

1975

## Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act

Stephen A. Gorman

Follow this and additional works at: <http://lawcommons.luc.edu/lucj>

 Part of the [Human Rights Law Commons](#)

---

### Recommended Citation

Stephen A. Gorman, *Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act*, 6 Loy. U. Chi. L. J. 49 (1975).

Available at: <http://lawcommons.luc.edu/lucj/vol6/iss1/3>

This Note is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

## Recognizing the Needs of Adopted Persons: A Proposal To Amend the Illinois Adoption Act

### INTRODUCTION

The practice of adoption, while not recognized under the common law of England,<sup>1</sup> is nonetheless an institution ancient in its origins.<sup>2</sup> The legends and myths of the Greeks and Romans produced at least two well known adoptees: Oedipus, the ill-fated King of Thebes,<sup>3</sup> and Hercules, the adopted son of Zeus.<sup>4</sup> Moses, perhaps the most forceful personality in the Old Testament, was the adopted son of Pharaoh's daughter.<sup>5</sup>

Roman civil law provides the historical basis for modern adoption laws.<sup>6</sup> In the United States adoption is strictly a creature of statute. Illinois enacted its first adoption legislation over a century ago.<sup>7</sup> Numerous legal scholars have analyzed various constitutional aspects of the Illinois adoption laws.<sup>8</sup> A major amendment to the Illinois Adoption Act<sup>9</sup> was occasioned by the United States Supreme Court's decision in *Stanley v. Illinois*<sup>10</sup> wherein the Court held that an unwed

---

1. H. CLARK, *THE LAW OF DOMESTIC RELATIONS* 603 (1968). The first adoption statute was not passed in England until the 20th century. *The Adoption of Children Act*, 16 & 17 Geo. 5, c. 29 (1926).

2. For an excellent article detailing the history of adoption see Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743 (1956).

3. SOPHOCLES, *OEDIPUS THE KING* (F. Storr transl. 1912).

4. J. FRAZER, *THE GOLDEN BOUGH* (1890).

5. *Exodus* 2:5-10.

6. See generally Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922); W. BUCKLAND, *A TEXT-BOOK OF ROMAN LAW* 121-28 (3d ed. 1963); R. LEAGE, *ROMAN PRIVATE LAW* 114-20 (3d ed. 1961).

7. An Act to provide for the Adoption of Minors, Law of February 22, 1867, p. 133, ILLINOIS LAWS.

8. Lutterbeck, *The Law in Illinois Pertaining to the Adoption of Children*, 8 DEPAUL L. REV. 165 (1958); Veverka, *Right of Natural Parents to Their Children as Against Strangers*, 61 ILL. B.J. 234 (1973); Note, *Child Without a Family: Problems in Custody and Adoption of Children*, ILL. L.F. 633 (1962); Comment, *Illinois Inheritance Laws and Adopted Children*, 2 DEPAUL L. REV. 63 (1952); Comment, *Adopted Children's Rights*, 42 ILL. B.J. 304 (1954).

9. ILL. REV. STAT. ch. 4, § 9.1-12a (1973).

10. 405 U.S. 645 (1972).

father, like other parents, is entitled to a hearing on his fitness before his children are taken from him.<sup>11</sup>

However, neither the Illinois General Assembly nor the state's reviewing courts have directly addressed themselves to the desirability or validity of current laws which severely restrict an adopted person's ability to acquire access to information regarding his biological parents, the circumstances of his birth, and his subsequent adoption. Despite this legislative and judicial inactivity, the topic of adoptees' rights has generated substantial popular interest, as reflected in the media.<sup>12</sup>

The purpose of this article is threefold: first, to examine the nature of the legal relationship between an adopted child and his natural parents; second, to discuss the procedure and overall effect of impounding and sealing adoption records, original birth certificates of adopted children, and court proceedings regarding adoptions; third, to propose an alternative to the present Illinois law, whereby adult adoptees would have access to confidential information regarding their adoption.

## THE LEGAL RELATIONSHIP

### *The Rights and Duties of Natural Parents*

In order to analyze the ultimate effect that adoption has on all the parties involved, it is necessary to discuss briefly the purely legal relationships which adoption creates and destroys. In Illinois, the legal consequences imposed by an adoption are delineated within the adoption statute:

After the entry either of an order terminating parental rights or the entry of a decree of adoption, the natural parents of a child sought to be adopted shall be relieved of all parental responsibility for such child and shall be deprived of all legal rights as respects the child, and the child shall be free from all obligations of maintenance and obedience as respects such natural parents.<sup>13</sup>

---

11. For an excellent discussion of the *Stanley* decision see Note, "Strange Boundaries" of *Stanley: Providing Notice of Adoption to the Unknown Putative Father*, 59 VA. L. REV. 517 (1973).

12. See, e.g., Gorner, *Adoptee's Plight*, Chicago Tribune, June 24, 1974, § 2, at 1, col. 1; Gorner, *Searching for Natural Parents*, Chicago Tribune, July 8, 1974, § 2, at 7, col. 3; Bartlett, *Seeking an Answer to "Who Am I,"* Chicago Tribune, September 10, 1974, at 1, col. 2; Nobile, *The Right to Be Illegitimate*, Chicago Sun-Times, July 28, 1974 (Magazine) at 15, col. 1; Gorner, *Adoptee Finds Her Real Dad*, Chicago Tribune, September 25, 1974, § 3, at 1, col. 1.

13. Illinois Adoption Act, ILL. REV. STAT. ch. 4, § 9.1-17 (1973) [hereinafter cited as the Illinois Adoption Act § 9.1-17].

The viewpoint expressed by the Illinois statute is in accord with the generally accepted rule, subject to various exceptions, that adoption terminates all existing rights and duties between the adoptee and his natural parents.<sup>14</sup> Since adoption is in derogation of the parent-child relationship, it has been held that courts must strictly construe the adoption statute.<sup>15</sup> The rights of natural parents are not terminated until all parties have precisely complied with the mandates of the adoption laws.<sup>16</sup>

One court has taken the position that once the adoption decree is entered the adopted child then "becomes no more than a stranger" to his natural parents.<sup>17</sup> Another court, albeit in dicta, has gone to further extremes in characterizing the adopted child-natural parent relationship:

Custody may be awarded for a temporary duration but a decree of adoption severs forever every part of the parent and child relationship; severs the child entirely from its own family tree and engrafts it upon that of another. For all legal and practical purposes a child is the same as dead to its parents. The parent has lost the right to ever see said child again or to have any real knowledge of its whereabouts.<sup>18</sup>

Although the Illinois statute<sup>19</sup> indicates that adoption terminates all legal rights and duties between the adoptee and the natural parents, Illinois courts have taken the position that the natural parent remains ultimately liable for the support of his child even though that child has been adopted.<sup>20</sup> In *Dwyer v. Dwyer* the Illinois Supreme Court set forth its view of the natural parents' obligation to an adopted child:

An adoption of a child does not work a complete severance in the relationship between the child and its natural parents. The duty of a parent to support his minor child arises out of the natural relationship, and while that duty may also be imposed upon the adoptive parents by statutory enactment, the natural parent may, if

---

14. 2 C.J.S. *Adoption of Persons* § 139, at 570 *et seq.* (1972).

15. *Dwyer v. Dwyer*, 366 Ill. 630, 10 N.E.2d 344 (1937).

16. *In re Cech*, 8 Ill. App. 3d 642, 291 N.E.2d 21 (1972).

