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Intestate Succession, Sociology and the Adopted Child

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INTESTATE SUCCESSION, SOCIOLOGY AND THE ADOPTED CHILD

I.

INTRODUCTION

An adoption decree has an immediate effect on the rights and duties of three parties: the adopted child, the natural parents and the adoptive parents. From a sociological point of view, these rights and duties should be modified and adjusted in a manner which will promote the best interests of the adopted child. With respect to the adopted child and adoptive parents, the possibility for close and permanent family ties should be created,[1] while all rights and duties between the adopted child and natural parents should be severed.[2] Thus, a new "adoptive family" relationship can be created. One of the rights to be considered is the right of intestate inheritance.

Intestate succession, at common law, was dependent upon the existence of a blood relationship between the deceased and the party claiming the estate.[3] However, with the advent of adoption statutes[4] and the subsequent creation of family units across blood lines, this basic common law doctrine has required adjustment and modification.

The issue of intestate succession arises in one of three ways among the parties affected by the adoption decree. First, in the event of the intestate death of a natural or adoptive parent or relative, should the adopted child participate in the distribution of either estate or of both estates? Secondly, when the adopted child dies intestate, to which parents or relatives (natural or adoptive) should the child's estate pass? Finally, in the event the adopted child dies leaving descendants, do his descendants inherit through the adopted child from their adoptive grandparents and relatives, or from their natural grandparents and relatives, or both? The other side of this latter problem is whether the adoptive grandparents and relatives or natural grandparents and relatives of the descendant may inherit from him through the deceased adopted child. The solutions offered for the above problems may reflect either of two approaches. They may be derived from common law doctrine or, in the alternative, may be based on contemporary sociological thinking. The latter approach commends itself more readily, since common law doctrines are basically inimical to adoption, while sociological reforms initiated adoption procedures as we know them.

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1. ROSNER, CRISIS OF SELF-DOUBT 3 (1960).

2. U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, LEGISLATIVE GUIDES FOR TERMINATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND ADOPTION OF CHILDREN 14 (1961).

3. See note 7, *infra.*

4. In 1851, Massachusetts passed what is considered to be the first adoption statute. See Kualmann, *Intestate Succession by and from the Adopted Child,* 28 WASH. U.L.Q. 221 (1942).

This comment will proceed to present the current statutory law concerning inheritance rights by, through, and from the adopted child for observation in light of sociological objectives and the methods employed to achieve these objectives. Its aim will be to examine the existent conformity between the statutes and current sociological thought.

II.

HISTORY AND DEVELOPMENT OF ADOPTION

The earliest recorded adoption is that of Sargon I who founded Babylon in the 28th century B.C.[5] In 2285 B.C. the Code of Hammurabi provided for adoptions and the cultures of the Assyrians, Greeks and Egyptians all knew of adoption.[6] It was in Rome, however, that adoption reached its widest acceptance in the ancient world.[7] In these ancient cultures, the continuity of the male line was important for political, religious and economic reasons. Therefore, in the event a natural male heir became impossible, this essential continuity was achieved by adoption. The interests of the adopted child were normally subordinated to the parent's need for a male heir.[8] Two factors present themselves as highly significant in the ancient concept: the interests of the child were not considered and the adopted child could inherit from his adoptive parent. In fact, this latter condition was the express purpose for adoption of the child.

In spite of this development, adoption was not recognized in England prior to 1926.[9] The editor of Comparative Jurisprudence wrote "The law of England knows nothing of adoption."[10] The English system ascribed great importance to property holdings and consequently permitted inheritance only between those people related by blood.[11] The common law position is clearly stated by Lord Coke:

> . . . lands are derived from one to another, because it is wrought and vested by the act of law, and right of blood, unto the worthiest and next of the blood and kindred of the ancestor, and therefore it hath not in the common law altogether the same signification that it hath in the civill law; . . . But by the common law he is only heire which succeedeth by right of blood.[12]

In the Western World, Indian customs recognized adoption and the right to inherit from the adoptive parents. However, the courts refused to recognize such customs stating ". . . the right of adoption is contrary

