

The Best Interests of the Child

Norval Morris†

It had happened swiftly, safely, and to the noisy delight of the Chinakans. The distance between the beach and their fishing village was about a hundred yards; we were inundated about midway on our journey, providing a perfect view for all.

When we pushed off there seemed ample clearance between the calm waters and the gunwales, though the barque was heavily laden with the tins of bully beef, of dried biscuits, of jam and condensed milk and a wide variety of other groceries to which the Burmese villagers were reputed to be partial. I doubt that Mr. Plimsoll would have been suspicious, unless perhaps he was wise in the ways of Burmese fishing villagers.

I had built so many dreams around those tins and bottles. Of course I would not bargain; no vulgar barter for me. I would simply give gifts—not all at once, but in a steady flow of beneficence. The natural tendencies of the Burmese to extend hospitality to a European who had unbent to the point of wishing to visit their humble fishing village for a day or two would be powerfully reinforced by my munificence. Images of feasts, of wise old Burmese gentlemen beaming with approval at the young white man come to live temporarily among them, of the less proper passages in *The Golden Bough*, had haunted me for weeks, and I confess that it had not escaped my daydreams, and even an occasional more real imagining of the night, that one or more of the slender, lovely Burmese girls might take it into her heart and passionate nature to express her gratitude in those ways they were reputed to favor for this purpose. And now . . . now, nothing would remain . . . not a single biscuit . . . not a pot of marmite . . . none of Jardine's diverse and, I ruefully remembered, expensive produce remained above the waves.

A sinking feeling, I thought as the barque sank, and was amused by the trite pun. Looking, I am sure, a total fool, pith hel-

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met still squarely in place, left arm raised to preserve my father's watch, his parting gift to me, I trod water while boats pushed off from the village. I was soon pulled aboard and carried dripping to the landing stage, where I had expected to arrive in dignity and wealth, not soggy poverty.

They treated me kindly. There were a few muffled laughs but most of my audience had disappeared into their huts to minimise my indignity. The headman welcomed me with a word and hurried me to the hut set aside for me facing out into the Gulf of Martaban. In pidgin English he directed me to divest myself of my clothes and to substitute for them a white *longyi*, the cylindrical skirt to the ankles, folded in front, which is worn by men and women in most Burmese villages of the South, and a single-breasted *eingyi*, a short-sleeved jacket, also of a white and almost transparent cloth, worn by adult male villagers. The headman gestured for a young man to gather up my clothes and suggested that I might like to rest for a while.

I remember what an idiot I felt. It had been ludicrous to think I could manage on my own. Here I was stranded—well, hardly “stranded,” rather “at sea,” though in a hut—without even an interpreter. What a miserable emissary of the powerful Raj! What a fool the natives must think me! I would have to ask San Thay to join me rather than leave him on the beach with the police sergeant. Or wouldn't it be better, I recall thinking, to call the whole visit off and crawl back to Moulmein, birthday or no birthday. How presumptuous I had been to think that my schoolboy affectation of a benevolent visit to a Burmese village would be acceptable to the villagers. Undecided, I walked around the edge of the huts, along one narrow companionway and another, to the landing stage where I intended to gesture or shout to the beach or somehow get a message to San Thay.

They had wasted no time! The youth of the village were at work and play between the village and the beach. Three or four fishing barques and a cluster of dark diving heads were assembled over the scene of my inundation. Bully beef and biscuits, jams and condensed milk, the imperishable cornucopia of Jardine and Sons was being rescued by the young men and women of Chinaka. My immediate anger turned to amusement and then to laughter, and a new flood, this time of goodwill, engulfed me. Suddenly the village was populated, not deserted as it had been as I walked from my hut to my view of the salvage operations. My amusement had generated acceptance. And it was clear to me that it did not matter if San Thay joined me in the village or not; either way I would be treated kindly.

My laughter turned back to quiet amusement and then to interest in the salvage operation. I wanted to swim out to assist, but the loin cloth and jacket seemed inappropriate to the purpose and my swimming costume, which I had brought in my bag, was of course intermingled with the groceries on the sands at the bottom of the shallow bay. So I watched, and pointed, and laughed at the joy of the young divers, and applauded as tin after tin emerged into one or another of the boats.

My bag rose to the surface in the arms of two young men. Into a boat it went and was brought to where I stood. I reached for it. Firmly but gently I was denied its possession. Reawakening anger quickly calmed as I was made to understand that washing and drying might be necessary and that the clean contents would soon be in my hut.

I saw a lighter skin among the children playing around the divers, slim and swift in the water like the rest, but with a honey-coloured body and brown hair. I pointed to him and asked the headman about him. "He JiHan. His mother speak English. She work for Sahib Cunningham in Moulmein. She help you talk." And so it was. JiHan's mother, Shin Yalat, served throughout my visit to Chinaka as an erratic but conscientious translator on the few occasions when translation was necessary.

But it was her son, JiHan, who had attracted and held my immediate attention. He seemed to me about five or six years old, but I am never sure about such matters. It was clear that he was Eurasian, of light brown skin, browner than the sun can achieve for the European, but lighter and tanner than the Burmese. He was beautiful, as only a very few European children are ever beautiful, and Burmese children never—though the average pulchritude of the Burmese, child and adult, clearly exceeds that of Europeans. He glowed with the soft radiance of the young and privileged—bright blue eyes, light brown hair, and fine Nordic features set in an envelope of honey-coloured skin. Slender yet sturdy, swift of movement, he was compellingly visible among the children of the village.

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I would never forget the date of this, my first failure as an entrepreneur. It was the twenty-fifth of June, 1924, during the rainy season in the month the Burmese call Nayan—I don't know the year in their calendar. But it was also my twenty-first birthday, and I had been planning its celebrations for months, building too much on it, no doubt.

It had seemed to me important to mark my passage from infancy by some ceremony and yet to avoid, if possible without offence, the usual alcoholic celebrations at the Club. Obviously, I would have to be away from Moulmein on the twenty-fifth of June.

Since my duties obliged me to visit all villages within my jurisdiction at least once a year, a trip to Chinaka, in the curve of a bay on the coast facing the Gulf of Martaban, had seemed to me an excellent excuse for a private birthday celebration of a type I would be likely to enjoy and to remember. I would take San Thay, my houseboy, and stay at Chinaka for two or three days. San Thay and the policeman could stay on the beach while I went out to Chinaka itself.

I had visited Chinaka on occasions before, but they were always formal and brief visits, an hour or so with the headman, asking through an interpreter if there were any police problems I should address; he had no idea at all, and I had not much more, of the frame of reference of such an inquiry.

My earlier visits had been confined to the two buildings on the shore. One was a large structure in which the villagers kept the equipment for tilling their gardens and in which they shaped the barques which were the capital equipment of this fishing village; the other, a simply constructed but ornately decorated pagoda, fell outside my lay jurisdiction.

The sense of cleanliness, peace, and relative prosperity about Chinaka, as well as its graceful setting, had attracted me to it for more than a formal visit. The village consisted of between 150 and 200 inhabitants, men, women, and children and forty or more bamboo and thatch huts, connected by wooden walkways, built on stilts over the shallow waters of the bay. Their economy was simple but sufficient: mostly fishing for food and for barter, with some small vegetable gardens near the beach, a few pigs also penned ashore.

Those who lived in Chinaka and the other stilted fishing villages in the delta were regarded as primitive and simple by other Burmese, not only by the town dwellers but also by those in the agricultural villages. The Chinakans and the others who made their homes over the water seemed to have come from waves of migration earlier than the movements west from Siam and south from India.

When I had last visited Chinaka my perception of its beauty must have been apparent. The headman had invited me to return and, gesturing toward a hut on the outer perimeter of the village,

had invited me to use it and had seemed to mean it. Many Burmese villages have rest-houses for travellers (it is an act of Buddhist religious merit to have one), but for a fishing village built offshore it is unusual—travellers don't pass that way. He had seemed sincere in the invitation, so I accepted and planned the birthday visit.

It was the beauty and simplicity of the place that attracted me, I told myself, but greed was not entirely absent. Several of the villagers produced hand-carved model boats, replicas of their fishing barques, delicate and of precise detail, and much prized by Europeans and Burmese alike. I had intended to acquire several of these. But in the event, these plans, too, proved trivial.

When the drama, anger, and amusement of my arrival were over, I settled with quiet contentment into the life of the village. I was cared for in the sense that I was fed and allowed to be a part of the village without much fuss being made. There were no feasts, no gifts, none of the uninhibited entertainments I had stupidly expected, just a shy acceptance. I accompanied the crew of a fishing boat one morning, wandered about a bit on the beach and in the gardens, and chatted a little with San Thay and the sergeant, who also seemed to be enjoying our stay in Chinaka. And I slept a great deal, the reed mattings on the springy floor of the hut proving unexpectedly comfortable.

In the later evening of the day of my arrival at Chinaka I had changed back into my now washed and dried shorts and an open-necked shirt, finding embarrassment in any simulation of native dress. Shin Yalat had come to me, confirming what the headman had told me: that she worked as a maid in Moulmein for the Cunninghams and that she would help me talk to the villagers. She did her best. It was not very good. I concluded that it was not so much that she could not remember the simple English words to which I tried to limit my conversation but rather that she was of no great swiftness of mind—a soft and generous disposition, eager to please, but not very adept linguistically, or, I suspected, in any other way. JiHan's English was vastly better than his mother's, really quite excellent for his age, but he did not seem to wish to play the role of interpreter for me. He was less than at ease with the adults in the village, though the children obviously accepted him as one of their own. In the end, neither Shin Yalat nor JiHan spent much time with me during my visit to Chinaka.

It was a wonderful time when words were not particularly needed. An experience very different from my expectations but as twenty-first birthdays go I could think of none better. There was

no bitter aftertaste; I was pleased with what I had done. I did not regret the loss of the supplies; indeed, they had not been lost, they had been traded in an exquisitely gentle way, a lesson to the economist and to the administrators of the Raj that few, no doubt, would accept. In the burgeoning egotism of first adulthood I congratulated myself on the delicacy of my sensibilities when, of course, none of the virtue of the transaction lay with me. I recalled that several of the meals I had been served had indeed been enriched by foodstuffs salvaged from the gentle shallows between the beach and Chinaka. My fair share or more, I was sure.

The memory that clings closest to my mind is of one evening sitting on the walkway, my back resting against my hut, soft, spicy smells of fish cooking for dinner sharpening my appetite, while I looked out across the deep curve of the bay and its encircling palms, and watched several twin-oared barques, each propelled by a man sitting in the stern, his oars crossing and uncrossing in front of him as he pushed his boat lazily home to the peace of a Chinakan evening. In such a calm setting the Cunningham case came to me on soft tread. Yet Dr. Veraswami was right: "It iss a difficult decision for you, Mr. Blair, ass difficult as you will ever have to make."

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I had met the Cunninghams on occasion at the Club. The relatively few children of Europeans in Moulmein were welcome at the Club during the daytime, when they used the tennis court and the swimming pool, but it was not common for them to be there in the evenings, when I tended, occasionally, to visit. I had never seen the Cunningham boy there, though I understood in a vague way that he swam there often in the afternoon, the only people remarking on this being the two adult Eurasian members, who were quick to spot and to comment on one of their own being so unqualifiedly accepted, as they clearly were not.

So far as I knew, the Cunningham boy was treated like any European child of his age; certainly the other young children saw nothing of note about him, except perhaps his energy and agility in play. But I did not know him at all and had forgotten our meeting in Chinaka until I visited the Cunningham bungalow, and that visit was not social, rather in the line of duty.

Coleen Cunningham telephoned one morning to police headquarters to report that their bungalow had been broken into and some money and a few relatively valueless pieces of personal jewelry stolen. Bruce was up river at the teak plantation and would

someone come to investigate the matter and do whatever had to be done.

There was not much to be done. There rarely is with burglaries, if they are burglaries and not thefts by servants. One has to determine the outer limits of time when the offence occurred, who was in the bungalow over that period, and whether anyone saw or heard anyone or anything suspicious. It means a series of rather pointless interviews in which little is discovered beyond what is blurted out by the first reporter of the loss.

My morning was free. The Cunninghams were, after all, the most prosperous of the non-governmental Europeans in Moulmein. I had found them quite pleasant when we had met at the Club, and there was no reason—other than sloth—for delegating the investigation, such as it would be, to anyone else. So I went, taking a recently recruited Indian policeman with me to add an air of authority to my likely inefficiency.

My assistant and I were shown into a sitting-room leading out onto a verandah immediately beside the main entrance to the bungalow. A maid had obviously been expecting us and led us into the empty room, saying that the memsahib would be with us in a moment. But the boy, whom I immediately recalled seeing at the Chinaka village, was the first to arrive. He stood immobile in the doorway, surveying us, hesitant yet curious in the manner of bright children, the striking blue eyes moving rapidly in his oval face. He could not have been more than six or seven years old, yet he seemed taller than the usual six-year-old, his slight frame held erect, the head tilted back. He was not a child to be ignored and he knew it. He moved with confidence into the room, it being clear to even a first-time visitor like me that despite his light-brown skin he was at home.

Coleen arrived, hurrying in behind the boy, her hand reaching for his shoulder. "I see you have already met John." She did not seem greatly disturbed by the burglary. She had seen no one, had not lost much of value, and had not felt threatened personally. Of course, her room had been broken into during the night and this caused understandable unease, but she was a sensible, confident person who recognised that the intruder had gone to some effort not to disturb her and hence likely meant her no harm—though she would have to make arrangements for better security in the future.

By contrast, the boy seemed quite delighted by all these events, the crime and its present consequences. His shiny eyes watching everything that was being done, willing to run errands or

to fetch anyone of the household I or my assistant might wish to interview. He had his own theory of the burglary; he had found an unexpected footprint outside the window of the Cunningham's bedroom and what he said was a mark on the shutter that had not been there the day before. Whether these findings were the precocity of an incipient detective or the products of childish fantasy I never found out, since this proved to be one of my many failures as a detective. The responsible criminal was never brought to book, certainly not for this crime, though I supposed it likely he would eventually be caught for some other. I rarely did catch burglars, unless someone had seen them or informed upon them, on which occasions my capacities as a detective invariably took great leaps forward.

Coleen served coffee to me soon after my arrival at the Cunningham bungalow that morning, my Indian constable being given similar courtesies in the kitchen and the boy serving as his escort. There was not much to tell. She had left her purse on the dressing table in the bedroom with a few notes and some small change in it—she did not know how much—and in the morning she had found the purse, empty, on the floor. The only other things missing seemed to be some imitation jewellery from a drawer in the same dressing table.

Bruce had left for the interior earlier the day before. She had dined at the Club. She had gone to bed on returning from the Club after checking that John was asleep in the room next to hers. He had come into bed with her in the morning as he often did, whether Bruce was home or not. She had half-wakened and taken him in her arms. They had both slept for some time. The offense was discovered when they woke.

As I say, I never found the thief. I think the boy's explanation captured all the truth of it we would ever discover: "Someone watched and waited outside, broke the shutter catch very quietly and sneaked in; but he didn't get much."

Later I made the usual formal report to help the Cunninghams with their insurance claim, the main constabulary duty in such matters.

The boy had impressed me with his charm and intelligence so that in the next few weeks, whenever I met Coleen or Bruce Cunningham, I asked after him. They responded warmly to these enquiries and always had one or another story of the boy's wit or success to relate. But I didn't see him again until the crisis of decision was upon me.

I saw Bruce Cunningham soon after he returned from the inte-

rior after the burglary and talked about the burglary with him. He seemed as unconcerned as his wife. I expressed my pleasure in meeting the boy and risked asking him about the boy's name—I had met him as “JiHan” and then he had been introduced by Mrs. Cunningham as “John.” Was this merely an anglicisation of his name, or was there more to it? And what did the boy call himself? And his friends?

Apparently, though without intending to, Bruce Cunningham had solved this minor problem for the boy and for others. A few weeks before the child's birth, Shin Yalat's husband, a Karen from the fishing village of Chinaka, had been killed in an accident up-river at the teak estates owned by Cunningham's firm. Shin Yalat's grief was obvious and the Cunningham household cared for her with solicitude, but it later became clear that she had been spared some awkward explanations since the boy when born was obviously not the son of her husband. The Karens are darker skinned than most Burmese—the boy's father was undoubtedly European. Nevertheless, when he was born Shin Yalat gave him the name she and her husband had agreed upon for a boy, if a boy were born: JiHan, a name reasonably common among the Karens of the South of Burma, though not so common in Chinaka as to be confusing. And JiHan he was called by his mother, Shin Yalat, when they were alone or on the occasions he had been taken to his late father's family in Chinaka. However, from his early infancy he was known as John, as a formal matter, in the Cunningham household. The Cunninghams had seen him within hours of his birth and from their first sight of the light tan skin, the blue eyes, the straight features, the awkward Burmese “JiHan” had translated itself into the easy English “John.” But in his second year these appellations too had been changed, and largely by the boy himself. Amused by the two names, Bruce Cunningham had found a commonality between them and had called the boy “J.J.,” in the manner of the moguls of American business. The boy latched on to this and shaped it to his personal style so that he called himself and became generally known as “JayJay”—in the Cunningham household (except to Coleen), at the Club, and throughout the European, Burmese, Indian and Chinese communities of Moulmein. But Shin Yalat stuck to “JiHan” and Coleen to “John.”