17. *People v. Issachar*, 203 N.Y.S.2d 667 (Ct. Gen. Sess. 1960).

18. *In re Adoption of Bryant v. Kurtz*, 134 Ind. App. 480, 487, 189 N.E.2d 593, 597 (1963). The comparison of an adoption to the death of the child with respect to the natural parents is provocative. While the statement that the natural parent has no right to see the child or know of its whereabouts is surely valid, does it necessarily follow that the child must also consider for all "legal and practical purposes" his natural parents dead? If that is in fact the conclusion to be reached, it is an unnecessary mockery of the child's very existence. It is as though the state has decided that the child was never genealogically a part of anyone. It is biologically and historically impossible to graft one person onto the family tree of another.

19. Illinois Adoption Act § 9.1-17. See text accompanying note 13 *supra*.

20. *Dwyer v. Dwyer*, 366 Ill. 630, 10 N.E.2d 344 (1937).

necessity arises, be required to perform that duty . . . . The statute is not to be construed as relieving the natural parents from all obligation to support their minor children.<sup>21</sup>

The *Dwyer* opinion has been cited in recent decisions as an accurate interpretation of the law as it exists in Illinois.<sup>22</sup> It should be noted that while *Dwyer* imposes a residual obligation upon the natural parent, neither that case nor subsequent cases have found that any residual rights vest in the natural parent by reason of that obligation.<sup>23</sup>

### *Adoption and Inheritance*

Another aspect of how the Illinois courts have viewed the legal relationships between the natural parent and the adopted child is reflected in cases decided under the Illinois Probate Act.<sup>24</sup> In *In re Tilliski*<sup>25</sup> the court held that under Illinois probate practice a child who is adopted is not restricted in his right to inherit through intestacy from his natural parents:

The statute authorizing adoption of children is remedial. It was unknown to the common law. Primarily, it is beneficial to the adopted child. It gives to it rights it did not have before. It does not purport to lessen any of its natural rights, but gives additional rights. The same right of heirship from blood parents enjoyed by a natural child should not be taken from an adopted child unless clearly required by statute. We are of the opinion that under the statute in force at the time of the death of Mary E. Tilliski, intestate, her natural child, Sarah A. Martin, was entitled to a child's share, and that the fact that she had been previously adopted did not deprive her of it.<sup>26</sup>

21. *Id.* at 634, 10 N.E.2d at 346.

22. *People ex rel. Bachelda v. Dean*, 48 Ill. 2d 16, 268 N.E.2d 11 (1971); *Gill v. Gill*, 8 Ill. App. 3d 625, 290 N.E.2d 897, *aff'd* 56 Ill. 2d 139, 306 N.E.2d 281 (1973) (involving child support after divorce). *But see* H. CLARK, LAW OF DOMESTIC RELATIONS § 18.9 at 659 (1968) wherein that author takes the position that the better rule is that natural parents should retain no obligations towards their children who have been adopted.

23. *See, e.g., People ex rel. Witton v. Harriss*, 307 Ill. App. 283, 30 N.E.2d 169 (1940), where the court held that a natural mother did not retain the right to visit the adopted child and thereby dismissed the mother's theory that such visitation should be allowed since she was ultimately liable for the support of the child.

24. Illinois Probate Act, ILL. REV. STAT. ch. 3, §§ 11, 12, 14 (1973) [hereinafter cited as Illinois Probate Act].

25. *In re Tilliski*, 390 Ill. 273, 61 N.E.2d 24, *aff'g* 323 Ill. App. 490, 56 N.E.2d 481 (1945).

26. 390 Ill. at 285, 61 N.E.2d at 29. The Illinois Supreme Court apparently agreed with the view expressed by the Illinois Appellate Court in its decision, 323 Ill. App. at 504, 56 N.E.2d at 487:

[I]t seems to us that the conclusion is irresistible that an adopted child, in a legal sense is both the child of its adopting parent and its natural parent. We reach this result not only because the overwhelming weight of authority in the United States points in that direction, but to hold otherwise would be extremely unjust and unnatural. Consanguinity cannot be ignored in placing a meaning upon our adoption and descent statutes.

Under the Illinois Probate Act the term "parent" includes both the mother and father of a legitimate child, but only the mother of an illegitimate child<sup>27</sup> unless that child's parents intermarry and he is acknowledged by the father.<sup>28</sup> A reasonable extension of the rationale in *Tilliski* is that a legitimate adopted child has possible statutory rights to inherit through intestate succession from both of his natural parents, while an illegitimate, unacknowledged adopted child can inherit only from his mother. Moreover, section 12(8) of the Illinois Probate Act has been interpreted to allow an adopted child who was illegitimate at birth to inherit through the laws of intestacy from the collateral ancestors of his natural mother.<sup>29</sup> Other jurisdictions have taken the position, either by statute or by judicial decision, that an adopted child can only inherit from its adoptive parents.<sup>30</sup> Provision is also made in the Illinois Probate Act that natural parents and their kindred may, under certain circumstances, inherit from the adopted child.<sup>31</sup> A case involving such an inheritance would most likely arise only in a very unique fact situation, but such a case is not beyond the realm of possibility.<sup>32</sup>

It is not the purpose of this article to discuss in detail the intricacies of descent and distribution in Illinois, or the trends of inheritance laws throughout the country.<sup>33</sup> However, the Illinois Probate Act, when

27. Illinois Probate Act § 12(8) provides in its relevant part that:

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living. . . .

28. Illinois Probate Act § 12(8) provides in its relevant part that:

[A] child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate.

29. *Warner v. Gregory*, 415 F.2d 1345 (7th Cir. 1969); *Gregory v. LaSalle County*, 91 Ill. App. 2d 290, 234 N.E.2d 66 (1968).

30. *See, e.g., OHIO REV. CODE ANN. § 3107.13* (1972); *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 229 S.W.2d 675 (1950) (holding that adoption should not operate as an instrumentality for dual inheritance). The National Conference of Commissioners on Uniform State Laws has also taken the position that adoptees should only inherit from their adoptive parents. Uniform Probate Code § 2-209.

31. Illinois Probate Act § 14 in relevant part provides that:

An adopting parent, and the lineal and collateral kindred of the adopting parent, shall inherit property from a child lawfully adopted to the exclusion of the natural parent and the lineal and collateral kindred of the natural parent, in the same manner as though the child lawfully adopted were a natural child of the adopting parent, except that the natural parent and the lineal or collateral kindred of the natural parent shall take from the child and the child's kindred the property that the child has taken from or through the natural parent or the lineal or collateral kindred of the natural parent by gift, by will, or under intestate laws.

32. Conclusion based on an interview with Associate Judge John J. Hogan, Circuit Court of Cook County, Probate Division, in Chicago, Illinois, September 20, 1974.

