SOCIAL AND LEGAL POLICY IN CHILD ADOPTION IN ENGLAND AND WALES,
1913-1958.


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ABBREVIATIONS
N.A.S. - National Adoption Society.
N.C.U.M.C. - National Council for the Unmarried Mother and her Child.
S.C.S.R.A. - Standing Conference of Societies Registered for Adoption.
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The object of this thesis is to examine some aspects of social and legal policy in relation to child adoption in England and Wales between 1913 and 1958. As Professor Marshall has pointed out, "Social policy is not a technical term with an exact meaning". It is, therefore, appropriate to point out the meaning which has been attached to the terms social and legal policy in this thesis. In the main, social policy in adoption is used to describe the policy of governments as it was reflected in successive Acts of Parliament, and legal policy in adoption is taken to mean the attitudes of the courts to the interpretation of statutes as seen in judicial decisions. These two categories cannot, of course, be regarded as mutually exclusive.

However, legislative and judicial decisions do not stand in isolation; they are best seen in relation to their social context. Social and legal policy in this matter must, therefore, be examined both in the light of historical traditions and attitudes and also as a part of the contemporary social setting. In addition, since the process of administering policy is continuous it is subject to shifts in social attitudes, so that governments, sooner or later, are subject to fresh pressure to reform or modify the existing law.

In relation to the field of child adoption, such an analysis reveals a number of developments which reflect changing social attitudes. The first Part of this thesis examines the rise in interest in legal adoption and the debate which ensued over a number of years as it became clear that the proposals made to incorporate adoption into the legal system
carried implications affecting other parts of the social structure and that these also touched on questions of legal principle. The second part of the work discusses how a primary preoccupation with the problem of transfer of status for the child resulted, in the first legislation, in lack of proper control over adoption practice; it also describes the legislative steps taken to remedy that situation. The third and final part discusses the emergence of professional practice in the field of adoption and also the effect on policy of certain psychological theories relating to the parent-child relationship.

This thesis therefore traces some of the changes which have taken place in public attitudes to adoption as they are to be seen in the areas of social and legal policy during the period under consideration.

In the process of writing this thesis many sources were used, which included books, periodicals, newspapers, Parliamentary Papers, Hansard, conference reports and discussions with a number of people who have experience of working in the field of adoption. However, one particular primary source should be referred to at this point. As a result of permission granted by the Home Office it was possible to make use of the Departmental Bill Papers relating to adoption. This term – Bill Papers – refers to the notes and memoranda filed by a Department in relation to successive Acts of Parliament. The Bill Papers are internally classified as follows: files leading to the first Adoption Act, 1926 – HO 45/12642/456209; files compiled between the passing of the 1926 Act and its implementation – HO 45/12695/496773; files leading to the Adoption of Children (Regulation) Act, 1939 – 669162 and 689999; files leading to the Adoption Act 1950 – 147551; and files leading to the Adoption Act 1958 – 944866.
From the chronology of the note, it is possible to identify the file in which it is contained.

It should also be pointed out that only written evidence submitted to the first Departmental Committee on Adoption in 1921 is still in existence. This evidence, too, was consulted at the Home Office. Written evidence to subsequent Departmental Committees was researched if it had been separately published by the particular organisation or individual concerned.
PART I

"Of all the assets of which the State stands possessed, none are more valuable than the children, but of all its assets the State has in the past been of none so wasteful and so heedless".

W. Clarko Hall,
The State and the Child, 1917.
CHAPTER I

STATUS, SUCCESSION AND SANCTION.

In our society, the biological fact of parenthood is given recognition by the State through those legal rights which parents possess over their children. This reinforcement of the natural link of parent and child establishes and defines responsibility for the care and control of these weaker members of society. It is also the means whereby the child acquires social and legal status in the wider society. Parental rights and duties have been enforced and acknowledged by society as a means of defining the social and legal unit of the family, which has been a fundamental concept throughout Western civilisation.

Legal adoption can be contrasted to this situation. Here parenthood is a legal invention. It is the result of a process whereby the status of parenthood is voluntarily abrogated and transferred, through a legal process, to new parental figures. The adopted individual acquires new relationships which supersede those established by birth and so becomes a member of a new family. Where the child is illegitimate his status is strengthened as the process legitimises him and removes a legal handicap and lessens a social stigma. Indeed, this has been a subsidiary function of legal adoption in our society; it has been the practice for some unmarried mothers to adopt their children in order to legitimize them.
The introduction of legal adoption into the English legal system is a comparatively recent event since the first Act enabling this to happen was not passed until the beginning of the twentieth century. Legal adoption had not previously existed since the concept ran counter to certain basic tenets of the common law. It became part of our law only after inroads had already been made into a number of these principles by Parliament so that the law had already been modified to a certain extent. This is significant since the concept of legal adoption, above all, was a challenge to the traditional view of parental rights. On the other hand, the demand for its introduction was made only when changes in the fabric of British society created a need which, it was felt, could be met if de facto adoptions could be legally safeguarded through a permanent transfer of the child. But despite the weakening of the traditional legal standpoint and the pressure for change, there was considerable resistance to be overcome, a resistance which was supported to some extent by concern about sexual immorality and irresponsibility.

Resistance from the legal point of view was to be found in three main areas. In the first place, legal adoption would run counter to the principle that rights over children were vested in their parents and were incapable of voluntary alienation. In the second place, the transfer of a child from one family group to another would affect the rules concerning the transfer of property. In the third place, if adoption was to be a legal process authorized by a court a decision had to be made as to the most appropriate court or courts to be allotted.
this jurisdiction. Although this last point did not touch on a question of legal principle, it was a matter which for reasons of judicial administration, was to prove a major difficulty.

Conflict in these three areas, where change or innovation would result from the introduction of child adoption, explains why an apparently straightforward measure of social reform was so slow in reaching the statute book despite the support of the public, of influential groups, and of a number of Members of Parliament. What its advocates saw simply as a philanthropic movement providing for the welfare of children had implications which touched upon questions of legitimacy, upon the legal definition of the family and upon that institution's important function as a means of devolving property. The history of this movement to achieve legal adoption illustrates the extent to which these concepts remained rooted in British society at the beginning of the twentieth century, and to what extent, on the other hand, the Englishman's castle was being breached by the armies of social change.

Since parental rights were inalienable, all "adoptions" made before the passing of the Adoption of Children Act, 1926 were informal arrangements with no legally binding force. The legal position is well illustrated by the case of Humphrys v. Polak which was heard in the Court of Appeal in 1901. The plaintiff, a single woman, had placed
her illegitimate child with the defendants for a trial period of one month. It was agreed that if the defendants wished to keep the child after this period had expired, they would maintain and bring up the child as their own and would relieve the plaintiff of all liability. However, four months later the defendants refused to maintain the child whereupon they were sued by the mother for breach of the agreement. The action failed since the Court of Appeal was of the opinion that the promise made between the parties could not be upheld. It was legally impossible for the mother to divest herself of her parental rights in favour of another person or persons. As a result the agreement could not be enforced.