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The crisis came quietly to the Cunninghams, though they should have expected its arrival someday. It came in the form of a promotion. Bruce was to be in charge of the company's interests in

Kenya, itself a secure stepping stone to a directorate in London. There was no question about it, he must grasp this opportunity, which would mean moving to Kenya via some leave in London three months hence.

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If Coleen Cunningham had been calm about the burglary, she certainly was not calm now. Pushing aside the hesitant restraining hand of the duty officer, she burst into my office. "Bruce is up river again and I can't find John. I think his amah, Shin Yalat, has taken him. Some of his clothes and toys are gone. You must find him and bring him back immediately."

I did not bridle at her peremptory tone; she was on the edge of tears and her blustering did not cloak her anguish. I tried to calm her, but she would have none of it. There was nothing more to tell me, she said. John had probably been taken to Chinaka. I should fetch him. Everything was normal last night. John went to bed at his usual time. She read to him until he went to sleep. She then wrote a letter home—by which she meant, of course, to her family in England, since Burma and Kenya would never be thought of by her as providing other than residences—not homes. And then she went to bed herself. She heard nothing in the night. In the morning John was gone and so was Shin Yalat.

"Did Shin Yalat speak about this to the other servants?" I asked.

"They say not."

"Did Shin Yalat know that you and Bruce are leaving Burma?"

And here she hesitated, not, I thought, to polish an untruth but to be precise about an uncertainty. "We have not spoken of it yet to the servants but I think they may know. I don't know how. But I have the impression they do."

"Shin Yalat is his mother, is she not?" I knew the answer, of course, but the enquiry might help Mrs. Cunningham see the difficulty of the situation and lessen the pressure on me for an immediate police solution.

"He was born to her, yes, but since then I have been his mother. We kept her on because she looked after him well. But he is obviously half European. It is absurd to think of him as a Burmese village boy. You have talked to him. Surely you know. She has kidnapped him. You must bring him back. I'll come with you to Chinaka."

The thought of what I should say and do in Chinaka was bad

enough without the added threat of the now relentless Coleen Cunningham to complicate my task. With some effort I persuaded her not to come to Chinaka with me, which is, I suppose, a tribute to the swift success of her effort to compel me to go there. She agreed to stay at their bungalow, certainly until Bruce returned. I suggested sending a message to Bruce to return as soon as he could; she replied scornfully that she had already done so.

It seemed to me that at least I should see that JayJay was safe and find out what Shin Yalat's intentions were if he were with her. And if he were not, then indeed I had an urgent police matter on my hands—so I had better go immediately to Chinaka. If he were there, whether I should bring him or them back to the Cunningham bungalow perplexed me. Did I have authority to do that? Probably not. And yet there seemed a genuine issue about the boy's future. Who should decide? Surely not me.

Coleen Cunningham rejected my offer to have a policeman accompany her back to her bungalow. When she left the police station she was less distressed than when she had arrived, but it seemed to me also less in doubt about what had happened and must now happen. Shin Yalat had kidnapped John; he must be brought back and she discharged at the very least. My earlier enquiry as to whether John had been formally adopted by Bruce and herself had been brushed aside as absurd. "We will do that when we are back in England on leave before going to Kenya. You can't rely on courts here. Everyone knows he is our child and has been since he was born—we have made no secret of that to anyone. Shin Yalat knows it too; she has been his amah, his nurse, his nanny. You must have seen that for yourself."

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If you look at the map you will see that Moulmein is about 100 miles, as the crow flies, from Rangoon. But crows don't fly in Burma, and in 1926 the lines of command, communication and transport followed their own idiosyncratic and meandering paths. My chain of command went through Mandalay, some 400 miles to the north of Moulmein and then turned slightly west of south a further 350 miles to Rangoon. Travel time and travel distance were often not directly related in Burma. The journey by train north to Mandalay and then south to Rangoon was far swifter than the much shorter distance by road west around the Gulf of Martaban on horseback or by bullock waggon—well, hardly by road, by tracks really, and even they were often swallowed by the jungle and rutted by the tropical rains, not gentle English ruts to trip the

wandering inebriate, but chasms to stagger an elephant. Wheeled vehicles were useless cross-country; to carry larger loads, bullocks pulling bamboo sleds on heavy teak runners were best suited to avoid the bogging and tipping that beset all other conveyances.

There were, of course, motor cars in Moulmein. One could not drive the direct route from Rangoon to Moulmein, but the roads from Rangoon to Mandalay and from Mandalay to Moulmein could be negotiated. It was hardly sensible, however, to do so. Leave those adventures to one's driver, let him wrestle with the punctures, the boggings, the overheatings; when the car arrived in the town it would be useful, but not between towns. In any event, the only motor vehicles that were available to me in Moulmein were a few military lorries and then only in emergencies with the permission of the authorities at the garrison.

These matters troubled me as I wondered how to go about bringing Shin Yalat and the boy back to Moulmein. I could take a military lorry but it would be a chancy journey. On horseback I could be in Chinaka about noon, if I started early, and perhaps back by late afternoon on the evening train from Mudon. Yes, that would be the best plan. If I took a policeman with me as interpreter, he could bring the horses back to Moulmein while Shin Yalat, the boy, and I could return by train.

But I felt the need of advice and counsel before leaving; it would not do to rush off with no idea what to do when I got to Chinaka. If Shin Yalat and JayJay were not there it would be obvious what to do—but what if, as I hoped and believed, they were there? Dr. Veraswami was too busy to talk to me until the evening. There was no one else to turn to in Moulmein. Much as they and I disliked it, I would have to try to seek advice from my superiors in Mandalay by telephone—caution and good administrative practice seemed to converge on this result.

The telephone had come to Burma with the military, the signal corps festooning lines along roads and railways, talking to one another by lying on their bellies shouting into gun-metal orifices actuated by desperately rotated cranking devices. The railway authorities had carried matters further, substituting less fearsome wooden boxes affixed to walls in the stationmasters' offices, requiring less cranking, having earpieces to be lifted to the side of the head rather than requiring the assumption of a recumbent posture, and with little protruding rounded mouths into which one shouted. I hated them all. And they seemed to hate me. Those in the capital cities who arranged the switching requests to police headquarters obviously resented my interrupting the usual military or railway

business to which their lines were largely devoted; they patronised me and went out of their way to misunderstand me. My efforts on the telephone always reminded me of Laocoon's struggles with the serpent; but if I was to be helped on what to do at Chinaka it would have to be by telephoned advice or not at all.

Therefore, when Coleen left, I went straight to the railway station and sought permission—which could not be refused—to call Mandalay. Mandalay listened, could offer no help since the legal adviser was on leave, but authorised me to call Rangoon Headquarters even up to the 2 i/c Burmese Police, a presence I had actually met some months earlier when he paid an inspectional visit to Moulmein.

To my astonishment, my call had been expected. There had been a call from Mandalay but also, and more surprising to me—though had I had more judgment of human behaviour it should not have been—Rangoon headquarters had already heard about the alleged kidnapping from elements of the commercial community in Rangoon associated with the company for which Cunningham worked. There was no doubt what I was to do—it was not a matter at all of my judgment—I should understand it to be a direct order: if Shin Yalat and the boy were in Chinaka when I got there I was certainly to bring the boy back to the Cunningham bungalow and hand him over to Mrs. Cunningham and to Mr. Cunningham, who would probably be there by then. Shin Yalat should be persuaded to come too, but I was not to see that as an order—I should not use force to compel her return.

It was hardly a conversation at all. The telephoned orders were unambiguous. My search for advice, some understanding of the relevant law, of the attitude I should take to the boy and to Shin Yalat, was swept aside. In due course I would receive, I was assured, a Memorandum of Law to support what had been done and to guide me on the relevant law. But for the time being I was to fetch the boy home and to take with me whatever police force I thought necessary to that end. No, there was no need to alert the army authorities in the matter, surely I could handle it with the police force available. After all, it was only a Burmese woman and a child.

I began to regret that I had sought advice; it might well have been better to leave it to the inspiration of the moment in Chinaka. Now I had no choice. But I did have some choice as to how to carry out the orders. Remembering the friendliness of my earlier visit to Chinaka I decided to confine myself to one Burmese policeman as an interpreter to accompany me. We arrived at the

beach looking across to Chinaka, hot and tired, in the late forenoon.

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My policeman-interpreter was a Shan, but he spoke fluent Karen. It was a painful session for me and, I gathered, also for him. The headman and the priest met us in the shade of the storage hut on the beach. There were no chairs, no mats or other signs of hospitality, just the area beside the large hut where grassy vegetation became sand to squat or sit on.

When we arrived, activities on the shore ceased. By the time our horses were unsaddled and tethered, the few women working in the vegetable gardens had rowed back to the village. Soon the headman could be seen rowing himself to the shore. The priest emerged from the pagoda and we were assembled.

I could see children playing around the walkways of the village but no adults seemed to be taking any interest in our meeting. I could not see JayJay among the children, but at that distance I could hardly be sure.

The headman had apparently misplaced what little English he had found on my earlier visit. He spoke in Karen in what seemed to me brusque and complex sentences; certainly the few words of Karen I knew were of no use to me. And the priest did not participate at all in the discussion; for all he said he might as well have been a Trappist. He was a youngish man in a much less than spotless saffron robe who spent most of the time he was with us digging abstractedly in the rough sand with a preternaturally large and dirty big toe equipped with a broken nail. His contribution to the parley was to distract me, in which he was successful.

It was not only his small stock of English that had deserted the headman; his earlier cordiality to me had also quite disappeared. I did my best to explain our business in neutral terms. "Are Shin Yalat and JiHan at Chinaka?"

"Yes."

"The Cunninghams are worried about them. They do not know they are visiting the village. JiHan must come back to Moulmein so that he can go back to school."

There then followed a lengthy exchange between the headman and my interpreter from which I felt excluded as they chattered back and forth. I interrupted, rebuking the policeman for carrying on the discussion himself: "Tell me everything he says, don't talk on like that."

This both upset my only ally and confirmed the headman's

growing hostility, his eyes and posture revealing his complete understanding of my miserable mission, and of my unease in it. He pressed me firmly to the truth. "Shin Yalat and JiHan must return with you—is it so? Are you taking her child from her and her family?"

In reply, I made the task of the interpreter impossible, talking on and on until in desperation he stopped me and I had to retreat from my earlier direction to him just to interpret. "Tell the headman, please, in your own words, that the boy must now come back to Moulmein with us, that Shin Yalat may if she wishes to, and that I promise that the boy will not ever be taken away from her without a careful legal decision as to who he should live with." The promise was self-serving and weak; I had no such authority. A direct order from Rangoon could hardly be resisted. I wondered where I gained the courage to make these promises.

As the talk lengthened between the headman and my interpreter I felt more and more helpless and excluded. They both warmed to what was clearly to them an interesting if troublesome matter, centering, I suspected, on the obtuseness and probably the cruelty of the English.

It was all very painful. We were rowed out to the village. I was taken to the hut of Shin Yalat's ex-husband's family, which was now her family, though she was, of course, a Shan from the North and had not seen her own parents and siblings for years. The hut was crowded; all the family lived there, I gathered. Shin Yalat and JayJay were there. I tried to be pleasant to them but the boy was stiff-backed and hostile, the mother withdrawn and hostile.

The boy's response was direct and clear: "School opens on Monday. It is Friday, today. Shin Yalat and I will come back in time for school. I am allowed to come here with Shin Yalat when there is no school. Why are you taking me back?"

I felt years his junior. There was a clear-eyed directness about him that outfaced me, and he did have the better case to argue. My mumblings that "Everyone is worried about you" sounded weak and childish to me, but there was no other line to pursue.

As he gradually appreciated that I would not relent, that he had no choice in the matter, that Shin Yalat and the villagers were equally unwilling to help him have his way, and that he might even be taken from Chinaka without Shin Yalat, the tears came to his eyes. He did not wipe them away. He turned from me and asked Shin Yalat to take him back to Moulmein. His request was wordlessly accepted. She stood. He took her hand and glared, damp eyed, at me. They were ready.

I turned and walked out of the hut. My interpreter, who had remained silent during my talk with the boy and his mother, walked out after me. No one else followed. I waited on the walkway.

The headman spoke at length and quite loudly to Shin Yalat and her family. He knew he would be overheard by the interpreter and made no effort to lower his voice for confidentiality. My interpreter told me later that the headman had tried to reassure the family that I would not let the Cunninghams steal the boy, but my interpreter thought that he did not sound as if he had much confidence in this. He told them of my promise but did not seem to understand exactly what it meant—nor, it seemed, did my interpreter.

It was a disagreeable return journey. Shin Yalat and JayJay rode on the two horses to Mudon, the policeman and I leading them. I had thought the horseback ride might cheer up JayJay, but he made it clear that he had learned to ride, did not need to be led, and if I thought he would run away, by all means let me lead the horse as a punishment for my stupidity.

The return journey passed largely in silence. JayJay did not talk much to Shin Yalat and neither spoke to me. At Mudon, the policeman left us, riding one horse and leading the other, to return to Moulmein. On the train, the boy slept most of the time, cuddled up beside his mother. Her eyes were closed; whether she slept or not I was not sure.

I had time to think. The Cunninghams should not take Shin Yalat with them to England and Kenya, even if she would be welcome in Kenya, which was doubtful. She would be utterly lost in England with nothing whatsoever to do, isolated and superfluous. And seeing her in Chinaka made it clear that Chinaka must be her home. Setting any question of sentiment aside, she would be taken into her ex-husband's family in Chinaka, another mouth to feed but accepted because the husband's widow is, by custom, part of the husband's family. She could work with the other women in the few shoreside fields and in household duties, but she would be a substantial drain on the family. If JiHan were with her it would be very different. Soon he would begin to work as a fisherman. He was obviously strong and intelligent. He would make a fine fisherman, a productive and promising member of the village, the stuff of which headmen and village elders are made. With JiHan, Shin Yalat was an asset; without him, a customary obligation to be borne.

And letting sentiment seep in, the mother and child seemed

deeply attached to one another and the boy accepted and successful in Chinaka. Why not let nature rule? It would be cruelty to wrench the boy from his mother and surely it would confirm the emerging and occasionally expressed Burmese opinion of the tyranny and insensitivity of the Raj. Had we not undertaken to protect and respect their customary laws and their religious practices? Here was a deep-set custom, essential to family and village relationships, expressed in the life of the Buddha himself, the mutual obligations of the husband's family and his wife and children; and here was I even thinking of tampering with it.

My calming reverie was shattered by our arrival in Moulmein. The Cunninghams, Coleen and Bruce, met us in a company lorry. The boy ran excitedly to them. There were tears from Coleen. To my surprise, the Cunninghams seemed pleased, too, to see Shin Yalat. The same affection did not envelop me. My morning's hesitations and telephone calls had made them doubtful of me.

It was arranged that Bruce would soon call upon me to discuss the whole matter and the four of them clattered off in the lorry, Bruce driving, Coleen and the boy beside him, Shin Yalat in the rear.

* * * *

The memorandum came when I was tired. All I wanted to do was to sit on the verandah, have a whisky, perhaps another, talk to no one, not even to Veraswami, and go to bed, to sleep I hoped, and not to spend the night awake thinking how tired I was. But the memorandum came and demanded attention by its very bulk. Rangoon, in the person of one Douglas Sharp, had promised a Memorandum of Law to help me with the Cunningham Case; what had come seemed more like a legal training manual, a blow by blow description of the cases and the statutes, and, like all such, it was painfully careful to avoid any remotely helpful conclusions. But it did have the merit of honesty if not of brevity. There was a covering note which reproduced what appeared also to be the memorandum's final conclusion: "In sum, the current case law and statutes do not give any clear guidance in the problem you must decide. They tell you the principles to apply but not how those principles apply to your case."

In the covering note, Sharp added, though it was omitted from the memorandum, that I could rest assured that whatever I decided would certainly be severely criticised by the authorities in Rangoon, himself included, since it was a problem whose solution could not but alienate important interests in Burma, and that he

was entirely delighted that he did not have to make the decision himself. Solomon, he suggested, had it easy by comparison to Blair. As an afterthought he wished me luck, though where he thought I might find it did not appear. He requested that I regard this covering note as strictly a personal comment, not to be treated as any part of his official legal advice to me. He annoyed me, but I rather warmed to him.

I allowed myself the whisky and, as the sun began the rapid final descent typical in the tropics, I sat on the verandah, facing the bungalow, my chair tipped back, waiting to see if the fading light would give me some understanding of what the lawyers had to suggest. "The best interests of the child" was the phrase that resonated through Sharp's document. This must be given predominant weight, but other matters must be considered also. Parental rights were not to be ignored. Everything, so it seemed, was to be judiciously weighed, the child's interests being given predominance but balanced in some mysterious fashion against everything else. What a help these lawyers are!

Sharp was adamant that this lengthy memorandum was only a first installment; there was much more law I would need to know before deciding the case. All he had so far canvassed was English law, English statutes, and English cases. He would now promptly get about searching out whatever he could about Indian and Burmese law and about the proper relationships between English and Burmese law and practice in a case of the type I had to decide. But he did add one confident conclusion that confirmed my sense of being captured by the Cunningham Case: it was already clear to him that both in England and in Burma a question of custody of the type I faced could in the first instance be brought before a Magistrate's Court. There was no way I could shuffle the problem off to the qualified, certainly more qualified, judges in Mandalay or Rangoon. They, of course, could hear appeals from my decision but the general practice in such cases in England as in Burma was to give great weight to the discretion of the magistrate of first instance. After all, he, more than any more senior judges, would be close to the contending parties and would therefore, so it was argued, be better able to achieve this fine balance between many competing interests. I could have swallowed all this with less misery if Sharp had not managed to convey his amused satisfaction that the problem was mine, mine alone.

