than a satisfaction

22. Dowling, Anna, op. cit., p. 112.

23. Jenkins, Dr. R. L., "Adoption Practices and the Physician," The Journal of American Medical Assn., Vol. 103, No. 6, Aug. 1934, p. 403.

of their own needs; the ability to recognize in the child a separate personality, with needs of its own.²⁴

The adoptive parents who experience a sense of virtue in fulfilling the physical needs of an orphan child, yet have no appreciation that a child needs affection, may be equally dangerous.

"The trend in adoption legislation is away from the purely legal point of view--according to which adoption may be by notarial act (as in two states) or the court is expected merely to sanction a relationship as a justice of peace solemnizes a wedding--toward the conception of adoption as essentially a process in social case work. Thus the newer laws provide for social investigation and for a trial period in the foster home before a decree is granted, the aim being to insure the welfare of the child and to avoid unnecessary severance of natural family ties."²⁵

It is true, of course, that parents are obliged to take for better or for worse the children who are born to them. But inasmuch as there are available those opportunities made possible through scientific research which can be utilized in determining physical and mental endowment, it seems the wise course when embarking on the adventure of adoption to make use of these resources. Health status at the time of adoption can easily be determined by a thorough physical examination including laboratory tests. The general trend of mental growth can be predicted in over three-fourths

24. Ibid., p. 404.

25. Taylor, Hasseltine Byrd, "Law of Guardian and Ward," Social Service Monographs, No. 35, University of Chicago, 1935, p. 174.

of cases, according to Edith F. Symmes of the Infant Testing Service at the Institute for Child Guidance in New York City. Thus adoptive parents have an advantage and escape the hazards of rearing a child who may have suffered a birth injury or shown the traits of Mongolism or has been heir to any of the other misfortunes which may occur in the best of racial stock.²⁶

"It would never seem wise for individuals to adopt children who did not appeal to them as the unconscious rejection of the child may be reflected in the behavior and attitudes of those about him."²⁷

This does not mean, however, that there should be any less emphasis on the need for more objective criteria in selection of children for adoption than physical attractiveness and the charm of a winning smile.

"Just as preventive medicine has become a goal for the medical profession, so in clinical psychology as it relates to the field of adoption, the prevention of unfortunate placements through the early use of development tests becomes a goal for psychological research."²⁸

As yet personality adjustments cannot be insured, but the possibility of some maladjustments can be eliminated.

26. Symmes, Edith, "An Infant Testing Service as an Integral Part of a Child Guidance Clinic," The American Journal of Ortho-Psychiatry, Vol. 3, No. 4, Oct. 1933, p. 428.

27. Ibid., p. 428.

28. Ibid., p. 429.

"Studies have shown that many adoptions are arranged without much awareness of social factors involved. Foster parents motivated by a strong desire for a child have found children for themselves. Absorbed by their own subjective need of a child, they may be neglectful of the feelings of the family from which the child comes, or fail to obtain the necessary information to protect themselves or their child. On the other hand, own parents compelled by fear and because of lack of knowledge, make hit or miss arrangements for their children. They often allow well-meaning individuals, wholly unfamiliar with the subtler aspects of adoption, to arrange for the future of their children. This haphazard procedure, like other actions based on chance and impulse, sometimes works well, other times ends tragically. While there is no proof available, it is safe to assume that adoption plans based on knowledge and understanding of the various factors involved are more likely to result in satisfaction and happiness for the individuals concerned than are those arranged impulsively.

Child adoption touches the deepest emotions of the people involved, affecting subjective elements of human relationships as well as external life. This is true not only for the foster parents but for the family from which the child comes and for the child himself. Adoption is not merely concerned with the temporary, momentary placement of a child with a family but affects the child for his whole lifetime. In view of the complexity of the problem and its many ramifications, it stands to reason that skilled social service which brings understanding and experience to the participants, should be available at the very outset. It is before the child enters the foster home that the prospective parents' capacity as a potential foster family should be evaluated and the child's availability and placeability determined. Once the child is in the home a new situation exists and perhaps becomes so involved that it is next to impossible to disentangle the relationships of the various people. It would seem to be clearly indicated that it is better to prevent unnecessary and ill advised adoption placements than to have petitions denied by courts when they are presented for

final legal adoption, or for the court to grant them because it is too late to do anything else that would be more constructive. Is it not the agency's function to be equipped to give constructive guidance at a time when old ties of family kinship are being severed and before new family relationships are formed?"²⁹

"Adoption petitions by relatives frequently are the most difficult of all adoptions coming to the attention of a State Department. In the investigation of these cases infinite care must be taken to provide the court with a knowledge of the motives underlying the adoption of the child's adjustment to the home, and of the attitudes of both the related and unrelated petitioner to the proceeding."³⁰

In a study made by the Children's Bureau instances were found of stepfathers who wished to adopt in order to gain control of a child's trust fund, grandparents who were petitioning to adopt in order to obtain a settlement from the father of their daughter's child or to triumph over the child's father, and relatives who were adopting from a sense of duty rather than because of any true affection for the child. The welfare of the child is the paramount issue in every adoption, and it is the duty of the State Department, when they are given responsibility in adoption cases, to make certain that this is not overlooked whether relatives or strangers are the petitioners.³¹

29. Theis, Sophie, Van Senden, op. cit., pp. 1-2.

30. Colby, Mary Ruth, "Responsibility of the State in Child Adoption," The Child, Vol. 2, Nos. 9 and 10, March-April, 1938, p. 197.

31. Ibid., p. 197.

"The marriage of the mother to a man other than the child's natural father creates a normal family group in which the child may have a place. When a marriage followed by the adoption of the child by his step-father takes place during the child's infancy, he is spared the stigma of illegitimacy."³²

"However, kinship does not guarantee a satisfactory social adjustment for there are elements of weakness as well as of strength in such a relationship. For this reason an investigation into the home situation of the petitioners is quite as essential when they are related as when they are strangers to the child."³³

The need for investigation in adoption cases is re-emphasized by Miss Mary Ruth Colby, Consultant in Social Service, United States Children's Bureau:

"Adoption establishes a permanent relationship between foster parents and a child often too young to give expression to his desires and, therefore, incompetent to make a decision for his future. Only through an impartial study that will bring to light all the potential values or disadvantages of the adoption either for the child or for the foster parents can the interest of the child be placed before the court. For example, regardless of the seeming desirability of a home, the future welfare of the child will be jeopardized if he is unable to meet the expectations of his foster parents as he grows older. In order to assure satisfactory standards of case work in making investigations, about one-fourth of the States have given the responsibility for making adoption investigations to a State welfare department.

"Court action severing the ties between a child and his own parents or relatives is the

32. Nims, Elinor, op. cit., p. 54.

33. Ibid., p. 60.

final process created by the placement of a child in a family home. The success of an adoption is dependent upon the wisdom of the original placement, since the ties of affection that have developed during the time the child has been in the home cannot be disregarded even when there is a question about the desirability of the adoption.

"The selection of a home for a child is a highly specialized service. It must be based on a thorough understanding of the child's background and his potentialities for physical and mental development and on an equally thorough understanding of the foster parents, their motives in adopting a child, the relationships within the family, and the contribution the foster parents can make to the sound emotional and social development of the child. Failure to appreciate the real significance of parent-child relationships or willingness to accept a casual social acquaintance as a prospective foster parent has resulted in many undesirable placements of children."³⁴

The development of skilled placement services through a broad educational program is one of the major responsibilities of a State Department.

"Placements of children made by individuals who have no understanding of the problems involved in the selection of a proper home for a child have been the cause of much anxiety to State Departments and others interested in the welfare of children. An investigation made at the time the petition to adopt a child is filed may show that the home is most undesirable, but once the child has become an integral member of the family group it is practically impossible to remove him unless actual physical or moral neglect can be proved."³⁵

34. Colby, Mary Ruth, op. cit., p. 194.

35. Ibid., p. 195.

The interval of time between the initial foster home placement of the child and placement for adoption not only has value for the parent, but it is also essential to responsible placement of the child.

"It is impossible to generalize about the age at which a baby should be placed for adoption. Responsible placement rests on knowledge of him as a potential little person and this knowledge is gained through all contacts with him and with his parents, but just as important is what we learn about him through our own observation. His period of placement in a temporary foster home is one of intense activity on the part of the agency, utilizing the skills of the physician and the psychologist and the skill and devotion of the temporary foster mother. From the angles of their varied experience with the child and the worker's own observation in those experiences, the worker will come to recognize the child as a person in himself--having certain capacities and abilities, certain limitations. In some children the pattern emerges in the very early months; in others it will take much longer to feel any degree of assurance in selecting adopting parents--or even in determining whether or not the agency can take responsibility for placing him for adoption.

There are many questions that can be raised about ability to know a child well enough to place him with adopting parents who will find in the development of his capacities and personality, satisfaction for their own desires and potentialities. Fortunately for all concerned, the element of love between the child and the parents enters and forms the basis for growth together as a family. About one point, however, there is clearness, and that is that the agency undertaking adoption placement as its function is responsible to the child for his placement. If responsibility is accepted at this point we are confronted with the problem of finding parents for a particular child. The agency cannot create these parents, they must be found among the real people who present themselves to the agency asking for a child to make their own.

And here we admit the element of chance. But the agency can offer some control, some direction; not a control by theories and formulae, but the control that comes through trying to recognize actual realities and to utilize them to determine a course of action. For the agency does commit itself to action in planning placement for a child; more perhaps than in any other field of social work. An adult must take responsibility for himself, a child cannot."³⁶

The agency has a responsibility to parents taking a child for adoption, but its focus is on the child rather than on the adopting parents. If it is really expressed there, it will offer as much protection to adopting parents as to the child.

The pressure of parents wanting a child to adopt is often hard to bear; the full force of their need must be met; often intensified by the force of the community behind them. This pressure can be met only in terms of the actual children who can be offered for adoption. The agency cannot create children for parents wanting them, any more than it can create exactly the parents it might desire for a child. The limit for the agency is set by the fact that it must work with real human people, not with ideally created puppets."³⁷

"The agency naturally first meets adopting parents at the point when they come to apply for a child--to use the words of many applicants "when they come to talk about adoption." They reveal much about themselves both by the questions

36. Pendleton, Ora, op. cit., p. 38.

37. Ibid., p. 38.

they ask and by the emotion they put into these questions. If they do not raise questions, they may express demands--and these too are revealing. It is the agency's responsibility to find out what their need is, and to meet it or state frankly that it cannot do so, without dragging a family through a protracted experience that may yield nothing but a painful rejection for them and is wasteful and costly to the agency.

Another value an agency may put into this first contact is that of interpreting clearly its own responsibility in the situation, by sincerely trying to tell applicants what it can and cannot do; by giving them some understanding of the agency, how it works and why.

It is only fair for them to know at the outset what the agency will do, what is involved for them, and what they can and cannot reasonably expect to know about any child they may take. It may be helpful for them to know, at this point, what responsibility the agency takes in placing a child for adoption, and what responsibility they must take for themselves.

The application interview may give the case worker his deepest insight into the qualities of these potential parents--what they have to give to a child and what they will seek in their relationship to him.

Every agency develops its own method of investigation or study, or whatever we choose to call the procedure of learning to know adopting parents. The point is that they really must be known if a child is to be placed in their home and both are to be given some measure of security. To give much of themselves to another person is not an easy experience for people wanting to adopt; they can do it only if they understand why it is necessary. And in doing it they may find something of value to themselves in relation to the child who comes to them; they will find it a period of preparation for a child.