5. 1 SCHAPIRO, A STUDY OF ADOPTION PRACTICE 14 (1956).
6. Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332, 333 (1922).
7. Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 744 (1956).
8. See note 5 *supra*.
9. In 1926, adoption was authorized by statute in England. 16 & 17 GEO. V, c. 29, 5(2) (1926). A complete history of adoption practices is reviewed in Hockaday v. Lynn, 200 Mo. 456, 98 S.W. 585 (1906).
10. 1 C.J. 1371, n.17.
11. See note 7 *supra*.
12. 11 COKE, COKE UPON LITTLETON 237b (Am. ed. 1812).

to natural law, and we have been unable to find any case reported where adoption by custom has been sanctioned or maintained."[13]

In 1851, Massachusetts enacted the first statute in the United States providing for adoption.[14] Following this lead, other states enacted adoption statutes. Many of these denied the adopted child the right to inherit from the adoptive parents and permitted inheritance from the natural parents after the adoption decree.[15] Where the statutes were vague or silent on inheritance, the courts resorted to an interpretation based on common law which denied inheritance to any one except those related by blood. Contemporary sociological views on adoption and intestate inheritance by, from, and through adopted children are inimical to the common law as well as to the statutes initially passed in the United States concerning adoption practices and the issue of intestate succession.[16]

III.

CONTEMPORARY SOCIOLOGICAL VIEWS

Contemporary sociological thought concerning the purpose of adoption has been clearly stated by the Child Welfare League:

> The placement of children for adoption should have as its main objective the well-being of the children.[17]

In an attempt to best achieve this objective welfare agencies conduct a thorough examination into the background of the natural parents, the adopted child and the prospective adoptive parents. This examination covers the psychological history, physical health and economic background of both sets of parents. In effect, the examination covers all matters necessary to insure placement with adoptive parents who can be expected to develop a normal and permanent family relationship between themselves and the adopted child.[18]

All experts agree that, as the child becomes able to understand, he should be told that he is adopted.[19] However, it does not follow that the child, or even the adoptive parents, should know the natural parents. One standard of the American Adoption Service is "Services to parents should preserve confidentiality (*sic*) and keep knowledge of each other's identity from natural parents and adoptive parents."[20] This policy would protect

13. Non-She-Po v. Wa-Win-Ta, 37 Or. 213, 216, 62 Pac. 15, 16 (1900).
14. See note 4 *supra*.
15. See note 21 *infra*.
16. "In many instances adoption laws and their interpretation by the courts personify old concepts and practices which are now outmoded by modern conditions and knowledge." 1 SCHAPIRO, A STUDY OF ADOPTION PRACTICE 93 (1956).
17. CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR ADOPTION SERVICE 6 (1958).
18. Martire & McCandles, *Psychological Aspects of Adoption*, 40 IOWA L. REV. 350 (1954); Comment, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L.J. 715, 717–20 (1950).
19. BERNARD, ADOPTION 102 (1964).
20. CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR ADOPTION SERVICES 11 (1958). Slightly more than half of all adoptions are conducted through agencies.

the adoptive parents from the possibility of harassment by the natural parents who may seek return of their child. The object is to effect a complete emotional break between the child and the natural parents. It also tends to lessen the *fears* on the part of the adoptive parents that the natural parents will attempt to take the child away from them. Thus, the objective of effecting a complete emotional break between the child and the natural parents is furthered.

IV.

INHERITANCE TO THE ADOPTED CHILD

A. *From Adoptive Parents and Relatives*

Granting the statutory right of inheritance from the adoptive parents and relatives to the adopted child and the consequent denial of the child's right to inherit from his natural parents and relatives has been a very slow and confused process.[21] This comment does not purport to retrace historical developments, but rather will deal only with the statutory law as it stands today.

Currently the adopted child possesses the right to inherit from his adoptive parents by express statutory grant in forty-six states.[22] In some, the right is explicitly stated, as in the South Carolina Code, ". . . for all inheritance purposes . . ."; others grant it by indirect reference. For

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Some independent adoptions are conducted by doctors or close friends. In the latter situation, the names of the parties are usually not kept confidential. However, a survey on independent adoptions reports "Trouble between natural and adoptive parents is unlikely to occur if they do not know each other's identity." WITMER, HERZOF, WEINSTEIN & SULLIVAN, INDEPENDENT ADOPTIONS 113 (1963).

21. For a complete history of the development of inheritance rights and the position of the law with respect to intestate succession up to 1943 see Kuhlmann, *Intestate Succession by and from the Adopted Child,* 28 WASH. U.L.Q. 221 (1942). *See also* Note, *Legislation and Decisions on Inheritance Rights of Adopted Children,* 22 IOWA L. REV. 145 (1936).