The legal principle which is expressed in this decision was well-embedded in the law. It had been maintained despite the gradual modification which had taken place in the law concerning parental rights. Originally the father had almost absolute rights over his children in the eyes of the law which he could maintain against all others including the mother. This attitude is to be found in the words of the judge in Re Agar Ellis: "The rights of the father to the custody and control of his children is one of the most sacred rights." Intervention by the courts with these rights was exceptional. However, from the middle of the nineteenth century a number of statutes changed the situation both by giving the mother rights of custody, which had previously been denied her, and by allowing intervention by the courts with custody rights of the

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2 for example, R v. de Hannuville (1804), 5 East 221
3 (1883) 24 Ch. D. 317, C.A.
parents in certain circumstances.

One aspect of such legislative change was embodied in the Custody of Children Act 1891. Indeed the first Adoption of Children Bill, introduced into the House of Lords by the Earl of Meath on 16th July, 1889, was a forerunner of that Act. Both reflect the growing concern that the rights of parents to retain and recover the custody of their children affected the activities of philanthropic societies concerned with the care of children. The Earl of Meath's Bill had as its specific purpose to prevent "parents or other guardians from recovering their children after they have consented to their adoption; unless they can satisfy the Justices that their claim is legitimately made for the benefit of the children". The Bill was therefore aimed at resolving a specific situation rather than at dealing with "adoption" in the wider sense. The situation was one which arose when children, who had been admitted into orphanages or who had been placed for "adoption" by a philanthropic society, were removed by their parents or guardian for the sole purpose, it was alleged, of gaining financially when the children started work. These parents were often not fitted "either morally or pecuniarily to have care of them" according to the Earl of Meath.

He went on to say that for such people a child was not a treasure to cherish but simply a chattel from which they might draw the greatest financial advantage. This was a class of parents who brought

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5 op. cit.
up their children in hostility to all law and all notions of morality so that they ultimately formed a band of dangerous characters—a band which was increasing in number, and becoming a social danger in the large cities of the country. Often the children were encouraged into criminal acts; the boys were taught to steal and the girls were used "for still more evil purposes". The result was that the work of individuals who did their best to rescue these children were frustrated as soon as the children could earn their living since the parents then reclaimed them. On the other hand, those who might be willing to "adopt" the children were reluctant to do so because of this insecurity. No doubt there were large numbers of people who had no children of their own who would be glad to "adopt" if they felt that they had a legal claim on the child. For these reasons the measure was needed.

The introduction of the Bill coincided with two legal cases concerning rights of custody in such circumstances but this particular Bill was not the result of these. It had been framed more than a year previously as a result of Petitions received by his Lordship as chairman of the Parliamentary Social Reform Committee. These had come from a number of persons who were interested in institutions for destitute children and so were aware of this problem. This concern is one aspect of that growing opinion in the nineteenth century of the social benefit which would result if children were removed from bad surroundings and were brought up elsewhere in the care of a "fit person". For instance, the Care and Education of Infants Convicted of a Felony Act 1840 made it

6 op. cit.
possible to transfer a convicted child from the custody of its parents or guardian to the custody of any person willing to provide for its education and maintenance. The test to be applied was the benefit which might accrue to the child, a principle which later was to be embodied and widened in the Industrial and Reformatory Act 1866, amended in 1880. However, it may well be that this early legislation dealing with the transfer of custody "was obviously intended less in the interests of the child than for the protection of society against the danger of an hereditary criminal class".

Another set of circumstances in which transfer of custody was allowed by legislation arose under the Prevention of Cruelty to Children Act, 1894 which enabled the child to be transferred to a relative or other fit person if a parent or guardian was convicted or was on trial for inflicting bodily injury on a child. The Criminal Law Amendment Act, 1885 enlarged the definition of crimes against a child to include seduction or prostitution caused, encouraged or favoured by the parent or guardian.

From these Acts, it can be seen that the transfer of custody from the parents or guardian — although a nineteenth century innovation — was not a revolutionary idea by 1899. Nonetheless, the Bill did not succeed.

1:2 The Bill had a brief Parliamentary history. Tactically it was almost bound to fail since it had been introduced late in the Session and, as the Earl himself recognised, there was, on that basis alone, not much hope of it being passed. He hoped, though, that it would go into Committee and there be subject to advice and criticism. In fact, however, the Bill was withdrawn since it was so strongly opposed by the Lord Clarke Hall: The Law Relating to Children (1894)
Chancellor himself, embodying in his speech® the traditional attitudes of the English lawyer.

The Lord Chancellor was prepared to concede that there was an evil — somewhat exaggerated — to be remedied. However, in dealing with this particular hardship, the Bill would alter the whole law of England with reference to the right of parental control. If such a change was to be attempted the measure would have to be far wider and deeper, and treat the whole question as one subject. This measure simply picked out particular parts of the right of parental control and tried to deal with them.

Indeed there was hardly a single section of this Bill, or a principle of it, — so far as a principle could be found — to which the Lord Chancellor was not entirely opposed. The only principle which he could find in the Bill was that the principle of adoption should be imported into the law of this country and that the right of parental control should be taken away in certain circumstances. With neither aspect could the Lord Chancellor agree. In addition, he found that the framers of the Bill had themselves qualified and restricted the principle so that the original vigour and force of what was proposed had been lost. For example, when a child was adopted under this proposal no rights of adoption were transferred since "nothing hereinafter contained shall confer on the adopted child any incident of blood relationship, right of succession, etc.". Neither did the measure remove the parents' contingent responsibility to maintain the child if the foster-parent was not able

to support the child. The Bill, he asserted, was full of such contra-
dictions, was ill-considered, and almost incapable of being worked.

The government agreed that an evil did exist for which
legislation was needed. This was the problem of those children who
had been deserted by their parents and came into the care of the Poor
Law Guardians. A Bill was under consideration for the purpose of
preventing such children from being re-claimed if it could be shown
that the parents, by reason of their bad character, were not persons
fit to be entrusted with their guardianship. This Bill was in fact
introduced and passed as the Poor Law Amendment Act, 1889. It
enabled the Guardians to pass a resolution "adopting" a child subject
to the complaint of a parent or guardian to a court of summary juris-
diction that there was no grounds for the resolution. The court had
power to confirm or rescind the resolution under section 1 (2).
(This statute is a forerunner of Section 2 of the Children Act, 1948).
Often such children were boarded-out with foster parents, or, on the
application of parents or relatives or friends, they were discharged
into their care but subject to the Guardian's resolution to assume
custody of them.

The kind of circumstances which had been giving concern to
the philanthropic bodies and the Earl of Meath were to come to the
public's attention quite dramatically in two court cases involving Dr.
Barnardo which were reported in the early 1890's. In Barnardo v.
Holmwood⁹ (Roddy's Case) the facts were that a Miss Le Lierre had

⁹ [1891] A.C. 388. H.L.
applied for the admission of a boy of nine, John James Roddy, into Dr. Barnardo's Homes. This boy was not an orphan nor was he completely destitute, but it was alleged that he was grossly neglected by his mother. The child was illegitimate and his mother's husband, who was not the father, seemed to have no interest in him.