In accepting the function of placing a child for adoption, an agency has the responsibility for deciding what child it can offer a family on

the basis of its knowledge both of the child and of the family. If this is kept clearly in mind, we shall not be disturbed over the question of whether a home is selected for the child or whether a child is selected for the home for the ultimate action will be the same. The final responsibility for acceptance of the child rests with the adopting parents themselves; the young child cannot take it. The agency is responsible for him; and the family is responsible for itself in relation to him."³⁸

The chief implication of the study of sixty adopted children made by Epstein and Witmer was that all adoptions should be preceded by the study and consultations that characterizes the case work of the best child-placing agencies.

The chief conclusion of the study for the cases as a whole was that it seemed that it must have been fairly clear from the beginning that the parents' motives in taking the children were not likely to lead to happy relationships and that adoptions could have been refused, if judgments concerning them had been made on that basis.

The chief implication for adoption procedure from this conclusion is for the sort of individualization and understanding that is characteristic of psychiatry-oriented case work.³⁹

38. Ibid., pp. 38-9.

39. Epstein, Ruth and Witmer, Helen, "Some Suggestions for Illinois' Adoption Procedure: A Study of Sixty Adopted Problem Children," Smith College Studies in Social Work, Vol. VIII, November 4, -June, 1938, p. 333.

In answer to the question which is often raised--what is required of foster parents--the writer has chosen an excerpt from the published adoption policies of the child-caring agencies of Buffalo and Erie County, New York.

"In considering a home for the placement of a child the agency is concerned, first, about the physical aspects of the home. Foster parents must, of course, be in good health, mentally and physically. Their home certainly need not be the abode of wealth, but neither should it be marred by poverty.

Foster parents should be adequately housed; that is, their home should be large enough for their needs, it should be clean and sanitary, with sufficient light and ventilation to safeguard health and properly furnished to assure necessary comfort.

There should be a family income large enough and sufficiently secure to provide the necessities of life and to insure against want. Besides an adequate standard of living, foster parents must be able to give the child intelligent physical care in days of health and in times of sickness, that the child may not be exposed to neglect but may in its childhood lay secure physical foundations for a vigorous manhood or womanhood.

On the moral side it is required that applicants for adoption service bear a good reputation in the community and conform in their private and community life to the standards of morality enjoined both by religion and society. They must also be able and willing to accord the child placed into their home the benefits of moral discipline and education, thus developing the qualities of useful citizenship.

The intellectual and cultural life of prospective foster parents is also taken into account by the conscientious agency when selecting foster homes for its charges. This does not imply that foster parents must be highly educated, but it does presuppose some knowledge of the fundamentals of culture, and ability to read and write the language of our country.

More important than cultural achievement, however, are the attitudes of prospective foster parents towards manifestations of intellectual life and cultural progress. Do they appreciate the value and necessity of acquiring knowledge and growing in knowledge? Do they try to cultivate those powers of the intellect with which they are endowed? Do they make the most of such cultural opportunities as are within their reach? Are they willing to provide opportunities for the child to acquire as much education and culture as it may be capable of absorbing and utilizing? These are questions to which the placing agency seeks answers, and these answers will provide it with sufficient knowledge of the intellectual and cultural aspects of the foster home to enable it to make an intelligent decision in accepting or rejecting the home for placement purposes.

Adoption agencies generally believe that definite manifestations of interest in things spiritual are essential in a good foster home. Church agencies naturally stress active church membership as an indispensable requirement in a foster home, while all agencies recognize the value of spirituality in the family life and appreciate the unifying and steadying influence upon the family of the faithful observance of the practices of formal religion.

Since children are always placed, as required by law, for adoption with people of their own religious faith, adoption agencies ask that foster parents cooperate with the church in the task of educating the child in the precepts and practices of their common faith.

After a home has been investigated along the lines indicated, and conditions found satisfactory, the home is approved for placement. Having an intimate knowledge of the foster home, the agency is now able to determine the type of child suitable for placement in that home. When such a child is available for placement, the foster home and the child are brought together and a successful adjustment usually results."⁴⁰

40. "Wanted a Child," The Adoption Policies of the Child Caring Agencies of Buffalo and Erie County, New York, pp. 11-3.

C. Probationary Residence as a Protective Measure.

"In general, it has been found that in homes where there are adopted children, there are two conflicting sets of emotional problems. First, the child who is available for adoption has generally been deprived in infancy and has had his life routine upset to the extent that he has become insecure. This insecurity has generally produced an emotional instability which makes him a problem to handle. Second, the parents who adopt a child frequently have been deprived of children, or have had certain inadequacies in their lives for which they hope to compensate by this new interest. This salvaging of parental emotional problems in children is fraught with danger, particularly in view of the fact that the children in such cases have usually had insecure lives, which have rendered them less able to withstand mishandling."⁴¹

Are adoptive parents prepared to do what the wisest own parents have always done: enjoy each passing phase of babyhood, childhood, and youth to the full, help the youngster to enjoy or leave him free to enjoy, as he goes, all the normal satisfactions of his age, but never hold him back, or encourage him to linger, or try to force him into a mold, however much they grieve to lose their personal hold on him or would like him to follow plans in harmony with their own tastes or interests?⁴²

"The desirability of deferring adoption until a child has been in the foster home for a period long enough to assure satisfactory adjustment to the family, and to allow study of his

41. Towle, Charlotte, op. cit., p. 463.

42. Sayles, Mary Buell, Substitute Parents, p. 22.

mental and personality development, has been demonstrated by the experience of social agencies. Many agencies prefer a two-year period, but one-year is generally accepted as a minimum time for constructive services.

The trial period has been given too little attention in legislation. In nearly two-thirds of the States no requirement is made in the adoption law that a child should live in a home for a minimum period of time before a decree of adoption is granted. Thirteen States require a six-month period of residence. In six States an interlocutory decree is given by the court, which is in effect for a year (2 years in one State) before final action is taken by the court. In States requiring an interlocutory decree, supervision of the home by the investigating agencies during the trial period is required or may be ordered by the court. In some situations additional visits to the home may not be needed, but they are important when a child has been placed in a home without regard to essential safeguards."⁴³

In a study of sixty adopted problem children made by Epstein and Witmer, evidence was shown in specific cases of one of the difficulties inherent in adopting very young children.

One of these children was one day old when he was adopted; another was two days old, the third five weeks, and the fourth two years old. From seven to fourteen years later the parents brought them to the Illinois Institute for Juvenile Research. On examination they were found to have I.Q.'s ranging from 40 to 68. In addition one was diagnosed epileptic and another as suffering from spastic

43. Hanna, Agnes K., "Some Problems of Adoption," The Child, Vol. I, No. 6, December 1936, p. 7.

cerebral paralysis. These adoptions might have been avoided if there had been an investigation and a trial period.⁴⁴

In their study it was found that there was an unexpectedly close relationship between the reasons for adoption and the clinic's interpretation of the cause of the children's problem behavior.

It would seem (strange though this may be to social workers) that adopting a child in order to provide their own children with a playmate or to obtain a substitute for a child who died was usually a preface to a fairly successful adoption. On the other hand, adoptions entered into because the parents could have no children of their own generally resulted in failure, as did those undertaken on impulse, or out of a sense of duty or pity or for retaliation or deceit. The adverse conditions for the children that might be expected to follow from such reasons for adopting them are made clearer by a consideration of the actual cases, but even the statistical data give evidence that an unfavorable prognosis may usually be made in such cases.⁴⁵

"Adopting a child in order to fill up a gap left by the death of another child would seem to be a situation that might contain

44. Epstein, Ruth and Witmer, Helen, op. cit., p. 372.

45. Ibid., p. 382.

hazards for the adopted child, since one might expect that the parents would idealize the dead child and demand too much of the adopted one. In none of the cases in this group, however, was there clearcut evidence of such an attitude, though in several it seemed that some such attitude might be concealed under the adoptive parents' mild rejection. Several cases, on the contrary, were characterized by the reverse attitude. The parents were over-indulgent and over-restrictive, fearing perhaps that unusual care was needed to prevent a repetition of their former loss."⁴⁶

"A consideration of the situations at the time the adoptions took place gives evidence that failure is apt to follow when the reasons for adoption have little relation to the child's own welfare."⁴⁷

"Both statistically and descriptively it seems that there was a fairly close correlation between the reasons why the children were adopted and the attitude the parents later assumed toward them. Adoptions entered into because the parents thought they could have no children of their own seemed particularly prone to turn out unsuccessfully, as did those that were undertaken for pity or duty or in order to achieve some objectives out of the ordinary.

All this suggests that it would be possible in a considerable group of cases to anticipate, at the time adoption is being considered, the probable results of such action. The trial period that is required by law in some states would seem to be one way of avoiding some of the unsatisfactory adoptions. More important than legal restrictions, however, is the ability of the adoption authorities to recognize some of the more subtler aspects of the desire for children and

46. Ibid., p. 384.

47. Ibid., p. 385.

to evaluate which individuals have attitudes that are apt to be favorable to a child's emotional growth."⁴⁸

"In thinking of the future, it may be of help to keep one fact clearly in mind. The adopted child is never an own child born to his adopting parents. The force of emotional denial of this reality presses from all sides. It comes from within the agency in its desire to give the child the feeling of really belonging to someone; it comes from the adopting parents, in their drive to make the child really their own; and it comes from the child himself, in his deep need to have a real father and mother. This denial will not be expressed in terms of fact; it will be more apt to take the form of failure to accept emotional implications and of building a structure that is dangerous because it is based on denial of reality. The agency and the adopting parents can work together in the brief time between placement and adoption to recognize some of the unlimited possibilities for happiness and growth in the real relationship between the parents and their adopted child. If they do this the future will provide for its own eventualities, because it will be based on a foundation of love directing its full force toward meeting them, unhampered by the destructive element of denial or rejection of any part of the relationship itself."⁴⁹

The proceeding under which a child is declared dependent previous to the time a petition for adoption is filed virtually makes the adoption a matter of two distinct steps and has the very real advantage of severing the parental relationship over a child when the break-up of the family seems necessary and of transferring the legal guardianship of the child to an officer of a recognized agency or

48. Ibid., p. 387.

49. Pendleton, Ora, op. cit., p. 41.

institution. This guardian is usually given the right to consent to the child's adoption without further contact with the child's parents. This greatly facilitates the work of the agency having the child's custody as it can consent to any adoption it may arrange for the child and at the time desired by them for such action. This is one way of enabling an agency to live up to standards having to do with a probationary period with supervision in the foster home and to have the backing of the law during this time.⁵⁰

During the probationary period contact should be maintained with the home, and the success of the placement observed.

If, at the end of a fair trial, it is evident that the child is not making a reasonably satisfactory adjustment, or if the effect of the adoptive parents on the life of the child is not a reasonably wholesome one, the placement should be terminated. If the success of the placement is doubtful, the probationary period should be extended. If the placement is judged to be successful and a re-examination of the child reveals it to be suitable for adoption, the adoption should be permitted.⁵¹

50. Nims, Kliner, op. cit., p. 78.

51. Jenkins, R. L., op. cit., p. 407.

D. Responsibility of Child-Placing Agency to Natural and Adoptive Parents:

Individual agencies need to study their own philosophies and procedures to see whether they are really meeting the needs of their community or allowing two services--assistance to unmarried mothers and placement of children in adoption homes--to slip gradually into the hands of unqualified persons.⁵²

As a large proportion of children placed for adoption by relatives or other persons are born out of wedlock, the need for having the services of a social agency to unmarried mothers is evident.