22. ALA. CODE tit. 27, § 5 (Supp. 1963); ALASKA STAT. § 20.10.120 (1960); ARIZ. REV. STAT. ANN. § 8-108 (Supp. 1964); ARK. STAT. ANN. § 56-109 (1947); CAL. PROB. CODE § 257; COLO. REV. STAT. ANN. § 153-2-4 (1963); CONN. GEN. STAT. ANN. § 45-65 (1960); DEL. CODE ANN. tit. 13, § 920 (1953); FLA. STAT. ANN. § 731.30 (1964); GA. CODE ANN. § 74-414 (1964); HAWAII REV. LAWS § 331-16 (1955); IDAHO CODE ANN. § 16-1508 (Supp. 1965); ILL. ANN. STAT. ch. 3, § 14 (Smith-Hurd 1961); IND. ANN. STAT. § 6-208 (Supp. 1965); IOWA CODE ANN. § 600.6 (1960); KAN. GEN. STAT. ANN. § 59-2103 (1964); KY. REV. STAT. ANN. § 199.520 (1963); LA. CIV. CODE ANN. art. 214 (West Supp. 1964); MD. ANN. CODE art. 16, § 78 (Supp. 1965); MASS. ANN. LAWS ch. 210, § 7 (1955); ME. REV. STAT. ANN. tit. 19, § 535 (1964); MICH. STAT. ANN. § 27.3178(549) (1962); MINN. STAT. ANN. § 259.29 (1959); MISS. CODE ANN. § 1269-06 (Supp. 1962); MO. ANN. STAT. § 453.090 (1949); MONT. REV. CODES ANN. § 61-212 (Supp. 1965); NEV. REV. STAT. § 127.160 (1957); N.J. REV. STAT. § 9:3-30 (1960); N.H. REV. STAT. ANN. § 461:6 (1955); N.M. STAT. ANN. § 29-1-17 (1953); N.Y. DOM. REL. § 117; N.C. GEN. STAT. § 29-17 (Supp. 1963); OHIO REV. CODE ANN. § 3107.13 (Page Supp. 1964); OKLA. STAT. ANN. tit. 10, § 60.16 (Supp. 1964); OREG. REV. STAT. § 109.041 (1963); PA. STAT. ANN. tit. 20, § 1.8 (1950); R.I. GEN. LAWS ANN. § 15-7-16 (Supp. 1964), § 15-7-17 (1956); TENN. CODE ANN. § 36-126 (Supp. 1965); TEX. PROB. CODE § 40 (1956); VT. STAT. ANN. tit. 15, § 448 (Supp. 1965); VA. CODE ANN. § 63-358 (Supp. 1964); WASH. REV. CODE ANN. § 26.32.140 (1961); W. VA. CODE ANN. § 4759 (1961); WISC. STAT. ANN. § 48.92 (1957); WYO. STAT. ANN. § 1-721 (1957).

example, the Hawaiian Code provides that the adopted child is considered a ". . . natural child of the whole blood . . ." and then prescribes a cross reference from this section to the section on descent and distribution.

The statutes in the four remaining states[23] make no express reference to the right of inheritance from the adoptive parents. Typically, North Dakota's provision states:

> The child so adopted shall be deemed, as respects all legal consequences and incidents of natural relation of parent and child, the child of such parent or parents by adoption the same as if he had been born to them in lawful wedlock.

The North Dakota court, in construing this section, has stated "among the 'legal consequences and incidents of the natural relation of parent and child' is the right of inheritance. . . ."[24] Such an interpretation conforms to the concept of a permanent family relationship between the adopted child and the adoptive parents. It is important to note that no state expressly denies the child's right to inherit from his adoptive parents.

However, a child's right to inherit from his adoptive relatives is more reluctantly granted. Only thirty-two statutes expressly grant this right.[25] West Virginia, which is representative of this group, provides: "For the purpose of descent and distribution, . . . a legally adopted child shall inherit from . . . the lineal or collateral kindred of such adopting parent or parents."

Eight other states grant the right but impose some qualification.[26] The right may be limited to inheritance from either the children of the adoptive parents or the lineal kindred of the adoptive parents. Likewise, in this area no state statute expresses a complete denial of the right. However, the eight latter states,[27] which grant the adopted child the right to inherit only from the children or lineal kindred of the adoptive parents, do expressly deny inheritance from the collateral kin of the adoptive parents. The Massachusetts statute is typical of this group, stating: "A person adopted . . . shall stand in regard to the legal descendants, but to no other of the kindred of such adopting parent, in the same position as if so born to him."