33. Two excellent articles dealing with problems involving adopted persons and inheritance are, Fleming, *Inheritance Rights of Adopted Children*, 35 CHI. B. REC. 221 (1954) and Note, *The Adopted Child's Inheritance From Intestate Natural Parents*, 55 IOWA L. REV. 739 (1970); H. CLARK, *LAW OF DOMESTIC RELATIONS* § 18.9 (1968) also has an excellent brief discussion of inheritance problems created by adoption supplemented by numerous case citations.

read in conjunction with the Illinois Adoption Act,<sup>34</sup> raises an interesting problem. Illinois probate law presently provides a statutory right to adopted children to inherit from their natural parents. Illinois adoption laws, however, serve to restrict an adoptee from learning the identity of his natural parents. The confidentiality encouraged by adoption laws makes it virtually impossible for a person who has no knowledge of his natural parents to claim an interest in property through intestate succession. The problem could, of course, be resolved by an amendment to the Probate Act which would specifically eliminate an adopted person from the chain of intestate succession of the adoptee's natural parents. The point is raised here to illustrate an apparent inconsistency in the policies of two legislative enactments. The laws of inheritance promote the policy that the estate of an intestate decedent should be distributed on the basis of consanguinity. The effect of the Illinois adoption statute is to contradict that policy by promoting total anonymity between the natural parents and their adopted offspring. Impounding and sealing adoption-related material raise serious issues in areas other than inheritance, as discussed below.

#### THE EFFECT OF SEALED RECORDS

##### *The Relevant Statutes*

Under Illinois law, the court records relating to an adoption proceeding can be impounded upon the motion of any party to the proceeding or upon the court's own motion.<sup>35</sup> Thereafter, the custodian of the court records can produce the materials only upon specific order of a court of competent jurisdiction. The court limits access to those persons specified in this order.<sup>36</sup> In addition to court records, the adoptee's original birth certificate may be subject to impoundment. In most cases, a new certificate of birth is prepared by the State Registrar of Vital Records upon receipt of a copy of an adoption decree.<sup>37</sup>

---

34. Illinois Adoption Act § 9.1-18 provides:

The word "illegitimate" or the words "born out of wedlock", or words importing such meaning, shall not be used in any adoption proceeding in any respect.

Upon motion of any party to an adoption proceeding the court shall, or upon the court's own motion the court may, order that the file relating to such proceeding shall be impounded by the clerk of the court and shall be opened for examination only upon specific order of the court, which order shall name the person or persons who are to be permitted to examine such file. Certified copies of all papers and documents contained in any file so impounded shall be made only on like order.

35. Illinois Adoption Act § 9.1-18. The full text is set out in note 34 *supra*.

36. *Id.*

37. ILL. REV. STAT. ch. 111½ § 73-17 (1973) provides:

(1) For a person born in this State, the State Registrar of Vital Records shall

This new birth certificate will often reflect the actual place and date of birth of the child,<sup>38</sup> but will show the adoptive parents, rather than the natural parents, as the child's mother and father. The original birth certificate, the evidence of adoption, and any copies of the original certificate held by custodians at the local level are sealed from inspection,<sup>39</sup> and can be opened only upon an order of a court of

---

establish a new certificate of birth when he receives any of the following:

(a) A certificate of adoption as provided in Section 16 or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(b) A certificate of adoption or a certified copy of the decree of adoption entered in a court of competent jurisdiction of any other state or country declaring adopted a child born in the State of Illinois, together with the information necessary to identify the original birth certificate and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(c) A request that a new certificate be established and such evidences as required by regulation proving that such person has been legitimized, or that a court of competent jurisdiction has determined the paternity of such a person.

(d) An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary.

(2) When a new certificate of birth is established, the actual place and date of birth shall be shown; provided, in the case of adoption of a person born in this State by parents who were residents of this State at the time of the birth of the adopted person, the place of birth may be shown as the place of residence of the adoptive parents at the time of such person's birth, if specifically requested by them, and any new certificate of birth established prior to the effective date of this amendatory Act may be corrected accordingly if so requested by the adoptive parents or the adopted person when of legal age. The new certificate shall be substituted for the original certificate of birth:

(a) Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection or certification except upon order of a court of competent jurisdiction or as provided by regulation.

(b) Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection or certification except upon order of a court of competent jurisdiction.

(3) If no certificate of birth is on file for the person for whom a new certificate is to be established under this Section, a delayed record of birth shall be filed with the State Registrar of Vital Records as provided in Section 14 or Section 15 of this Act before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed record shall not be required.

(4) When a new certificate of birth is established by the State Registrar of Vital Records, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this State shall be transmitted to the State Registrar of Vital Records as directed, and shall be sealed from inspection.

38. ILL. REV. STAT. ch. 111½ § 73-17(2) (1973). The full text is set forth in note 37 *supra*.

39. ILL. REV. STAT. ch. 111½ § 73-17(2)(a) (1973). The full text is set forth in note 37 *supra*.



competent jurisdiction.<sup>40</sup> It is assumed by Illinois attorneys that mere request on the part of an adult adoptee to see court records regarding his adoption or to see his original birth certificate would not be considered a sufficient reason to open such records.<sup>41</sup>

The statutory practice in Illinois regarding the disclosure of adoption records and original birth certificates of adoptees is similar to that practiced in other jurisdictions.<sup>42</sup> To date, the validity of these laws has not been challenged in any reviewing court. It would appear however, that serious constitutional questions are raised by these statutes.<sup>43</sup> It is this author's contention that constitutional questions

---

40. There are only a few reported cases where a court has been presented with a question of what facts establish sufficient reason to open sealed adoption records. *See, e.g., In re Wells*, 281 F.2d 68 (D.C. Cir. 1960) (inspection denied to natural mother absent a showing of fraud or evidence that the welfare of the child would be served); *In re Glasser*, 198 Misc. 889, 100 N.Y.S.2d 723 (1950) (petition to inspect adoption record denied in an action for alienation of affection and criminal conversation); *In re Minicozzi*, 51 Misc. 2d 595, 273 N.Y.S.2d 632 (Sup. Ct. 1966) (claim that information contained in adoption record was relevant to defense in a paternity suit held not to establish good cause).

41. Conclusion based on interviews with attorneys engaged in adoption practice in Cook County Illinois.

42. *See, e.g., IOWA CODE ANN. § 600.9* (1950); *MASS. GEN. LAWS ANN. ch. 210 § 5C* (Supp. 1972); *N.Y. DOM. REL. LAW § 114* (McKinney's Supp. 1974). *Contra*, *CONN. GEN. STAT. ANN. § 45-66* (Supp. 1974). The National Conference of Commissioners on Uniform State Laws has taken the position that adoption record information should be released only upon the consent of the parties involved. The Uniform Adoption Act § 16 (1971) states:

Notwithstanding any other law concerning public hearings and records,

(1) all hearings held in proceedings under this Act shall be held in closed Court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties; and

(2) all papers and records pertaining to the adoption whether part of the permanent record of the court or of a file in the [Department of Welfare] or in an agency are subject to inspection only upon consent of the Court and all interested persons; or in exceptional cases, only upon an order of the Court for good cause shown; and

(3) except as authorized in writing by the adoptive parent, the adopted child, if [14] or more years of age, or upon order of the court for good cause shown in exceptional cases, no person is required to disclose the name or identity of either an adoptive parent or an adopted child.

43. A discussion of the constitutional questions raised by the impounding of adoption and birth records and the general nonaccessability of such records to the adoptee is found in Note, *The Adoptee's Right to Know His Natural Heritage*, 19 N.Y.L.F. 136-57 (1973). The focus of the constitutional argument centers on the equal protection clause of the fourteenth amendment. The authors of the cited Note contend that statutory denial of access to records such as a person's birth certificate based on his status as an adoptee creates a discrimination founded on a suspect criteria. This is analogous to situations where an individual is classified on the basis of his race, lineage or alienage. It is pointed out that usually one's status as an adoptee was beyond his control, just as his race, legitimacy, and sex are also predetermined. A stricter standard of review is employed by courts when considering the validity of legislation which is based on a suspect classification. It becomes the burden of the state to show that the classification is justified by a compelling state interest. *See, e.g., Reed v. Reed*, 404 U.S. 71 (1971).