"A number of States have undertaken to control placements of children by prohibiting placements except those made by authorized agencies. Valuable as such provisions are if they are put into operation through a continuing educational program, they have little effect unless the girls and women who need assistance in caring for their children can obtain advice and help at the time that it is needed."⁵³

"Social agencies, both public and private, should assume more responsibility for children available for adoption, and increase their services for unmarried mothers whose children are most often placed by unqualified persons."⁵⁴

52. Hanna, Agnes K., "Interrelationship Between Illegitimacy and Adoption," Child Welfare League of America Bulletin, Vol. XVI, No. 7, Sept. 1937, p. 6.

53. Hanna, Agnes K., "Some Problems of Adoption," The Child, Vol. I, No. 6, Dec. 1936, p. 5.

54. Ibid., p. 7.

"The Children's Bureau in 1935-36 made a study of adoption procedure in States in which the State Welfare Department had some responsibility for the investigation of adoption petitions. It was found that less than half of the children had been placed in the homes of petitioners by child-placing agencies and that about one-third of them had been placed by individuals not connected with authorized agencies. Other children had not been placed in a technical sense, since the petitioners were step-parents or persons with whom the child had always lived, in a few instances the child was not in the home when the petition was filed, or no information was available as to the placement.

Reduction in the number of placements made by other than authorized child-placing agencies should be of interest to a State Department. Since a large percentage of such placements are made by parents and relatives, it is the responsibility of the State Department to develop a greater willingness on the part of the child-placing agencies to serve these persons and thereby to prevent the making of placements without proper understanding of all the elements involved. Child-placing agencies should look at the whole placement more realistically and should offer their assistance to parents and relatives in order to protect children from haphazard placements."⁵⁵

"Local resources, public or private must be available in every section of the State to meet the needs of unmarried mother and her child, and it is the responsibility of the State Department to stimulate the development of these resources so that independent placements will not be necessary. Having an active local agency equipped to give service to unmarried mothers would not necessarily mean that children of unmarried parents would be less often available for adoption, but it would mean that when such children were to be placed they could be referred to authorized child-placing agencies and thereby be spared the hazards of independent placements."⁵⁶

55. Colby, Mary Ruth, "Responsibility of the State in Child Adoption," The Child, Nos. 9 and 10, March-April, 1938, p. 195.

56. Ibid., p. 196.

Miss Hanna, who is Director of the Social Service Division of the United States Children's Bureau reiterated the need for services to unmarried mothers at a time when they need it most in her summary of the study of adoption made by the Bureau.

"Any study of the children for whom petitions of adoption have been filed will show that a large proportion of them were born out of wedlock. In a study made by the Children's Bureau it was found that about sixty per cent of the children belonged in this group. Furthermore, among the children adopted by persons other than relatives nearly three-fourths were of illegitimate birth. In some States the proportion was even higher. It is evident that a close relationship exists between adoptions and birth out of wedlock."⁵⁷

The Children's Bureau was unable to obtain accurate information in its study of the number of children born out of wedlock who were actually adopted. No accurate State statistics on this situation were available, but it was felt that theoretically a comparison of the number of illegitimate during a year with the number of adoptions of children of illegitimate birth during a similar period should give some indication of the extent to which adoption occurs. In attempting to make such a comparison with the figures available, the Bureau was seriously handicapped by the fact that California and Massachusetts, two of the states included in the adoption study, do not report illegitimate

57. Hanna, Agnes K., "The Interrelationship Between Illegitimacy and Adoption," Child Welfare League of America Bulletin, Vol. 16, No. 7, Sept. 1937, p. 1.

births. It was found on using this rather crude comparison of births and petitions in the remaining seven of the nine widely distributed States throughout the country that apparently nearly a fifth of the white children born out of wedlock were adopted.

"Let us assume that only a fifth of the white children born out of wedlock are adopted. Unquestionably, a large proportion of the remaining children are being cared for by their mothers or by other close relatives who have accepted this responsibility without recourse to legal methods for giving the children the family name and rights of inheritance. Almost equally unquestionable, in the opinion of many persons, is the possibility that a large number of these children are under the care of persons who are not relatives, but who fail to give the children the legal protection of adoption. Some of these children undoubtedly are passed from family to family as the interest of the foster parents wanes or some misfortune occurs. Assistance and advice given to the mother when she needs it most, during pregnancy or at the time of confinement, would do much toward reducing this hazardous, unplanned care."⁵⁸

"When we are faced by the fact that the requests for children for adoption exceed by many times the children available for adoption, there would seem to be little excuse for any child's being adopted into a home that is unsuited to his capacities and are unable to provide real home life. Since the majority of the children available for adoption by persons who are not relatives were born out of wedlock the question might well be raised whether so many children would be placed by irresponsible persons or by those having a financial interest in the placement if real services and sound advice were available to their mothers.

Placement for adoption should be made by qualified social agencies, since it requires

58. Ibid., p. 5.

understanding, skill, and continuing services. Only by understanding something of the size of the problem can this situation be frankly faced and the necessary services provided by public and private agencies. We need more complete statistics for the whole United States to test our assumption that most of our placements for adoption involve children born out of wedlock and that the number of these children available for adoption is not large. It is interesting to conjecture whether, if more adequate services were available to the mothers, this number would be increased by children who otherwise would be casually placed; or whether, by applying the sound case-work procedure of careful study of the children, the number who should be adopted would decrease."⁵⁹

"The lack of social services in rural areas and small towns has made the readjustment of the unmarried mother and her own community exceedingly difficult, if not impossible, and as a result an agency in the city cares for the child or assists the mother in caring for him.

Assistance to unmarried mothers in their own communities is one of the important child-welfare services in rural areas for which Federal funds have been made available to the States under the Social Security Act. The extension of such services will do much toward solving one of the most difficult problems. More than one city has seriously questioned the use of community funds for the care of non-resident girls who, as recent information has shown, may constitute at least half of the girls under care in the maternity homes maintained by voluntary funds. The only method of meeting this situation and of preventing increased use of commercial agencies is to have someone available to help girls in smaller communities to make plans for maternity care."⁶⁰

"Parent-child relationships are complex, even with ties of blood relationship. The person who assumes responsibility for establishing such a relationship by placing a child for adoption has an obligation to both the parents and the child.

59. Ibid., p. 5.

60. Ibid., p. 6.

She must bring to the foster parents an understanding of the child's physical and mental make-up and his parentage and background, and she must assist in interpreting to them personality problems and situations that are undesirable for the child's development."⁶¹

Miss Pendleton, too, believes that the agency placing a child for adoption has a triple responsibility--to the child, to his parents, and to the adopting parents. If it can be really responsible to those who are intimately involved, it will at the same time meet its obligation to the community--which is alive with interest and continually exerting pressure.

Because the movement toward adoption usually begins with a child's parents, the agency's part in the process is first expressed in the case worker's relationship to those parents.⁶²

While we shall not express in detail what goes into that relationship, one or two points may be suggested at which activity on the part of a case worker has helped the parent in making the decision for or against final separation from the child. An agency which offers foster care not only for adoption, but also on a boarding-home basis has many applications for care from parents who have not yet reached the point of decision, or clarity in their own feeling about their child.⁶³

61. Hanna, Agnes K., "Some Problems of Adoption," The Child, Vol. I, No. 6, Dec. 1936, p. 3.

62. Pendleton, Ora, "Agency Responsibility in Adoptions," The Family, Vol. 19, No. 2, April, 1938, p. 36.

63. Ibid., p. 36.

"The majority of parents who come to the agency with their problem are unmarried--at least to each other. Because of this fact the parent who usually is most vitally concerned is the mother. . . . The fact that the largest number of children the agency places for adoption are those of unmarried mothers does not simplify the problem; but it does to some extent focus our thinking to the point of recognizing that illegitimacy of birth and all the feeling inherent in it play a large part in the mother's final acceptance or rejection of her child. The agency, through the case worker, can help her by setting some limits which she can use as fixed realities in her confusion of emotional conflicts and her dread of an unknown future."⁶⁴

One limit is that of fixing a definite time limit in which the mother is asked to make her decision whether she wishes the child placed for adoption or will assume responsibility for him. The case worker and the mother determine the length of time when the child is accepted for placement. During this period the child is placed in a boarding home. This gives the mother an opportunity to know both the freedom of separation and the sorrow of it. During this period she is also given an opportunity to know the child as an individual with a life of his own, a person apart from herself.⁶⁵

"Some mothers will actively use the case worker's help during this period, others will not. The final decision for adoption is the mother's, but the case worker may help her in meeting the realities in the situation, both

64. Ibid., p. 36.

65. Ibid.

for herself and the child. This setting may sound formalistic but it has real value for the parent and offers obvious protection to the child as well. Its value has been shown by the actual use parents themselves make of it, taking the initiative in holding both themselves and the agency to it. Every mother will not want or need time to separate from her child, she may already have separated before she came to the agency, but the child is not placed for adoption before the time mutually agreed. A mother who does not need this time in working out her own part in the situation can accept it if she sees its importance for her child in the final selection of his adoption home.

The financial arrangement for the child during the period of boarding care represents another limit the mother can utilize. The agency usually requires her to have some part in the support of the child through this period--either by full or partial payment for his board, or by actually taking steps toward securing public support. Some measure of financial obligation will give her a realistic basis for her future plans."

"Working together around these two problems, the agency and the parent face the real problem of ultimate responsibility for the child. Whose is it to be--the parent's or the agency's? If the parent assumes it, what kind of responsibility can she take? Can she assume the complete responsibility of having the child with her--at least with her family? Can she meet it by assuming the whole financial obligation or a part of it? If she can do neither, how does she plan to take an active part in the child's life, giving him an emotional security in his relationship to her? An indefinite period of boarding care presents real problems both for the parent and the child, and the agency is responsible for giving her some insight into them, or at least an awareness that they do exist. Discussion between the parent and the case worker around these points does not mean pressure by the case worker, to influence the parent's decision one way or the other; it is merely facing the realities in the situation for those vitally concerned."⁶⁶

"When a parent has decided to release a child for adoption, something new comes into her relationship to the agency and the case worker's role changes: he is no longer used by the parent for herself. He is responsible for obtaining from her pertinent information that is needed in planning adoption for the child. It is helpful for a mother to know that the agency must have specific facts to meet the requirements of court action; that the adopting parents will have questions about the child's parents, the kind of people they are, their interests and abilities, something of their families--the information designated as 'background.' It is still more important for the parent to feel that, in giving information to the agency, she is helping materially in the selection of the home in which her child may live and grow comfortably and usefully. She does not take responsibility for his placement, but she can contribute something that may help in planning a surer, safer future for her child. If the mother feels this, she may be able to use her feeling to give useful information that she could not bring herself to reveal when her concern was centered on her own problem. For many mothers there is a real difficulty in going to an agency to place her child for adoption. The agency should recognize this and help her to get something out of the painful experience: something for herself, if she wants and can use it--but only if she wants it; and some feeling of assurance about her child's future."⁶⁷

Miss Sophie Van S. Theis, Secretary of the Committee on Child Placing and Adoption of the State Charities Aid Association of New York sets forth the "claims" of the adoptive parents, and the part the adoption worker plays.