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23. NEB. REV. STAT. §§ 43-110, 111 (1952); N.D. CENT. CODE § 14-11-13 (1960); S.D. CODE § 14.0407 (1939); UTAH CODE ANN. § 78-30-11 (1953). Footnotes 22 and 23 include the relevant statutes of the fifty states reviewed. Subsequently, such statutes will be referred to only by state names. Classifications are based on the express presence or absence of terms.

24. Borner v. Larson, 70 N.D. 313, 319, 293 N.W. 836, 838 (1940). Utah reached a similar result in *In re* Brenner's Estate, 109 Utah 172, 166 P.2d 257 (1946).

25. Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Montana, New Mexico, New Jersey, New Hampshire, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, Wisconsin.

26. Alabama, Florida, Massachusetts, Maine, Mississippi, Rhode Island, Tennessee, Vermont.

27. *Ibid.*

In the ten remaining states, the right is neither specifically provided nor specifically denied.[28] Consequently, those courts must determine the presence or absence of the right by some other method. One such method of construction is reference to other relevant provisions of their statutes. In *In re Taylor's Estate,* the Nebraska court interpreted such a statute and held ". . . if our legislature had intended to place any limits upon such rights and privileges, [to inherit from adoptive relatives] it could easily have inserted them in the law of descent of property."[29] On the other hand, the South Dakota court, in *In re Eddin's Estate,* concluded: ". . . that while parents can adopt children and thereby make such children their heirs, they cannot make them the heirs of others . . . unless the statute under which the adoption is made shows a clear and unmistakable intent. . . ."[30] The court, in *Taylor,* interpreted the Nebraska statute in conformity with contemporary sociological thought and its objective of complete integration of the adopted child into the adoptive family. The South Dakota court, in *Eddin,* however, has interpreted their statute according to the principles of the common law.

It is submitted that the approach taken by the Nebraska court is more appropriate. Since the concept of adoption is, itself, foreign to the common law, rights under the adoption decree should not be interpolated from common law principles. Sociological pressures, beginning in the early nineteenth century and having the child's welfare as their main objective, gave rise to adoption practices. Today, very definite methods are used by adoption agencies to achieve the objectives of the "adoptive family" concept. Contemporary sociological practice should be utilized for interpreting statutes concerning intestate inheritance to the adopted child from the adoptive or natural parents and relatives. Thus, the legal incidents attending adoption would evolve from the same foundation as did adoption itself and ultimately the best interests of the adopted child will be served.

B. *From Natural Parents and Relatives*

At present only eleven states preserve the adopted child's right to inherit from his natural parents subsequent to the final decree of adoption.[31] Twenty states expressly deny the right.[32] The remaining nineteen states' statutes give no indication, on their face, whether the right is to be granted

28. Arizona, Arkansas, Georgia, Iowa, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

29. *In re* Taylor's Estate, 136 Neb. 227, 235, 285 N.W. 538, 541 (1939). Other states have reached the same result. See McCune v. Oldham, 213 Iowa 1221, 240 N.W. 678 (1932); *In re* Cadwell's Estate, 26 Wyo. 412, 186 Pac. 499 (1920).

30. *In re* Eddin's Estate, 66 S.D. 109, 279 N.W. 244, 245 (1938). For the same result in other states, see *In re* Hewett's Estate, 153 Fla. 137, 13 So. 2d 904 (1943); Dye v. Ghann, 216 Ga. 743, 119 S.E.2d 700 (1961); *In re* Smith's Estate, 7 Utah 2d 405, 326 P.2d 400 (1958).

31. Alabama, Arkansas, Florida, Louisiana, Massachusetts, Maine, Michigan, Missouri, Rhode Island, Texas, Vermont.

32. Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maryland, Minnesota, Nevada, North Carolina, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia, West Virginia, Wisconsin.

or withheld.[33] In *Sorenson v. Churchill,* the South Dakota court interpreted a statute which contained no specific reference to the right and said: ". . . no one consents for the innocent and helpless subject of the transfer that he shall lose the right to inherit from his natural parent. . . ."[34] This approach, however, has been criticized by the New Hampshire court.[35] That court indicated its opinion that the adopted child receives an undue advantage if allowed to inherit twice, once from his adoptive parents and again from his natural parents. It is curious that the New Hampshire court reached a conclusion which would be considered correct by contemporary sociologists, yet based it on reasoning which those same sociologists would reject. They would refuse inheritance from natural parents, not because of any possible advantage from double inheritance, but because the inheritance from the natural parent in no way aids the relationship between the adopted child and the adoptive parents. In fact, it could prove to be a serious obstacle to that relationship.