The basic interest the state has in adoptions is in promoting the welfare of the adoptee. The contention is that solid evidence exists to show that adoptees are actually

raised by the Illinois statutes can be avoided by amending the present Illinois Adoption Act. An amendment could provide an adoptee, upon reaching his majority, the opportunity to acquire specific information regarding his biological parents and his adoption, without making adoption records available to the public in general.

### *Evidence In Support of Change*

Extensive commentary concerning laws which allow the sealing of adoption records has been generated by various groups, composed mostly of adults who were adopted as children.<sup>44</sup> These organizations have vocalized the opinion that all adult adoptees have a right to know the identity of their natural parents:

Yesterday's Children propose that it is a universal need to know

---

harmed by sealed record statutes. Therefore, such statutes fail to meet the overall purpose of adoption, and thus do not exhibit the compelling state interest necessary to sustain their validity.

Alternative constitutional arguments are also raised. The first is that the right to know one's natural heritage may be included in the penumbra of rights emanating from the Bill of Rights. See *Griswold v. Connecticut*, 381 U.S. 479 (1965). The points of analogy include the right to association and the right to acquire useful knowledge, both of which have been recognized by the Supreme Court, although neither is specifically set forth in the Constitution. See, *NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *Meyer v. Nebraska*, 262 U.S. 390, 403 (1923). Another argument is advanced, relying mostly on Justice Goldberg's concurring opinion in *Griswold*, that an individual's right to know his natural heritage may be included under the ninth amendment.

Weighing against the adoptee's purported right to know his biological origins are the rights of the natural and adoptive parents. The right to privacy, best enunciated in *Griswold*, was later expanded in *Roe v. Wade*, 410 U.S. 113 (1973) to include, subject to some limitations, the right of a woman to decide to have an abortion. Granting that the state has an interest in promoting the anonymity and privacy in adoptions when it is desired by the parties, the question then becomes whether the interests of the state, the natural parents, and the adoptive parents supersede any interest the adoptee has in compromising, to some degree, that anonymity and privacy. It also can be argued that the adoptee's interest should prevail since children should not be made to suffer for the transgressions of their parents. See, *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972). The problem arises in characterizing the surrendering of a child for adoption as a transgression or an act for which the natural parents should forever bear the legal burdens.

One final factor discussed by the authors of the cited Note concerns the relationship between statutes which preserve anonymity in adoption procedures and the possibility of increased numbers of black market adoptions if such confidentiality were compromised. It is basically a matter of speculation as to whether such adoptions would increase if adoptees, upon reaching their majority, could learn at least their biological name. Black market adoptions may be on the increase anyway in light of the decreased number of adoptable children. This shortage is traceable to, among other factors, the ready availability of legal abortions and the tendency on the part of more and more unmarried mothers to keep their children. Since no conclusive evidence exists that black market operations would increase if sealed record statutes were amended to allow adoptees access to them, the argument would still be viable that the state has failed to establish the compelling interest sought to be promoted by such statutes.

44. Only one adoptee's group, Yesterday's Children, Inc., organized by Donna Cullom in Evanston, Illinois, in March of 1974 is presently active in Illinois. Membership now totals approximately 400. The largest and perhaps best known adoptee's organization is the Adoptee's Liberty Movement Association (ALMA), organized by Florence Fischer in New York City in 1971. Information based on an interview with Donna Cullom, in Evanston, Illinois, September 5, 1974 [hereinafter cited as Cullom Interview].

your own true identity and the identities of your forbearers. We propose that because it is a human need it should be recognized that it is a human right to meet that need. We believe that current social practices and current state laws that prohibit adults from learning their own identities and histories are a violation of human rights and a violation of civil rights under our Constitution. We believe that every adult should have access to the recorded information concerning his own history and his separation from his own natural family.<sup>45</sup>

While the constitutionality of such laws is debatable,<sup>46</sup> sociological and psychological evidence exists which indicates that the extremely confidential nature of adoption practice has harmful effects on the adopted person.<sup>47</sup> A strong case can be made that adoption as an institution would be markedly improved if adult adoptees have access to their own adoption records. Thus, regardless of whether the right to know one's biological background is so fundamental as to be protected by the Constitution, an amendment to the present adoption statutes merits serious consideration. To date there has been no general legislative movement in the United States to alter adoption procedures insofar as disclosure of information to adoptees is concerned, but in Great Britain there has been at least one notable advance in that direction.<sup>48</sup>

---

45. *Id.*

46. See discussion in note 43 *supra*. The constitutionality of the Illinois Adoption Act § 9.1-18 (full text set forth in note 34 *supra*) may be subject to attack on the grounds that the section is unconstitutionally vague. The statute leaves it to the discretion of the court as to whether a sealed adoption proceeding record shall be opened and made available to named persons. The statute fails to give any guidelines as to how this discretion is to be exercised. Furthermore, the statute gives no indication of what parties must have notice of a proceeding initiated to open such a record.

47. Some experts advocate that adoptees should have available to them or to their adoptive parents substantial information concerning their natural parents. See generally J. TRISELIOTIS, *IN SEARCH OF ORIGINS—THE EXPERIENCES OF ADOPTED PEOPLE* (1973); A. McWHINNIE, *ADOPTED CHILDREN—HOW THEY GROW UP* (1967); M. KORNITZER, *ADOPTION AND FAMILY LIFE* (1968).

48. J. TRISELIOTIS, *IN SEARCH OF ORIGINS—THE EXPERIENCES OF ADOPTED PEOPLE* 166 (1973) [hereinafter cited as TRISELIOTIS]:

The final report of the Departmental Committee on the Adoption of Children (Command Paper 5107) published in October 1972, made certain recommendations that give expression to the findings of this study. The report recommends that the adoption agency or, where there is no agency, the local authority, should be named on the adoption order, so that an adopted person may himself later be in a position to approach the agency for information that the adopters are unable or unwilling to provide. Furthermore, adoption agencies should be required to retain their records for seventy-five years. The committee also recommended that an adopted person aged eighteen years or over should be entitled to a copy of his original birth certificate. This recommendation would cover all adopted adults in England, Wales and Scotland.

In fact, Scotland has provided for the availability of birth certificates to adopted persons over the age of seventeen for the last forty-five years. Adoption of Children Act (1930), 20 & 21 Geo. 5, ch. 37, § 11 (Scotland) reads:

The Registrar-General shall, in addition to the Adopted Children Register and

The argument is made that adoptees face a more difficult task of social and psychological adjustment, and that such difficulties are often directly related to the adopted person's lack of feeling a continuity with the past.<sup>49</sup> Put simply, an adoptee, no matter how strong his emotional ties with his adoptive parents and family may be, is in many instances deprived of certain self-identity reinforcements that are derived from the knowledge that one has blood relatives. In some cases the adoptee may not know of his nationality, his race, or the existence of biological siblings. In addition, the adoptee may be unaware of such simple facts as who he resembles, where he was born, or a variety of other information that non-adopted individuals take for granted. It is true that the modern practice, at least in adoptions carried out through public or private agencies, is to provide the adoptive parents with some information concerning the family background of the natural child.<sup>50</sup> This information is usually imparted orally rather than in permanent written form. The legitimate or illegitimate character of the child's birth is also usually known by the adopting party.