"While the worker focuses primarily on the child as her client, the prospective foster parents make their claims, too, and rightfully so. They come to the agency with their hopes and ambitions, bringing with them, too, fears and prejudices. After their suitability as to the usual standards of good character and living

67. Ibid., p. 37.

conditions have been established there will be the subtler elements for consideration. Some of the deepest inner aspects of intimate family life will often only be glimpsed by the worker and frequently the foster parents themselves are neither articulate about themselves nor even conscious of what motivates their actions. The more the worker understands of the subjective as well as the objective factors in a home, the better the quality of her work. Frequently the highly cultured, well educated families who offer every possible social opportunity for a child are the ones of whom the public hears and who bring pressure on the agency for a child. They do not necessarily offer the best opportunity for the child for whom the agency is trying to find a home. The adoption worker has to be firm in her conviction that her responsibility to the child comes ahead of every other consideration. The experienced worker knows that over-placement in the long run helps no one. Fortunately the desire to adopt a child is not restricted to any one group of families, and all kinds of homes are available ranging all the way from the simplest workman's home to that of a highly intellectual and socially favored one. The crux of good adoption work probably lies in the adoption worker's ability to give wise and imaginative assistance in the selection of the right home for the child who can accept placement."⁶⁸

Miss Van Theis goes on to say that no matter how carefully the adoption worker may have paved the way for the child with the foster parents nor how well prepared the child may be for his new relationship, it will soon become evident that no preparation can take the place of the actual experience of building up new relationships. After placement strong feelings on the part of both child and foster parents may come to the surface, for both may be fearful as well as eager to go forward. Many adjustments are not unlike those which any human being experiences

68. Theis, Sophie Van Senden, op. cit., p. 7.

when new relationships are being formed. In some foster families, content and secure in themselves, affection and love and respect for one another is built up quite unconsciously and simply. Others achieve family unity by a more conscious, step-by-step development. Those who believe that after a child is placed in an adoption home he will live happily ever after, are simplifying "life into a fairy story." The adoption worker meets every conceivable problem that may be presented by any new family situations and added to them are those which arise out of the adoption itself. The well trained worker will know when to participate actively in helping the family, or the child, or both, through difficult times, and when to stand firm in doing nothing except to reassure the family as to their own capacity to meet problems. Since situations and individuals vary so tremendously, rules as to the frequency and the nature of supervisory visits must of necessity be flexible.

Because the agency had experience with the child in his early life and knew both him and the foster parents before they knew each other, and also because it assumed some basic responsibilities when it placed the child, it remains in a very unique position to give help. After legal adoption, the children themselves and the foster parents in many instances voluntarily keep in contact with the agency, partly for advice in case of difficulties and partly to share their joys.⁶⁹

69. Ibid., p. 7.

Miss Charlotte Towle, too, points out that it is essential to ascertain the emotional determinants that prompt the parents to adopt a child, for it is these emotional elements that will condition their reaction to the child.

"A home that is unsuitable for a certain child because of emotional bias may be suitable for another child of different age, sex, nature, or personality, or for a number of children. Likewise, a home that is unsuitable for a number of children may be better suited to one child."⁷⁰

"Just as an artist does not merely fit a triangular fragment into a triangular niche, but also considers the color effect in relation to the completely sublimated concept, so in child placing one cannot merely recognize the more or less fixed physical and mental elements, but must give attention to the emotional coloring by which those elements become conditioned, so as to integrate the fragments."⁷¹

Miss Emma C. Fuschner, Director of the National Child Welfare Division of the American Legion stresses the responsibility of agencies in an adoption program.

"The organizations entrusted with the care and placement of children have it within their power to render the greatest possible service that can be rendered for the benefit of children. They also have it within their power to cause heart rending conditions that wreck the lives of children and foster parents. Extremes face us. There are the institutions and agencies that have iron-clad rules and lack of understanding of the need for flexibility where human beings are concerned, or the kind of organization that pride

70. Towle, Charlotte, "Evaluation of Homes for Child Placements," Mental Hygiene, Vol. XI, No. 3, July 1927, p. 480.

71. Ibid., p. 481.

themselves on easy placement of children for legal adoption and are not concerned with the future of the child and the foster parents."⁷²

Many applicants for babies for adoption do not ask questions, but if they are dealing with reputable child-placing agencies and institutions they will be compelled to ask questions and they will likewise be compelled to answer many questions. Everything possible should be done, legally and otherwise, to compel proper protection of the children and prospective parents. "Illegitimate" babies are not at a premium: there are no illegitimate babies, but there are illegitimate parents. It is because prospective foster parents are led to believe that no questions are necessary that they do not ask questions.⁷³

"No matter how greatly impatient the prospective foster parents may be, the institution or child-placing agency must accept responsibility and blame for the mistakes that are made and the lives that are wrecked."⁷⁴

There are, of course, many children in need of homes who should never be placed for legal adoption, and many applicants who should never be entrusted with children for legal adoption.

Training and experience, together with all the co-operative resources and skills available, are essential to safeguard and protect both the children in need of

72. Puschner, Emma C., "Child-Adoption--Our Most Difficult Undertaking," Child Welfare League of America Bulletin, Vol. XVI, No. 6, June 1937, p. 2.

73. Ibid., p. 2.

74. Ibid., p. 4.

homes and the prospective foster parents.

"When properly carried through, it is a most satisfactory experience to bring the right child and the right foster parents together."⁷⁵

"Full information about the child placed for adoption should be given foster parents at the time the child is first placed or as soon thereafter as adoption is contemplated. In some cases the facts need not be given in too stark detail, but the main facts should be known. The foster parents who do not want to know anything about the child they adopt are risking much through their ignorance. It is their duty as well as their right to know as much as possible about the child whom they are to nurture and direct."⁷⁶

In a study made by Ruth Epstein and Helen Witmer of sixty adopted children it was discovered that in twenty-five cases, the largest group in the series, the children's difficulties seemed to the clinic staff to be due to the adoptive parents' rejection of them. In some cases this attitude was openly expressed by frank statements of dislike for the child or by neglect or cruelty.

"Rather frequently the parents excused their attitudes of dislike or disappointment by attributing their difficulties to bad heredity. In justification of this they could say that they were told nothing of the children's background when they adopted them, this being the practice in almost all of these adoption cases. It seems unlikely, however, that in most cases an accurate description of the children's parents would have done more than sustained

75. Ibid., p. 5.

76. "The ABC of Foster-Family Care for Children," U.S. Children's Bureau Publication, No. 216, p. 37.

them in their diagnosis of the course of the children's problems as hereditary. On the other hand, if at the time adoption was contemplated these parents had had an opportunity to think through their probable feelings toward a child in the light of its true history some of these unfortunate adoptions might have been avoided entirely."⁷⁷

77. Epstein, Ruth and Witmer, Helen, op. cit., p. 378.

CHAPTER V
STUDY OF ADOPTION PROCEDURES AND POLICIES
OF SELECTED SOCIAL AGENCIES

A. Scope and Purpose.

In Chapter IV the writer has given consideration to the philosophy of adoption and adoption procedure in general. It has been brought out that "an agency has the responsibility for deciding what child it can offer a family on the basis of its knowledge both of the child and of the family."

The criticism has often been heard by those in social work that agencies are too "selective"--that standards of these agencies are such that only "very choice" children are considered adoptable and only "very choice" homes are considered as potential adoptive homes.

The criticism implies that an average sampling of parents and children in a community would show that in actuality the majority might not come up to the standards set by agencies and hence the adoption standards are too "artificial."

This criticism might be answered in several ways. One answer might be the argument previously given; namely, that "when the state has an opportunity to pass upon the suitability of parents for its wards it has a moral responsibility

to do all in its power to avoid placing them in homes that will handicap their development." Likewise an agency which has the responsibility of choosing a home for a child has the responsibility of selecting the best home available for that particular child.

Another argument might be that people who seek to adopt children cannot be assumed to be an average sampling of parents in a community. They differ as a group in being older and in being childless in most instances. In a study of the adoptive parents of over two thousand children made by Alice M. Leahy of the University of Minnesota, published in 1933, it was learned that eighty-nine per cent were childless married couples, that an average of nearly ten years elapsed between the marriage and adoption. This is five or six times the period preceding birth of the first child to parents in general. On the average they were found to be about five years older than a relatively unselected population of true parents of white children.¹

Rather than answer the criticism in any of these ways, however, it seemed that a reading of actual adoption case records and a discussion with case-work supervisors in regard to policies would serve as some basis for a conclusion.

Inasmuch as all adoption records are considered

1. Leahy, Alice M., "Some Characteristics of Adoptive Parents," American Journal of Sociology, Vol. XXXVIII, No. 4, Jan. 1933, pp. 548-553.

highly confidential, in no instance was sufficient information removed from any record to identify any person concerned. Inasmuch as the adoption records are very long and detailed only a few from each of the agencies could be read.

Public and private agencies will be separately discussed, because of their different responsibilities and because of the different roles they play in the adoption program in Milwaukee County and the remainder of the State.

B. Agency Policies as to Suitability of the Child.

The three largest private child-placing agencies in Milwaukee County were selected for the purpose of this study. Inasmuch as numerous questions could be raised in the discussion of an adoption program, it seemed wiser to limit the questions to a few specific ones which would bring out the policies of an agency. Questions surrounding adoptive homes lent themselves best to answer by reading adoption records and those in regard to the child by a discussion of general policy with case-work supervisors and amplification by study of cases.

1. The first question raised in an attempt to determine the suitability of a child for adoption was--Does the agency consider a child for adoption whose mother or father was found to be feeble-minded?

All three agreed that the child should not be placed for adoption except after a period of study of the child in a boarding-home. None would place the child immediately. The agencies differed in their concepts of responsibility to the child. One agency felt that a public agency should take the child, another that a public agency might eventually have to take the child, and another that it, the private agency, should take the child.

Agency A would not place a child for adoption whose mother or father was feeble-minded, that is low enough mentally to be institutionalized--I. Q. of seventy or below. The supervisor of this agency stated that this should not be construed to mean that the child might not be adoptable. He would have to be observed in as nearly normal a home situation as possible for a period of time. If his development, as evidenced by psychological tests, seemed normal, he could be placed for adoption in a home that would meet his needs. However, this agency could not financially afford to provide boarding home care to such children over an extended period. The agency could not keep a child in a boarding home for four or five years, for example, before adoption to determine whether he is "normal." Four or five children with no such history of feeble-mindedness in the background could be provided with boarding-home care for a year in place of the one child being observed. The agency could not feel that it was justifiable for it as a private agency to use its funds for the one child in place of the four or five. A public agency, on the other hand, could accept a permanent commitment and place the child for a period of observation in a boarding home if necessary or, if possible, in a free home. Then, if the child did not develop normally enough to be placed for adoption, the public agency could continue with its responsibility to the child in some other way.

(Case) A case in point which was read was that of a child whose paternal history indicated that most of the relatives had difficulty with grade school work and were unable to finish the eighth grade. A psychological test given to the mother showed intelligence of a high grade moron level. The mother was given assistance in making other plans for the child.