The adopted child's right to inherit from his natural or blood relatives[36] is expressly provided for in the same eleven states which preserve the right in regard to natural parents. Among them is Maine, whose statute provides ". . . but he (the adopted child) shall not by reason of adoption lose his right to inherit from his natural parents or kindred." Nineteen states expressly deny this right to the adopted child,[37] while twenty statutes contain no provision concerning the right.[38] However, some courts have interpreted these latter statutes to grant the right to the adopted child.[39]

The Child Welfare League has adopted the following standard:

> An adopted child should inherit only from and through his adoptive parents and their relatives. There should be no inheritance from natural parents or their relatives, except in the case of step–parent and relative adoption.[40]

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33. Alaska, Georgia, Idaho, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Washington, Wyoming.

34. Sorenson v. Churchill, 51 S.D. 113, 212 N.W. 488, 489 (1927). Other courts have reached the same result. See Sears v. Minchew, 212 Ga. 417, 93 S.E.2d 746 (1956); *In re* Bartram's Estate, 109 Kan. 87, 198 Pac. 192 (1921); Sledge v. Floyd, 139 Miss. 398, 104 So. 163 (1925); *In re* Ballantine's Estate, 81 N.W.2d 259 (N.D. 1957); Stark v. Watson, 359 P.2d 191 (Okla. 1961); Coonradt v. Sailors, 186 Tenn. 294, 209 S.W.2d 859 (1948); *In re* Brenner's Estate, 109 Utah 172, 166 P.2d 257 (1946); *In re* Roderick, 158 Wash. 377, 291 Pac. 325 (1930); Wagner v. Varner, 50 Iowa 532 (1879).

35. Young v. Bridges, 86 N.H. 135, 143, 165 Atl. 272, 276 (1933).

36. Alabama, Arkansas, Florida, Louisiana, Massachusetts, Maine, Michigan, Missouri, Rhode Island, Texas, Vermont.

37. California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maryland, Minnesota, Nevada, North Carolina, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia, West Virginia, Wisconsin.

38. Alaska, Arizona, Georgia, Idaho, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, North Dakota, New Hampshire, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Washington, Wyoming.

39. *In re* Bartrams' Estate, 109 Kan. 87, 198 Pac. 192 (1921); Sledge v. Floyd, 139 Miss. 398, 104 So. 163 (1925); *In re* Brenner's Estate, 109 Utah 172, 166 P.2d 257 (1946); *but see, In re* Furnish's Will, 363 Mo. 932, 254 S.W.2d 645 (1953).

40. CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR ADOPTION SERVICE 64 (1958).

A similar provision is found in the Model Probate Code.[41] The Uniform Adoption Act,[42] however, makes the inheritance rights from the adoptive relatives optional but in all other respects is similar to both the Model Probate Code and the standards of the Child Welfare League.

Those state statutes which expressly provide for the continuance of the adopted child's right to inherit from his natural parents or relatives are inconsistent with currently accepted standards in the social field as well as with the views expressed by the framers of the uniform laws and model codes. Analyzing the provisions in light of the purposes underlying such standards, any right of an adopted child to inherit from his natural parents or relatives opens the way for them to discover where the child has been placed. Thus, the court's decree, granting the estate to the child according to the dictates of the statute, gives rise to both the possibility of harassment by the natural parent and a reason for fear on the part of the adoptive parents that the natural parents may seek to get their child back. A further, and perhaps more important consideration, is that granting such a right in no way tends to aid the development of a family relationship between the adopted child and adoptive parents. A federal guide to suggested state legislation reports: "Implicit in a modern termination statute would be the philosophy that wherever possible family life should be strengthened and preserved."[43]

In those jurisdictions which make no express declaration, either providing or denying inheritance rights from natural parents or relatives, the courts should look to accepted sociological thought for the basis on which to interpret their statutes. This would appear more acceptable than reliance on the common law, which was, in all respects, antithetical to adoption generally. It is in the interpretation of the indefinite statute that the courts have the opportunity to aid the main objective of adoption, the welfare of the child, by creating a close family unit. Such an opportunity was favorably employed by the Nebraska court in the *Taylor* case discussed earlier.