Adoption creates a unique legal relationship. "Adoption, unlike mere custody, severs conclusively the rights and interest of natural parents."<sup>51</sup> While adoption is often mistakenly considered as a legally created substitute for natural childbirth,<sup>52</sup> it is actually a legal procedure which results in the creation of a relationship comparable to that created in marriage.<sup>53</sup> By compliance with the procedures and formalities set forth in the Illinois Adoption Act, and the issuance of the adoption decree, two parties are joined into a legally recognized and

---

the index thereof, keep such other registers and books, and make such entries therein as may be necessary, to record and make traceable the connection between any entry in the register of births which has been marked "Adopted" pursuant to this Act and any corresponding entry in the Adopted Children Register, but such additional registers and books shall not be nor shall any index thereof be open to public inspection or search, nor, except under an order of the Court of Session or a sheriff, shall the Registrar-General furnish any information contained in or any copy or extract from any such registers or books to any person other than an adopted child who has attained the age of seventeen years and to whom such information, copy or extract relates.

49. TRISELIOTIS, at 160.

50. SCHAPIRO, A STUDY OF ADOPTION PRACTICES (1956); Interview with June Teason, Director of Adoptions, Illinois Children's Home and Aid Society, in Chicago, Illinois, September 6, 1974. The problems discussed in this article are most crucial in instances where the individual was adopted in infancy or at such a tender age as to have no recollection of his natural parents. Children adopted at an older age or adopted by relatives usually do not have the same difficulties in gathering information about their natural parents.

51. *In re Cech*, 8 Ill. App. 3d 642, 645, 291 N.E.2d 21, 24 (1972).

52. For an excellent series of articles regarding the many facets of adoption see SCHAPIRO, A STUDY OF ADOPTION PRACTICE—SELECTED SCIENTIFIC PAPERS PRESENTED AT THE NATIONAL CONFERENCE ON ADOPTION, JANUARY 1955.

53. *Id.*

socially accepted union.<sup>54</sup> Adoption, like marriage, creates new rights and obligations and destroys or alters rights and duties of the parties that existed prior to the adoption. A new legal entity is created. Adoption succeeds in severing most of the legal ties between parents and their natural child, just as divorce destroys most of the legal consequences of marriage. However, an adoption decree is incapable of totally severing those emotional and psychological ties<sup>55</sup> or of destroying curiosity. These feelings may be instinctive or grow as one comes to realize that being adopted is in some way different than being the natural offspring of one's parents.<sup>56</sup> "There is ample evidence that the adopted child retains the need for seeking his ancestry for a long time."<sup>57</sup>

The legal destruction of the adopted person's biological name effectively puts him in the position of being historically and ancestrally alone.<sup>58</sup> Granting that in most cases the emotional ties between the adoptee and the adoptive parents will fulfill the overall parent-child relationship, the adoptee is still quite literally a person without a past.<sup>59</sup> At one time a person's surname was reflective of his position

54. In the usual case the adopting party consists of a husband and wife. Adoptions by single persons, not related to the adoptee, are less common, but by no means unheard of. Conclusion based on information available in a pamphlet distributed by the Adoption Information Service, State of Illinois, Department of Children and Family Services, 1439 S. Michigan Avenue, Chicago, Illinois.

55. Brown, *Ingredients of a Therapeutic Family in the Browndale Model*, INVOLVEMENT 3, 4 (March-April 1974):

No man-made law or court order can change the affiliation of birth. We may go through a legal procedure to declare a family unfit but, nevertheless, that family is still the family of the child.

56. *Orr v. State*, 70 Ind. App. 242, 254, 123 N.E. 470, 474 (1919):

The relation of parent and child is not created by the law of the State. It is a natural relation, and in all civilized countries it is regarded as sacred. (Citations omitted).

57. Committee on Adoptions, American Academy of Pediatrics, *Identity Development in Adopted Children*, 47 PEDIATRICS 948, 949 (1971).

58. Cominos, *Minimizing the Risks of Adoption Through Knowledge*, 16 SOCIAL WORK 78, 78-79 (1971):

By not sharing differences between the child's and adoptive parents' backgrounds with the adoptive parents, the adoptive process becomes less painful and more comfortable for the adoptive parents . . . .

But what can this practice do to the child? In effect, it erases his natural background, strips him of his heritage, deprives him of his "genetic" ego. It makes him a product of nothing—a non person—at least at the time of placement. It offers no help to the child when he begins to express a normal curiosity about his natural parents and strives to resolve his problems of identity. The many unknown facts create conflict, confusion, and distorted fantasies.

59. TRISELIOTIS, at 166:

The self-perception of all of us is partly based on what our parents and ancestors have been, going back many generations. Adoptees, too, wish to base themselves not only on their adoptive parents, but also on what their original parents and forbears have been, going back many generations. It is this writer's view, based on his findings, that no person should be cut off from his origins.

in life, his occupation, his kinship or his geographical birthplace.<sup>60</sup> Everyone has experienced the embarrassment and mild anger of being called by the wrong name. The involuntary changing of a person's name is indicative of his subservience, as evidenced by the practice of slave owners and traders in the history of our own country.<sup>61</sup> The undesirable effect of using numbers rather than names to identify persons in a computerized society has been the topic of much discussion,<sup>62</sup> and is a common experience for most citizens of the United States. An individual's name, and all that it encompasses, is perhaps more personal and more intimate than anything else he possesses. To destroy a person's historical identity, which in fact his name reflects, is to tamper with an important individual psychological and sociological foundation.<sup>63</sup>

There are instances where the need to obtain the identity of an adoptee's natural parents is mandated by a medical problem or some other special circumstance.<sup>64</sup> It must be conceded, however, that most inquiries made by adoptees regarding their biological origins begin as normal childhood inquisitiveness. Since the general practice is for adoptive parents to inform their children, beginning at an early age, that they are adopted, and to cultivate the meaning of that relationship as the child progresses toward maturity,<sup>65</sup> it is reasonable to expect that at some time the adoptee will realize that somewhere in

60. C. BARDSLEY, *ENGLISH SURNAMES: THEIR SOURCES AND SIGNIFICATIONS* (1889, reprt. 1968); E. LATHAM, *A DICTIONARY OF NAMES, NICKNAMES AND SURNAMES OF PERSONS, PLACES, AND THINGS* (1904, reprt. 1966).

61. A. HALEY, *ROOTS* (1974) (an account of one Black American's search for his ancestral African tribe).

62. See generally *THE COMPUTER AND INVASION OF PRIVACY, Hearings before the House of Representatives' Committee on Government Operations, 89th Cong., 2d Sess.* (U.S. Gov't. Printing Office 1966).

63. TRISELIOTIS, at 160:

The study [of adoptees] identified three main areas which have important implications for adoption practice: the developing child's need for warm, caring, and secure family life; the adoptee's vulnerability to experiences of loss, rejection or abandonment; and the adopted person's need to know as much as possible about the circumstances of their genealogical background in order to integrate these facts into their developing personality.

64. *E.g.*, the adoptee or his adoptive parents learn that he has some type of inherited disease. Consultation with or information from the natural parents is necessary. If this were the only problem faced by adopted people in light of sealed records the situation could be easily remedied. First, it seems reasonable that such a situation might establish a good cause for having the records opened. Second, the adoption agency or other party appointed by the court could serve as the intermediary between the parties, obtaining the needed information without revealing the identity of either.