Agency B would accept a permanent commitment of the child. The placement for adoption would be considered only after an extended period of study and supervision of the child in a boarding-home or a free home. If the child showed normal development, as evidenced by psychological examinations, the child would be considered adoptable. The philosophy of this agency is that of a religious responsibility to the child, and it is this philosophy which governs the acceptance of guardianship.

(Case) The mother of a child who was accepted on a permanent commitment was diagnosed as not mentally deficient but having intelligence of a dull and backward level. She was unstable and the psychiatrist giving service felt she would be unable to consistently carry out a plan for the care and upbringing of the child. It was recommended that if she released the child, any decision as to final adoptability should be postponed until the child was old enough to be examined. The possibility of inherited mental deficiency was to be given consideration. Paternity of the

child was not established. There were no relatives able to care for it. The child was cared for in an institution for a time, and later placed in an adoptive home, with no plan for adoption until a series of definite psychometric ratings could be obtained. The child is still in the adoptive home. The most recent psychological examination indicates dull average intelligence. The adoptive home is not an over-placement. If the child is adopted, the adoptive parents will not expect more of her intellectually than she is able to give. They are former farm people, now living in an urban community, who have had limited education.

Agency C would consider taking permanent commitment of the child, if there were not several instances of feeble-mindedness in the history. The child would be placed in a boarding home for observation for the ultimate purpose of determining adoptability. If its progress, after a year or so, showed development that was not normal, the child would not be placed for adoption. The agency would then ask that the permanent commitment be vacated and the custody of the child transferred to a public agency. However, before asking for a transfer, the agency would get in touch with the parent (or parents) and advise her of the plan, so that she might have an opportunity of voicing any objection or making another plan for the child.

The supervisor of the agency believes that agencies are more flexible now than they were three or four years ago. They are willing to take more of a "gamble" now. For example, the agency will accept a child, not necessarily with termination of parental rights, and ask the mother to "hold off" on termination until the child is built up physically and observed for mental growth.

(Case) A case in point mentioned was that of an adult mother with the mentality of a nine year old child. The father has average intelligence. The child who is physically weak will be observed over a period of time in a boarding-home at the agency's expense. If she progresses well, the agency will accept a permanent commitment, with adoption in view. If she does not, she will be transferred to the care of a public agency after consultation with that agency and relatives.

2. Would the agency take a child for adoption where there was a history of insanity in the family?

All three agencies seemed less concerned about insanity in the background than about feeble-mindedness and showed a greater willingness to assume responsibility when there was such a history.

Agency A would accept permanent commitment of a child for the purpose of adoption if there was an isolated instance of insanity. A diagnosis would first be obtained to determine whether or not the insanity was an hereditary type.

The child would not be placed for adoption, and hence no permanent commitment accepted if there was insanity in direct line of descent, as the mother or maternal grandparents. Certain types of insanity do not develop until a child reaches adolescence, and hence he might be perfectly all right until then. With this outlook, the agency could not assume responsibility by accepting permanent commitment. The private agency, because of its dependence on private contributions, does not believe in "mortgaging" the future of its agency. The administration changes from time to time, the future financial condition of the agency is problematical, and hence it would not be justifiable for it to accept children who might revert back to it years later. This would be especially true in cases of children with histories of feeble-mindedness in the background, who after being permanently committed to the agency might be found to be unadoptable, and therefore the responsibility of the agency for years.

However, a public agency with a more assured future, could take responsibility and place the child in a free home or even an adoptive home, with the entire history presented to the adoptive parents.

(Case) The mother's history in this case indicated there was one isolated instance of insanity. The mother was a high school graduate whose school records indicated she would be able to do college work. Maternal relatives

had either finished grade or high school.

The history of the father showed no serious physical disease nor any mental ailments. He was a high school graduate who had done fair work. Several of his relatives had completed high school; the others had finished grade school.

Histories of both the maternal and paternal families showed stability and good character. The agency would accept permanent commitment of the child.

(Case) The history of the father in this case indicated stability. He was a high school graduate. All of his relatives had completed grade school work; some had had high school training. The maternal history was poor. Few of the maternal relatives had completed grade school. The mother, who was unstable, had delusions of persecution. Three of the maternal relatives were mentally unsound. The child would not be placed for adoption by the agency. Other plans were made with the assistance of a public agency.

(Case) Two of the maternal relatives were patients at mental hospitals; another had committed suicide, with little in the way of causal factors to account for it. The mother herself "brooded" much more over her situation than an average person. Paternal history was not obtainable. Plans, other than adoption, were made for the child, with the co-operation of another agency.

Agency B would accept permanent commitment. If the mother or maternal grandparents were insane there might be doubt about placing the child for adoption. Placement would depend on the type of insanity. For example, the maternal grandmother might have become insane during menopause. Physicians might rule out any hereditary connection, and the child considered adoptable. A complete history would, of course, be given to the adoptive parents.

(Case) In this case both parents were inmates of mental hospitals. Other relatives were also psychotic, and there was a history of feeble-mindedness. Under no circumstances would the children be considered adoptable. Some were placed in boarding homes after acceptance by the agency. Other children in the same family were not accepted because of low mentality. Plans could be made for them in public institutions to meet their particular needs.

Agency C would not consider a child unadoptable because of an isolated case of insanity. If it were the mother or father, for example, and the rest of the history was good, this agency would consider taking permanent custody for the purpose of adoption. It would want to know all about the details of the psychosis--type, onset, etc. The agency, like the others, would present the history to the adoptive parents.

3. Would the agency place a child for adoption where there was a history of syphilis, for example, of the mother?

Generally, all of the agencies would rely on medical and laboratory tests and would place the child after competent examination indicating freedom from disease.

Agency A might consider the child for adoption if the mother had received treatments during pregnancy and the child's Wasserman tests were negative. This agency would prefer to have a particular adoptive home in mind before accepting commitment, so that an understanding of the problem would be assured, and so that it would be definitely known that the potential adoptive parents would realize the need for periodic examinations of the child and follow through with this responsibility.

(Case) A case mentioned was that of a mother who had received treatment during pregnancy. The child's Wasserman tests have been negative. This child is being considered for adoption.

Agency B would accept a permanent commitment. If the mother had received treatment during pregnancy and was "free" from syphilis, at the time of the child's birth, the child might be placed for adoption, upon advice of physicians.

Agency C would accept a permanent commitment if the mother was under treatment during pregnancy and if not only Wasserman tests, but also a lumbar puncture was negative.

4. Would the agency place a child for adoption if he had congenital syphilis?

Two of the agencies would not accept the child at all, and the third would hesitate to place the child for adoption because of the expense of medical care which would be necessary and the difficulty of interesting adoptive parents in such a child.

Agency A would not accept a permanent commitment for the purpose of adoption because of the long-time expensive medical care involved. Such a child might after adequate medical care be considered adoptable; responsibility for its care should rest upon the agency, but as a practical matter it could not assume the financial responsibility that such care would entail. Such a child could be accepted on a permanent commitment by a public agency and placed in a free home or even an adoptive home, if the child had received treatment and was apparently "cured," and if the foster parents understood the need for periodical re-examinations of the child; a complete history would, of course, be given and the significance of congenital syphilis explained in detail to them.

Agency B would accept permanent commitment but would, in all probability, not place the child for adoption. The only circumstance under which the child would be placed was if certain potential adoptive parents, after learning of the

history, and having a good understanding of the child's need, would accept him and contribute to his welfare by providing such special medical attention as the child might require. Most adoptive parents "shy" away from congenital syphilis, however, and such a placement almost never occurs.

(Case) A case in point is that of a bright child of school age who has congenital syphilis and who requires extensive medical care. The agency has sought to interest several families, who might do much for her. None, however, were willing to assume the responsibility.

Agency C would not accept a permanent commitment of a child with congenital syphilis.

5. Would the agency place a child for adoption where there was a history of epilepsy?

Two of the agencies would not, generally, place such a child. The third has no "general" policy.

Agency A would not place a child for adoption if there was a history of epilepsy in direct line of descent, that is if the mother or maternal grandparents were diagnosed as epileptic. It might place such a child if a relative not in direct line as a maternal uncle, was epileptic. Epilepsy very often does not develop until adolescence; hence, the agency would not feel justified in accepting guardianship and providing care during this long waiting-period. Here, too, as in other cases mentioned it was

suggested that a public agency could accept a permanent commitment and place the child in an adoptive home, with the adoptive parents aware of the facts.

Agency B has no general policy with regard to a child in whose background there was a history of epilepsy. Each case would have to be considered individually. The agency has never placed such a child for adoption.

Agency C--The supervisor of the agency explained that a definite answer could not be given to the question at this time. The problem is being given study and attention and has been discussed with local and national medical authorities. It might depend on whether the epilepsy was organic or due to some traumatic experience. Some physicians say that such a child, even though the history showed organic epilepsy in the background, could be placed, with the adoptive parents knowing the facts. At present, the agency hesitates to place such a child.

The supervisor of the agency believes that adoptive parents themselves are instrumentalities for deciding about children, for they have turned down children when their history is told to them.

(Case) A case mentioned was that of a mother who was unstable. A paternal uncle of the child was an epileptic. The child, seemingly, was normal. It was offered to three different families and turned down by all three.

(Case) In this case the child itself was found to be epileptic after the agency had accepted a permanent commitment. The child was placed in a boarding home at the age of two months. A permanent commitment was accepted fifteen months later. Seizures developed and a diagnosis of ideopathic epilepsy was made. The permanent commitment was vacated, and the custody of the child was transferred to a public agency, with the approval of the mother. The maternal history was good. Paternity of the child had not been established.

6. Would the agency place an illegitimate child for adoption whose paternity had not been established?

All three agencies would place such a child.

Agency A elaborated by explaining that it would try to get a history of the alleged father, or if there were two men involved would get histories on both. If the mother's background was quite good adoption would be considered. If not, and no history of the alleged father could be obtained, the risk would probably be too great.

7. Does the agency give assistance in following-through with some other plan for the child, if the agency would not place him for adoption?

All feel responsibility of the agency to give assistance to the mother.

Agency A would follow through with a plan. In the case of a child born out of wedlock, where the mother still wished to release her child, a referral might be made to another agency, such as the State Public School at Sparta or the Milwaukee County Home for Dependent Children.

In a case where a mother would consider a temporary commitment to an agency, the agency might take the temporary commitment and place the child in a boarding home, if boarding home funds were available through the parents or public funds. The agency would supervise the child. It could also use this time to study the child, whose history might be questionable, with the plan of eventual adoption in view.

(Case) In this case the mother was classified as a high grade moron, and the father's history was not good. The maternal grandmother, with whom the mother lived, and the mother were told the child could not be placed for adoption through the agency. The mother then decided she did not wish to release the child. Assistance with plans for the child in the home of the maternal grandmother was given; arrangements were made for State Aid. The child was born over a year ago; the agency is still active.

Agency B would always follow through with some other plan. This might be placement in a boarding-home, a free home, or an institution. This is a denominational agency

which has institutional service available.

Agency 6 would follow through with some plan. If the mother wished to release the child for adoption, and the agency did not, from the history obtained, feel it could place the child, she would be referred to a public agency. In some instances the agency has taken permanent commitment of children, where it did not have all the history or where history it had was doubtful, in order to avoid an independent placement.

The supervisor of the agency feels that it is the "job" of the private agency to accept permanent commitments even though the child's history might be questionable, as there are more facilities which a private agency can utilize during the period of study of the child. However, most private agencies are not financially in a position to provide extensive boarding-home care, and hence until they are, their "job" will have to be assumed by public agencies.