When the boy was admitted into the Home, his mother signed an agreement to leave him in the care of the managers for twelve years. It was also alleged that she had declared herself and the boy to be Protestants, that he had been baptised in that faith, and that he had attended Protestant schools. On 1st October, 1889, the boy was boarded out with the mother's consent and knowledge at Huntingdon. On 22nd December, 1889 a letter reached Dr. Barnardo from a firm of Roman Catholic solicitors demanding that the boy be returned to his mother who now claimed to be a Roman Catholic herself. After correspondence between the parties, Dr. Barnardo decided not to hand over the boy. As a result, a writ of habeas corpus was applied for and obtained. Dr. Barnardo appealed against this decision, first to the Court of Appeal and then to the House of Lords.

He failed in both courts. The law was quite plain: the mother could not bind herself by an agreement not to take away the child. The agreement between the parties was therefore absolutely null and in determining who was to have custody of an illegitimate child, the court would primarily consider the wishes of the mother unless that was detrimental to the interests of the child.

However, as Lord Esher recognised in his judgement in the
Court of Appeal, this cause célèbre was in reality a dispute between two proselytizing religious groups. "..... this is not a mere dispute between the wife of a labouring man and Dr. Barnardo. It is a dispute between two sets of earnest benevolent enthusiasts."

The same principle was in dispute in Barnardo v. Ford (Gossage's Case)\(^{10}\) in 1891. Harry Gossage had been born in 1880 and baptised in a Roman Catholic Church in 1883. In 1888, his mother, being destitute, accepted the offer of an organ-grinder at Leamington, to take the child for a time. In September, 1888, Dr. Barnardo received a letter from a clergyman in Folkestone which stated that a policeman had found a boy who said he had no home and that he had come to Folkestone with two organ-grinders who had treated him badly and then turned him away. Dr. Barnardo accepted the boy and communicated with the mother who replied that she was pleased at this outcome and adding that his two brothers had already been sent to Canada. Shortly afterwards a Mr. Norton from Quebec offered to "adopt" a boy from the Homes and selected Harry Gossage from among several put forward by Dr. Barnardo. On 6th November, 1888 the boy was handed over to Mr. Norton. On 11th November, a letter was received from a Mr. Alfred Newdigate, a Roman Catholic, written on behalf of the mother and asking for the boy to be handed over to him. Dr. Barnardo refused to do so and the mother applied for a writ of habeas corpus to recover the boy. Dr. Barnardo again appealed and again failed.

These cases helped to highlight the legal position with

\(^{10}\) [1892] A.C. 326, H.L.
regard to parental control, and the problems facing philanthropic bodies attempting to "save" children from a poor environment. The publicity given to the decisions and the concern they aroused were no doubt influential in persuading the government of the need for a measure to modify the law of custody in certain respects.

1:4 The Custody of Children Bill was introduced into the House of Lords by the Lord Chancellor in June 1890. Its main aim was to give power to a court to decline to grant a writ or order of habeas corpus compelling the production of a child in certain circumstances. On the same day, the Earl of Meath introduced the Protection of Children Bill which the Lord Chancellor felt was free to a great extent of the objections made to the Adoption of Children Bill. Although the Lord Chancellor was cautious about any substitution of other control for that of parents, yet if proper security for parents could be combined with additional security in the interests of children, then he would raise no objections. Indeed he proposed that both Bills should be referred to the same Committee.

The result of these moves was the Custody of Children Act, 1891 which established the principle that if a parent had abandoned or deserted his (or her) child or allowed it to be brought up by and at the expense of another person, school or institution, then in any claim for recovery of the child, the burden of proof was on the parent to

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11 Hansard, House of Lords, Volume 344.
show that he was a fit person to have custody. The High Court was given power to refuse the application altogether. In addition, if at the time of the parent’s application for custody, the child was being brought up by another person, the High Court could when awarding custody to the parent, also order him to pay back the whole or part of the costs incurred in the care of the child.

After this limited concession, which recognised that the possible welfare of the child could be weighed against the rights of custody of the parent, the legal position remained rigid. The Act of 1891 enabled de facto adoptions to be safeguarded against the claim of the parents of a child only if the parent’s behaviour could be shown to amount to abandonment or desertion. It was not the general policy of the law, as Humphrys v. Polak illustrates, to uphold a transfer of custody by a parent, which is the essence of legal adoption.

Another problem of substantive law raised by any proposal to introduce legal adoption was the question of property rights and its devolution. A basic tenet of the English common law since the Middle Ages was that real property passed to the eldest legitimate son by the rule of primogeniture on the death of the father. It was not divisible in any other way. The rule ensured the preservation of property through its descent to the legal heir, and the accumulation of wealth in the hands of the landed aristocracy, a privilege which they were remarkably tenacious in defending. Attempts to repeal the law were made in the

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nineteenth century particularly through the demands of the Liberals and the Manchester School who wished for a free trade in land. These efforts were not successful. In 1859 a Bill, the Real Estate Intestacy Bill for the abolition of the law of primogeniture was met with the retort that it “tended to produce either despotism or republicanism,” and that its repeal would destroy “that fair and reasonable influence which the property and aristocracy of the country was allowed to possess”. Indeed, according to Lord Graham: “The law of primogeniture is inherent in the character, customs and feeling of Englishmen”.

In the light of these remarks, it would not be surprising for any Lord Chancellor to regard the introduction of legal adoption with considerable doubt. Although modification of the medieval rules of land law had taken place, so that land could be distributed in a will, for example, yet the position regarding succession to property would have to be clarified. Would the creation of new legal relations for the child result in the introduction of a new principle concerning the devolution of property? In other words, would the adopted child - often born illegitimate - be given equal status on an intestacy with the legitimate and natural child of the adopters? It was also realised that by adoption it was possible to reduce the rights of the legitimate and natural children of the deceased to the property which they might otherwise inherit.

In 1925 the Law of Property Act abolished the old land law and reformed the whole medieval law of property. It has been suggested that

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14 See J. B. Ben-Or op.cit.
resistance to the reform had finally crumbled when the first world war brought about the eclipse of the English landed aristocracy which had hitherto successfully resisted it despite the radical social changes of the Industrial Revolution. In the words of the Duke of Marlborough in The Times on 19th May, 1919: "The old order is doomed. Those fortresses of territorial influence it is proposed to raze in the name of social equality".\(^\text{15}\)

Ironically, the attempts to institute a method of legal adoption in this country were inspired by philanthropic not dynastic motives. The aim was ostensibly to provide for the welfare of children, not to provide a mechanism for the transfer of property but the movement was caught up in a long-drawn out debate concerning one of the central preoccupations of the English legal system. However, it does reflect the fact that the movement's impetus was to meet the needs of the property owning classes. As Major Attlee stated in the House of Commons on 26th February, 1926;\(^\text{16}\) "We have had a good deal of references to property and the idea of childless couples adopting children, but what we find in East London is that, where some misfortune befalls a family, there is nothing so common as the adoption of children by neighbours .......". De facto adoption existed — indeed, it is difficult to envisage a society in which it does not exist in some form — particularly among poorer people where mutual help was a defence against disaster. Its transformation into a legal institution was touched off by social changes which brought a new social class into

\(^{15}\) As quoted in A. B. Ben-Or, op.cit.

the field of "adoption".