65. See, *e.g.*, Krugman, *Differences in the Revelation of Children and Parents to Adoption*, 46 *CHILD WELFARE* 267-71 (1967); Sorosky, *The Controversy Over the Sealed Record in Adoption: A Psychological Investigation*, a paper prepared for a meeting of the American Academy of Child Psychiatry in October, 1973; C. PRENTICE, *AN ADOPTED CHILD LOOKS AT ADOPTION* (1940). One author does take the position that adopted children should not be told they are adopted. J. ANSFIELD, *THE ADOPTED CHILD* 35 (1971).

the world there probably exists a person or persons who, biologically at least, are very important to him. Such a realization on the part of the adoptee does not necessarily mean that the desire to learn about his biological and historical past will alter his relationship with his adoptive parents, or manifest itself in any particular type of conduct.<sup>66</sup> There is no doubt that a spectrum of reactions exists. Some adoptees have an apparent disinterest in acquiring knowledge of their ancestors or meeting with their natural parents, while others manifest a compulsion for obtaining such information.<sup>67</sup>

### *The Philosophy Behind Sealed Record Statutes*

It is a basic tenet of family law that in cases where the custody of children is involved, the paramount issue to be considered by the state and the courts is the welfare of the child.<sup>68</sup> The Illinois Adoption Act specifically incorporates this concept:

The best interests and welfare of the person to be adopted shall be of paramount consideration in the construction of this Act.<sup>69</sup>

66. TRISELIOTIS, at 166:

The adoptees' quest for their origins was not a vindictive venture, but an attempt to understand themselves and their situation better.

67. Testimony in support of this proposition appears in the record of a recent New York case, *In re Ann Carol S.* (Sur. Ct., Bronx County, dec. August 8, 1974). Petitioner in that case was an adult adoptee who was seeking access to records regarding her adoption. Petitioner called Dr. Robert J. Lifton, a recognized expert in the area of adolescent psychiatry and a close associate of Erik Erikson, as a rebuttal witness. Mrs. Gertrude Mainzer of New York City represented the petitioner in the action. The following exchange between Mrs. Mainzer and Dr. Lifton is found in the record at 554 *et seq.*:

Mrs. Mainzer: In your opinion, what happens to an adult who wants this knowledge but doesn't get this knowledge about his or her historical origin or historical connectedness?

Dr. Lifton: From my own experience with adopted people and from the literature, it apparently seems as though every single adopted person has some significant degree of curiosity about this. Some are blocked from further effort by that layer of guilt, others make the effort.

The desire to find out is probably universal. Where it is blocked, one remains locked in more extreme fantasies. The fantasies that adopted children seem to have are at either extreme: Most characteristically, for instance, the mother is either imagined to be a prostitute in the gutter of society—otherwise, why would they keep this dirty little secret—or, at the other extreme, a great queen that will lift one out of one's ordinary existence into something noble.

Neither extreme of fantasy is healthy or real. So, I think that one is locked into conflict and there is enormous frustration in not being able to find one's identity.

I would sum this up by saying a gap in one's sense of identity will always remain if one cannot find out this information about one's heritage.

68. *Thorpe v. Thorpe*, 48 Ill. App. 2d 455, 198 N.E.2d 743 (1962); See generally H. CLARK, *LAW OF DOMESTIC RELATIONS* 572 *et seq.* (1968).

69. Illinois Adoption Act § 9.1-20a (1973).

A reasonable argument can be made that those sections of the Illinois statutes which allow the impounding and sealing of adoption records and birth certificates imply that the legislature has decided that it is in the best interest of the child that a high and almost impenetrable wall of confidentiality and protection surround adoption proceedings.

Illinois courts have not yet had occasion to comment on the rationale of sealed record statutes. However, cases have arisen in other jurisdictions which discussed the reasoning behind sealed record statutes. In *People v. Doe*, a New York trial judge made the following observation regarding the New York Domestic Relations Law, section 114, which provides for the sealing of adoption records:

[The statute] has assured the mother, who has given birth to a child born out of wedlock and finds that she cannot properly take care of the child, that instead of secreting the child or placing it with persons haphazardly, if she wishes to permit suitable, desirous and qualified persons to adopt the infant, her indiscretion will not be divulged. It further assures her that the interests of the child will be protected in that no one will ever know by means of the adoption proceeding that the child is illegitimate. It assures the foster parents that they may treat the child as their own in all respects and need not fear that the adoption records will be a means of hurting the child, which has become by this proceeding their child, or of harming themselves. It assures all persons connected with the adoption that the records will be and remain sealed and secret.<sup>70</sup>

There are several valid reasons why the General Assembly and the courts should, during the time following the finalization of the adoption, establish extreme precautionary measures to protect the adoptive family and the child. They deserve every help possible to protect them from the prying eyes of the natural family<sup>71</sup> and to remove the social, emotional and legal difficulties that the adoption may have created.<sup>72</sup> What is lost in this logic, however, is the very basic fact that adopted children do not remain children forever.<sup>73</sup> A

70. *People v. Doe*, 138 N.Y.S.2d 307, 309 (1955).

71. *McGaffin v. Family and Children's Service of Albany Inc.*, 6 Misc. 2d 776, 164 N.Y.S.2d 444, *appeal dismissed*, 174 N.Y.S.2d 972, *aff'd*, 7 App. Div. 2d 769, 179 N.Y.S. 2d 948 (1957).

72. *Hubbard v. Superior Court*, 189 Cal. App. 2d 741, 747, 11 Cal. Rptr. 700, 704 (1961):

A mother, having given birth to an illegitimate child, must lay bare the details of her misfortune, perhaps in her statements involving others who may be innocent, but will in any event be convicted without trial if cloture is broken; family secrets of petitioners for adoption must often be told to the investigators which, if ever revealed to the public, could embarrass and punish them through public censure. There is no need to elaborate.

73. See generally J. PATON, *THE ADOPTED BREAK SILENCE* (1954) (recounting the experiences of forty adults who had been adopted children).



time does come when adopted children, like all children, assume the responsibilities of adulthood. Thus, while originally it may have been in the very best interest of the child involved in an adoption to have the records of that proceeding and his original birth certificate sealed,<sup>74</sup> it does not necessarily follow that such action remains in the best interest of that person for his entire life.

It is a reasonable proposition that it would be undesirable to subject adoption records and court proceedings to general public scrutiny. An adoption is very much a private affair, best administered with a minimum of public fanfare. There is a valid interest on the part of the state and the parties involved to remove the entire proceeding from the gaze of the over-curious general public, and the statutes here under discussion adequately provide a means to satisfy that interest. Adoptions of infants carried out through public or private agencies are usually successfully completed without the adoptive parents and the natural parents ever having come into contact with each other. The better policy appears to be that these parties remain anonymous.<sup>75</sup> Sealed record statutes promote this policy in an attempt to avoid the serious conflicts that could arise between the natural and adoptive parents. The problem becomes particularly acute when the natural parents have misgivings about having surrendered the child either before or after the final decree has been entered.<sup>76</sup> A statutory provision which would allow an adoptee to have access to his adoption records upon reaching his majority would continue to preserve the desired anonymity between the natural parents and the adoptive parents for a substantial period of time. There is no question that this anonymity would be compromised by releasing adoption information to the adoptee. However, the undesirable prospects of a child being caught in the middle of an emotional tug of war be-

---

74. One reason behind sealed record statutes is to shield from the child the fact that his birth was illegitimate. This is clearly indicated in the Illinois statute which specifically provides that language pertaining to illegitimacy is not to be used in or appear on the records of the proceeding. Illinois Adoption Act § 9.1-18. Some researchers contend, however, that if an adoptee, not otherwise informed, assumes anything about himself, he assumes that he is illegitimate. Interview, Margaret Lawrence, Director, Adoption Research Project, at Lake Forest, Illinois, September 13, 1974 [hereinafter cited as Lawrence Interview].