If a mother decides that she does not wish to give up the child, the agency would give assistance with a boarding-home plan where she could be with the child, or would refer her to a relief agency or work out some plan in her own home.

Foster home care for the child alone, when the mother does not wish to release it, is never encouraged.

All three agencies would provide boarding-home care for a child, while a mother is deciding about releasing

the child or making some other plan. If she is able to assume financial responsibility during that period she would be expected to do so.

Several of the cases heretofore discussed illustrate those which agencies did not accept for adoption placement.

The following cases were chosen to present a picture of children who were placed in adoptive homes.

Case 1--An illegitimate child was placed in a boarding home by the agency several months after its birth. The mother had been assisted in plans for herself prior to the time the baby was born. She had made her own decision about releasing the child. A study of the maternal history showed that the mother came from a good middle-class home, perhaps above average in standards and culture. The family was a small one living in an urban community. The mother graduated from high school when 16; her scholastic achievements were above average. Additional training fitted her for work in the business world. The child's maternal grandparents, American born with sixth and eighth grade educations, had always been self-supporting; the grandfather had a trade. The maternal relatives had excellent high school records; one had college training.

Paternity of the child was established. The father, who had come to the United States as a small boy, with his parents, respectable farm people with good standards, had some high school training. His grades were good. The

paternal relatives, several of whom had graduated from high school, were industrious, steady people.

The physical histories of both families were good.

The child was seen regularly by a physician and a social worker. It was placed in a superior adoptive home four months after the original boarding-home placement.

Case 2--The mother of an illegitimate child was given assistance over an extended period in making a plan for the child. He was placed in a boarding-home two months after his birth, the mother and the agency sharing the financial responsibility. He remained there for two years, when the mother's decision to release him became a finality, and the agency accepted permanent commitment. This period was utilized for supervision and study of the child. Because of circumstances which made it inadvisable, no detailed maternal history was obtained. The mother, an only child, came from a urban home where the economic conditions were good. General reputation of her relatives indicated stability. She had had some high school training. A psychological examination indicated low average intelligence.

Paternity of the child was established. The father, American born of foreign parentage, had completed grade school. He appeared to be a man of average intelligence. There was no known history of insanity, feeble-mindedness, or epilepsy, in either family.

The child was placed in a home on a free-home basis,

with adoption in view, from the boarding home. He was adopted two years later. Psychological examination indicates average mental and physical growth.

Case 3--An unmarried mother had made her own confinement plans when she was referred to the agency. At no time did she have any wish to keep her child. She was a strong, healthy girl of twenty, who had had an eleventh grade education, followed by domestic work. She came from an average-size family living in an urban community. Her parents, born in Europe, had few educational advantages. Her father, who had a trade, had been a heavy drinker for years, which habit had resulted in much quarreling in the home. Her mother, a "self-educated" woman, was a woman of reliance and good moral-character. Her brothers and sisters, some of whom had had high-school training, were self-supporting people of good reputations. A distant maternal relative was a patient in a mental hospital, with a diagnosis of dementia praecox, paranoid type. The alleged father, whose physical health was good, had average intelligence. He had completed tenth grade. His relatives were American-born, working-class people. There were no instances of feeble-mindedness, insanity, epilepsy, or venereal disease in the paternal history.

The child was a full-term, normal baby whose developmental history was also normal. She was placed in an

adoptive home at the age of six months. Legal adoption will not, of course, take place for at least an additional six months.

Case 4--A permanent commitment of this illegitimate child was accepted by the agency when it was a few months old. The mother, who had been given assistance with confinement plans, had no desire to keep the child. Her relatives had no wish to make a plan for it. The mother, who was in a profession, had had college training. Her relatives were rather prosperous, intelligent, ambitious American-born farmers. Her mother was well-educated. Most of her brothers and sisters had high school training; one had done college work. The health of the family was excellent.

Paternity of the child was established. The father whose people were American-born of the same nationality as the mother's was also a member of a small, healthy, stable farm family. He had had some high school training with fair grades. His position was a semi-skilled one.

Case 5--Because the actual paternity of this child could not be established, two "paternal" histories were obtained. One paternal history showed a "father" who had had unsteady unskilled and semi-skilled employment, a limited education; there were reports of drinking on his part. His people were literate, American-born farmers and

laborers. The other paternal history indicated the "paternal grandparents" were foreign-born self-supporting people living in a semi-rural community. They had had the equivalent of grade school educations in their native land. The "father," who had one failure in his grade school work had done factory work. All of his brothers and sisters had had grade school educations, and several had completed high school. After finishing school his brothers learned trades; his sisters secured domestic employment.

The mother, whose parents were foreign born self-supporting people of good reputation in the small community in which they lived, had done factory work after finishing the tenth grade. Her brothers and sisters completed high school. The brothers had good trades. There were no serious physical diseases nor any mental ailments indicated in any of the histories obtained.

The child was placed in an average adoptive home at the age of eight months. It developed well, and was several months "advanced" for its age.

Case 6--A legitimate child was placed for adoption after a boarding-home stay of several months. The parents, who were separated, had no interest in the child, and the relatives did not wish to make a plan for it. The child's maternal grandparents had had college training; the grandfather was a business man in an urban community.

Both parents were young people who had completed high school. The paternal grandparents were self-educated, of foreign birth. The grandfather had always been able to furnish a comfortable living. The child was examined periodically; her health was good. She showed above-average mental progress.

Case 7--Paternity of this child was established. The parents had planned to release the child immediately after birth and had no desire to change the plan when the child was born. Both had college training. The father's scholastic achievement was outstanding. The histories of both showed members of their families were people of integrity, ability, good moral character. The grandparents, hard-working, intelligent, had provided good education for their children. Physical histories were negative. The child was placed in a superior home.

Case 8--This illegitimate child was placed temporarily in a children's home pending a decision by the mother as to whether she wished to release the child to the agency or make some other plan.

The maternal grandparents were American-born farm people of probably average intelligence. A maternal uncle, who had completed grade school, did laboring work in an industrial plant; a maternal aunt was still in school.

The mother, a domestic, had had a grade school education with one failure.

Paternity was established. The paternal grandparents were American-born; the paternal grandfather adequately supported his family from the income of his own business. The father, a grade school graduate, had done skilled work.

There was no history of insanity, feeble-mindedness, epilepsy, or venereal disease in either the maternal or paternal history.

The mother decided to release the child for adoption; the agency accepted a permanent commitment when the baby was six months old and placed it in an adoptive home, after several complete physical examinations, and a developmental study six months later.

C. Study of Some Adoptive Homes.

While the intangible elements which enter into the selection of an adoptive home for a particular child are difficult to classify in a mere summary of case records, an attempt is being made in the following to bring out some of these factors which play an important role in the choice of adoptive homes.

These cases are presented as typical cases showing particular types of homes.

Case 1--The adoptive parents in this case were a childless couple who had been married for several years and had always wanted a family. They envied the good fortune of their relatives and neighbors who had children. The adoptive father was a professional man in his middle thirties. He was a university graduate. His relatives for many years back had been born in America of North European stock. His family background was good: high standards, educational advantages, financial security, religious affiliation. His income, a comfortable one, was sufficient to predict financial security and some advantages for the child. The physical home conditions were pleasant; the neighborhood was a good residential one.

The petitioning wife, who came from a small family of good background, good standards, had done secretarial work after completing two years of college training. Her people

were in businesses and professions. She and her husband, though far-removed in distance, had kept up an active interest in the members of their families and had a "close" feeling towards them.

The married life of the adoptive parents was happy.

They had no "feeling" about illegitimacy when it was explained to them that most children who were placed for adoption were born out of wedlock. They had no "feeling" about adoption, believing that if an adopted child grew up knowing he had been chosen, and was given love and affection, he would not consider himself different from other children. They felt environment was important to a child's development.

They expressed the belief that education was important, especially for a boy, and they would like to have a child placed with them, attend college. They did not have quite the same feeling about the necessity of college training for a girl--they would leave a decision up to her.

They had no great feeling about nationality, except that they would prefer not to have a child of a Western European nationality.

Case 2--The adoptive parents in this case were childless. The adoptive father, in his middle forties, had a semi-executive position in an industrial plant. He was born in America, and had started to work after finishing

grade school at the age of fourteen. He came from an average size family, members of which had trades. His employment was steady; his work record excellent. His salary amply provided for necessities and some luxuries. He had saved enough to warrant the prediction of a financially independent old age.

The adoptive mother, forty years of age, was also American-born and had had a grade school education. She had done store and factory work before her marriage. Her people, self-supporting of good reputation, had trades and skilled positions.

The home was a comfortable one in a fair neighborhood.

The adoptive parents were church members, who would provide a religious training for a child. They had mutual recreational interests.

They liked children, and because they felt they would never have any, they wanted to adopt one. They felt life was empty if they just did things for themselves; they would like to share their home with a child. They had no feeling about nationality. They had no feeling about education--"College or trade school"--whatever the child wanted. They did not believe in too much discipline, but did not like to see unmanageable children. They would not expect a genius but neither would they want a "dullard."

They were not people of any great intellectual ability, but they had made a good social adjustment. There was

definite thinking and planning for the future. There was a sincerity in what they were doing. They seemed to be able, at least in their own thinking, to accept differences in children in their respective abilities.

The child placed in their home is making a good adjustment. They will probably be able to give him as many advantages as he is capable of using.

Case 3--The adoptive parents in this case had been known to the agency for several years. Their attractive farm home had been used by the agency as a boarding-home. The children placed there had progressed and adjusted well. The home life was congenial.

The adoptive father, a man in his middle thirties, was a pleasant, self-possessed man born in the United States. His people were farmers. He enjoyed his farm and was what might be considered rather prosperous. He had some high school training. His reputation in the community was excellent.

The adoptive mother, in her early thirties, had had some college training. She had followed a profession before her marriage. She, too, came from a good farm family.

The adoptive parents were active church members. They were interested in parent-teachers' work, even though they had no children of their own.

They wanted to give a child a permanent home. They had grown to love the children who had been boarded with

them. They would offer a child as many educational advantages as he could take.

Case 4--A childless couple approaching middle age seemed to want a child because of loneliness and because they really enjoyed children. They would undoubtedly receive more than the usual amount of personal satisfaction in bringing up a child. There seemed to be an emotional need. It was felt a child of no higher than average intelligence could be well placed. It was felt that their particular contribution was in the care and affection they would give, rather than any intellectual stimulation. They were told that the child probably would not be bright enough to go to college, and that the mother was mentally dull and backward. This seemed to make no impression on them, as they evidently did not have such plans for the child they wished to adopt. They were satisfied as long as the mother was not feeble-minded.

The adoptive father, brought up on a farm, had had two years high school training. He had done farm work, but for many years had lived in an urban community where he had followed one type of employment, which might be called unskilled. The income in the home was not large, but sufficient to meet the needs of the family on a simple scale.

The adoptive mother, American born, had spent her childhood on a farm as a member of a large family. She had

had a grade school education, and had done domestic work before her marriage.

The home of the adoptive parents was sufficiently large, simply but adequately furnished. The neighborhood was an old residential one, made up of small cottages and modest flats.