It was too late to try to master the details of his memorandum. The darkness had pressed the paper to my sweaty nose. I

would read it in the morning and then decide what should next be done.

* * * *

A most restless night. Never really awake and hardly asleep; the line between dreams and half-awake self-hatred wavering through the night. My dreams were of snippets of my own childhood interlaced by a waking sense of helplessness in being so futilely situated in Burma, neither writing nor learning, far separated from all that interested me in the world. And then in that last soft sleep before dawn, when peace comes to the troubled, I dreamt of the secure warmth of my mother's love, only slightly perturbed by my father's protracted military absences. I woke with the sense that Shin Yalat and JiHan were as one and that the lawyers' cases were as nothing to that sweet tie.

* * * *

The morning and early afternoon went in administrative trivia, the Cunninghams, Shin Yalat, and JayJay pushed from my mind by the warm certainties of my dream, and it was not until late afternoon that I gave Sharp's memorandum a careful reading.

Sharp's words recreated many of my repressed uncertainties. He told me a lot about the way the law, in particular English law, approached problems of adoption and custody of young children, but he also managed to convey an air of undisputable direction without openly so saying—the boy should go to the Cunninghams for reasons any sensible Englishman would know without having openly to labour them. He wrote with the educated young Englishman's typically patronizing attitude toward the Burmese. It seemed clear to him that, if the Cunninghams really wanted the boy, there were ample grounds for me to find in their favour, some quite legitimate and some less so, such as his heavy suggestions that, by virtue of the birth of the boy, sired other than by her husband, Shin Yalat might be thought unfit to be his mother; unfit, at least, if the Cunninghams were to be weighed morally in the balance with her as parents. He softened the blow, he thought, by speculating that no doubt she merely reflected the moral values of all Burmese women and that therefore this might be an unworthy individual moral assessment—which seemed to me rather to stress than to minimise the insult. His further innuendo that she might well know more than she had admitted about the earlier alleged burglary and theft seemed to me wild and improper guesswork.

But I could not dismiss all his memorandum so lightly. He did tell me a lot about the values that were brought to bear on these

custody conflicts in England. Much of what he wrote seemed sensible and helpful in my quandary. One comment in particular leapt from his neatly hand-written pages, so carefully and repeatedly marked "Confidential—Without Prejudice—Not for Distribution." It was this: "There was one proposal by the 1921 Committee which did not find its way into the report of the Second Committee that I believe has a lot of sense in it. It was recommended that the judge in an adoption proceeding avail himself of the advice of any reputable person who had experience in the instant case. The Committee assumed that this person would be some sort of public health officer, probably a woman, who would be at an advantage in a confidential interview. Why don't you enquire whether there is anyone in Moulmein who can serve you in this capacity?"

What an idiot I had been. Surely Dr. Veraswami would be able to guide me to people who had maturity of judgment and also already knew something of the life of the boy in his Chinaka and Cunningham settings. It was certainly worth the enquiry. In the end, it gave me my best insights into the extraordinarily difficult decision I faced, for the more I learned, the harder, not the easier, it became. And it was Veraswami himself who led me into these further decisional complexities.

I hurried around to Veraswami's bungalow in the late afternoon, unusually early for such a visit. Fortunately, Veraswami had returned home from the hospital before I arrived so that I was spared the awkward embarrassments of a meeting with his servants while his wife and children hid in anxiety. He greeted me effusively as usual, enquired if the sun was sufficiently across the yard-arm for a beer, and we sat to sweat and talk on the verandah, looking across to the hospital and the jail through the steaming undergrowth, the late afternoon shower responding to the remaining heat in the swiftly setting sun.

Yes, of course he knew the Cunninghams and JayJay. Had I not realised that the Cunninghams were one of the few European families that consulted him on a regular basis? Where did I think he got the money to keep me supplied in beer? And then, troubled by his own directness, "Of course, Mr. Blair, I am teasing, ass you know. It iss a privilege and one of my few pleasures that you feel at ease to visit me and consult me ass you do about yourself and your important work." His hand-waving took on great circular sweeps of benevolence and he rummaged about for more beer, so as to demonstrate what I already well knew—that he was pleased by my company, a sentiment I reciprocated with an intensity he could hardly know. Moulmein would have been impossible without him.

“Eric, I will do all I can to help you about the boy, his mother, and the Cunninghams. I know the problem you face. I have seen it looming, approaching inexorably, so it has seemed to me, for some time, ever since the boy was born—or even possibly before, to be precise, if you do not think I am as usual my overly boastful self.”

“Before JayJay was born? How could that be, Doctor? Not more of your Indian predestination, I hope.”

“Indeed not, no, not at all, by no means. Rather the common sense to which you English lay such frequent claim. You see, I attended Mrs. Cunningham’s accouchement when she first came to Moulmein.”

It took me a moment or two to understand what he was talking about. I had heard nothing of Mrs. Cunningham ever having been pregnant. Certainly she had never been so while I was in Moulmein, or rather, I never knew about it—and why or how should I—if she had. What Dr. Veraswami was telling me was that she had arrived pregnant, close to the date of expected parturition, she and her husband both worried that she should not have travelled out from England so late in her pregnancy, and that on arrival in Moulmein they had enquired who was the best doctor in the town and had taken the trouble to look behind the recommendations in the Club guided by skin colouration, to the realities of training, experience, and reputation in crises that confirmed Dr. Veraswami’s preeminence. And what was more remarkable, when the Cunningham baby died within hours of its birth and the difficulties of birth were such as to preclude Mrs. Cunningham from ever again bearing a child, they did not turn on Dr. Veraswami with accusations of incompetence, but rather recognised his skill and effort in their service and his regret in the baby boy’s death. So he had remained the doctor to them and their household, including Shin Yalat and her son when he was born, a few weeks after the death of the Cunningham baby. “I could not say, Mr. Blair, that the Cunninghams see me as a friend, but I do know that they trust me with their personal problems, medical and psychological, and that I am very glad to serve them. And they are generous patients. So please have another beer and forget my offensive joke.” A lugubrious stacatto noise, meant to be a laugh, escaped him.

“Psychological problems, you say, Dr. Veraswami. Of what sort?”

“I am not sure you should ask, my friend, and I am quite sure I should not answer—Hippocratic oaths, confidences of patients, and all that.”

I told Dr. Veraswami of the memorandum of law I had received from Sharp in Rangoon and of the fact that it was recommended by an English Committee, advising on matters such as I had to decide, that it was proper for me in my role of judge to consult someone who might be better able to find the facts I would have to weigh than I could by ordinary court processes, that I had come to him to seek advice about who in Moulmein might be helpful in this way, and that here he was, the obvious person, trusted by the Cunninghams and I supposed by Shin Yalat and certainly by me. Surely he should help me.

Veraswami was both silent and still—a most unexpected combination in such a bouncy, energetic person. I waited. The silence became difficult. I fidgeted, I suppose, which pushed him to a response. At last he did speak, but with none of the open directness I had come to expect. “I do not know. I am too tired to make up my mind now. If you will excuse me now, I will think about the matter; perhaps talk to the Cunninghams and Shin Yalat if I have your permission to do so, perhaps not. I shall let you know in a day or so if I think I can be of any help. Iss that satisfactory, Mr. Blair?”

I began to feel a pushy outsider, loading onto him what should be my burden. But surely the matter was too important for such delicacies. It would be best to take him at his word. I finished the remaining warmish dregs of my beer, stood up, said that of course what he proposed was most acceptable to me, and thanked him, perhaps too formally, for his hospitality.

“Oh, Eric, don’t be stiff and English with me. I am in doubt. I need time to think and perhaps to talk to others. I know how much you care about this decision and I am ass ever moved by your warmth of heart and sincerity of purpose. Don’t, as the English say, ‘treat me like company.’”

I had never before wanted to hug him—indeed, any male—but I wanted to then. Instead, of course, reflexes conditioned by years of constraint dominated my behavior. I offered what must have been a somewhat sickly smile, and said good evening.

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“It hass not been easy, not easy at all, quite difficult, but I have decided what I should do and I have the agreement of Mr. and Mrs. Cunningham and of Shin Yalat—JayJay, I did not ask. I will tell you everything I know and everything I think about whether the boy should stay with Shin Yalat or stay with the Cunninghams, but I will not try to decide this question. That iss for

you. Only for you. It is your burden, a heavy burden, and it is right that no one should share it, I think. But I will conceal nothing I know from you. And I think I can tell you in a sentence what the problem is—though not the answer to it—but the problem: the problem is one aspect of the question of cultural neutrality. Are there neutral principles by which you can properly decide the superiority of one culture over another? Or are the determinants of advantage and disadvantage themselves culture bound, culture determined, so that what is considered advantage and disadvantage is itself dictated by the competing cultures? If this be so, it is hard to see how you, an Englishman with your peculiar privileged view of the world, can at all fairly decide on the boy's custody between the Cunninghams and Shin Yalat, if his best interests are to guide you, for from the point of view of which of the competing cultures are those interests to be determined? How can you, how can anyone, know, if all of us wear these cultural blinkers? What an appalling problem for you, Police Magistrate Blair. No one really knows the answer, yet you must decide it in the case of the child of Shin Yalat. I will help you all I can, but I am quite delighted that the problem is yours, not mine."

It was not obvious to me immediately how Dr. Veraswami was characterising my task of deciding who should have custody of the boy, but I was much relieved by what he said. At the least it meant that I would have the guidance of a wise counsellor about matters other than the law, and though Sharp annoyed me by his arrogant assumptions about the Burmese and also, it seemed to me, about the likelihood that all I was looking for was the easiest way out of a politically delicate case, nevertheless he was obviously informed about the law and interested in its principles and origins. If, in remote Moulmein, I had to take on this sort of decision, I was relieved to have both Veraswami and Sharp assisting me.

I pressed Dr. Veraswami to be sure I understood the terms on which he would help me and the way he thought the problem of deciding on the boy's custody should be defined.

Veraswami insisted that he was unsure what he would do in my situation, but he trusted me in the sense that he believed I would do better the more I knew—he was prepared to complicate the problem for me, not to try to simplify it, which I took for a compliment. He claimed to be ignorant of the English and Burmese and even the Indian laws of adoption and custody but he hoped that what he knew of the Cunningham household and of Shin Yalat and the boy would help me.

"I don't know much about the law either, Dr. Veraswami, but

Douglas Sharp in Rangoon has been trying to teach me—at some length—and I think I understand some of it. Let me tell you.”

“No. Not now, Eric. Let us meet soon when we are not tired, as we both are now, and talk quietly without rush or hurry” His hands spread upwards and outwards in a gesture of leisurely reflection.

He was clearly right. I was burdened and anxious to be rid of the problem, grasping at straws to pull myself comfortably one way or the other. I needed time, ample advice, calm discussion, and balanced reflection so that I could with more inner peace withstand the harsh criticisms to follow whatever I decided. So we arranged what had surely not been done ever before in Moulmein, under the suzerainty of the Raj: we would meet late the next afternoon, an Indian doctor and an English Acting Superintendent of Police, himself the Chief Magistrate to boot, on the verandah outside the Police Station, overlooking the parade ground—in full view of anyone who cared to observe from the residential huts of the police on the other side of the parade ground, or had need to visit the police station—and talk as equals and friends into the night. It seemed a most revolutionary plan and I was delighted I had made it.

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We did attract stares of interest from some of the European and Burmese police, and of disapproval from two or three Europeans who chanced to visit the police station, but it proved a relaxed and helpful venue. Nor was there delay in our approaching the case of JiHan-John—I never could give the matter a single title in my mind.

“It is good of you, Dr. Veraswami, to play Solomon for me in this matter.”

“It iss not surprising, Eric, that you mention that name, Solomon, though I think the story you had in mind about him was a much earlier Indian folk-tale that the Jews liked. Something very like it iss often told in India and not about Solomon.”

My eyebrows must have expressed my scepticism; Veraswami so often told of what was earlier and better in the history of India than of anywhere else. Veraswami looked puzzled. “No really, Eric, I have read the story in the Book of Kings and it iss like many western Indian folk-tales, only, if I may say so without offending you, not ass subtle ass most of them. Perhaps I am quite wrong in one way about that—Solomon himself was the fifth counted son of David’s very many children, and David’s relationship with Bath-

sheba, except in his dotage when she prevailed unfairly on him to appoint Solomon his successor, does lend the story a reflected complexity missing in most folk-tales and, if I may add, in most English discussions of Solomon's alleged wisdom. He certainly had a scheming mother and seemed to inherit that skill from her. But all that does not matter now, not at all; what matters now is whether the story about him you had in mind, about the two women contesting, contesting bitterly, for the baby, is like Shin Yalat and Coleen."

I agreed that Solomon's solution to the problem I faced had crossed my mind, though I was doubtful how to apply it to present circumstances without being charged by my superiors with uttering threats to murder, which I strongly suspected they would see as grounds for a severe reprimand if not worse. Assistant Superintendents of Police, even when clothed in magisterial robes and duties, must not threaten to bisect a young boy with a sword, ceremonial or otherwise. Solomon's solution seemed for me a path away from earning a reputation for wisdom, as he had, and toward prompt dismissal from the civil service. I said as much to Dr. Veraswami.

"You take it too literally, Eric. If the story guides you at all, it is only . . ."—and his pudgy hands circled forward in search of a phrase—"as a metaphor, a test to help you, an idea, not a procedure. Why, not even the exalted Magistrate of Moulmein has unlimited authority of life and death as did Solomon." And he smiled happily at me.

"Please, Dr. Veraswami, I am not proposing to cut JayJay in half. To the contrary, I wish he were twins—preferably twins who disliked one another. But how does Solomon help? After all, the story has lasted over two thousand years, more if you are correct about its Indian origin—there must be some truth in it."

I cannot recall the words of the lengthy analysis of the story in Kings that Veraswami developed with obvious pleasure, but I do recall its broad thrust and a few of his phrases.

Most people, he suggested, read the story as literally as I had, whereas it had endured because it was a parable speaking to deeper truths than one prostitute's lies about another—for that is what both mothers were. No matter to which of the two women Solomon gave the baby, the child could expect no fine future as the bastard of an inmate of a brothel in Israel. Perhaps Solomon, if he had been as generous as he was supposed to be wise, should have intervened to arrange a more promising future for the baby. And it had been such a simple problem for Solomon, much easier than

mine: neither claimant mother had known much of the baby; it was new born to one of them; neither had demonstrated a caring capacity; the only tie of the two mothers to the child was that one had given birth to it and one had not—though each had on the same day given birth to a baby. That must be so, Veraswami stressed, for even in Solomon's kingdom, three thousand years ago, a doctor or midwife could tell whether or not a woman had recently given birth, so that Solomon would have no need of the threat of a sword to find any necessary facts unless they both had experienced parturition at about the same time. "So, Solomon, my friend, had it much easier than you. Neither Shin Yalat nor Coleen Cunningham is telling you any lies, so far as I know. Solomon only had to find out one fact and let his decision follow it, and he found a way to find that fact, or thought he did; while you, Mr. Police Magistrate, have a much harder problem because you know all the necessary facts and they don't clearly tell you what to do. Solomon's was a problem of evidence, yours is one of substance, an ethical decision—so very much more difficult."

"So, I have nothing to learn from that story to help me now, Dr. Veraswami?"

Veraswami's head waved from side to side in his distinctive gesture: perhaps yes, perhaps no. "Ass a literal story I have always been suspicious of it, Eric. Solomon may have shown statistical wisdom, sound gambler's instincts, since most mothers would prefer life for their child with another to the child's death, but he did not have to show any profound psychological understanding to know that."

"What, then, does it show, Dr. Veraswami? Why has the story lasted if there is no more to it than you say?"

"Because, my friend, it speaks, I think, to a deeper truth, harder to accept, but one which we all grasp within ourselves. The true mother does not mean the natural mother, the mother who gave birth to the child. Motherhood is more profound than parturition. The true mother is the one who would sacrifice herself, her own needs, for the sake of the child. It is a story about altruism, not parturition. The baby Solomon did not bisect was one 'mother's' possible means of escape from the brothel, a most valuable future asset. To be a true mother, so goes that parable of the wise Solomon, is to be prepared to deny oneself for the welfare of the child, and that denial can be shown by anyone who cares sufficiently for the child. Solomon may have got it wrong, it is possible, is it not, about who really was the baby's natural mother, but not, it seems to me, about which of the two cared most for the

child." Chuckling to himself, Veraswami added, "And, by the way, ass the story iss told, I have always thought that he did get it wrong. Have you met many Jewish mothers, Eric? I am not at all sure which was which." He held his right index finger vertically beside his forehead, and said, "But the point iss, whether or not, it doesn't matter, you see."

Veraswami's syntax had trailed off badly, but his theme grew more interesting. However, it didn't much help my decision, merely shifted its ground. And why did it matter whether Shin Yalat or Coleen Cunningham cared more than the other for the boy, and what about Bruce Cunningham's caring, which also seemed clear and strong—did that not count in the balance? These degrees of caring and altruism, should it be called for, spoke only, I suppose, to which would serve the best interests of the boy in times of crisis in his life and in the steady tenor of his growth.