V.

INHERITANCE FROM THE ADOPTED CHILD

A. *To Adoptive Parents and Relatives*

In forty-three states, the adoptive parents have the right to inherit from the adopted child.[44] The Wisconsin statute, which exemplifies this

41. MODEL PROBATE CODE § 27 (Simes 1946).
42. UNIFORM ADOPTION ACT § 12.
43. U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, LEGISLATIVE GUIDES FOR TERMINATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND ADOPTION OF CHILDREN 12-13 (1961).
44. Alaska, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin.

group, provides: ". . . the adoptive parents shall be entitled to inherit real and personal property from the adopted person. . . ." Within this group, however, seven states distinguish between possessions of the adopted child received from his natural parents and those received from his adoptive parents.[45] These so-called "source" states base their approach on the theory that they are redistributing the adopted child's property to those who provided it. The Massachusetts statute is typical:

> If the person adopted dies intestate, his property acquired by himself or by gift or inheritance from his adopting parent or from the kindred of such parent shall be distributed according to the laws of descent and distribution . . . and property received by gift or inheritance from his natural parents or kindred shall be distributed in the same manner as if no act of adoption had taken place.

Such statutes indicate a legislative view contrary to the sociological objective of a complete severance of relations between the adopted child and his natural parents. The requirement that the court determine the source of the child's possessions is based on the premise that the natural parents know where the child is and associate with him, or, at least, give the child something that is subject to later inheritance by them. However, this premise is inimical to sociological views. One writer states: "The importance of own, permanent family ties has impressed social workers as they observed in children the adverse psychological effects of the lack of such ties."[46] Allowing the natural parent to associate with the child impedes the development of "permanent family ties" between the adopted child and the adoptive parents.

No statutes expressly deny the adoptive parent's right to inherit from the adopted child. In seven states, however, the statutes do not mention the right.[47] A representative statute of this group is South Dakota's, which reads ". . . the two shall sustain towards each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation." In *Calhoun v. Bryant*,[48] the South Dakota court interpreted an earlier statute with similar language to vest the adoptive parents with the right of inheritance from the adopted child. Such an interpretation is in harmony with the concept of a totally integrated family unit for the adopted child.

In thirty-eight states, adoptive relatives may inherit from the adopted child.[49] Within this group, however, eight states[50] limit this right to either

45. Arkansas, Georgia, Illinois, Maine, Massachusetts, Michigan (MICH. STAT. ANN. § 27.3178(156) (1962)), New Hampshire.
46. ROSNER, CRISIS OF SELF-DOUBT 4 (1960).
47. Arizona, Kansas, Nebraska, North Dakota, South Dakota, Utah, Wyoming.
48. 28 S.D. 266, 133 N.W. 266 (1911).
49. Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa (IOWA CODE ANN. § 636.42 (1964)), Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Vermont.
50. See note 26 *supra*.

the lineal relatives of the adoptive parents or only the children of the adoptive parents. The remaining twelve statutes have not dealt specifically with the right of adoptive relatives to inherit from the child.[51] However, in many of these states, the statutes have been construed to grant the right. In *Shepard v. Murphy,* the Missouri court held that the adoptive relative had the right to inherit to the exclusion of the natural mother, stating ". . . it is our duty to so construe the provisions of the foregoing section [a forerunner of the present statute] as to best . . . accomplish the object for which the adoption code was enacted."[52] The Missouri court, by such a decision implemented the "philosophy that wherever possible family life should be strengthened and preserved."[53]

B. *To Natural Parents and Relatives*

The right of the natural parent to inherit from the adopted child is granted expressly in only the "source" states,[54] and, even there, is limited to those things which the natural parents have given the child during his life time. Thirty-two statutes expressly deny the right[55] while eleven make no mention of it.[56] However, keeping in mind that forty-three state statutes[57] expressly grant the right of inheritance to the adoptive parent, by implication, in those states where the statutes are silent on the right of the natural parent to inherit, the natural parent would be precluded from sharing in the estate of the adopted child.[58]