The third legal problem which retarded a successful completion of the campaign for change in this field concerned the question of jurisdiction over adoption proceedings. Here the problem was to find a court where all aspects of the adoption process could be properly considered. In dealing with a social matter such as adoption the court would not be concerned solely with question of legality although a proper change of status for the child had to be safeguarded. But in addition to the legal transfer of rights, questions of social policy are raised involving issues which are extra-legal, such as the welfare of the child. These issues, while not displacing the legal questions, are of importance in ensuring that the best interests of the child and of all other parties to the adoption are being served. The decision on jurisdiction had to take into account these matters and proved to be an unexpected area of controversy.

The awarding of jurisdiction to the High Court did not give rise to much controversy. Probably the traditional jurisdiction exercised by the Court of Chancery over matters relating to children made it an obvious choice as it involved only an extension of these powers to include adoption. It was not, in fact, until late in the process of formulating policy that a dissentient voice was raised against this almost undebated acceptance. Sir Geoffrey Butler, in moving the Second Reading of the Adoption of Children Bill, 1925, which he had sponsored, spoke of instances of a 'somewhat wooden, a somewhat slow, readjustment to the conditions of the day which were reflected in the decisions of the Chancellors presiding over the Court of Chancery in the 50 or 100 years
preceding the passing of the Judicature Act 1873-75. Although that was 'all a matter of the past, ..... yet traditions, and particularly honourable traditions, are like penetrating and clinging gas; they hang about the clothing.' But this was a single voice of dissent - or so it appears - and the question of placing jurisdiction with the High Court presented very little controversy.

The choice of the inferior court, however was much more difficult. The evidence presented to the first Departmental Committee contained suggestions as to the most suitable court for the purpose. The obvious choice lay between the County Court and the Juvenile Court. Both had strengths and weaknesses - as became apparent from the evidence. On the one hand, the County Courts dealt with civil matters; they had been established by statute in 1846 to meet the need for a system of courts to deal with small civil cases. Their main jurisdiction was therefore over contracts and torts. However, "a sort of parental jurisdiction comparable with what would appear to be necessary is already exercised by County Court judges in the administration of funds under the Workmen's Compensation Act; and was so conferred on them by the Guardianship of Infants Act, 1886 which empowered the County Court to deal in certain matters connected with the custody of children."17 Another County Court judge felt that if any enquiries were needed the judge could rely on the Registrar to the court whose knowledge of local people was "often astonishing" or he could employ bailiffs who were often ex-policemen and so well-informed on local matters. He added, that, in certain cases, it

17 Evidence to the Hopkinson Committee.
might be useful to have other assistants to whom a case could be referred for investigation where necessary.

On the other hand, the juvenile or children's courts had been established under the Children Act, 1908, to deal with young offenders. These were courts of summary jurisdiction manned by magistrates and their establishment stemmed from a movement which advocated treating young offenders differently from adults. The strength of these courts, as far as adoption was concerned, lay in the existence of officials, such as Probation Officers, able to make the necessary enquiries. In addition, the speed with which cases were dealt with was a factor in their favour, as was the experience gained by these courts in making orders for the custody of children brought before the court under the Children Act, 1908. But the jurisdiction of the court was primarily criminal and some doubt was expressed as to the suitability of bringing a civil matter such as adoption into such a court. The decision on this point of the inferior court proved remarkably difficult to resolve and was the area, above all, where successive governments proved intransigent.

These three legal points — the question of parental rights, the transfer of property, and the allotting of jurisdiction — provided the areas where the debate over the principle of legal adoption was to be fought out. The ease with which they could be overcome or the resistance which they showed can be taken as indicators of the strengths and weaknesses of the established order as it was embodied in the legal system. The movement for legal adoption was to provide one test of the strength of these principles but only when certain changes had taken place in the fabric of British society which made legal adoption appear as a desirable mechanism to meet certain social needs. These changes will now be considered.
The evidence is clear that an interest in child adoption burgeoned in this country at the beginning of the twentieth century. As would be expected this interest arose not from a single source but from the confluence of several areas of concern and of social change.

This interest in child adoption can be linked, in the first place, to the growing importance of the child welfare movement which aimed at improving the physical well-being and general health of babies and young children. This, in turn, was one aspect of the general interest in children which had its roots in the nineteenth century and which is well documented. Early legislation, however, was concerned with protecting the child as wage-earner through the control of the conditions of child labour, and it was at the end of the century that interest widened to include the situation of the younger child and the baby. The result was a separate campaign known as the maternity and child welfare movement.

McCleary\(^1\) points to four interrelated reasons for this concern. In the first place, the widespread interest in the prevention

\(^1\) G. F. McCleary: The Early History of the Infant Welfare Movement (1953)
of disease during the latter half of the nineteenth century was linked to the developing activities of the local health authorities. Secondly, there was a strengthening of public concern to protect children from various kinds of exploitations. This trend can be seen in measures such as the Infant Life Protection Acts, 1872 and 1897 which attempted to protect foster children, and in the Prevention of Cruelty to Children Acts, 1889 and 1894. These Acts exemplified a further acceptance of the principle that the community as a whole had become responsible for the welfare of its children, and could intervene to protect children even against their parents. Thirdly, the decline in the birth-rate, although it had laid low the Malthusian spectre of over-population, now began to give rise to the opposite fear of under-population. Fertility declined in England and Wales from 35.3 per thousand population in 1866-70 to 23.5 per thousand in 1881-85, 21.3 in 1886-70, 20.5 per thousand in 1891-95, and 19.3 per thousand in 1896-1900. This trend continued into this century, the figures for 1901-05 being 28.2 and 26.2 for 1906-10. Lastly, there was the unavoidable fact that despite a decline in the general death rate during the second half of the nineteenth century, the rate of infant mortality had shown a distressing tendency to rise. Table 1 (page 35) shows the death rates from 1851 to 1901; in 1899 the death rate for this age group reached the peak figure of 163 per thousand.

The result of this four-fold concern was to focus attention upon the causes of infant death and in particular upon the relation between infant mortality and the ante-natal care of mothers. At the same time, it was realised that standards of child-rearing could be raised as families became smaller and mothers were able to devote more time to the care of the
individual child. One aspect of the movement was, therefore, educative and focussed on the need to guide and teach mothers the best method of child care. The smaller family would also mean a higher standard of living and could lead to improved nutrition and hygiene. The Infants Health Society, founded in 1904, had as one of its aims, the spread of knowledge on the best methods of systematically dealing with the chief factors prejudicially affecting the health and lives of infants. The establishment of this Society pointed to "the complete failure of our present methods of rearing infants of the working class and the danger to our national existence which such a state of affairs clearly and definitely portends".  