Case 5--The adoptive mother, in her late twenties, was reared on a farm. She had had a year and a half of high school training, and then had done factory work until her marriage. She came from an average sized family, which had moved to an urban community after the death of her mother, when the adoptive mother was a young girl. Her father opened a small business of his own.

The adoptive father, in his early thirties, had had a grade school education. He had assisted his father, who had his own business in a middle-sized urban community, until the depression when he secured a factory job. He had continued his education by taking correspondence and formal vocational training courses.

The relatives of both adoptive parents were people of stability, ambition, good character.

The income was small, but sufficient if there was thrift and good management, which there was.

The home was a modest flat in a fair neighborhood.

The adoptive parents were ordinary, sincere, honest people with good common sense. They were kindly and

affectionate. They respected each other's judgment.

They were unable to have children, and wanted one for companionship. They "loved children" and had always wished to have one. The adoptive father felt he needed a little more responsibility than just his wife, and he wished to assume the responsibility of a child. They planned a high school education for the child they might have.

The child placed in their home, who had had institutional experience, is adjusting well. The adoptive parents had an understanding of the limitations of the institutional life for him.

Case 6--These childless adoptive parents lived in a modest, well-kept, cottage in a small urban community. The neighborhood consisted of moderate income homes.

The adoptive mother, American-born, in her early thirties, had worked in a factory after completing grade school. Her parents were foreign-born, migrating to America from their farm homes, when adults. They came from thrifty, healthy stock. Her father had had steady work as a laborer. He and his wife learned to speak, read and write English after coming to America. The adoptive mother's brothers and sisters had grade school educations. While their occupations were mediocre, they were self-supporting, reputable people.

The adoptive father, in his late thirties, was also born in America of people of foreign birth. His father had had

a trade, which provided an adequate living, for over thirty years. His brothers became farmers or learned trades after finishing grade school. Their children had high school training. The home life of the adoptive father had been most happy. He started to work as soon as he completed grade school, and in his place of employment, was able to learn a trade. From his income, a modest one, he and the adoptive mother saved enough to purchase a home, to add to a bank account they had opened soon after their marriage, to keep up insurance, and to buy another little piece of property.

They were intelligent, pleasant people. They lived simply, they had common interests and mutual recreational plans. They enjoyed their home. They were church members, and contributed their time and energy to church activities. Their reputations in their community were excellent.

They would have welcomed children of their own, but, unable to have any, they were desirous of giving some child a home, their love and affection. They were never so happy as when the neighborhood children came in, especially the little girl next door, to whom their home was a second home.

They would like to give a child the educational advantages they had missed, but would not force him. "You shouldn't force a child to go to college if he isn't interested." They liked to have intelligent children around, but "there was quite a variation in their families and they had all

been happy together."

They felt a child could be disciplined by having things explained to him, by training him in good habits.

They would expect to tell a child he was adopted so that he would grow up "knowing."

Case 7--The adoptive parents came from a long-line of Americans. Their relatives were business and professional people of excellent educational backgrounds who had achieved good "social" recognition and economic success.

The adoptive parents, both in their middle thirties, were college graduates. They had done interesting work, they were rich in experience, they had traveled much, their mental accomplishments were recognized, they were "cultured" people of good standards. Their comfortable home in an urban community was in excellent taste. Their financial position was very secure.

In consideration of their ages, they wanted to give an older child a home. They felt they had been fortunate in having so much and wanted to share it with a child. They wanted to give a child the educational advantages they had had.

D. The Adoption Policies of Two Public Agencies.

In the study of the adoption policies of three private child-placing agencies it was brought out that their intake is selective. When children come to their attention whose parents wish to release them for adoption, the agencies can decide whether or not they will accept permanent commitment.

The intake of public agencies, on the other hand, is not selective. They must take all children whom the court commits to their care--children whose parents release them, children who must be removed from their own homes.

It seemed wise to determine something of the adoption program and policies of public agencies, to learn what part they play, and what they are doing about the children whom the private agencies cannot take.

Two public agencies were selected: one because it is an agency which accepts children on a state-wide basis, and the other a Milwaukee County agency, because of the large part it plays in the local adoption program.

Questions regarding their policies and procedures lent themselves best to answer by discussion with the agency supervisors.

The information obtained from these discussions is presented here.

The supervisor of the state child-placing agency, stated that the long-time care of a child whom a parent or

parents wish to release for adoption, is the "job" of a public agency and the short-time care of a child, that of a private agency. Private agencies have more change of administration and hence of policy and therefore may not feel justified in taking the risk of long-time guardianship.

Whatever an agency can do for the best interests of a child should always be its primary consideration.

It is believed that the agency is meeting the needs of the children committed to its care. Children whom the agency feels secure enough about adopting, are being adopted.

If a child is released for adoption to the agency and a study reveals that there is a history of feeble-mindedness in the background, it is the policy of the agency to keep that child in the institution or place it in a boarding home for a period of about two years or more. This time is utilized for study, observation and supervision. If the child is retained in the institution during this time, it has an opportunity for normal development under the present set-up, for the agency operates under a cottage-plan and has a nursery-school system. The child, if it shows normal mental and physical progress, would then be placed in an adoptive home, with the understanding that adoption would not become final until the child was about five years of age. This period, too, is utilized for study and observation, and it is the policy of the agency to have both a physical and psychological examination before

adoption becomes final. The adoptive parents would, of course, be informed of the child's background.

A case in point was that of a five year old boy who had been known to the agency since infancy. He had been placed, without a termination of parental rights, after abandonment by the mother. At one time she had been in an institution for the feeble-minded. The paternity of the child was unknown.

The mother was located, after the boy had been in the custody of the agency for some time, and she was informed of his whereabouts. She had married in the meantime, but neglected to show any interest in her son. She again disappeared.

The court terminated her rights on findings of abandonment, and the agency accepted permanent guardianship.

It was felt that the best interests of the boy would be served outside an institution. His progress in the institution was very rapid, and he was outstanding in every way in the group.

The potential adoptive parents were given the child's complete history, and though at first somewhat skeptical, after seeing the child they had no hesitancy about taking him. His progress "tripled" in their home. His unusual accomplishments indicated superior intelligence.

If a child with congenital syphilis or any other physical handicap was released to the agency under a

permanent commitment, it would be given extensive medical care before placement for adoption. If syphilitic, he would not be placed until a series of tests (including Wassermanns and spinal taps) showed negative reactions. The child would be placed with adoptive parents who fully understood the significance of the child's condition, and the need for periodic check-ups. It has been found that some adoptive parents would take such a child for what they could do for him.

A case mentioned was that of a little girl who came to the agency (an institution) as a small baby with congenital syphilis. There had been no termination of parental rights.

The mother, who was unmarried, was under treatment for syphilis. She had had two other illegitimate children.

The maternal family was shiftless; there was a lack of stability, and the morals of some members were questionable.

There were no negative factors in the paternal history.

Paternity had been established and after a time the mother married the adjudged father. For a while it was believed they might take the child into their own home. However, the mother's conduct again became very questionable. The parents separated, and the agency felt that it was to the best interests of this child that she should not be returned to the parents.

She had received extensive medical care, and responded

with a series of negative Wassermans and spinal taps.

At the age of four the child is outstanding physically and mentally. If there is a termination of parental rights, the agency will undoubtedly place the child for adoption if adoptive parents are willing to take her knowing all the facts in detail.

Another case cited was that of a child whose physical development was slow. The mother, who was unmarried, lived with the maternal grandmother and was responsible for her support. The maternal grandfather of the child was deceased.

The mother could not face life with the social handicap of an illegitimate child.

No one knew of the child's coming until the day of confinement. The child was born at home. There was a great deal of an emotional situation in the mother's attempt to "cover up" from outsiders the fact that she had a child.

The baby was brought to the agency when a month old. Because of the family's rejection of the child, it had probably suffered some physically, and upon entrance it was in poor physical health. He was a frail, unattractive looking child. Though he responded as an entirely normal child mentally, his physical development was slow. He was small, and looked much like an ugly duckling. He was free from any disease.

The adoptive parents, when they saw him, were much more moved to do something for a child with a handicap and

were challenged by the idea of what they might do for him. He was placed in their home at the age of five months. By the age of two years, he had made such splendid progress that the agency felt secure in allowing the adoption to become final. He was very close to being an absolutely perfect "physical specimen."

If there is a history of insanity in the child's family, an investigation would be made to determine the type of insanity, and placement would depend on an evaluation by competent medical authorities. This child, too, might be placed for adoption, with the adoptive parents having a knowledge of the history. If there were a number of instances of insanity an adoption plan would not be considered. A plan for him in a free-home or boarding-home might be worked out, where he would be given all the advantages that make for normal, wholesome development. This latter plan might also be made for a child whose family history showed epilepsy. Generally such a child is not placed in an adoptive home.

A child whose paternity had not been established could be placed for adoption, with the adoptive parents knowing that no paternal history had been obtained.

Before any child with a "questionable" history is placed for adoption, the adoptive parents are given a great deal of interpretation so that their final decision is based on their own knowledge.

The agency has had no annulment of an adoption during the six-year period that the supervisor, with whom the adoption program was discussed, was on the staff.

In one or two cases, where placements had been made years ago, the agency was called upon because of behavior problems that had developed. It gave service to the adoptive parents, and plans for continued follow-up care were referred to specialized agencies.

The director of the Milwaukee County agency explained that the agency is making about one-half of the County Court's adoption investigations. It is called upon in all cases in which the child has not been placed by a child welfare agency. It does not place children for adoption. It maintains a consciousness at all times that its role is that of an investigator and not comparable to that of an agency which has a definite responsibility for the care of children.

It is a fact-finding agency which passes on to the Court and to the State Board of Control, in cases where the Board is by law required to give consent, the information obtained through a thorough investigation. Each investigation involves a study of the child, his physical and mental background on both the mother's and the father's side, a study of the fitness of the petitioners to adoption and the suitability of the home. References are consulted in accordance with statutory provisions.

Eighty-four petitions, affecting ninety-two children were received during the year 1938. Half were boys and half girls; about one-half were legitimate children, the other half born out of wedlock. In seventy-nine per cent of the cases step-parents were the petitioners--in sixty-three cases the step-father and in eight, the step-mother. Relatives sought adoption in thirteen per cent of the cases--in eight instances the mother's relatives, and in four the father's. Eight per cent of the cases may be described as independent placements, cases in which a parent placed his child in another home for adoption, often with little knowledge of the new family. Such cases are often the most difficult assignments ever given to social workers. Parents, under stress of circumstances, too readily accept homes suggested by someone known to them which later fail to meet the child's needs. One conspicuous tragedy will serve to illustrate. A ten year old child, of American born parentage, was placed by the father, through the help of a well intentioned individual, in the home of a middle-aged, couple of Italian birth, marginal economic circumstances, and of a different religious denomination than that of the child. On the death of the child's mother, leaving a large family of children, the father was easily persuaded that it was to the best interest of the children that some of them be placed for adoption. This child had been in the home nearly a year, when a petition for adoption was filed.

The new parents made real sacrifices for her, but already there were indications of trouble ahead; a child, with a close feeling for her own brothers and sisters, intellectually above average, in a limited foreign home, with racial, cultural and religious background different from that of her own family. The father decided he had made a mistake and withdrew his consent to adoption but the family refused to give up the child. At a habeas corpus hearing in circuit court, the little girl was returned to the father who, with the help of authorities in another state, had arranged that she be cared for with her brothers and sisters in that state. The commendation of the court and the thanks of the father were small compensation to the foster parents who had cared for the child a year and a half, believing that she was to become their own through adoption. The prevention of placements made without a thorough knowledge of both child and home is the only real solution to such placements. When, as in this case, the child is already living in the adoptive family, the best that can be done is to work out the solution that seems the least damaging to the child.