These reflections recalled to my mind that Sharp's memorandum had suggested that the different "degrees of solicitude" of those contending for the child might be determinative. What an extraordinary idea! How would one measure such sentiments? Those who protested most powerfully? Those who wailed the loudest? But trying to think about different degrees of caring for JayJay pushed me to the further troublesome thought: Why should anyone want to adopt a child? I knew that many children were adopted and that sometimes adults fought bitterly over their custody. But why? To be solicitous of the child? To help the child? For the child's sake? For themselves? For their own advantage? But what possible advantage could there be in having to care for, and pay for, and shape one's life around, a child? On the face of it, it seemed a remarkably selfless act—altruism in powerful form.

It was surely one of God's more cunning jokes to link physical pleasure to procreation. He must have concluded that, absent such a powerful incentive, animals would not choose the altruistic path of child-bearing and child-rearing. And He must have concluded further that, among animals, men and women would need the largest incentive of temptations to procreation every day and night of the year, not just during brief periods like other animals. So God must have decided that no one would want to be a parent unless coerced to that role—and yet here were many people, not so coerced, fighting for the right to be parents.

Shin Yalat had surely not wanted to conceive when she copulated with whoever was his father; but from the child's birth onward she had devoted herself to the child, built her life around him. Now the situation had changed and she needed him more

than he needed her. If she were to live in Chinaka, life would be a great deal better for her with than without JiHan. So was it still altruism that moved her? She would hardly know. The deep imprint of genes over the millenia had shaped her behaviour to her child—who was sacrificing and who was being sacrificed seemed hardly relevant. And yet it was unavoidable, if JiHan were to stay with her, that his life would be narrowed for her sake. The sacrifice, objectively, would be his.

But even that possible insight didn't help much since it also seemed to me that the Cunninghams were in no objective sense altruistic in wanting to keep John with them. It was not that they wished to be generous to a child with ability and grace who otherwise would be an illiterate fisherman in a Burmese village—they wanted John. They wanted John because he was a fortuitous substitute for the child they had lost, a surrogate for their own child. The same kind of genetic imprint that was in Shin Yalat determined the behaviour of Coleen Cunningham and, I assumed to a lesser degree, of Bruce Cunningham.

I am told that among certain animals the mother will drive off the other children of the species so that she can suckle and care for her own. If necessary she will kill the others, the better to be able to rear her own. But if she makes a mistake and takes under protection a baby not her own—and apparently this does occasionally happen—then the infant she thus erroneously adopts will be cared for and fought for as her own. Genes do not recognise and protect genes; rather they use their host vehicles which are acculturated to protect their own genetic stock. The Cunninghams had made no mistake in taking JayJay as their own, but the cases seemed parallel. Between Shin Yalat and Coleen Cunningham, as loving mothers, there was nothing to choose. And there was no reason to think that Bruce Cunningham was any less a father to JayJay than if the boy were genetically half his.

I began to wonder if the whole analysis in terms of self-sacrifice for the sake of the child made any sense. At a certain level all motives are self-serving. If that be so, then in my obligation to judge between Shin Yalat and the Cunninghams, I should not consider the strength of their motives except insofar as they might work to the advantage of JayJay.

What sense is there, then, in this idea of "degrees of solicitude" for the child? Very little, I came to think. Such an idea might be relevant if one were contemplating whether JayJay would be neglected or cruelly treated by any of those seeking his custody; but plainly all three wishing to be JayJay's parent had deep affec-

tion for him, and his being neglected or treated cruelly seemed most unlikely whatever I decided.

JayJay's happiness seemed a decisional touchstone; but how to measure that? It seemed even worse than trying to measure the likely degrees of solicitude for him of Shin Yalat and the Cunninghams.

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In retrospect I remember our conversation that evening overlooking the parade ground as of a three-act play without a conclusion. The Solomon story helped to focus my mind more on the boy than on the adults contending for his custody. They had strong interests, of course, but, in the context of Veraswami's version of the Solomon story, theirs seemed secondary to JayJay's. On the other hand, in what seemed like the second act, Veraswami's confirmation of the views I had formed about the Cunninghams and Shin Yalat, the interests of these adults, the ties of love and service they had formed with the boy, seemed of predominant importance.

As I say, Veraswami's close acquaintance with the Cunningham household served only to confirm the opinions I had formed from my briefer contacts with them in Moulmein and in Chinaka with Shin Yalat. That John was a Eurasian seemed not to be perceived by the Cunninghams; that he was not their natural child seemed not to be noticed by them and certainly never acted on. I found it hard to imagine what different treatment the baby boy that had died soon after birth to Coleen could have received. They were loving, considerate parents. Indeed, if they were to be criticised as parents, certainly in the light of my own experience, it was for the very fixation of possibly excessive love on the boy—if love can ever be excessive. Certainly it can be smothering and inhibiting. But even here I had to admit that they were not excessively protective of the boy, to the degree of denying him growing adventures. After all, they did let him go with Shin Yalat to Chinaka on occasion, which I had no doubt they could have prevented; they did let him ride at an age when overly solicitous parents might have denied him that experience; they let him play freely with his European and Burmese peers, which few if any other children in Moulmein, European or Burmese, were allowed. And clearly they loved and cherished him. He was the very focus of their home, his needs timing their meals when this was possible, his presence in the morning in their bed most welcomed. Their care for his education and the growth of his person and character

seemed unqualified.

Nor could one, in fairness, fault Shin Yalat in her care of JiHan. Would it have been different if he had been her husband's child? How could I know that? How even could Shin Yalat know that? He obviously was not her husband's child. What the circumstances of his procreation had been I neither knew nor could enquire, but by no outward and visible conduct and by no word did she do other than serve and care for JiHan in Moulmein as an amah, in Chinaka as a mother—or so it seemed to me. Did she, in Moulmein, behave as more than an amah to JiHan? How would I know? Amahs often seemed to love the children they cared for with a love that was deep and enduring. The same could be said for, and was reported of, many English nannies. Should I ask Shin Yalat if she loved JiHan as a son or only as a child she devoted her life to? What a silly question. And how little I could build on the answer, whatever it was.

I asked Dr. Veraswami whether the boy had suffered any grave illnesses, my thought being that in such situations the depth of sentiment of Shin Yalat and the Cunninghams might be more manifest. "The usual childhood ailments, Eric. A few high temperatures. A few minor accidents." And then, seeing the point of my question, he added, "It has been my experience that both Shin Yalat and Coleen were in anxious and loving attendance whenever I arrived and that the boy had gone to whichever of his three parents—for I am sure that is how he sees them—whenever he was hurt. Eric, I think you will find it very hard to distinguish between them in degrees of solicitude for JayJay once you recognise that you English and the Burmese have very different ways of expressing love. The only additional expression of love that I can see between them is that Shin Yalat undoubtedly conceived, carried, and bore JiHan, and that the Cunninghams did none of these things. Many would think that that was the decisive difference between them. Now tell me, we have put it off perhaps too long, what does your much vaunted English law say about these things? Does it make that difference between Shin Yalat and Coleen the central guide to your decision? If so, you will not need anything like Solomon's wisdom to solve your problem and to earn the hostility of the Cunninghams and, no doubt, of your seniors who rely on you to do what important commercial interests in Burma want you to do since, as I well know, the Cunninghams are important and influential people."

"I have Douglas Sharp's letters and memoranda from Rangoon in the office, if you would care to glance through them," I an-

swered, and I rose from my seat.

Veraswami raised a courteous palm toward me. "No, Eric. Let me look at them after you have decided the case. I could be no help to you with the law. But it might help me if you could give me some rough understanding of how much guidance the law gives you in your decision. Are there past cases and opinions of wise judges to help, perhaps to control, what you should do?"

"Would that there were, Dr. Veraswami. There aren't, but a few do help a little, I think."

I did my best to summarise what Sharp had written to me. What it came to was that English law had, surprisingly, not approached these problems until the mid-1920's, and then only by way of two Committees of Enquiry leading to the first Act of Parliament on adoption in 1926. This Act of Parliament had just received the Royal Assent a few months before Veraswami and I sat talking beside the parade ground. Previously, these matters had been, in law, only questions of inheritance of property, or they had been confined to litigation among the very wealthy concerning wards in Chancery. No case precisely like the one I faced had been decided, so far as Sharp knew, but there had emerged the general view that the governing value was the best interest of the child balanced against what seemed like quite strong rights of natural parents to the control and custody of their children—the cases told me, in other words, what I already knew. The natural parents had a strong claim; they could lose it by neglect or cruelty, in which case the State might assume their responsibilities and might even give them to others. Natural parents could, of course, also lose these rights by agreeing to give them away, apparently even to sell them, and then the matter would be a simple one of whatever the agreement said—provided the agreement was clear on the assumption or retrieval of custodial rights; but there were no litigated examples of these, just assumptions from general principles. If parents or a parent let others, say relatives, care for their child over a substantial period, pay for the child's keep, and educate and care for the child, then there were cases in which the natural parent or parents could lose their custodial rights, the child becoming the child of those who raised, educated, or cared for him. But there seemed to be no English case in which this payment, this assumption of responsibility for the child, had led to a change in custody before, as with Shin Yalat and the Cunninghams, the natural mother was also caring for and living with the child. Still, the principle might be more important than this difference of detail.

"Why, Eric, did England have no statutory law on adoption

until this year? Did not India have some law on this matter much earlier, and Burma I suppose? And what about other countries? Why does the so-called Mother of Parliaments move so late to this question of mothering? You would think she would be quick to worry about her children."

"Sharp claims ignorance of what law there might be in Europe other than in England. He tells me that America moved earlier to some case law and statutes; he thinks it was in the aftermath of their Civil War, and he thinks the 1914-1918 war explains why England moves in the matter now. I am not clear about the connection but he suggests that the mass of surplus children after these wars, the desire to get them out of institutions, the sheer cost of the institutions, and the need of families to try to replace their slaughtered adolescent children, all together formed the pressure that led to the law's interest in adoption. It is interesting if speculative.

"As to India and Burma, Sharp is swift to claim ignorance, but I have asked him to give me advice and I think he will. He has suggested that Indian law is well developed concerning the adoption of male children, but mainly in order to provide for male children to pray for the souls of their departed fathers after their death. It sounds like one of his many prejudices, but I am unsure. Anyhow, he will let me know, he says, and also about Burmese law. You see, Dr. Veraswami, I am not even sure whether English or Indian or Burmese law governs in these matters. Sharp is also to advise me about that.

"In the end, Doctor, I fear the legal directions will come to this: the best interests of the child weigh most heavily but the rights of the natural parent or parents are to be given very great weight. Indeed, they are to be protected unless the parents have been cruel to the child, have neglected the child, have displayed some moral fault or faults making them unfit to be parents, or have entrusted the child to others who have formed familial relations with the child which also must be greatly respected. Shin Yalat would seem in law, at any event in English law as Sharp advises me of it, to be entitled to remain JiHan's parent and to keep custody of him unless it can be said that by her actions she has entrusted the child to the Cunninghams to be treated as their child. If she has, then I have to begin that awful process of trying to decide what is in JayJay's best interests. How, in Heaven's name, can I know?"

"So, Eric, where the lawyers lead you iss to a procedure of thought, issn't it? They tell you what you may think about and

what you may not—but for this custody question there iss not much to leave out. Over all the best interests of the boy; but then you must not overlook the powerful claims of the natural mother, just because she iss the natural mother, nor of the Cunninghams, because they have for several years treated the boy ass their own, looked after him, paid for him. All these matters you can weigh ass well ass any middle-aged Indian doctor with a taste for London, but perhaps I can help you with the question of the boy's best interests—not the answer, I don't know that—but the question."

"Does it not come to: where do I think the boy will be happier?"

Dr. Veraswami was clear that this was the wrong way to approach the matter, though I found his argument hard to follow. The defect in this approach was that it was too positive, too confident, he thought. It was like looking for a world of lasting love. It claimed too much for the life of anyone. "You are too young to know yet, Eric, and I can only sense the truth of it without feeling it, but I suspect that those who tell us that love and happiness are the lasting satisfactions do not know much of what they say. I have watched older married people—it iss clear that the fever of love is not upon them—but there iss a quiet mutual support, a friendly affection, a comfortable tolerance which seems to me to be a much warmer and more lasting sentiment than love. Love, if one iss very fortunate, grows into affection and becomes enduring in the change. No, it iss not happiness we must hope for for JayJay, it is a quiet acceptance of the limits we all feel and the pains and disappointments we will all endure no matter how well we do. Love becomes affection, ambition becomes satisfaction in one's work. And that iss, I think, the real anodyne for the human condition—work—the only anodyne, the only sure comfort."

Work in Chinaka for JayJay would be completely predictable and utterly reliable: the work of a fisherman and probably the responsibilities of an emerging leader of the village. But how dull, how repetitious. Work in Kenya for JayJay would be a small school and the often painful task of growing up to colonial and English ways, certainly less supportive and easy than the paths, or rather paths and channels, of a Chinakan childhood and youth. His work later in England also seemed clear in its early years. He was intelligent and energetic; the Cunninghams would press him, if he should need pressing, which I doubted, to University and a profession. Conformity and achievement, intellectual and physical, would be expected of him, while carrying the burden, not concealed by the excessive politeness of his peers, of a different-coloured skin—so

that he would never quite belong. If work was the anodyne, he might need a lot of it if I set him on the English path.

Distracted by these speculations, I missed the beginning of what Veraswami was saying. "I'm sorry, Doctor, my mind had drifted."

"Perhaps it iss ass well that it had, perhaps it should stay away. I am not at all sure whether I am being at all helpful; but I wonder should you consider something else we have not talked about—I think of it ass a doctor, but I suppose it iss true for any profession and many avocations. Perhaps the boy is creatively gifted, one cannot be sure, but he iss very promising, do you not think so? And if he iss then his happiness doess not, I suppose, matter ass much ass his having the opportunity to develop those gifts. If so, I suppose, you must send him off with the Cunninghams and leave Shin Yalat in failure, to be merely tolerated in the village."

"But is it not important to have creative people in a Burmese village, Dr. Veraswami? Could he not help his people there too?"

"Not very much, I think, Eric. A few more fish, perhaps better boats or houses, perhaps a more peaceful existence, but it iss hard to see how he or anyone else could make much change. Some educated Burmese will no doubt lead their country away from England and to political independence and, one hopes, economic prosperity; but they will come from the cities and from the schools and from English universities—not from fishing villages."

* * * *

"It is interesting, most interesting, that the boy may go to Kenya, near where it all began."

"Where what began?" I asked.

"You know, Mr. Blair, the human experience, you, me, us, *Homo* supposedly *sapiens*, issn't it so? I am told that some three million years ago the first *Australopithecus africanis* began to wander the grassy savannas where you may send the boy."

I supposed that courtesy precluded asking Veraswami directly what he was going on about—but why not? "Tell me, Doctor, what has our long-named ancestor to do with JayJay?"

"I think it quite relevant, quite, perhaps even a fundamental point; tell me if you do not agree." He got up from the table and walked over to the balcony so that he could prop his rump on it and address me even more directly. When Dr. Veraswami decided to engage one in close conversation, he took it literally. "The point iss that we are not here for happiness, or of a certainty not only for

happiness, or even for our own best interests, even if we were sure what they are. We are a species, the same species, you and me, though you English may find that most hard to agree to; and that species is distinguished from all others in that it has developed a most unusual brain. The early African hominid of which I spoke was distinctive in that it moved about carrying tools—other animals used tools, but it took them about where it went. And by means we only poorly understand, in three million years it developed an astonishing reasoning and communicating capacity from which all that is distinctively good and bad in man emerges. The boy, JayJay, is a part of that species, as much a part as all others over those millions of years, and he has to grow so that the species will grow, and I find it interesting indeed that he might go back to where it all began, if you decide he shall live his childhood with the Cunninghams.”

It remained far-fetched to me, but I could see how an argument could be made that my decision about the boy was part of a larger cosmic pattern involving everyone, though it did not comfort me much. Dr. Veraswami saw that I found his anthropological meditations unhelpful. “I will not continue to trouble you with these possible sillinesses of mine, Eric, but at least one thought from the biologists may help you. Thomas Huxley, who you will remember supported Darwin when his views of man’s origins were most unpopular, said that we must learn what is true in order to do what is right. I think that the truth of man’s origins and the development of the species remain important to many more decisions than you might think, including whether JiHan stays or John goes.

“Yes, yes, whether you like it or not there is one more species point that my conscience tells me I must press upon you about your decision. It is probable that the growth of the brain in the hominids, of which I spoke, came from their behavior, from what they did, and not from any chance mutation of their genes. It is clear to me that people learn and grow by doing, by trying—not by mere acceptance of what others do and try. The human condition is a struggle, and I do not mean a struggle to survive, I mean a struggle to grow. And I am not at all sure, quite unsure in fact, that it is possible to grow in that way as a fisherman in the delta.