Although the movement was one which "following usual British precedent...... begin at the periphery - with local not central initiative," central government concern gradually found expression in a number of statutes. The work of individual Medical Officers of Health, local authorities, and voluntary organisations in such directions as health visiting, milk depots, and infant welfare clinics, was encouraged in the first decade of the twentieth century by a number of statutory measures, such as the Midwives act, 1902 and the Notification of Births Act, 1907. Such steps were further boosted by the recommendations of the Report of the Committee on Physical Deterioration, 1904, which stressed that the problem could only be dealt with as part of some great scheme of social education to which many agencies must contribute - legislative.
administrative and philanthropic — and by which the people themselves were to be induced to cast off the paralysing traditions of helplessness and despair.

The appointment of this Committee, following concern at the physical state of many volunteers for the Boer War, indicated the reason for growing government concern. There was fear that the country would miss the existing opportunities to develop our overseas territories and would be unable to muster a large enough army to protect the Empire. As one Member of Parliament stated in a Debate in the House of Commons in 1905, care of children was "good economy and good Imperialism". These anxieties were to be proved starkly and bitterly in the struggles of the first world war. In the words of Herbert Samuel, President of the Board of Trade, in 1915:

"(1) The security of our civilisation depends not only upon its excellence, not only upon the efficiency of our nation, but also on our numbers. It is the mass of a nation in these days which tells.

(ii) If the present birth-rate were on the same level as it was forty or more years ago, we should have half a million more babies each year than we now actually have.

(iii) If you put the two together, the deaths of infants before birth and the deaths of infants in the first year of life in many of the districts of our country ...... one third of our possible new population never survives the first year".6

It is not surprising, therefore, that during the first world war interest in the movement grew. The Notification of Births (Extension)

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5 As quoted in Bruce; The Coming of the Welfare State, 3rd ed. 1966 at p. 189.

Act, 1915 which made it compulsory in all areas of the country for the father, in the first place, or any other person present at the birth, or in attendance on the mother within six hours of birth, to notify the Medical Officer of Health within thirty-six hours. (The compulsory registration of births with the Registrar of Births and Deaths had been found to be inadequate to preserve infant life). By a Circular of 29th July, 1915, the Local Government Board urged on local authorities the importance of putting into operation all their powers for promoting maternity and child welfare, pointing out that the war had intensified the need for such work. The Act of 1915 gave them power to levy rates for infant welfare work and the Maternity and Child Welfare Act, 1918 gave local authorities wide powers to extend their care of mothers and young children. It became compulsory for each authority to establish a maternity and child welfare committee and power was granted to make such arrangements as might be sanctioned by the Local Government Board for attending to the health of expectant and nursing mothers and children below school age. The whole edifice of legislation was further strengthened by the establishment of the Ministry of Health in 1919 leading to better co-ordination of existing services and the development of other aspects of child welfare.

2:1 This concern for the welfare of children highlighted the plight of one group which was highly vulnerable, that is, those who were born illegitimate. The Registration of Births and Deaths Act, 1874 had made the registration of births and deaths compulsory. By the beginning of the twentieth century it was possible to study the trends
in the birth and death rates. An examination of infant mortality figures aroused, as has been seen, a general concern in this field. It also revealed that for an illegitimate child the chances of dying in the first year of life were twice as high as those of a legitimate child; for example, in 1915 the death rate for illegitimate children in first year of life was 203 per thousand compared with a death rate of 105 per thousand legitimate births. By 1918 the comparative figures were 185 per thousand and 91 per thousand respectively. The social attitudes to the unmarried mother would tend to make her conceal her pregnancy as long as possible, and the fact that she often worked as long as she was able would mean less adequate medical care for her. The problems caused by an unwanted and unwelcome baby often meant separation of mother and child for long periods if she had to support herself, at a time when substitute feeding was inadequate and the public supply of milk was often impure and unsterilised. (This was the reason for the setting up of Milk Depots in many large cities). She would often have a low standard of living - a wage barely adequate for one now had to be stretched to cover the needs of her child - which would affect the child's diet and general environment.

An example of growing public concern for the situation of the illegitimate child and the mother is to be found in the establishment of the National Council for the Unmarried Mother and Her Child in 1918. The aims of the Council speak of the need for immediate action for securing better provision for, and protection of, the unmarried mother and her child. Indeed, "in view of the fact that the deaths of illegitimate infants in England and Wales are always double that of legitimate infants, concerted action, from the standpoint of Public Health might well have
been undertaken long before the war.\textsuperscript{8}

The temporary rise in illegitimate births\textsuperscript{9} intensified this concern, particularly since the practical difficulties facing an unmarried mother were exacerbated at that time. It seems that the supply of foster-mothers for the 'boarding-out' of babies greatly decreased. In 1917, for example, a society working with unmarried mothers reported to the Child Welfare Council of the Social Welfare Association for London that appeals for assistance from unmarried mothers unable to find accommodation for their babies and unable, as a result, to undertake work, were steadily increasing. Enquiries to other similar societies revealed that they were, one and all, confronted with the same difficulty.\textsuperscript{10} This problem meant "at best, malnutrition for both mother and child and, at worst, moral disaster to the mother and neglect to the child".\textsuperscript{11}

This lack of boarding-out provision was explained in part by the employment of women in many occupations previously closed to them. Many married women were attracted by the demand for women's labour during the war effort, at comparatively high wages. This was change "unlikely to be altered"\textsuperscript{12} at the end of the war. Another problem arose

\textsuperscript{8}\textsuperscript{8} Statement of Aims of the National Council for the Unmarried Mother and Her Child, 1918.

\textsuperscript{9}\textsuperscript{9} See Table 2, page 56.

\textsuperscript{10} Statement of Aims of the National Council for the Unmarried Mother and Her Child, 1918.

\textsuperscript{11} op.cit.

\textsuperscript{12} Lady Henry Somerset, Sunday Times, 3rd March, 1919.
from the shortage of accommodation and the result was that: "Lodgers pay better and are therefore preferred to babies". In the face of this high demand, the price charged by the foster-mothers who remained available for this work, was increased.

In addition, the war brought in its wake a new kind of illegitimacy. Concern began to grow for the girl of "the educated class" for whom the "adoption" of the child was seen as a useful mechanism. This would comply with the generally held belief that during the first world war the pattern of illegitimacy altered to include more children of girls of the middle classes. One person who had worked with such girls spoke of "adoption" as the "sole practical means of providing a natural home life for stranded waifs of the educated classes". In this she did not wish to be taken to mean that she ran counter to the generally accepted policy of keeping mother and child together, "in those classes to which social conditions do not render it harmful or impossible". A boarding-out system was not possible for children of the educated classes. This was because such a child would be affected by its environment: "if such a child is boarded out in a cottage, it grows up in an unnatural position, singled out from among her contemporaries, temperamentally out of touch with her surroundings, liable to fall into danger when she approached womanhood by reasons of her conspicuous position and by what she feels is her romantic history".

13 Evidence of National Council of Women to the Hopkinson Committee.
14 Evidence of R. N. Peto to the Hopkinson Committee.
15 op.cit.
It was impossible for an educated girl to acknowledge her child, since her livelihood depended upon her character. The working class girl could support herself by working in shops, in factories, or in domestic service, whereas girls of the professional classes could rarely hope to support themselves since the rate of pay was not commensurate with the higher standard of living "demanded of them". It was felt that two years represented the utmost time during which such a mother could support her baby, affiliation orders being out of the question for her.