Thirty-two states expressly deny the natural relatives of the adopted child the right to inherit from the child.[59] Again, those states that do grant the right are the "source" states and the same qualification is placed on their right as is placed on the right of natural parents in such states.[60] The eleven remaining states have no provision either way concerning the right;[61] but again, where statutes expressly grant the right of the adoptive

51. Arizona, Georgia, Kansas, Maine, Missouri, Nebraska, North Dakota, South Dakota, Oklahoma, Utah, Wyoming, Wisconsin.

52. Shepard v. Murphy, 332 Mo. 1176, 1181, 61 S.W.2d 746, 748 (1933).

53. See note 43 *supra.*

54. See note 45 *supra.*

55. Alabama, Alaska, California, Connecticut, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, North Carolina, New Jersey, New York, New Mexico, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin.

56. Arizona, Iowa, Kentucky, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, Wyoming.

57. See note 44 *supra.*

58. Note, 22 IOWA L. REV. 145, 151 (1936).

59. Alabama, Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Idaho, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, North Carolina, New Jersey, New Mexico, New York, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin.

60. See note 45 *supra.*

61. Arizona, Iowa, Kentucky, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, Wyoming.

relatives to inherit from the adopted child,[62] the natural relatives, by implication, would be precluded from such a right.[63]

VI.

INHERITANCE THROUGH THE ADOPTED CHILD

The one remaining possibility is inheritance through the adopted child. Fifteen state statutes[64] expressly provide for the situation where property passes through the deceased adopted child from his descendants to his parents or relatives and vice-versa. North Carolina has such a provision, which reads "The adoptive parents and the heirs of the adoptive parents are entitled by succession to any property by, through, and from the adopted child. . . ." Where the statutes are vague some courts have reached the same result. In *In re Herrick's Estate,* the Missouri court stated: ". . . appellant, being the heir of her mother . . . had the same right to inherit through her a share of the estate of the deceased 'adopting' parent as if her mother were a daughter by blood."[65]

Although the right to inherit through the deceased adopted child has been granted either by statute or judicial interpretation, a further question remains. The court must determine which set of parents or relatives, natural or adoptive, may inherit or be inherited from, as the particular case requires. For example, when a natural parent and an adoptive parent each wish to claim the estate of the deceased adopted child's deceased child, the provisions of the statutes discussed earlier concerning the proper participants in the estate of the adopted child must be consulted.

VII.

CONCLUSION

The state statutes which totally exclude the natural parents and relatives from any inheritance rights with respect to the adopted child and grant to the adoptive parents and relatives the right to inherit by, through, and from the adopted child are few in number, only seventeen.[66]

This inadequacy reflects the state legislators' misunderstanding of accepted principles of child welfare with respect to the entire concept of

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62. See note 49 *supra.*
63. See note 58 *supra.*
64. Alabama, Arkansas, Colorado, Hawaii, Idaho, Indiana, Louisiana, North Carolina, Texas, Wisconsin, Montana, New York, Ohio, Oregon, Virginia.
65. *In re* Herrick's Estate, 124 Minn. 85, 144 N.W. 455, 457 (1913). Other courts have reached the same result. See Bailey v. Wireman, 240 S.W.2d 600 (Ky. 1951); Jones v. Lovell, 170 So. 2d 431 (Miss. 1965); *In re* Fitzgerald's Estate, 223 Iowa 141, 272 N.W. 117 (1937); Vreeland v. Vreeland, 296 S.W.2d 55 (Mo. 1956).
66. California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Maryland, Minnesota, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia, West Virginia, Wisconsin. Some of these statutes do, and others do not, provide for inheritance through the adopted child. However, since the statutes are explicit on inheritance by and from the adopted child it is assumed that the statutes would be construed to grant the right of inheritance through the child.

adoption. Such shortcomings result from a failure to consider the importance of keeping the natural parents' identity confidential and, especially, of effecting a complete substitution of the adoptive for the natural parents.

In those instances where adoptions are handled by private agencies or on an independent basis and the names of the natural parents and adoptive parents are kept confidential, these inadequacies become, in fact, the disrupting force which detracts severely from a competent method for the creation of a normal and permanent family life for the adopted child.

The worth of the traditional "natural rights" of parent and child, who are only parent and child biologically, must be examined in light of contemporary sociological views concerning the status of the adopted child. Common law principles alone cannot serve to determine rights in an area which is, itself, in derogation of the common law.

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