“It is behaviour that determines growth, Mr. Blair, not the other way round if you follow me please. You will have noticed, I am quite sure, that when people wish to pray, whatever their beliefs, Hindus, Muslims, Buddhists, Christians, even Jews, they behave in very similar ways. Oh yes, I agree to be sure that they do

not behave in identical ways; some prostrate themselves, some do not; some bend their knees while some regard genuflection as a sign of idolatry; some clasp their hands together above or in front of their heads, and some do not; most bow their heads. But my point is that those are the sorts of things that all people do when they pray.

“You would know a person was praying if you knew nothing whatsoever of his religion, had never seen one of his tribe or cult or persuasion before. One type of behaviour for all people is praying. It is like laughing or crying—common to all, all humans. Though some animals also laugh and cry, they do not pray, or so it seems to me. And what I am trying to say is that the praying shapes their beliefs, gives form and importance to them. The behaviour, the praying, in all its forms makes people more perceptive of matters larger than themselves, makes them think less selfishly, makes them contemplate the force they choose to call divine and their place in the human story. I am sorry to sound like a preacher, Mr. Police Superintendent, but you will surely see that it is the praying that fashions the intensity of the belief, not the other way round, not the belief which compels the praying.”

I had to admit to myself that the point Veraswami was making had some truth in it. Smiling, laughing, praying, working might well be what most fashioned life: the behaviour forming the culture, the action shaping the belief; but it was not immediately apparent to me what this had to do with the topic of our late evening’s discussion.

“What has this to do with the boy, Dr. Veraswami, even if you are right? I agree it is an interesting idea.”

“This, I think. You give the boy more opportunities to develop through many different forms of behaviour as a European than as a Burmese fisherman. He can grow more because he will be expected, encouraged, pushed and prodded to behave in more ways. He will grow more. That is the point.”

“One minute you have him a cell in the evolution of a species; the next like a plant to be grown in a hothouse so that he will spread, swift and large. He is just a little boy, Dr. Veraswami, and perhaps will grow best unprodded beside his mother. Many little boys do. And now you are asking me, as I understand you, Dr. Veraswami, to treat the boy as if I were considering the placement of an animal in a laboratory designed to make the largest contribution to all the other animals there, though none would make any more than a miserably small contribution.”

“It is worse than that, Eric. A miserably small contribution to

all the other animals there and all those that will be there in the future.”

“If you are right, Doctor, should I be here in Moulmein? Should you? Should anybody?”

Veraswami bounced up from the balcony, arms thrown upward in delight. “You mock me well, Mr. Blair. Certainly I don’t think you should be here, except perhaps to talk to me. And I am sure that I should not be here, except perhaps to be of some slight help to you. Though this evening I think I have failed even in that. You please, please, must not think that I have been arguing that you should give the boy to the Cunninghams or to Shin Yalat. I find it a very troublesome problem. But I put these ideas, such as they are, in the hope that they will help you to ass full an understanding ass you can have and will need.”

We were both tired, tired absolutely and of the subject; it seemed too hard, beyond the decision that anyone should have to make for others. Dr. Veraswami made one last effort cryptically to sum it all up. “Ass property, the boy belongs to Shin Yalat; even though the Cunninghams have contributed to his life they did not give him life. If life is a search for happiness, my guess is that he will be happier in Chinaka than in London—though I certainly would not; if the purpose of life is to contribute and to take resigned comfort in the contribution, then he must go with the Cunninghams.”

As we said goodnight, I found what most stuck in my mind was the vehemence of Dr. Veraswami’s preference for London over Chinaka, were he the child at issue. And yet here he was, slaving away at the miserable jail hospital in Moulmein, when he could, I assumed, have been in London, had he wished.

He walked off across the parade ground, or rather around it. I knew the feeling. I always preferred the circuit to the walk across. I have never felt at all at ease, even when directed to be so, on a parade ground, and to Dr. Veraswami it must have felt even more incongruous.

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I sat for a while on the verandah after Veraswami had left. What I found myself concluding from his involved talk about the human species, and the ways in which we live and grow, was that I might be facing a choice between JiHan’s happiness and his obligation to pay that small token of tribute to the development of the species that some can make.

Perhaps the solution to my problem might be found in what I

had so far seen as its greatest difficulty. The very distance between the two cultures of upper middle-class England and of a Burmese fishing village had until now intensified the challenge to me; but that very distance might also provide the clue to the better decision.

First, that distance must have been as clear to Shin Yalat as it was to Coleen Cunningham. The Cunningham household demonstrated it and lived it every moment of the day and night. Shin Yalat could hardly have failed to recognise that her son was being brought up in a very alien culture, a culture from which she was excluded other than as an observer and as a foreign servant. She would not have phrased the fact of her increasing separateness from her son in that way, but she could not have been blind to what was happening to him and to her relationship to him.

But more important, the two cultures represented what some would see as polar opposites in the relationship between the individual and the group. Success in the Burmese village lay in conformity, in being deeply a part of the group; the group would grow through the collectivity. It was of course true that, in many respects, the English culture, which JiHan would join if he accompanied the Cunninghams, also had its rigid expectations of how one should behave, how dress, how speak, with whom associate; but it also, more perhaps than any culture other than the brash and as yet uncultivated Americans and the even more uncouth Australians and Canadians, encouraged and gave its highest respects to the creative and uniquely contributing individual. Individual thinkers and leaders, provided they reasonably conformed in outward behaviour—in dress, speech and manners—were the fuel of English science, of English letters, and of English industrial strength. By contrast, the Burmese fishing village of the delta was the epitome of the life of the group, where group development was the only acceptable agent of change.

This did not mean that the Chinakan fisherman might not know a great deal. Some thought that he might know as much about the complex life of the Bay of Chinaka as any modern marine biologist—he might know as many facts. But it was knowledge of a different order, a knowledge shared with all the fishermen of the village. It was not the knowledge of the individual discoverer.

All this should not weigh much in my decision, I supposed, unless I believed that JiHan might be one of the chosen few blessed with capacities for individual creativity, in which case the warmly supporting group of the Burmese village would dampen

and drown those qualities. He might well be happier in Chinaka, but the chance of his there being, even in small part, individually creative seemed quite unlikely.

But how very unhappy JiHan would likely be in England. I remembered the miseries of my prep school and of Eton, and I too had been seen as clever and independent, and hence the appropriate butt of schoolboy cruelty and the affected irony of the less secure teachers. JiHan would be seen by some as a "Boong," a native, a lesser breed without the law, a monkey dancing to the tune of the English organ grinder, but never quite making it. Was that the misery to which I was to commit this warmly happy boy when the charm and ease of Chinaka, and a role of leadership in Chinaka, awaited him?

* * * *

To my astonishment it was the Officer in Charge of the Imperial Police in Burma on the telephone. He assumed I knew what he wanted to talk to me about and seemed hesitant, almost shy, in talking to me. "I hope you don't mind my calling you on this matter, Blair?"

"Not at all, sir. Certainly. What matter, sir?"

"That child and the Cunninghams, of course. But if you think it improper for me to discuss it with you because it is *sub judice*, I want you to know, Blair, that His Majesty's Government is watching the matter closely. I don't wish to influence your judgment, believe me, but you had better know the range of problems you have in hand."

The fan was rotating more noisily than usual in the office at the railway station where I had been summoned for this telephone call. I had gone there expecting more advice from Sharp, not the embarrassed animadversions of the most senior officer of my service in Burma. As I say, the telephone always terrifies me—the two words, telephone and terrify, run euphoniously together and resonate in my mind as I clutch the instrument to my face—but the authoritative rumblings from Rangoon made me realise that I was in the eye of the political hurricane and had better concentrate with some determination on what was being said.

He put it circuitously but vigorously. The last thing in the world he would ever consider doing was interfering in the exercise of a judicial discretion by one of his subordinates. I must understand that the great reputation of English law, at home and abroad, was built on that secure impartiality of the English judge and his sturdy independence from political interference. Neverthe-

less—and the word seemed to crop up quite often in his conversation—nevertheless, I must realise that the case I had to decide might have important consequences quite beyond the parties before me. He phrased it well; I could hardly forget its force: there were some with commercial interests of importance to His Majesty's Government who would wish for local support of a major industry and of those who run it; but also of considerable importance was the growing nationalist sentiment in Burma, feeding on the same turmoil as in India, a sentiment which would delight in making a *cause célèbre* of my little matter by suggesting that even Burmese children were not safe from the larcenous ways of the Raj. So what was important was that justice should seem to be done, that no suggestion of political influence should be thought to have been brought to bear—and it was obvious that I should ensure that whatever words I uttered in the Court should not be capable of misconstruction to that end, and yet at the same time that “the right thing should be done.”

Douglas Sharp would, of course, be ready to guide me on the law, but it had been concluded in Rangoon that I should not be assisted in the actual hearings by any legal representatives beyond those the Cunninghams might decide to employ, lest it be thought by the Burmese Radicals that I was being unduly influenced. On the other hand—and he seemed to have as many other hands as nevertheless—he had given directions that I was to be given priority use of the telephone and it was expected that I would, over the next day or two, before I heard the case, consult regularly with Sharp and other legal officers in Rangoon, who had been working diligently on the relevant law and would advise me on it.”

“Do you understand? Do you have any questions?”

I did and I did not.

“Oh yes, one other thing, Blair. Captain Taylor will be coming to Moulmein tomorrow on a general inspection of your section. He will be no trouble. He will come back straight after the Cunningham matter is settled. We need someone there to report back promptly on the political and commercial implications. No interference, you understand.”

He regretted that he would be away from Rangoon for the next few weeks, but he had no doubt that he could leave the matter safely in my able hands. The peremptory quality of his farewell made me think that he shared my doubts in his concluding statement.

"I hear you got your marching orders from i/c Burma Police, Old Boy. He told me to call you."

Sharp infuriated me sometimes and I told him so. I told him that it had been impressed on me that I was not confined to his advice but that I could search more widely in the legal affairs section in Rangoon or even Mandalay if I wished. And I thought I did.

"Oh, don't be so stuffy, Blair. I'll play the charade with you if you want."

"It's not a charade. I need technical advice on the law, not schoolboy teasing, Sharp. I don't really understand all the implications of the difference between adoption of a child and custody or guardianship of a child. I want help like that; not your brilliant repartee. So, if you will help me, do so."

Sharp seemed chastened but not troubled at all by my words. Or rather it seemed to me he was suddenly quite troubled, sensing that I was wrestling with the case, not just trying to find a discreet way through it.

* * * *

Moulmein was by Burmese standards a large town with a population of about 60,000, if one included Indians, Chinese, the army, and the Europeans. Probably about 45,000 were Burmese, so that Moulmein was on the itinerary of every wandering dancing and folk-tale acting group in Burma. While I was in Burma there must have been a *pwe*, a performance by such a group, two or three nights almost every month, though less frequently at the height of the rainy season. Occasionally, I would attend their performances and stay for a short time. I did not know the stories they mimed well enough to follow them in detail, and my Burmese was certainly not adequate to the task. The dancing, though graceful, had a repetitive pattern that I soon tired of. The dancing girls were young, extremely supple, and graceful, but I had no need of stimulus for my sexual inclinations; they were enough trouble without going out of my way to encourage them.

Moulmein had a high reputation among the wandering dancers and actors because of a natural theatre near to the town. The river Salween made a firm U curve close to the main road to Mandalay. The actors and dancers would pitch their wooden boards and their bamboo and canvas stage at the curve of the U, close to the road, so that with generators and simple arc lamps their Bamboo U would serve as well as Shakespeare's Wooden O, which after all, had been the primitive site of some great plays. The audience would gather on the road and the side of the road, squatting and

lying on mats, or sitting in a few scattered chairs, the close view across the narrow river lending to the stage and the performers on it an air of a separate and magical world.

From a police point of view the *pwes* caused no trouble whatsoever, though some of the Europeans expressed anxiety. The *pwes* blocked the roadway and stopped traffic, of course, but in the evenings that hardly mattered; there was so very little traffic to stop, and they never generated any disturbances.

I was surprised when the Mayor, Ba San Chi, asked me if I would join him one evening a few days hence at a *pwe*. There seemed no reason to decline. We were on cordial if distant terms and this gesture of personal hospitality should not be rejected. He told me he would meet me at the *pwe*, if I did not mind, since he had to be there earlier to welcome the actors and dancers and see that everything was in order—apparently this was a group of some distinction.

I should have known. I did know as soon as I arrived. There was a large gathering at the road across from the Bamboo U and, as I edged through to the seats obviously ready for the Mayor's group, it was clear that it was more than a hospitable gesture that had motivated Ba San Chi. There was another guest, well known throughout Burma, and Ba San Chi should have told me of his likely presence when he invited me.

I had seen the man's face often in the Rangoon papers. It was a most unusual face, the shiny light brown skin of the privileged Burman, neat symmetrical features, and then the distinctive curved indentation, as if from a hatchet wound, slicing from above the right eye over the bridge of the nose and down under the right eye high on the cheek bone. It gave his face at once a sinister and a sincere air. It seemed to be both a straightforward injury and a mark of cunning and perfidy. I recalled his name before the Mayor introduced him to me—U Tin Hlang—and remembered that he was one of the leaders of the G.C.B.A. For the past year one could hardly pick up a Burmese newspaper without seeing his face.

He expressed the formalities of salutation in tones appropriate to my public school rather than to a Burmese politician. But he softened the formality beyond the "How d'y do" to an assertion of pleasure in meeting me, as if he had heard of me before. I asked what brought him to Moulmein.

"You do, Mr. Magistrate. You and the Cunningham Case." I tried to raise an enquiring eyebrow. "Mrs. Shin Yalat's solicitor has briefed me, don't you know. I plan to call on you tomorrow to give notice of appearance."

I turned to the Mayor. His party, it seemed, consisted of three, and he seemed anxious to separate himself from his guests—somewhat shamefaced, as if he were conscious of having taken advantage of me unfairly, which he had.

There seemed nothing for it but to sit down, be as silent as courtesy would allow, and escape when I decently could. Clearly I should not be seen plotting with Shin Yalat's counsel, particularly such a notorious counsel. So I tried to turn my attention fully to the performance, which was already under way with much banging of drums, the euphonic wailing of a high-pitched wind instrument, and, of course, total disregard for European tonal scales. A dancer was twisting prettily in a tight-fitting, long, severely cut, red silken skirt and loose white open-buttoned tunic top, her extraordinarily long fingernails turned back on flexible hands almost touching the arms above her wrists.

My mind wandered from the performance. The presence of U Tin Hlang in Moulmein should not be taken lightly. Why had Rangoon not warned me that he might involve himself in the case? Perhaps they didn't know.

I knew, of course, that the G.C.B.A. was an activist group of Burmese plotting independence, but regularly forgot what the acronym stood for. With effort I could work it out: General Council of Burmese Associations. It was regarded as a seditious organisation in the Club and I was glowered at as inept whenever the G.C.B.A. was mentioned—surely the police should have the guts to protect us from such rabble rousers.

There had been little nationalist activity in Moulmein during my period there, though some turbulence had occurred in Rangoon in the form of Burmese riots against Indians that, as I understood it, had an underlying political significance—the aspiration of members of G.C.B.A. for independence both from England and from India. They apparently feared—and with good cause, I later came to understand—that if India gained independence they would remain as they had been under English rule, a part of India. The grant of a dyarchy to Burma in 1923, the same form of dual government that had earlier been given to India, by which there were local elections to the legislature as well as English nominations to it, with power being apparently shared but in fact remaining firmly within the control of the English authorities, did nothing to reassure activist Burmese of the imminence of self-government.

I had never actually talked with a senior member of the G.C.B.A. What little I knew came from the Rangoon and Mandalay newspapers, which made their leisurely way to Moulmein bear-

ing a heavily slanted Raj perspective on the news, from the wireless broadcasts which also originated with the administration in Rangoon, and from the more neutral comments of Dr. Veraswami, who was interested in both the Indian and Burmese nationalist movements, though not as a participant.

In the Club there was talk of the Burmese "barristocracy." I gathered that a coterie of Burmese had eaten their dinners and passed their examinations for one or other of the Inns of Court in London, had hobnobbed with members of the English aristocracy and upper-middle-class, and had returned to Burma with a strong sense of their equality, at least to anyone in authority in Burma. The view was strongly affirmed that the pusillanimity of the Rangoon and Mandalay authorities succoured this barristocracy and spelt the end of all that was sensible in the relations between the races ordained by God.

The dance stopped. The stage was cleared. There are no intervals in the European sense in such *pwes*, but rather breaks of action of a length to suit the stage of the performance, the weather, and the inclinations of the actors. Politeness moved me to try to make courteous chatter with Mr. U—the weather, the performance, and suchlike. He smiled and responded briefly, but made no pretense of wishing to talk about anything other than the case that had brought him to Moulmein and had brought me into his company—again a circumstance he made no attempt to conceal, saying he had asked the Mayor to invite me so that he could talk to me about the case.

"Surely, Mr. U Tin, it is wrong for us to discuss the case out of court. You tell me you will be appearing on behalf of Shin Yalat; I will listen carefully to you at that time, but not now, not about the case."

"You have such difficulty with 'Mr. U Tin.' Perhaps you would care to call me 'Mr. Lang,' which was what was preferred in England, or 'Tin' as a sort of Christian name, which also found favour in England. But on the question of our talking about the case, have your own way of course, but after all you have talked of it a great deal with Rangoon, even with the i/c Imperial Police Burma, I am told. Why not with me? If Douglas Sharp can go on and on to you with his smart repartee, why not me?"

"He was not trying to influence my decision—you would be trying to."