It seems that during the first world war the position of the unmarried mother deteriorated, at a time when there was growing concern for child life and a higher illegitimacy rate. The higher mortality rates among illegitimate babies would, as one commentator states, lead to "a veritable Slaughter of the Innocent". These babies, if they survived, could be an important means of helping to redeem the declining birth-rate. Since male babies were more delicate to rear than females, these babies needed to be saved at all costs in the light of the appalling losses of the war. In addition, there was an increase in middle class pregnancies outside marriage, for which the traditional mechanisms to deal with illegitimacy were felt to be inappropriate. So the inadequacy and inappropriateness of the traditional safeguards for the illegitimate child may well have turned the attention of the child welfare workers to the work of the adoption societies which were attempting to exploit new means of providing for this age-old problem.

As a result of these events "adoption" began to be suggested

16 Helen Best: The Jar Baby (1918), p. 1
more and more as the solution to the pressing problems of the deprived and illegitimate child. It was natural that during and in the aftermath of a large-scale war with its terrible loss of life, concern should be focussed on this area. Military losses had totalled 765,399, to be swollen by another 150,000 deaths during the influenza epidemic of 1918-19.

Children were now to be seen as much needed future citizens and much effort was focussed on preserving infant life. The National Council for the Unmarried Mother and Her Child, for instance was "a product of the energy released by the losses, the agonies and the strains of the great war ...... there was an increased clearness of vision, a determination not only to rebuild but to amend". One witness to the first Departmental Committee on Child Adoption in 1921 who had been in charge of Homes for children for thirty-five years, stated that only within the previous five or six years had the question of "adoption" been prominently brought forward.

Since the war, partly owing to "quite proper sentiments with regard to soldiers' children, partly owing to the great lack of foster-mothers the idea has become widespread".

Another witness to the same Committee, H. Drysdale Woodcock, a previous chairman of the National Adoption Society, also spoke of the

17 Statement of Aims op. cit.
18 Lady Henry Somerset in evidence to the Hopkinson Committee.
effects of the war: "At the present time, in view of the war, population is vital to us and if an increase can be encouraged in a proper way and within proper limits the advantages would be general."

These sentiments, somewhat crudely expressed, are to be found in the more popular newspapers of the period. The Sunday Pictorial, in particular, carried somewhat lurid articles concerning the plight of war orphans to whom, it was alleged, the State owed a clear duty. The articles coupled with the orphan theme "thousands of unhappy babies whose future is blighted by the fact that their poverty stricken mothers would give much to get them off their hands".\footnote{Sunday Pictorial, 25th November, 1917.} The Sunday Pictorial advocated state centres all over the country for enrolling the "unwanted" and suggested a vigorous campaign to encourage well-to-do women to adopt them: "to substitute pet babies for pet puppies".

Such articles clearly appealed to the strong feelings which the loss of sons would arouse in many families. There was a "strong desire amounting to a passionate determination to have children which has become manifest in all classes of people since the war ...."\footnote{Evidence of the National Council of Women to the Hopkinson Committee.} "In thousands of homes which have made the supreme sacrifice, there is a longing to start re-building up the family tree through the medium of child adoption".\footnote{Sunday Pictorial, 2nd December, 1917.} It seems that "adoption" as a method of replacing lost sons was employed particularly by the middle classes. The N.C.A.A. found that those desirous of "adopting" a child through an adoption
society were predominantly the professional middle class. The majority were people who had been married ten or more years and had no children. Many had lost an only son in the war.

Adoption was seen not only as a mechanism for replacing lost sons and heirs; there was also the problem that owing to the terrible mortality rates among young men during the war, there were, and would be for some time, an increased number of women who would never marry and childless widows who had lost their husband in the war. "The strongest desire in many of the best women is to have someone whom they may care for, train and guide." Since their maternal instinct could not now be satisfied by having children of their own, the feeling might find some partial satisfaction through adopting a child for whom motherly care was lacking. Indeed the reason given in Roman law for allowing adoption by women - "ad solatium liberorum amissorum adaptare possunt" - applied with painful force in post-war Britain as never before.

"Adoption" (in this case, the transfer of a child completely though not legally, to a new family situation) was thus seen as an answer to a number of distinct, though interrelated, problems. As the social value of the child rose, social agencies played a role in transactions which resulted in the transfer of a child from one family group to another and often from one social class to another. The mechanism could be seen to fulfill at least three aims: the prevention of infant loss; the desire to replace lost sons; and the function of removing a child from a bad

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22 Sir Alfred Hopkinson; Edinburgh Review 1919, p.147
23 See J. Ben-Or, op.cit.
environment to a "good home" at no expense to the rate-payer. The position is summed up in the words of Sir Geoffrey Butler, speaking in the House of Commons in 1924:

"Of all the methods of providing for children, one method in particular has, at the present moment come into progressive favour. That is the system of adoption. I have often asked myself why that should be so, and I think that it would be very difficult to say, unless that the breakdown of a former rather rigid conception of parental authority brings home with increased poignancy to this generation the miserable state of those children who are without the happiness which a home, and a home alone, can bring; and many people find in this process of adoption at present unrecognised and unofficial what one might call a sacramental ministry of reconstruction."

The concept of an adoption society - an agency arranging the transfer of children - seems to have emerged as a response to this social situation, the precipitating factor being the first world war. One of the two individuals concerned, Canon W. F. Buttle, first started to arrange "adoptions" as an individual, a practice which he did not originate. He was then living at Cambridge and had become disturbed by the high rate of illegitimate births in that town, the fathers of the children often being Cambridge undergraduates. It was not

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24 Hansard, House of Commons, Vol. 182

25 The early history of adoption societies is not well-documented. Sources used in this section include: Child Adoption No. 21, 1957; Child Adoption No. 26, 1958; a typewritten report in the possession of the N.C.A.A.; and a number of interviews with past and present staff of the N.C.A.A. and N.A.S., and Church Adoption Society, with Miss Margaret Kornitzer, Miss Jane Rowe, and Mr. H. H. Prestige.

26 Certain voluntary societies arranged de facto adoptions earlier than this and no doubt individuals would traditionally have fulfilled the role of linking the two parties to the "adoption".
until 1916 that he established an adoption society known as the National Adoption Society, and this move was made because of the need for compulsory registration under the War Charities Act, 1916. The purpose of the Act was to prevent any appeal to the public for donations or subscriptions or any attempt to raise money unless the charity was registered in accordance with statute. The measure was an attempt to avoid money being raised by exploiting public sympathy and patriotic zeal.

It is of some significance that registration under the Act was necessary since the definition of a war charity was "any fund, institution or association having for its object or amongst its objects the relief of suffering or distress, the supply of needs, or comforts, or any other charitable purpose connected with the present war where any such object as aforesaid is subsidiary only to the principal purposes of the charity ...".

In late 1916 the Society moved to London and in April 1917 a formal constitution was adopted.