The selection of the home to fit the child is out of control in independent placements. When the petition for adoption is filed, the child is already in the home; hence the study of its history and that of the parents does not precede placement. Sometimes the home does not fit the

child as the mother makes her own hit and miss adoption placement. The child, in some instances, might have been placed in a home better suited to its potentialities.

A case in point is that of a child who was placed by the mother in an adoptive home a few months after its birth. The home was suggested by mutual friends. The mother, who had no desire to keep the child, came from an American-born farm family of good standards. They were intelligent people who provided high school educations for their children. After finishing high school, the mother had gone into the business world, securing office employment in an urban community.

The history of the paternal family indicated good sturdy stock. The many members were self-supporting, industrious people living in an urban community. Several of them held responsible business positions.

The adoptive home in which the child was placed was a modest, working-man's home. The adoptive father, who came from a farm family, had not completed grade school. He had done factory work primarily, and during the depression years had extended periods of unemployment, making request for public assistance necessary. The adoptive mother, too, had been reared on a farm, and had obtained a country grade school education. She had had domestic employment.

The adoptive parents, in their thirties, were good,

honest, sincere people. They came from families where education did not enter into the picture to any marked degree.

They were childless, but had always wanted children. Their desire seemed to be to fill a void in their own lives; they wanted the interest of having a child to rear in the home.

The picture presented seemed to be that of an under-placement. On the basis of the history of the child's background, it appeared that she might have potentialities which could find more encouragement and better chance for development in a home selected for her.

On occasion, the independent placement for adoption works out satisfactorily. A case cited was that of a child known to the agency after the mother had placed it with a family known to her.

The child's heritage was poor. The mother's mental endowment was such that she was not capable of assuming much responsibility. A psychological examination showed that she was a probable high grade mental defective. She had had four illegitimate children in addition to the one she placed in the adoptive home.

The father's history indicated limited education and instability.

The investigator's first impression of the adoptive family was not a favorable one. The adoptive mother's

appearance was frowsy. She was not direct or frank, seemed evasive, and gave the impression of being a person of dull mentality.

The household standards were poor. The home was very poorly and meagerly furnished, with decidedly worn furniture.

The family history of the adoptive mother was poor. Her mother came from a large family all members of which were known to social agencies. Physical and mental history of some of these were questionable. Her mother's life had been a series of marriages with no indication of stability.

The adoptive father's history indicated the family standards of his people were superior to those of his wife. He came from an average farm home, which he left after finishing eighth grade, in order to go to work. He had a good steady work record. It was learned that the adoptive mother had become a person of greater stability since her marriage to him.

There was a noticeable change after the child had been in the home a comparatively short time. The adoptive mother took an interest in making the home more attractive and homelike. It was clean and orderly. It had more of the appearance of permanency and of meaning more to the occupants.

The adoptive mother's personal appearance improved. She no longer looked frowsy or "down at the heels." She became genuinely frank; she developed an animation

which was interesting to see. The first impression of her mentality was not borne out in later interviews.

The adoptive husband's employer also noticed a change in him.

The child received excellent physical care. It gradually developed into a healthy, robust child. It received much love and affection. The adoptive parents were already making future plans for it.

It appeared that the child would receive much better care and would have more security in the adoptive home than it would ever have with the mother. With its poor heritage it is doubtful that an agency would have placed it for adoption.

In none of the adoption cases referred by the court to the agency during the year 1938 were the children infants under one year. Thirty-eight per cent were under six years of age; eighty-four per cent under fourteen. Sixteen per cent were between the ages of fourteen and twenty-one. This group of children could not be adopted without their consent given in writing to the court.

If the agency, after investigation, considers an adoption plan for the child an unsatisfactory one, some other plan is suggested, but except on the request of the parent, the court, or the State Board of Control, no follow-up case work is done.

When a child is found in an unsatisfactory situation and the parent still has some connection with it, for

example where the parent's rights have not been terminated, but he has given consent to the adoption, he is informed of the unsatisfactory future outlook for the child and other possibilities are suggested.

The majority of cases are those in which a step-parent is the petitioner. When the agency finds that an adoption would be inadvisable, a recommendation of denial is made. No other plan is suggested in step-parent adoptions. The situation already exists and no investigator has the right to disrupt a home except upon authority of the court or the State Board of Control. The agency does suggest community resources when parents mention problems in the home.

If the agency finds a history of insanity, feeble-mindedness, epilepsy or venereal disease in the child's background, it informs the petitioner to the adoption. It would not recommend a denial of the adoption because of the history. If it is learned that the child has congenital syphilis, full details of the significance of the disease and of the need for medical care are presented to the petitioner.

The agency has known no family which did not wish to continue with the adoption plan even after it had been informed of an unfavorable background.

It is the general policy of the agency to establish paternity of an illegitimate child whose paternity had not been established up to the time of the request for adoption. In cases where paternity, for some reason cannot be established, but the mother names one man as the father, his history

is obtained

However, each case is evaluated on its merits. It sometimes happens that it seems wise not to attempt to establish paternity, for it might mean the stirring up of old animosities and trouble between families. This is particularly true in cases of older children, when their potentialities are already known and the paternal history would be of less significance than if they were infants at the time of plan for adoption.

Generally speaking, the adoption policies are the same as those of other agencies.

The problem of annulment of adoptions was discussed with the case-work supervisors who gave assistance in this study regarding adoption policies and procedures. Should there be more flexibility in the adoption law in Wisconsin permitting annulment on grounds other than those listed and under the conditions specified?

One replied by saying that she would like to have built up a social consciousness in the adoptive parents; to try to have the interested parties in an adoption be made fully aware of their responsibilities. Assistance with social service might be the means when an annulment was the potential plan of the adoptive parents. No child should have to remain in an adoptive home when the adoptive parents wish to annul the adoption. If it seemed wise, however, to remove a child from an adoptive home because of rejection

by the parents, the machinery to do so should be the same as that used for natural parents.

Another replied by saying that if agencies are living up to high adoption standards, and are, therefore, making placements which are well-adjusted at the time of adoption, and if adoptive parents have been informed of questionable histories, they should be held to their responsibilities and hence the adoption law should not be made more flexible. Case-work assistance should be given in the treatment of problems that might have arisen.

Each case would, of course, have to be decided on its own merits. If through some unforeseen development a situation should arise, as rejection by the adoptive parents, which would be hazardous to the child, he could be taken care of by removal from the home with a termination of parental rights.

The third stated that the adoption law should not be made more flexible in so far as annulment is concerned. A situation which the adoptive parents felt warranted annulment, could be taken care of in the same manner as if they were natural parents: termination of parental rights or case work service, if they were rejecting the child. If feeble-mindedness, insanity, venereal diseases, or epilepsy of the child, was the basis for the wish for annulment, the adoptive parents should be required to assume the same responsibility for the care of the child as natural parents.

If the adoption law was made more flexible there would be dangers of abuse.

The fourth answered by saying that she could not, at this point, give a definite answer. She believes, however, that if there is more flexibility in the adoption law regarding annulment, it should not be to such an extent that the law would be abused.

The fifth case-work supervisor believes that adoptive parents should be allowed to have an adoption annulled if the child develops insanity, feeble-mindedness, venereal disease, or epilepsy, under any circumstances. The law now provides that the above mentioned diseases may be grounds for annulment if they developed from conditions existing prior to adoption, of which the parents by adoption had no knowledge or information. She believes that they should not be forced to continue with their responsibility, that they have made a contribution to the child during the years he was in their home.

CHAPTER VI

CONCLUSION

While adoption concerns comparatively few children, natural parents, and adoptive parents, for those involved it is of fundamental importance.

Down through the years adoption, in one form or another, has existed. From the earliest times official sanction has been required to give it legal effect. The earliest codification of laws on record recognized the advantages of a legalized procedure for adoption.

The first adoption laws in the United States, passed in the middle of the nineteenth century, simply provided a procedure by which the legal custody of a child could be transferred from the natural to the adopting parents. Little attention was paid to the social factors involved.

Gradually these older laws were replaced by newer legislation. This came about with the growing consciousness that the State had a moral responsibility to afford the minor child the protection he rightly deserved.

That this consciousness developed slowly is evident from the foregoing study.

Inasmuch as adoption is so essentially important to those concerned, might not the conclusion be drawn that the State should provide painstaking safeguards?

That a social investigation should precede an adoption is almost an axiom. Yet in almost half the states in the United States no such provision is made in the law. The value of a trial period in the adoptive home, before a child is legally adopted would also appear to be self-evident, but in many states it is not required.

That the presence of these socially desirable features in the adoption laws should act as panaceas for all adoption problems is not, of course, expected.

The greatest problem, even in those states which were selected for study because their laws embody many of the most desirable features of the newer adoption legislation, is the apparent inability, under present laws, to adequately control placement of children for adoption by persons with no special kind of training for that work.

Another problem, closely correlated with this, is the absence of authority to remove the child from the home when placement is disapproved. There seems to be agreement that little can be done toward removal after the child has become established, unless a showing of serious neglect or immorality can be made.

Several states admit that they have made little visible progress in the control of so-called independent placements. The failures of these adoptions are not demonstrated in conditions of actual neglect but rather in problems arising after adoption by reason of the ill-advised selection of the home for the particular child.

One partial solution to the problem of independent placements might be more adequate service to unmarried mothers at a time when it is needed most. Another is by means of preventive work carried on through interpretation of the whole philosophy of adoption which stresses among other things the importance of the welfare of the child, and the need for skilled service in making placements. This program of interpretation can be carried on mainly through long time co-operation between the social worker and those who are sometimes responsible for the independent placements, namely, mothers, doctors and lawyers.

In the study made of adoption policies and procedures of selected agencies in Milwaukee County, it was ascertained that the problem of independent placements is not absent. Situations described in the study show that unskilled placement without a thorough knowledge of both child and adoptive home may result in tragedy.

They may prove satisfactory by chance, but there is no control in such placements, no planning, no design. The mother, in her eagerness to release her child, may place him in a home which will be hazardous to his normal, wholesome development.

The purpose of the study of adoption policies and procedures of selected social agencies was to determine whether their standards of acceptance of children are too high to

provide adoptive homes for children of questionable background and too high to make it possible for the average and mediocre homes to ever receive children for adoption.

The primary responsibility of the agencies is to the child. Whatever is best for his welfare is of paramount importance. All the agencies feel that children with questionable backgrounds should have an opportunity for a permanent home. By and large the agencies have the same standards. The private agencies, because of financial reasons, cannot accept guardianship of all children for whom a plan for adoption is desired by the parent or parents. They do give service until some definite plans are made for these children. The public agencies can and do accept guardianship. If the child's heritage is poor, a plan for study and observation of him is carried out. If his progress is normal, or if he responds well to medical care he may need, he is placed for adoption. It is believed that all children who can at all be considered adoptable are being adopted.

Adoptive homes are selected on the basis of the child's needs. They may be very humble homes. The adoptive parents may be people of limited education. This was borne out in the study made of adoptive homes.

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