75. See, e.g., *People ex rel. Swasing v. Rebecca Talbot Perkins Adoption Society*, 163 Misc. 719, 720, 296 N.Y.S. 778, 780, *aff'd* 251 App. Div. 868, 298 N.Y.S. 500 (1937):

Good people who are willing to take a homeless child into their homes by way of adoption should be encouraged in their charity, and they deserve every protection which the court is capable of giving them in their exclusive custody of the child and a particular effort should be expended to keep away from the home the child's parents and relatives. . . .

76. See generally Katz, *The Adoption of Baby Lenore: Problems of Consent and the Role of Lawyers*, 5 FAM. L.Q. 405 (1971).

tween two sets of parents or the harassment of one set of parents by the other are for the most part mooted by the adult status of the adoptee.<sup>77</sup> As a result, a confrontation between the natural and adoptive families is unlikely, and even if it did occur would create far less serious problems than had it taken place during the adoptee's minority.

Proposals which condition the adult adoptee's right of access to his records upon the permission of his adoptive or natural parents are unacceptable:

If the adopted child, when adult, is prevented from fulfilling his own need to gain knowledge of his natural family because other adults have the power to withhold their permission, then the adoptee is not a free person. The process of relinquishment and adoption have made the child a chattel property to be conveyed first to the agency and then to adopting parents, not just in childhood, but all his life.<sup>78</sup>

### *The Adoptive Parents*

It is not difficult to empathize with the adoptive parents who are faced with the situation of their adopted child manifesting an interest in his genealogical background. They may react, and understandably so, with some hostility toward the whole idea. To them the relationship between their child and his natural parents is no more than one of biological accident. It is the adopted parents who have provided the adoptee with the parental love, guidance and familial associations which sociologically constitute parenthood.<sup>79</sup> Adoptive parents may

---

77. Removing adoption records and original birth certificates from the absolute security now surrounding them so as to be available to the adoptee may create an opportunity for abuse, especially along the lines of blackmail. There is no method to determine if such incidents have taken place. See Note, *The Adoptee's Right to Know His Natural Heritage*, 19 N.Y.L.F. 136, 150, nn. 73-75 (1973) where it is stated that officials in two states which allow adult adoptees access to their records report no particular difficulties in the administration of their laws.

78. Lawrence Interview. The reference in the quoted material to "chattel" is a theme that runs through much of the philosophy of some adoptee organizations. The idea that the homeless child is a commodity to be processed and sold on the adoption market raises interesting and sensitive questions involving, among other things, the thirteenth amendment. Discussion of this aspect of the issue is beyond the scope of this article. For an excellent treatment of the practice and problems created by some methods of private adoptions see Note, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L.J. 715 (1950).

79. Adoptee's groups such as Yesterday's Children take the position that, for the most part, the fears of adoptive parents regarding their child finding his natural parent are unfounded. The adoptee is not looking for a parent-child relationship since the adoptive parents have fulfilled that function. What he is looking for is information which is usually available only from those people responsible for his birth. Persons who have succeeded in searching out a natural parent are generally not interested in re-establishing familial ties, although the relationship may become cordial. Deeper relationships do sometimes form between the adoptee and new found siblings or other relatives. Cullom Interview.

respond to such inquiries from their child by refusing to impart to him any knowledge they possess concerning his natural parents,<sup>80</sup> or by fabricating unfounded stories about the natural parents in order to impress upon the adoptee his good fortune in being adopted. Such reactions create severe problems in and of themselves.<sup>81</sup>

Adoptive parents, who are not adoptees themselves, have a difficult time in relating to the needs of their adopted children. "They have not had the experience of profound orphanhood and are unable to empathize with their child who wishes no more than to gain for himself what other people take for granted—an identity that is real and rooted in the history of man."<sup>82</sup> Many adoptive parents who do have some information regarding their child's biological family are no doubt highly successful in dealing with their child's inquiries about his natural mother or father. Yet it seems of equal certainty that serious conflicts can develop within the adoptee and between the adoptee and his adoptive parents as the child's desire for information becomes more urgent but remains unsatisfied.<sup>83</sup>

In fact, the practice of sealing adoption records may contribute to the problems faced by adoptive parents. The term "sealed record" imparts the notion that the confidential information regarding the adoption is contained only in the court records. This notion is not necessarily accurate. Organizations such as ALMA, Yesterday's Children and Orphan Voyage<sup>84</sup> report frequent incidences where adoptees have succeeded in finding their natural parent(s), even though the search was carried out without the aid of adoption records, original birth certificates, private investigators, or any assistance from public

80. Lawrence Interview:

Once you have told a child that he is adopted you have told him who he is not. You must then gradually begin to tell him who he is.

81. A. McWHINNIE, *ADOPTED CHILDREN—HOW THEY GROW UP* 262 (1967).

82. Lawrence Interview.

83. The distress felt by adoptees was more than adequately captured by the Greek dramatist Sophocles in *OEDIPUS THE KING* (F. Storr transl. 1912) at 101, where in response to Jocasta's plea that Oedipus abandon his search for his heritage the King stated:

Let the storm burst, my fixed resolve still holds  
To learn my lineage, be it ne'er so low.  
It may be she with all a woman's pride  
Thinks scorn of my base parentage. But I  
Who rank myself as Fortune's favourite child,  
The giver of good gifts, shall not be shamed.  
She is my mother and the changing moons  
My brethren, and with them I wax and wane.  
Thus sprung why should I fear to trace my birth?  
Nothing can make me other than I am.

84. An adoptee's group directed and organized by Jean Paton, headquartered in Cedaredge, Colorado.

or private adoption agencies.<sup>85</sup> While sealed record statutes do serve to wrap the task in a myriad of red tape which can become exceedingly expensive to unwind, the persistent adoptee who possesses some solid clue as to his identity, has a good chance of locating a natural parent.<sup>86</sup>

#### THE PROPOSAL

Amending the Illinois Adoption Act to allow adoptive parents general access to records regarding their child,<sup>87</sup> and granting the adoptee access to those records and his original birth certificate upon reaching his majority would not only put an end to the elaborate methods now being employed by adoptees to obtain this information, but would also improve the entire adoption process. By such an amendment the adoptive parents would have access to data necessary to answer many of the inevitable inquiries from their child. The statute would give notice to both the natural parents and the adoptive parents that the child will eventually have an option to examine the material for himself. The adoptive parents will have the benefit of supplying the child with information in accordance with a schedule by which they will judge his ability to assimilate the information. Adopting parents would enter the adoption with the knowledge that in addition to all the responsibilities of parenthood they have agreed to accept, they may also participate in the very important task of informing their child of his historical and ancestral background, even though it may be foreign to their own.

Adoptive parents who enter adoption with the knowledge that the child would have the opportunity, in the future, to view the records of the proceeding and other pertinent information, would be less likely to overreact when confronted by their child's queries about his natural

---

85. *E.g.*, Yesterday's Children was formed in March, 1974. By July of 1974 approximately 90 members were attempting to find a natural relative. By October 1, 1974, 18 members had succeeded in locating a natural parent or other relative.