Utter delight spread over Hlang's or U's or Tin's bisected face—whatever his name—and I realised what a ridiculous thing I had said. He was obviously not uninformed about my relationships

to police authorities and to the legal section; it was ingenuous for me to pretend. When the next interval came we made our way through the sweaty squatting throng of Burmese and slowly walked the mile or so back to my bungalow.

I listened carefully to him. It seemed to me important that I should see the case in its full political significance once it had been raised to that level. What U Tin Hlang had to tell me was not really at all complex—if the Burmese boy were given to the Cunninghams, it would look to the villagers like simple larceny.

“I had thought of arranging for the dancers tonight to present a folk-tale which is very popular in the country for reasons you will understand. It would have made the point dramatically for you, Mr. Blair, that I wish to make about the boy JiHan. But the Mayor thought you would be revolted by its indecency. He has most odd ideas about the tastes of English gentlemen, but I did not argue with him. I think you would have enjoyed it. It is called ‘The Young Man Who Changed Sex.’”

U Tin Hlang fell silent. He knew how to lure one on. Curiosity compelled me to ask him what the story was about.

Apparently a young man was powerfully attracted to the daughter of a rich man who kept her in golden but secure custody, in the manner of the folk-tales of the world. The rich man denied the young man's suit and turned him away. The young man went to a sorcerer who prescribed a potion that allowed the young man to change into a young woman and back again. So equipped, he changed to a young woman and gained access as a servant to the rich man's house. Diligence, intelligence, and a clear sense of purpose were rewarded by the servant's becoming the personal maid to the rich man's daughter. The potion was then further tasted, and the servant returned to his original state of virile young manliness, so that instant love was generated and promptly consummated between the rich man's daughter and the young man. (I could see why the performance might be somewhat unusual to European eyes; the Burmese like realism in the presentation of their stories.) The daughter became pregnant. Losing his nerve, the young man ran away. The daughter told all to her father. He refused permission for her to marry the young man, the father of the child. Instead, he married her off to another rich man, a friend of his in a neighbouring village, telling him the whole story. The child was born. The young man, the father of the child, petitioned the Princess Learned-in-Law for custody of the child. The Princess Learned-in-Law is, of course, the ultimate authority on all questions of law in Burma. The Princess Learned-in-Law denied the

young man's petition; any child born in wedlock is conclusively presumed to be the son of the husband no matter what the evidence to the contrary. "Every Burman knows that story, Mr. Blair; every Burman approves of its message."

"So, in your eyes, I am dealing with a Burmese child simply being stolen by a childless European couple, is that it, Mr. Hlang?"

"What I think doesn't matter, Blair. I am trying to tell you what the Burmese in general will think, and it is jolly decent of me to be taking the trouble to inform you in this way. And, as you know, English law has a similar presumption, though it is not so compelling. The boy may look half European to you but for my purposes he is entirely Burmese; the English court will be stealing a Burmese child."

U Tin Hlang went on to argue that even the more informed Burmese, less moved by the Princess Learned-in-Law, would hold a similar view: they had often heard English authorities say that local customs and local laws would be respected unless they were in some sense repugnant to ethical and legal values held to be inviolable by British law. That could hardly be the case here. Adoption was better known in Burma than in England, which only this year had its first adoption law. How could it possibly be said that the boy could be wrenched from his mother?

"So you think, Mr. Lang, that the Cunninghams should not take the boy and educate him as you have been so well educated in England."

Again a look of unqualified delight spread over his beaming round face. "Oh dear no, not at all, not at all. I hope you give him to the Cunninghams. Probably it will help the boy and it will be a great help to our movement. We need that sort of stimulus now. I will be most appreciative though I will denounce you from every box I can find to climb onto."

He saw my annoyance. I did not reply. I was outraged that everyone seemed to be using the child, his mother, and the Cunninghams for their own ends.

And then he continued: "You see, Mr. Blair, this is a wonderful case for me. I shall speak movingly to you in the court, words that will be interpreted by those who report me as powerful attacks on your employers. And then, whatever you decide, I shall win the case. If Shin Yalat keeps the boy it will be due to my compelling advocacy, another victory for the G.C.B.A. and for my position in it; if the boy goes to the Cunninghams the G.C.B.A. will be strengthened greatly and I will be seen as a hero for so gallantly struggling against such determined wickedness as you have demon-

strated. It is a great case, a great case for me.”

* * * *

Veraswami's instructions had been quite clear: do not talk to the boy about whether he would prefer to grow up as a Burmese fisherman or as an English gentleman, but talk to him so that you will be able to decide whether he would prefer to grow up as a Burmese fisherman or as an English gentleman. Quite clear, wonderfully unhelpful but quite clear. Why should I talk to the boy at all? How could he know the answer to that question? I could see no point in embarrassing the boy and even less in embarrassing me. I was never any good at light chatter with children, and this seemed hardly the occasion for light chatter even if I could manage it. And how could I ask him whom he loved more of the adults contending for him? And in any event that seemed less important than the equally hopeless task of trying to assess the intensities of their love for him. Why had I let Veraswami talk me into this dreadful interview with JayJay?

It had been a single sentence of Veraswami's that had persuaded me. "Perhaps it iss improper to involve the boy, perhaps unfair, but I suppose you must try if only to be sure for yourself that he cannot help in your decision."

"But it will upset him, Dr. Veraswami. Deeply, I should think."

"Of course, whatever you do he will be deeply disturbed by one or another parting. He iss a strong and resilient boy, I am sure. Your interviewing him will make little enough difference to him in the long run. You should do it for yourself, Eric, even if you hate it, ass perhaps you will—or perhaps not; he iss a rather sweet young man, easy to talk to, even for me."

The Cunninghams and Dr. Veraswami all thought I should talk to the boy in some informal setting, perhaps while swimming at the Club or perhaps playing French cricket with him before an evening meal at the Cunninghams. I had decided that the boy was old enough to talk to me, if talk to him I must, in my office, where he would know I was involved in serious concerns about his future, even if he did not understand their full import.

I dredged my memory for how I felt and thought at his age, but the only impression that welled up was of adults not taking me seriously, trying to make baby jokes of things I thought important. In my few earlier contacts with JayJay in Moulmein and Chinaka and on that hostile journey bringing him and his mother back to Moulmein, I had gained the sense of a maturity beyond his years,

so that the formal setting of the office seemed appropriate to me.

The Cunninghams agreed, with marked lack of enthusiasm, to my request that John should be brought to see me; they mistrusted my judgment in what they saw as a simple decision, obviously in John's best interests, and they feared—as I also feared—that I would, quite unnecessarily and for my own purposes, upset the boy. But they were sensitive and, I thought, wise in having Shin Yalat accompany him to my office and in making no attempt in any way to prepare him for the interview. I knew this to be so from the moment I saw the boy and his mother walk past my window to the entrance of the police station. He was clearly pursuing with joy an engaging adventure—a surprise which could only be to his advantage, since such was the case with all surprises given him by adults during his life. He was a much loved boy and showed it in the confidence and directness of his every movement.

Shin Yalat sat quiet and still outside my office. I am sure she knew the purpose of the interview but she preserved the calm immobility of countenance of a Burmese woman on formal occasions.

How should I start the conversation with the boy? The weather? School? Yes, that seemed a possibility. "I want to talk to you, JayJay, for a while, to get to know you better. I hope you don't mind?"

A smiling shake of his head did nothing to put me at ease. By contrast, he seemed quite at ease, the hostile attitude he had demonstrated on the forced return journey from Chinaka being either forgotten or controlled. His eyes wandered around my office and lighted on the line of rifles locked in an extended rack along one wall.

"Why are those guns there, Sir?"

"If we have to arm the police, say to chase some dangerous criminal or to shoot a tiger that has been raiding a village, I unlock the rack and give them the rifles. I have one of the keys to the rack; so does each Duty Sergeant."

"Could I hold one of them, Mr. Blair? My father would let me, I think." The statement was saved from prevarication by the note of extreme doubt in his voice.

Despite my strong inclination to humour him in any way that I could during this interview, letting him play with an unloaded rifle did not seem a good idea and I told him, truthfully enough for our joint purposes, that it was beyond my proper authority to take the guns from the rack except when there was clear need, and that each time the rack was opened and a rifle taken out a report had to be submitted to Rangoon.

"Really, to Rangoon, even when you do a little thing like that?"

"Issuing the guns is not such a little thing, JayJay. They are very dangerous."

He smiled in a friendly way and wandered over to the window of my office and looked out. Nothing was happening. A few police sitting outside their huts on the other side of the parade ground, but nothing to hold his attention. The silence lengthened. "I think I would like Shin Yalat to take me home now, please."

I asked if he minded staying with me a little longer, to which he gave a somewhat neutral assent.

"Do you remember when we first met at Chinaka, JayJay?"

His face brightened. Of course he did. What fun it had been swimming for all the tins I had spilled in the lagoon.

"And do you remember when you . . . we failed to solve the mystery of the burglary?"

That too he remembered and had enjoyed. He had told me how it had happened. He was not sure I had believed him.

I assured him it was as good an explanation as I had; I knew none better. But I wasn't sure. Was he?

"Of course, yes, did not the mark on the shutter and the footprint outside prove it?"

I yielded that it was persuasive evidence. What was becoming even more clear to me than I had previously appreciated was that I was dealing with a child of capacious mind and retentive memory.

He was smiling, friendly but slightly bored, helping me to make conversation, polite but disengaged. We talked of school, of cricket, of horses, of fishing in Chinaka. I would advance each subject; he would respond openly; I would let it tail off. He liked school, though he sometimes found it very dull and obvious. Horses were super. Fishing at Chinaka was great fun. He was polite, occasionally fidgeting and wandering about the office, friendly, but slightly bored, and we were getting nowhere.

Each time I mentioned the Cunninghams I rather dampened the ease of our communion by the formality of my reference to them—Mr. Cunningham, Mrs. Cunningham—but I found it hard, situated as I was, to talk of his father or mother, which they were not, unless I were now laying the foundation of my belief on which the law would later make them so. And how to refer to Shin Yalat other than as Shin Yalat bewildered me. Then, with inner horror at what I heard myself saying, I blundered directly to the issue.

"Have you thought what will happen to you if Mr. and Mrs. Cunningham leave Burma?"

"I will go with them."

"But what about Shin Yalat. What if she can't come with you?"

"Of course she can. Why shouldn't she?"

"Well, perhaps she wants to stay in Burma, in Chinaka. She would not find it easy to live in England or Kenya, you know."

"Daddy and Mummy would look after her. She would look after me as she always does."

"You won't need looking after much longer. You'll be off to boarding school soon. You will very soon be looking after yourself. Then what is Shin Yalat to do?" And then he must have realised from my face or my demeanour that this was no idle conversation but a matter of deep concern—that the pattern of his life might be shattered and that our conversation had something to do with it. His eyes filled with tears though no noise of pain escaped him. "They wouldn't be so cruel, I am sure." But the last phrase had an uncertainty similar to that he had expressed about his father's view of his freedom of access to a rifle. Cruel or not, he suddenly knew what was upon him.

And now there was no possibility of his making an easy exit. He walked, baby footed, to the door of my office, opened it, and ran crying to the arms of Shin Yalat.

I think but am not sure that I saw them both to the door of the police station. All that I had learned was that, whatever I decided, the boy would be scarred by it. But it was also clear from our conversation, as well as from everything I knew and had heard about JayJay, that the odds were that he would grow up to be a fine Chinakan fisherman or a fine English gentleman. And no compromise was possible.

* * * *

The evening before the hearing I dined alone at the Club. Captain Taylor was there, but we both thought it better for us not to dine together.

After dinner I walked round to Dr. Veraswami's bungalow to tell him of my talk with JayJay, of the unexpected interventions of my superiors in Rangoon, and of U Tin Hlang.

I did not stay long with Dr. Veraswami. I knew it was necessary for me to try to order my thoughts on the law so that I could be ready to listen with understanding to whatever would be said to me tomorrow. But I found myself complaining somewhat childishly to Dr. Veraswami about the extent of pressure from outside that was being brought to bear on me.

"It is quite maddening, Dr. Veraswami. Whatever I do will be thought corrupt: bowing either to political pressure or to pressure from commercial interests."

"So it iss, Eric. You can't avoid those suspicions. It iss even hard for you to avoid the reality of being improperly influenced, let alone the appearance. You will just have to try to set them aside." He waved my superiors and the G.C.B.A. away with a slow sweep of his hand. "But, of course, it will not be easy."

There was a reflective silence between us, broken in time by Veraswami recalling some words of an English playwright, T.S. Eliot he thought, that the greatest sin is to do the right deed for the wrong reason. "You may well be thought to have sinned after this case because you did the right deed for the right reason, Eric. The wrong reason will be presumed, issn't it!"

I was not at all sure I knew what he meant. Was he suggesting what he thought was the right decision? At all events I knew he had more confidence in the sincerity of my effort at impartial judgment than did Sharp and the others in Rangoon, and that comforted me. On second thought, perhaps the problem was that in Rangoon they did have a sense of the risk of my independence of judgment, and that was what troubled them. It got too complicated by half. I had better fix my mind on the boy, his mother, and the Cunninghams and do what was right in my conscience and to the devil with their politics, even if that meant doing what I concluded was the right thing for the right reason and yet being thought a spineless flunkey in the doing.

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As I walked home to my bungalow, and for the next hour or two, I tried to draw into some focus my understanding of the law I would have to wrestle with tomorrow. The facts concerning JayJay and Shin Yalat and the Cunninghams now seemed clear to me, and so did the commercial and political interests warring around them, but in the last resort the relevant law surely had a lot to do with what I must decide. I was not a saint sitting in the wilderness deciding with wisdom on abstract principles of justice; I was a junior magistrate, untrained, prone to error, uncertain of my judgment. I had to seek what guidance I could from established law. Here is how I understood the law before the hearing.

Burma had a well-developed law of adoption because a Burman Buddhist was unable to make a will; his only way of influencing the passage of his property after death was by adopting those he wished to benefit. Adoption in Burma required no court hearing

and no formal registration, but it did require consent to the adoption by the natural parent, parents, or guardians of the child, and the consent of the child if of a sufficient age. It also had to be made obvious that the adopting parents intended the child to inherit; this had to be clear to others in the community—after all, that was the purpose of Burmese adoptions, inheritance.

Under Burmese law JayJay could hardly be adopted by the Cunninghams. Shin Yalat obviously did not consent, and under Burmese law her consent could not be dispensed with.

The Guardians and Wards Act of 1890 was an Indian statute which, of course, applied also to Burma as a province of India. Any time the custody of a child was at issue, including when an adoption was contemplated, this Act applied. It made the best interests of the child the controlling consideration.

The Indian law on adoption, in particular the predominant Hindu law, differed greatly from the Burmese law on adoption. Indian law provided for adoption of males by males solely for the purpose of arranging lineal succession and for the new son's necessary activities in the funeral rites for the father. None of this seemed applicable in Burma, since it was clear that Burmese customary law and not Indian law governed adoption questions in Burma.

English law had recently, very recently, been changed. A few months earlier England had passed her first Adoption Act. Previously all "adoptions" had been informal or contractual, and all that were ever litigated were questions of inheritance and of custody or guardianship. Under the new English statute, Shin Yalat's consent to the adoption would have to be proved, unless the Cunninghams could show that a *de facto* adoption had taken place. This would seem unlikely in that the Cunninghams and Shin Yalat had all contributed to the rearing of JayJay. Therefore, under English law, Shin Yalat as the natural mother would have her rights as a mother protected unless it could be shown that she had neglected JiHan or been cruel to him—which she had not.

The English law of custody or guardianship was less formalised. It had grown in Chancery for rich wards of Chancery and was a free-wheeling, unencumbered, discretionary body of law in which "the best interests of the child" were the paramount consideration, despite the extraordinary difficulty of defining what that meant.

Custody or guardianship, of course, is only temporary. It can be challenged at any time, certainly by a natural mother like Shin Yalat were custody of JayJay awarded to the Cunninghams. By contrast adoption is as permanent as the legal relations springing

from natural birth.

That is where I stood, with, however, one complicating factor. The law of adoption I should apply was clearly Burmese law since JayJay's birth was in Burma, and I was precluded by both English and Burmese laws from treating him as other than a legitimate child, the son of his now dead Karen father, since he had been born in wedlock, despite the obvious fact of his partly European parentage. Under the law of adoption, then, the Cunninghams had little chance of becoming the boy's new parents. But they hadn't asked me for an adoption order, rather for custody of the boy so that he might lawfully accompany them to England and to Kenya. Indeed, had not Shin Yalat taken the boy to Chinaka without their permission I do not think that the matter would have come before me at all. The Cunninghams would have simply taken him away with them, leaving Shin Yalat to whatever remedies she could find—and there would be none. No, perhaps that was unkind; I had no reason to doubt that the Cunninghams would deal fairly with Shin Yalat, including taking her with them if she insisted on that—which, of course, she would not.

In briefest form: I could treat the matter as a Burmese adoption, in which case JiHan would stay with Shin Yalat, or I could treat it as simply a question of custody, in which case the best interests of JayJay would govern if I could assess them. My Court of Summary Jurisdiction was not bothered by forms of action; that is one reason why the English statutes on adoption and custody gave these matters to courts of such lowly jurisdiction—so that the family realities rather than the legal forms could govern. If the Cunninghams were given custody of John, then, in due course, some years later, an adoption could be formalised in England.