The second name which is linked to the early history of adoption societies is Miss Clara Andrews who, in 1914, was arranging temporary housing for Belgian War Refugees at Exeter. Her interest in adoption was, apparently, the result of this experience since she was

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27 It is not quite clear whether this society became the Church Adoption Society in 1920 or whether the latter was first established at that time. Both societies claim Canon Butt as their founder and both claim to be the original society.

28 Section 10.
frequently asked by English families if they could permanently "adopt" Belgian babies. However, as a member of the War Repatriation Committee, she was aware that the babies would have to be sent back to Belgium at the end of the war. She then conceived a plan for "National Child Adoption" in this country but did not proceed with the plan at this date.

Later Miss Andrews became a Lady Superintendent under the Ministry of Munitions. While working at Swindon, she was often called upon to find homes for children who had become orphans as a result of war casualties or as a consequence of accidents in the Munition Factory. Her experience with Belgian refugees enabled her to do so. In October 1917, it is said, Lord Rhondda telegraphed Miss Andrews to see him and give details of the adoption scheme. Miss Andrews was urged by him to make the scheme national and to organise it herself. Miss Andrews then founded the Children Adoption Society and, in 1918, other committees were formed in Salisbury, Southampton and the Isle of Wight. In 1918, the permission of the Local Government Board was obtained to call the society the National Children Adoption Association.

Although these two individuals were responding to the war situation in establishing "adoption" societies and in providing a regular channel for placing children, factors which have been examined, explain the next step in the history of legal adoption, that is, the continuation of the societies into the post-war period, and the increasing public interest that this particular means of child care aroused in the 1920's. The adoption societies had to show themselves to be "respectable" and responsible, free from the taint of "baby-farming" which had caused such
scandals in the nineteenth century and which was an evil which, as will be seen, continued into this century. It is little wonder that the work of these bodies underwent a certain amount of scrutiny by concerned bodies; there was a well-established fear of child exploitation; an understandable element of suspicion by the existing child care institutions towards this new method; and reservations over the possible encouragement of sexual immorality.29

29 This was an objection which was also met by the founders of the National Council for the Unmarried Mother and Her Child and other bodies and individuals who tried to support and help unmarried mothers, see for example, Helen Best: The War Baby, 1918, page 6.
<table>
<thead>
<tr>
<th>Year</th>
<th>Death Rate per 1000 Population</th>
<th>Deaths under 1 year per 1000 births</th>
</tr>
</thead>
<tbody>
<tr>
<td>1851-55</td>
<td>22.6</td>
<td>156</td>
</tr>
<tr>
<td>1856-60</td>
<td>21.8</td>
<td>151</td>
</tr>
<tr>
<td>1861-65</td>
<td>22.5</td>
<td>151</td>
</tr>
<tr>
<td>1866-70</td>
<td>22.4</td>
<td>156</td>
</tr>
<tr>
<td>1871-75</td>
<td>21.9</td>
<td>153</td>
</tr>
<tr>
<td>1876-80</td>
<td>20.8</td>
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<td>1881-85</td>
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</tr>
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<td>1886-90</td>
<td>18.8</td>
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</tr>
<tr>
<td>1891-95</td>
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<td>150</td>
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<tr>
<td>1896-1900</td>
<td>17.6</td>
<td>156</td>
</tr>
<tr>
<td>1901</td>
<td>16.9</td>
<td>151</td>
</tr>
</tbody>
</table>

**Note:** In the five years, 1896-1900, the number of deaths under one year was as high as in the five years 1851-1855, although the general death-rate had gone down from 22.6 to 17.6.
### TABLE 2

**ILLEGITIMATE LIVE BIRTHS, ENGLAND AND WALES**

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of illegitimate births</th>
<th>Per 1000 single and widowed women 15-45</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years 1911-1914</td>
<td>150,399</td>
<td>8.0</td>
</tr>
<tr>
<td>1915</td>
<td>36,245</td>
<td>7.6</td>
</tr>
<tr>
<td>1916</td>
<td>37,689</td>
<td>7.8</td>
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<tr>
<td>1917</td>
<td>37,157</td>
<td>7.7</td>
</tr>
<tr>
<td>1918</td>
<td>41,452</td>
<td>8.5</td>
</tr>
<tr>
<td>1919</td>
<td>41,876</td>
<td>8.6</td>
</tr>
<tr>
<td>1920</td>
<td>44,947</td>
<td>9.3</td>
</tr>
<tr>
<td>1921</td>
<td>38,618</td>
<td>7.9</td>
</tr>
<tr>
<td>4 years 1915-1918</td>
<td>152,543</td>
<td>7.9</td>
</tr>
</tbody>
</table>

Registrar General's Statistical Review of England and Wales for the Year 1924.
CHAPTER III

THE "BOLD VENTURE" EXAMINED

It may have been the publicity which was being given to
the adoption societies which resulted in a more serious consideration
of the practice by the older societies and voluntary bodies concerned
with caring for children, and by the moral welfare associations which
interested themselves in the unmarried mother. The founding of the
latter seems to reflect a change in attitude towards illegitimacy
during the nineteenth century. From a punitive attitude reflected in
the existence of penitentiaries (such as the British Penitent Female
Refuge established in 1840) there grew a stress on the need to rehabil­
itate the mother, primarily by developing her sense of responsibility
by caring for her child. This was reinforced, as McWhinnie points
out, by the discovery, discussed in the last chapter, that the breast­
fed child had a better chance of survival than the child fed on substi­
tute foods. "It was argued that the unmarried mother should be encour­
gaged to keep her child both on moral or religious grounds, and on such
grounds of health. This attitude, although it might argue against the
introduction of legal adoption (since that practice would separate
mother and child) might also result in a more tolerant attitude towards
the child who might no longer be seen to carry some of the taint of

criminality which had earlier been associated with the mother. Such statements must remain speculative, however, since the evidence does not expressly show if changed attitudes towards illegitimacy and to the concept of the criminality being an inherited trait played a part in the changing attitude towards the idea of legal adoption.

What can be said with certainty is that these two groups of societies gave a rather cool welcome to the new venture by the adoption societies but they eventually conceded that some value could come from a legal system of adoption. For this reason, they added their voices to those who were attempting to persuade the Home Secretary to examine the possibility of a change in the law. The eventual response of the Home Office was to establish a Departmental Committee to take evidence, to consider the question, and to report upon it. Evidence from this Committee came from a variety of witnesses and varied from the whole-hearted advocacy of the adoption societies to the cautious or even reluctant agreement of those who felt that the evil of the practice of legal adoption was less than the greater evil of the uncontrolled and unregulated situation then existing.