86. Obviously, the best clue is the real name of one of the parents, but an accurate date and place of birth, the name of the attending physician, the name of the agency that handled the adoption, the name of any attorney involved in the procedure, or knowledge of the actual date the adoption decree was entered might all serve as viable starting points for a successful search. Cullom Interview.

87. ALA. CODE ANN. tit. 27, § 4 (Supp. 1973) provides adoptive parents with such access to the adoptee's original birth certificate. In its relevant part the statute reads:

Upon receipt of copy of any final order of adoption the state registrar of vital statistics shall cause to be made a new record of the birth in the new name, and with the name or names of the adopting parent or parents as contained in the final decree. He shall then cause to be sealed and filed the original certificate of birth with the decree of the court and such sealed package shall be opened only upon the demand of said child when he has attained his majority or adopting parents or by the order of a court of record.

parents. The parent-child relationship between the adoptee and his adoptive parents could only be strengthened by such a procedure. Reliance on current statutes to guarantee the anonymity of adoption serves no purpose when in fact these statutes seem to be frequently subverted.<sup>88</sup>

Permitting access to adoption records on the criteria set out below would not destroy the overall confidential nature of adoption. The natural parents and the adoptive parents would continue to remain anonymous to each other.<sup>89</sup> No substantial increased burden would be placed upon the custodians of the records. Persons other than the adoptee or the adoptive parents could still gain access to the records only upon a showing of good cause in a court proceeding. Adoptee organizations and others who advocate abolishment of the stricter sealed record laws do not offer as an alternative exposure of every person who was ever involved in the difficult decision to give a child up for adoption.<sup>90</sup> The process under the proposed statute by which an adoptee could learn important personal information could conceivably evolve over a period of eighteen years. The proposal would not unduly jeopardize other relationships which have come into existence since the time of the adoption.<sup>91</sup>

The author does not advocate that the legislature should provide adopted persons with a statutory right to confront their natural parents, but only that the statute give them the right to acquire information about those parents from pertinent public records. Ideally, the information should be gathered in one central depository, preferably in the files of the clerk of the court in the county in which the adoption took place. The best system to disseminate information to the adoptee could be effectuated by an amendment to the Illinois Adoption Act. The proposal would provide that upon entry of an adoption decree

---

88. See A. McWHINNIE, *ADOPTED CHILDREN—HOW THEY GROW UP* 263 (1967) wherein that author concludes that the best results are achieved when the adopted child learns about his adoption from his adoptive parents.

89. It would not seem that there is any great advantage in having adoptive parents know who the natural parents are by name, although at least one authority has advocated the position that adoptive parents and the natural mother should meet, if only briefly. Lewis, *The Psychiatric Aspects of Adoption*, *MODERN PERSPECTIVES IN CHILD PSYCHIATRY* 428 (ed. J. Howells 1971). The statute could be drawn so as to allow access to the adoptive parents to all relevant information, save the actual names of either the natural mother or father.

90. Cullom Interview.

91. Adoption agencies have an understandable and rightful concern that an adoptee may unexpectedly confront a natural parent. Interview with June Teason, Director of Adoptions, Illinois Children's Home and Aid Society, in Chicago, Illinois, September 6, 1974. The possibility of such an occurrence appears more likely under the present law than under a system where the adoptee would have other sources of information about his background.

the court would order a set of documents germane to that adoption be prepared, sealed and made available to an adult adoptee upon his request. Included among these documents should be a copy of the adoption decree and original birth certificate, the true biological name of the person adopted, background information concerning the natural parents, the name of the agency, if any, which handled the adoption, information regarding any foster care the child had prior to adoption and vital medical information about the natural parents. A provision should also be made for other information about the child's background to be included at the court's discretion or as requested by either set of parents. Such a statute would assure the adoptee of an independent and readily available source of information concerning his ancestry. The author believes that in many cases the availability of this information would satisfy the needs of most adopted persons.<sup>92</sup> Such records would adequately have served their purpose if maintained for a period of seventy-five years.<sup>93</sup>

#### CONCLUSION

The social value of adoption cannot be overstated. It serves as a viable alternative to natural parents who, for one reason or another, are unable to care for the needs of a child. Private and public adoption agencies provide the medium through which a closely supervised and orderly custody transfer can occur. Moreover, agencies have at their disposal specialists in a variety of fields to service the needs of the natural parents, the adoptive parents, and the child. Adoption offers to persons who would not otherwise have children the opportunity to fulfil their parental desires. Adoption is a practical solution to problems the state encounters when it is forced to re-

---

92. Conclusion based on Lawrence Interview and the overall study by TRISELIOTIS, *IN SEARCH OF ORIGINS—THE EXPERIENCES OF ADOPTED PEOPLE* (1973).

93. In 1935, the New York State Department of Social Welfare issued a *HANDBOOK FOR THE COLLECTION OF STATISTICAL INFORMATION ABOUT CHILDREN IN FOSTER CARE*. The following statement regarding the social purposes to be achieved by the maintenance of records is made at page 11:

Among these (purposes) is the keeping of a set of archives of children removed from their own homes who in later life may wish to learn about their families. Since there is no absolute assurance that these persons will know where to begin to unravel the often tangled thread of transactions which attended their care and support, especially of those adopted in early infancy, or that records will have been preserved by the hundreds of voluntary agencies, children's courts, and county and city commissioners of public welfare, several of which may have had a hand in the care of a single child, one central confidential depository of information about each child separated from his own people and coming under the care of one or another of the agencies or institutions is a real safeguard of his future interests.

move a child permanently from the custody of parents determined by the courts to be unfit.<sup>94</sup>

Most importantly, however, adoption provides the child involved with a chance to partake of the benefits of family life under conditions hopefully superior to what they would have been if the child had remained with his natural family. Adoption is a procedure involving three parties—the natural parents, the adoptive parents, and the child—carefully supervised by the legislature, the courts, public and private adoption agencies, and society in general. If the law serves any party to the proceeding inadequately, then all concerned are served inadequately. But the focus of the law must be on the adoptee, since it is primarily for his benefit that the institution exists.<sup>95</sup>

The problems discussed herein with regard to the effect of sealed record statutes are better left to the legislature for solution rather than to the courts. Confidentiality and anonymity are important elements of an adoption proceeding. But their importance should not be allowed to overshadow substantial evidence which indicates that strict confidentiality and anonymity may do more harm than good, at least as far as the adoptee is concerned. An amendment to the Illinois Adoption Act providing adopted persons with access to recorded information concerning their natural families would substantially improve the institution of adoption, without destroying the general privacy of the procedure.

STEPHEN A. GORMAN

*Author's note:*

Recently a class action suit was filed in the Federal District Court for the Northern District of Illinois alleging that the refusal on the part of state officials to allow adopted persons full access to their adoption records is a violation of the adoptees' constitutionally protected rights. *Yesterday's Children, Inc., et al. v. Leahy, et al.*, Civil No. 75C378 (N.D. Ill., filed Feb. 5, 1975).

---

94. Illinois Adoption Act § 9.1-1D (1973).

95. *In re Tilliski*, 390 Ill. 273, 61 N.E.2d 24, *aff'g* 323 Ill. App. 490, 56 N.E.2d 481 (1945).