So the difference between adoption and custody might be at the heart of the matter. Suppose it had come to me as a custody question, in another way. Suppose the Cunninghams had decided to make their home permanently in Burma and had wished to send JayJay to an English public school and Shin Yalat did not wish him to go. Or suppose Shin Yalat had decided to remarry and settle with her husband and JiHan away from Moulmein. Or suppose the Cunninghams for good cause had decided to discharge Shin Yalat, or she had decided to leave them, and she proposed taking JiHan with her back to Chinaka. In all these situations the problem would have come before me just as a custody question; I would have had considerable discretion under the Guardians and Wards Act to decide in JayJay's best interests as well as I could determine them. But if the matter had the permanency of adoption

then it seemed that under both English and Burmese laws Shin Yalat would be unlikely to be deprived of her parental rights.

Yet was it not self-deceptive, bordering on the fraudulent, to think of this as other than an adoption? Whatever the technical legal forms, once the Cunninghams and JayJay were lawfully in England and then Kenya and then England, there was very little likelihood of Shin Yalat's ever seeing her son again, whether or not the Cunninghams later pursued the formalities of adoption. What faced me lay on the border between adoption and custody; what was becoming clear to me beyond doubt was that I did not wish ever to become a lawyer.

And yet there was one last possibility that Sharp insisted I should keep in mind. Under the new English law of adoption, and applying as best one could some of the earlier statements by judges in custody cases, there did seem one realistic way in which the Cunninghams might be granted parental rights over JayJay. There were some cases where natural parents had let their child be looked after for a considerable period of time by others, often relatives, and then sought by habeas corpus to have the child returned to them. Courts in such cases had sometimes ruled against the natural parents, and awarded parental rights to the family with whom the child had been placed, finding that the ties of love formed during the protracted entrusting of the child to that family should not be broken. Sharp thought the same argument could be made about the hybrid adoption-custody case I faced with JayJay. There were troubles with this argument, it seemed to me, and Sharp reluctantly agreed. It went beyond any existing English or Burmese decisions, for in none of those cases had the natural mother been in residence with the family to whom her child was "entrusted," and it hardly seemed right that a Moulmein magistrate without legal training should take to himself the right to extend the law in this way—even if it did make sense. Shin Yalat was with the boy as much as were the Cunninghams. Of course, they had paid for his keep and his education, and a mercenary law might regard that as relevant, but I found it hard to think it so. Still, I had to agree with Sharp, this did give me one way to go if I permitted the Cunninghams to take JayJay with them when they left Burma, and without having to pretend that it was merely a question of his temporary custody.

* * * *

My office was spacious for one but cramped, very cramped, for six. Yet, if we trooped into the courtroom, all hope of informal

communication would be lost, and it seemed to me utterly necessary for me, if not for the parties contending before me, that I should be able to talk with personal meaning to them. Perhaps I deceived myself. Perhaps it was just like many other adversarial decisions in which one must win and one must lose—nothing can be said to comfort the loser, and the winner is delighted to hear the result he wants to hear and is interested in nothing else.

We gathered in near silence, with words only of formal greeting and courtesy. Captain Taylor and I had been talking perfunctorily before the Cunninghams arrived, what about I do not remember, but certainly not the case I had to decide.

I must give Taylor his due of circumspection; he most carefully avoided, from the moment he arrived in Moulmein, giving any hint of his own views about the matter, succeeding, somehow, in leaving me with the firm impression that whatever I decided would be wrong and that its error would be precisely, fairly, and clearly reported to Mandalay. Throughout the hearing in my office, he preserved an interested silence, a focused immobility, his only movements being the necessary mopping with his handkerchief at his brow and the open neck of his khaki shirt.

It was indeed fiercely hot. As the Cunninghams, Bruce and Coleen, arrived, and then U Tin Hlang shepherding Shin Yalat, the clouds gathered and released a tropical storm. Sheets of water were hurled onto my office, so that the shutters had to be closed if we were not to be inundated. The weak rotary fan in the ceiling struggled hopelessly to move the hot and humid air. The brutal heat and the strained faces of the people before me gave the scene a cataclysmic air. It had to be a tragedy for some in the room, and I had to be the agent of their despair. The decision was mine, inescapably, and as Dr. Veraswami had rightly said, "it iss a difficult decision for you, Mr. Blair, ass difficult ass you will ever have to make."

When one leaves the tropics one forgets the noise of a tropical storm; the visual memory of the mass of falling water remains with me, but I find it hard to recall the sound other than that it was loud. I do remember that it was not easy to make oneself heard in my little office that afternoon; ideas with which I had struggled to my moral limit had to be offered in a shout. There was no doubt it was an unhelpful venue.

My memories of that afternoon are dominated by U Tin Hlang. Coleen Cunningham did not speak at all. Shin Yalat was silent and self-effacing, as if she herself were on trial for some offence. Bruce Cunningham said that he had only one point to add

to our many earlier conversations. It seemed to him on reflection, he said, "that it would be a rotten thing to do, having treated JayJay as a European child for seven years, educated him as a European, given him the expectation of a prosperous English future, to walk out on him now. It would be as if we had used him as a toy for seven years, now to be thrown aside. That really would be the ruthless Raj Mr. U complains about."

That was all that was said for the Cunninghams. They were not represented by counsel, unless the presence of the taciturn Captain Taylor could be regarded as representation. They relied on what they knew I knew of the whole matter.

By contrast, U Tin Hlang, in representing Shin Yalat's interests—or were they his own?—moved with the easy assurance of one at home in the courtroom, confident of the righteousness and persuasiveness of his cause. He knew that it was not customary to appear robed in a magistrate's court but, equally, he knew he had a right to appear robed, and he did so—in the gown of an English King's Counsel, though the heat and humidity led him to eschew the full wig to which he was entitled.

I had gathered from observation of the Courts of Record in Rangoon and Mandalay that this form of dress was acceptable in the tropics—gown but no wig. And it made sense since very little indeed need be worn beneath the gown. But such formality was unnecessary, almost incongruous, in a local magistrate's court, before a judge dressed as a police lieutenant.

U Tin Hlang gave an admirable performance. He was attentive to his client, solicitous of her comfort, and trying to consult her—or at least to appear to be consulting her. To the Cunninghams and Captain Taylor he was formal and correct, not offering to shake hands but obviously ready to reciprocate precisely any courtesies they might extend. But there were none; we were all anxious to have the hearing done with and were not at ease in such matters, as was our English-Burmese silk.

U Tin Hlang brushed aside Bruce Cunningham's suggestion that it would be a "rotten" thing for them to abandon the child now: "Mr. Cunningham should have thought of that when he and Mrs. Cunningham so greatly interfered in JiHan's life without bothering to find out from his mother if the child could become their child."

U Tin Hlang's submission on behalf of Shin Yalat must have occupied half an hour. Despite the surroundings and the humidity, it was easy to listen to. He spoke clearly, fluently, gracefully, in low key, without rhetorical flourish but with force. There were, he as-

sured me, only two themes in his submission, and each was sufficient to justify, nay to compel, the retention of custody and guardianship of JiHan by his natural mother, Shin Yalat. His first submission would be that the best interests of JiHan would be served by leaving him in his own country with his own people; his second submission would be that the law gave me no choice in this regard, that under Burmese law there was no question of shifting custody in such circumstances as faced the parties in this case, and that English law and the frequent statements of English political leaders joined in affirming the respect English law accorded to Burmese customary law insofar as Burmese matters were concerned—and JiHan and his mother were certainly Burmese.

I do not recall the details of his arguments. I know I found them very strong. He carefully avoided any hint of the immediate political significance of the case and gave the impression that it was his deep concern for the Burmese villager that led him to represent Shin Yalat. But his peroration did have political overtones, suitable for publication as it stood in the Rangoon and Mandalay newspapers; it was punctuated with statements from the House of Commons, as well as from leading English administrators in India and Burma, stressing their respect for Burmese law in relation to indigenous Burmese matters. He concluded: "You must do what a village headman would do in this matter. Only if there were clear conflict between English law and Burmese law would there be possible propriety in a contrary order. There is no such conflict. Therefore, may it please the Court, I submit that the custody of JiHan should remain where natural law and Burmese law both say it should remain, with his mother."

At last the Cunningham case was before me. I must decide it. I had, if the truth be known, made up my mind before U Tin Hlang had spoken; but I had hoped that he would say something that would make my decision seem clearly right or clearly wrong. In the latter case, I believe, I would have changed my mind. But nothing new had been said; it had all been said before that dark and steamy afternoon in my office.

Decision could no longer be deferred. The rain drummed on the shutters; the room began to stink; the air had not as yet been cooled at all by the rain; and the fan struggled on with its unequal task. I found breathing difficult. To speak, certainly to speak loudly enough to be heard, it was necessary consciously to draw breath. I seemed lost not only as to what to say but as to the very mechanics of saying it. Perhaps the best course would be to give my decision in a sentence and offer no reasons for it; Taylor would

have less to work with and no one else in the room would hear more than the decision, whatever I said.

But one cannot be that weak. I would not allow moral cowardice to lead me to dodge trying to give the reasons for my decision. I began haltingly, outlining what I had gathered about the law from Rangoon as well as from U Tin Hlang, and what I had done to inform myself about the facts of the case. Tension increased; it was as if I were torturing them. Why not get it over and done with. So I opened my mouth, drew a breath, and, of course, swallowed nervously, wrongly, and precipitated a fit of coughing from which the only words that emerged were a hoarse, "What I have to consider above all else are the best interests of the boy . . . and therefore . . ." and the choking cough returned in breathless force.

* * * *

My lungs got no better; the bombing no less—a routine of unproductivity. Though what I read to such of those on the Indian sub-continent as cared to listen was nearer to the truth about the war than what they would elsewhere hear, it remained propaganda, an encouraging mixture of exaggerations and half-truths. But gradually the momentum of the war was shifting to us. The Battle of Britain was long past. The Russians had lumbered to our side. The buzz bombs had not yet started their crescendos of death. It might take a long time to win this dreadful war but the ultimate result seemed clear enough. Japan was making no further headway in the Pacific, which must mean that the overall balance there too would gradually tip in our favour. But the killing continued, not the least in the saturation bombing of the industrial cities of the Ruhr. All this, in its minor details, sugar-coated for Indian consumption, I read nightly on the BBC.

My routine was firm. There was no need to rehearse what I had to read each evening. A reading through to myself just before the broadcast, mouthing a few phrases, sufficed for such clarity of diction as I could summon. I never had understood why it was thought that Eton, followed by five years in Burma, fitted me to read the news to the Indian sub-continent; but mine not to reason why or what or how.

The date has stuck firmly in my mind; it was the twenty-fourth of December 1944. The evening bulletin that I had to read to the disinterested Indians, who wished only for independence from the Raj, read in part:

The marshalling yards at Hamburg were struck again yesterday in a massive daylight raid by American B-29s and English

DeHavilland twin-engine light bombers. Six of our planes failed to return. Fires continued to burn in Hamburg through the night. Severe damage was inflicted on Germany's heavy industry and transport systems. It is regretted to report that Group Captain "JayJay" Cunningham, who was in command of the DeHavilland flight, was shot down, presumed killed. "JayJay" Cunningham, D.S.O., A.F.C. and bar, Croix de Guerre, was one of the aces of the Battle of Britain, a Spitfire pilot who converted to service in a bomber squadron and later to its command. The Prime Minister expressed his personal grief in this sad loss of "one of the very finest and bravest of the few."

I managed to stumble through the reading. I was haunted by the vision of JiHan, now aged twenty-five, throwing out his nets in the bay of Chinaka, illiterate, ignorant, and alive. Would anyone think to tell Shin Yalat?

APPENDIX BLAIR OPINION

This matter comes before me in a complex form. I have had the assistance of the Legal Affairs Section of the Imperial Police in Burma on the law I should apply, and this is, of course, known to the parties to this action. The technical form of action is a petition by the plaintiff, Shin Yalat, for custody of her child, and a cross-petition by the defendants, Mr. and Mrs. Cunningham, for adoption or, in the alternative, for custody.

I shall refer to the child, the object of these petitions, as "JiHan," since he has never been christened, though it is a matter of common knowledge that he is known to the Cunninghams and to the European community in Moulmein as "John," or more colloquially, "JayJay."

I shall not set out the facts at issue in this case; they are well known and there is little disagreement about them between the parties, apart from one matter of fact which I shall discuss in a few moments. But generally it is agreed that Shin Yalat has cared for her child with love and solicitude, and that the Cunninghams have also treated JiHan as their child, also with love and solicitude. In effect, for seven years JiHan has had the best of both worlds—a loving natural mother and loving adoptive parents, all in the same household. But this situation cannot long continue since Mr. Cunningham has been promoted by his employer and transferred to Kenya via home leave to England. Shin Yalat has been invited by the Cunninghams to come with them in a domestic situation but

she does not wish to leave her home in Burma and resettle in Kenya and then, in all probability, in England.

Shin Yalat's position is simple. JiHan is her son. Her husband is dead. In accordance with Burmese and particularly Karen custom, she and her son should join her husband's family in Chinaka and live there.

Likewise, the Cunninghams' position and the reasons why they took no legal steps to adopt JiHan are simple: under Burmese law it was not necessary for them to adopt the boy; under English law adoption was not possible until this year. But JiHan has been treated as their son since his birth and, they argue, this must have been obvious to Shin Yalat, who acted like any other amah, many of whom come to love the children they care for. Burmese adoption law fulfills different, testamentary, purposes, so the Cunninghams did not think it necessary to adopt JiHan. In this country, however, Shin Yalat's long acceptance of the entirely public arrangement that JiHan be treated as their son is tantamount to the mother's consent that the Burmese law requires had the Cunninghams pursued adoption processes in Burma. In sum: the Cunninghams have always seen JiHan as their son John, treated him accordingly, and been treated as parents by him. Shin Yalat's long acceptance of this situation, the Cunninghams contend, precludes her from now denying that JiHan has been adopted.

It falls to me to decide whether the boy stays with Shin Yalat or goes with the Cunninghams.

I have tried to discover JiHan's own preference in the matter. It is a grossly unfair question to put to a seven-year-old boy, even one as mature as JiHan. He wants no cessation of the present arrangements and is wrenched cruelly by the threat of their disruption. I sense that he would most prefer to accompany the Cunninghams, whom he sees as his parents, and for Shin Yalat, whom he also sees as his mother, to accompany them and him. But even in his childish world he realises, I think, how lost she would be in Kenya and then in England. At this point, his emotions overcome him and it is improper for me to seek to cast a heavier burden of decision on him.

So, assisted by the Legal Affairs Section and by the advice on the law given me by Shin Yalat's counsel, Mr. U Tin Hlang, I turn to the law. I shall not rehearse its details in this opinion; I have added an appendix, setting out the relevant law—this appendix was not prepared by me but I have relied on it. I am not trained in the law; yet it is my duty to find my way through it to a decision in this case. It merits mention, however, that many commentators on

these areas of law—on matters of both custody and adoption—are of the opinion that laymen should be involved, as I am, in deciding these questions.

It is appropriate, I am advised, for me to set out those aspects of the law that weigh with me.

Seeing the case before me solely as one of custody, I think there can be no doubt that JiHan is and always has been in the custody of Shin Yalat. Further, she has neither by action nor by neglect justified any interference by any court or any person with her custody of JiHan.

Seeing the case as a question of adoption presents larger difficulties. The Cunninghams, by caring for JiHan throughout his life, by treating him as their son, by loving him, have in my view acquired what the law calls “standing” to argue before this court that they should be declared the adoptive parents of JiHan. They did these things, held and expressed these emotions, to the knowledge of JiHan’s natural mother, openly and without concealment—indeed with pride, since JiHan was known widely as the Cunningham boy. Obviously, Shin Yalat has a powerful claim to retain her natural rights as mother and to deny parental rights to the Cunninghams. So, in the matter of the law of adoption, I must decide which claim predominates.

Posed in this way there can be but one answer: the claim of the natural mother should predominate. And, as I read the advice given to me by the Legal Section, that must be the result, and I cannot interfere with her maternal claim and consider JiHan’s “best interests” unless Shin Yalat has by some action—the traditional ones being mistreatment, neglect, or abandonment—given me the right to interfere and consider what is best for her son. But such actions by her are not present; the only possible action by Shin Yalat that can qualify her claim is her “entrusting” the boy to the parental care of the Cunninghams, thus letting them form a parental relationship with the boy and he one with them.

Having thought a great deal about the matter, I now find there has been a sufficient “entrusting” of JiHan to the Cunninghams for me to consider the question of the boy’s best interests as part of my deciding on his adoption by the Cunninghams. I most readily admit that I have been told of no case in England or in Burma precisely applicable to the case before me to support finding an “entrusting” of JiHan to the Cunninghams; I have had to go further than the English cases have yet reached. They have found such a case against the natural parent only when he or she has left the child for a substantial period with those seeking to adopt, so

that independent ties of affection have been formed. Here there was no such separation between Shin Yalat and her son; he was never with the Cunninghams alone, apart from her, for a protracted period. But, notwithstanding the difficulties in this area, I now decide that, given the very different culture in which Shin Yalat saw her son being raised, given the chasm of difference between the patterns of their lives, there was such an "entrusting" of her child to the Cunninghams, to act as his parents and to form ties of mutual love with him, that I must properly face the question of JiHan's best interests.

I will not labour the matter. I do not know whether JiHan will be happier in Chinaka or in Kenya and then in England. Whatever my decision the boy faces grief. But even for the future, after the immediate pain has dissipated, I am incapable of predicting his happiness. He is an intelligent child. He has much to give. I have come to the view that his larger fulfillment will be achieved with the Cunninghams and I so order.

I am told that the form of my order, should I decide the case as I have, is to deny Shin Yalat's petition for custody and dismiss also the cross-petition by the Cunninghams. It seems to me better that these relationships be formally settled as soon as the Cunninghams reach England, while they are on leave and before their posting to Kenya.

No judge could be other than troubled deeply by whatever result he reached in such a difficult case. I therefore direct that the boy JiHan shall not, on pain of contempt of court, be removed from Burma by the Cunninghams until Shin Yalat shall have had the opportunity to seek leave to appeal against my decision to the Supreme Court of Burma. Hence I stay any decision in the case before me for one month, order that JiHan shall remain in the custody of the Cunninghams for that month, and request them, though here I clearly exceed my judicial authority, to treat Shin Yalat as kindly now and in the future as the cruel circumstances will allow.

Selected Annotated Bibliography

For those who wish to pursue the legal issues raised in *The Best Interests of the Child*, the following is a short guide to the case law and literature.

I. ENGLAND

A. Case Law

Lyons v. Blenkin, 23 Rev. Rep. 38 (Ch. 1820) (suit in equity). A widower had entrusted his children to their maternal grandmother's care; upon her death they had passed into the custody of an aunt. Altogether the grandmother and the aunt had provided for their maintenance and education for more than ten years, the court, influenced by the extent to which the expectations of the children had been formed while in the custody of the aunt, denied the father's application to regain custody. In the opinion of the Lord Chancellor,

Nobody can doubt that if I give a provision to your child, it does not give me or anyone else a right to control your care of her; not at all; but on the other hand, if when she is young I was to give her a considerable maintenance during her infancy, which you could not have supplied, and a large fortune afterwards, and you the father permit her to take the advantage of that education which could not have been afforded but through my gift, could you afterwards stop short and say she should no longer have that advantage? Under such circumstances the Court would enquire what was most for her benefit.

Id. at 44.

Ex parte White, 12 J.P. 87 (1848) (suit at law). A mother had voluntarily left her illegitimate child with guardians for the first seven years of its life, and now sought to regain custody. In reaching his decision, the justice of the peace who heard the case considered not only the interests but the express wishes of the eight-year-old child, who seemed to him "very intelligent." The motion to change custody was denied.

Queen v. Barnardo, [1891] 1 Q.B. 194 (1890) (suit at law). A mother had given consent for her illegitimate child to be raised and educated in Dr. Barnardo's children's home, a Protestant institution. After a year and a half, the mother, with the intention of placing him in a Catholic school, tried to remove the child. Dr. Barnardo refused to relinquish custody. The trial court considered and rejected the argument that by entrusting her illegitimate child to another the mother had lost her right to retake him. On appeal, Barnardo's counsel argued that the "wishes of the mother of an illegitimate child, at most, are only an element to be considered in deciding what is for the child's best interest." *Id.* at 202. The

court held that illegitimacy “makes no difference whatever with respect to [the mother’s] right to the custody of the child.” *Id.* at 207. In the absence of good reason to the contrary—misconduct not being proved against the mother, and the child’s prospects being as good at the Catholic school as at Dr. Barnardo’s—the court felt itself bound to give custody to the mother.

Queen v. Gyngall, [1893] 2 Q.B. 232 (C.A.). A mother, having taken work in various parts of the world in the attempt to keep herself employed, had left her child in the care of others. She was denied the return of custody by the court. Here the conflict between the rights of the parent, superior at law, and the best interests of the child, recognized in equity, was plain.

Before 1873, everything had depended on whether the action was brought at law or in equity. The Judicature Act, 1873, 36 & 37 Vict., ch. 66, allowed cases brought in law to be decided according to principles of equity. Since there had been no misconduct on the part of the mother, her legal right, like the right of the mother in *Barnardo*, was not impaired. “[A]t common law the parent had, as against other persons generally, an absolute right to the custody of the child, unless he or she had forfeited it by certain sorts of misconduct.” *Id.* at 239. The wishes of the child could not be taken into account at law without subverting “the whole law of the family.” *Id.* at 241. Under the Judicature Act, however, the court was not bound by these principles of law, but could look to the best interests of the child. The equity jurisdiction was not granted for the determination of rights, but “was a paternal jurisdiction, . . . in virtue of which the [court] was put to act on behalf of the Crown, as being the guardian of all infants.” *Id.* at 239. The child in the case, unlike the child in *Barnardo*, seemed to the court distinctly better off with her guardian than with her mother. The court upheld the decision of the Divisional Court that to return the child to the custody of the mother would be contrary to her welfare.

In announcing the decision, Lord Esher had this to say of the equity jurisdiction:

That its jurisdiction to interfere with the parental right is not confined, as was argued, to cases where there has been misconduct on the part of the parent seems to me clear from many cases. . . . [Nevertheless,] the Court must exercise this jurisdiction with great care, and can only act when it is shewn that either the conduct of the parent, or the description of person he is, or the position in which he is placed, is such as to render it not merely better, but—I will not say ‘essential,’ but—clearly right for the welfare of the child in some very serious and important respect that the parent’s rights should be suspended or superseded; but that, where it is so shewn, the Court will exercise its jurisdiction accordingly.

Id. at 242.

In re Mathieson, [1918] 87 Ch. 445 (Ch. App.). The court, citing

Gyngall, denied the parents custody of a child they had left for years in the care of relatives. The parents had originally agreed not to ask for the child back; at trial they conceded that the child was better off than she would have been with them.

After a father has actually surrendered the custody of the child to relatives who agree to bring it up, and has placed the child with them, . . . if the Court sees, after the child has been there some time, that to revoke the arrangement and insist upon the return of the child to the parents would be injurious to the best interests of the child, then the Court is not under any obligation to make an order for the return of the child.

Id. at 447.

In re C.S.C., [1960] 1 W.L.R. 304 (Ch.); *In re B.*, [1964] 3 1 Ch. 1. These two cases construe a provision in English adoption law requiring prospective adoptive parents to have had actual care and possession of the child for a certain period before the adoption. In the first, the child's mother, who opposed the adoption, kept the child for two days against the wishes of the adoptive parents. The court found that during those two days the adoptive parents did not have care and possession of the child, and refused the adoption order. In the second case, the court allowed a mother to adopt her own illegitimate child, in spite of the fact that her work required her to leave the child for several days each week with another family, since the court found that no one exercised control over the child without the mother's consent.

B. Statutes

The Custody of Children Act, 1891, 54 & 55 Vict., ch. 3, § 1, provides:

Where the parent of a child applies . . . for a writ or order for the production of the child, and the Court is of opinion that the parent has . . . so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may in its discretion decline to issue the writ or make the order.

The Guardianship of Infants Act, 1925, 15 & 16 Geo. 5, ch. 45, § 1, provides: "[T]he court, in deciding [the question of custody], shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father . . . is superior to that of the mother . . ." The point of this act was to remove the superiority of the father's claim over the mother's that existed at common law.

The Adoption of Children Act, 1926, 16 & 17 Geo. 5, ch. 29, § 2-(3) provides that an adoption order cannot be made without the consent of the parent, unless the parent has abandoned the child, is incapable of giving consent, has refused to contribute, where possible, to the upkeep of the child, "or is a person whose consent ought, in the opinion of the court

and in all the circumstances of the case, to be dispensed with.”

C. Committee Reports

COMMITTEE ON CHILD ADOPTION, CMD. 1254 (1921). Two recommendations are relevant:

(1) Nothing should be done to impair the sense of parental responsibility or, unless essential to prevent injury to the child, to interfere with rights and duties based on the natural tie between parent and child (2) The mother and her child . . . ought not to be severed, unless for strong reasons on order to secure the true welfare of the child.

Id. at 12. On the other hand, the committee recommended that when custody had been taken away from a parent, that parent’s consent could be dispensed with when the child was later put up for adoption. *Id.* at 7.

CHILD ADOPTION COMMITTEE, FIRST REPORT, CMD. 2401 (1925). The Committee recommended safeguards against the exploitation of the natural mother:

Inasmuch as many cases of adoption in fact have their origin in the social or economic pressure exercised by circumstances upon the mother of an illegitimate child, it is desirable that there should be some safeguard against the use of a legal system of adoption as an instrument by which advantage may be taken of the mother’s situation to compel her to make a surrender of her child final in character though she may herself, if a free agent, desire nothing more than a temporary provision for it.

Id. at 5.

CHILD ADOPTION COMMITTEE, SECOND REPORT, CMD. 2469 (1925). The proposed draft of the Adoption of Children Bill, § 10, provided:

Where at the date of commencement of this Act any infant is in the custody of, and being brought up, maintained, and educated by any person or two spouses jointly, as his, her, or their own child under any de facto adoption, and has for a period of not less than two years before such commencement been in such custody . . . the Court may, upon the application of such person or spouses, make an adoption order authorizing him, her, or them to adopt the minor without requiring the consent of any parent or guardian

II. INDIA AND BURMA

A. Case Law

In re Gulbai, 32 Indian L.R. Bombay 50 (1907). A maternal grandmother and a paternal aunt each sought custody of orphaned girls; the court granted the aunt’s application. Under the Guardian and Wards Act, 1890, India Cen. Acts 42, the Court must first ask who is entitled to cus-

tody under local law. Under Hindu law, paternal relatives take preference. Also to be considered are the relations the minors have had with the contesting parties and the preferences of the minors. The girls had been with the paternal aunt for a number of years and expressed a desire to remain with her. The court stated that under the Act, "the mere legal right to be appointed a guardian, the preference of the minors, and the existing or previous relations are very minor considerations as compared with the main question—what order would be for the welfare of the minors?" 32 Indian L.R. Bombay at 54. In answering this question, the court looked to the happiness, the well-being, the health and the comfort of the children, and to which guardian would bring them up most like their own parents would have. The court made it clear that such considerations will sometimes defeat the claim of a natural parent innocent of misconduct.

Po Cho v. Ma Nyein Myat, 5 Lower Burma Rulings 133 (1909) (Rangoon). After the divorce of his parents, a child was taken to live with his mother and her new husband. When the mother died, the natural father applied for custody. Under the Guardian and Wards Act, 1890, India Cen. Acts 42, a father may lose his right to custody if he has permitted another to maintain his children and if it would be detrimental to the interests of the children for custody to revert to the father. Under Hindu law, an adoptive father acquires a right of guardianship even against the natural father, and in these circumstances, the court said, the child was nearly in the position of an adopted child. Under Burmese Buddhist law, if, after the divorce, the children live with one parent with the acquiescence of the other, the acquiescing parent loses the right to claim custody of the children.

Besant v. Narayaniah, 30 T.L.R. 560 (P.C. 1914) (Madras H.C.). An Indian father gave custody of his two sons to a wealthy and influential Englishwoman, intending to secure an Oxford education for them. Later he undertook to revoke this grant of custody. The High Court of Madras held that any such grant of custody by a father was indeed revocable.

On appeal, the Judicial Committee of the Privy Council agreed:

There is no difference in this respect between English and Hindu law. As in this country, so among the Hindus, the father is the natural guardian of his children during their minorities, but this guardianship is in the nature of a sacred trust and he cannot therefore during his lifetime substitute another person to be guardian in his place.

30 T.L.R. at 562. Nevertheless, the Judicial Committee said, the High Court in India had no jurisdiction, under the Guardians and Wards Act, to order the children to be returned to their father, since they were living in England. Moreover, if application were made in the High Court of Justice in England, the court would consider the children's interest before granting the father's application. It was relevant, the court found, that one son had attained the age of majority, that the other was very close to

it, and that both insisted that they would refuse to return to India.

Although the court did not dispute that the father was the guardian and could not be displaced as the guardian, "[t]he real question was whether he was still entitled to exercise the functions of guardian and resume the custody of his sons and alter the scheme which had been formulated for their education." *Id.* at 562. The answer was to be determined "having regard to the interests and welfare of the infants, bearing in mind, of course, their parentage and religion." *Id.* at 562.

Sathi v. Ramandi, 1920 A.I.R. 937 (Madras H.C.) (en banc). The Court found that after *Besant* there is no common law action for recovery of custody; all such actions must be brought under the Guardians and Wards Act.

B. Statutes

Guardians and Wards Act, 1890, India Cen. Acts 42, § 17 (which applied "to the whole of British India, inclusive of Upper Burma [where Moulmein is located] and British Baluchistan," *id.* § 1), stated:

In appointing or declaring the guardian of a minor, the Court shall . . . be guided by what, consistently with the law to which the minor is subject [e.g., Hindu or Burmese Buddhist law], appears in the circumstances to be for the welfare of the minor. . . . In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property. . . . If the minor is old enough to form an intelligent preference, the Court may consider that preference.

III. OTHER COMMON LAW COUNTRIES

A. Cases

In *Palmore v. Sidoti*, 104 S. Ct. 1879, 52 U.S.L.W. 4497 (1984), the question of the best interests of a child was addressed in the context of an interracial marriage. The Supreme Court had not previously faced this question other than to require counsel to represent the child's interests in certain situations. See *Santosky v. Kramer*, 455 U.S. 745 (1982); *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18 (1981).

Finlay v. Finlay, 240 N.Y. 429, 148 N.E. 624 (1925). The court declared that a court of equity will not determine the relative rights of parents, or between parent and child, in custody cases, but will act only for the welfare of the child.

In re Nelms, 153 Wash. 242, 279 P. 748 (1929). The court discussed the boundary between adoption and custody;

[T]he question of the change of legal parentage of a minor by adop-

tion is quite a different matter from that of a court deciding as a matter of discretion who shall have the custody and control of a minor. The former is not a matter of discretion at all, but a matter of consent, or the existence of conditions rendering consent unnecessary.

153 Wash. at 246, 279 P. at 749 (quoting *In re Lease*, 99 Wash. 413, 417, 169 P. 816, 817-18 (1918)).

Hawkins v. Addison, 3 D.L.R. 435 (Alta. 1955). The court found that when adoption is at issue, a court should dispense with the parent's consent only for reasons which the law has for centuries deemed sufficient to permit the court to interfere, such as gross moral turpitude, abdication of authority, or mental incompetence. Although the court is required to consider the welfare of the child, "the father knows far better as a rule what is good for his children than a Court of Justice can." *Id.* at 443 (quoting *In re Carroll*, [1931] 1 K.B. 317, 334).

Agar v. McNeilly, 8 D.L.R.2d 353 (Ont. 1957). The mother of an illegitimate child had consented to its adoption. Although a year elapsed before the mother learned who had custody of her child, no adoption order had been signed and she petitioned the court to return custody of the child to her. One of the issues was whether the mother was able and willing to support the child in satisfactory surroundings. The court found that she was.

The test as to the suitability of the surroundings is not whether they are the *most* satisfactory or *more* satisfactory than those in which the child would be reared if it continued to be in the custody of the adopting parents. . . . [The mother's] home is decent and respectable and she is not to be deprived of her child merely because her financial position is such that she has to go to work to support herself and her child and while at work leave it in the care of another person.

Id. at 367-68.

B. Statutes

UNIF. ADOPTION ACT § 26, 9 U.L.A. (1971). The act recognizes these cases in which the consent of the parent may not be required for the adoption of the child: "a parent who has abandoned a child; . . . a parent [who] for a period of at least one year has failed . . . to communicate with the child or . . . to provide for the care and support of the child as required by law or judicial decree; . . . a parent judicially declared incompetent[;] . . . [a parent of an individual 18] or more years of age[;]" and a parent who has signed an agreement giving up the right to consent.

IV. COMMENTARIES

I. DELUPIS, INTERNATIONAL ADOPTION AND THE CONFLICT OF LAWS 61-

85 (1975). The historical and contemporary roles of adoption throughout the world, including the international custody disputes arising therefrom, are treated extensively.

T. ELIAS, *BRITISH COLONIAL LAW: A COMPARATIVE STUDY OF THE INTERACTION BETWEEN ENGLISH AND LOCAL LAWS IN BRITISH DEPENDENCIES* 95-97, 104, 110, 116, 143-44, 200-06, 213-22 (1962). Some of the problems inherent in conflict of laws disputes are discussed. The treatment is predominantly contemporary.

R. GOTTESMAN, *THE CHILD AND THE LAW* 125-41 (1981). This section traces the development and present status of child adoption and custody matters in the United States.

M. MAUNG, *LAW AND CUSTOM IN BURMA AND THE BURMESE FAMILY* (1963). Commentaries by eminent British colonial administrators, jurists and scholars; "personal law" questions, special marriage acts for redressing conflict of laws inequities, and adoption issues are discussed at length.

J.H.C. MORRIS, *DICEY AND MORRIS ON THE CONFLICT OF LAWS* 469-86 (9th ed. 1973). This section covers the problems inherent in jurisdictional disputes in adoption cases.

S. ROY, *CUSTOMS AND CUSTOMARY LAW IN BRITISH INDIA* (1911). This book provides an excellent analysis of Burmese Buddhist law as it pertains to marriage, adoption, child custody, and filial duties.