3:1 The older societies used a variety of methods for the care of children, among them boarding-out and de facto adoption. Both these methods involved placing the child with a family but the distinction between them lay in the fact that in a boarding-out arrangement the family was paid for the child's "lodgings". Often the societies were helped in finding homes for children by their subscribers who might then be used to supervise and inspect the home after the child was
placed. De facto adoption was seen as a more permanent arrangement, but one which, as the case of Barnardo v. McHugh, shows was fraught with possible legal problems for the societies and the "adoptive" parents. The Custody of Children Act 1891 had helped to alleviate the position to some extent but it did not abolish the possibility of a legal battle for the custody of a child which might be won by the parent. However, the problem of parental rights was not the only reason for the suspicion which was aroused in certain quarters by the establishment of the adoption societies and by the growing interest in "adoption". The position of the established societies is to be seen in the report of a committee set up as a result of a Conference convened in London on 12th November, 1919. The meeting had been called by the Associated Societies for the Care and Maintenance of Infants "in view of the increasing interest taken in the question of child adoption", and it passed the following resolution:

"That the Conference having met to discuss the question of the desirability of the Adoption of Infants is of the opinion that the principle and practice of Adoption should be carefully examined by a small chosen Committee in view of the extreme importance of guiding the opinion of the Nation at this time on the whole matter".

The Committee, under the chairmanship of the Duchess of Bedford, was given the following terms of reference:

1. To consider whether Adoption is right in principle and if so within what limits.

2. To consider whether the formation of Adoption Societies is desirable.

3. To consider whether complete separation of mother from her child, as practised by existing Adoption Societies is desirable or justifiable and whether
safeguards adopted by Societies or individuals are adequate and effective.

4. To consider the dangers that may arise from societies or individuals arranging for the adoption of children and receiving money for so doing which is not applicable for the benefit of the children so adopted.

5. To consider how far Adoption should be subject to statutory restrictions and safeguards.

In fact, the Report issued by this Committee concerns itself mainly with the current practice of the societies and examines de facto adoption in the light of this. What emerges is the fact that the stumbling block for these groups was primarily a fear that the practice of "adoption" would foster sexual immorality.

The Committee found that there were five different kinds of "adoptions" which could be identified. In the first place the Report refers to the "adoption" of children by the Poor Law Guardians when they took children away from vicious and cruel parents. Since "all will agree that public authorities should have this power" this type of "adoption" was not examined by the Committee. A second type of "adoption" took place when Canadian farmers received "emigrated children" and trained them as farmers. This practice too was excluded from discussion. In the third place, associations and individual workers caring for friendless women and their illegitimate children might arrange for the "adoption" of infants in very exceptional circumstances. Since a complete severance took place between a child and its natural parent or relative in these cases, the Committee termed the arrangement a "complete adoption". Fourthly, the "great societies" such as Dr. Barnardo's Homes, the Church of England Waifs and Strays Society, the
Church Army and the Salvation Army also made arrangements for "adoption" in certain rare cases. But this was labelled "limited adoption" since the placement was subject to subsequent inspection by the society.

Fifthly, there were the N.C.A.A. and the N.A.S. which existed solely for the purpose of promoting and extending the practice of "complete adoption". Their aims were of a different order since "the sparing use of this method of providing for the illegitimate child is now transformed into a bold venture and adoption is practised on a much larger scale".

What is striking about this Report is the stress upon the exceptional nature of "adoption" for all societies except the new adoption societies. Indeed, the circumstances in which "adoption" was felt to be justifiable by the other groups, are difficult to find. One witness from the Duxhurst Farm Colony felt that the chief use of the practice was in connection with the illegitimate child of a married woman who had become pregnant when her husband was away in the armed forces. This was also the opinion of the representatives of the Salvation Army and the Church Army. Another witness spoke of "adoption" as a means of providing for a child whose mother was under sixteen. Some societies allowed "adoption" of a "guarded nature" where both parents were dead or the mother was lost sight of or was unsuitable or unworthy to have care of a child, or if the child was abandoned. But the normal practice of all bodies was to place the child either with a foster mother (that is, it was boarded out for money), or with relatives, or in a hostel from which the mother went to daily employment.

\(^2\) Founded by Lady Henry Somerset originally for the reception of inebriate women but which, during the war, became involved with saving infant life.
Even in the exceptional cases in which it was practised, the Committee was not without criticism of the practice of "adoption". It was disturbed at the ease with which infant life could be distributed by persons other than the parents or relatives. It might not always be fully realised by those who did so what a serious and responsible step was involved in transferring an infant from its natural parent to the home of the adopter. It was a practice freely exercised by societies and individuals. That is not the impression gained from reading the evidence, however, which seem to reflect a deep reluctance in all quarters, except that of the adoption societies, to practice this method of child care. The stress throughout the evidence is on the exceptional nature of "adoption" and one is struck by the sparsity of the examples given of circumstances held to justify its use.

"Adoption", in fact, ran counter to certain basic beliefs concerning the concept of parental responsibility, and the nature of illegitimacy. The former as has been seen was deeply embedded both in the law and in public consciousness. It was related to the second belief: that since illegitimacy was the clear and outward proof of immoral behaviour, all steps must be taken to prevent its recurrence.

As a result, the witnesses to the Committee repeatedly speak of the dangers of "adoption" since it relieved parents of their rightful responsibilities. If the tie between mother and child were severed, the mother's natural instinct would be stifled and her moral sense would thereby be injured. If she were relieved of all responsibility for her

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3 See Chapter I.
first illegitimate child, she would tend to be encouraged towards further immoral behaviour. Girls of the educated classes would naturally be tempted to dispose of the child by "adoption", although they were "happily influenced not to do so except in rare cases" if they came into the care of the Fellowship of St. Michael and All Angels.4

The love of a mother for a child was felt to be the strongest incentive for a girl to lead a straight life after "a fall". Societies formed to arrange "adoptions" were therefore likely to increase vice since the removal of a child led to the removal of many scruples. "Adoption" on a large scale was a dangerous experiment. The spokesman for the National Council for the Unmarried Mother and Her Child said that the Council, which was not opposed completely to the principle of "adoption", would always do their best to prevent mothers from taking advantage of it except in specific circumstances. Indeed, out of ten cases of a "second fall" which had been brought to their notice, eight of the mothers had allowed their child to be "adopted". The moral standards of men might also be influenced by the knowledge that, if they were responsible for bringing an illegitimate child into the world, there would be those at hand who would relieve them of all responsibility. "Adoption" on a large scale was a dangerous experiment.

In any case, in the opinion of this Committee, the reasons which had led to the establishment of the adoption societies were transitory. It had been the emergencies created by the war which had raised the demand for provision for illegitimate children, at a time when the old methods of dealing with these children had to some extent broken

4 Founded for care and reclamation of young unmarried women of the educated classes.
The rise in illegitimacy during the war could be explained by the general excitement which had been created in young men and women, together with the unavoidable mixing of the sexes in all kinds of work carried on by all classes of persons. This had contributed to a general breakdown of standards of morality which, up to a point, prevailed in peace-time. It was hoped that this breakdown was a temporary phenomena, but the result - the unwanted child - had been given special prominence by the publicity in the Press.

The Committee thus gave a very luke-warm reception to the new phenomena of the adoption societies. By connecting the founding of these to the temporary war-time situation they were able to hint obliquely at the temporary nature of the need which they were attempting to meet. In addition, the maintenance of natural ties and of family life were essential to the well-being of the community and so "adoption" was to be practised in exceptional circumstances where the separation of mother and child was practically inevitable. No system of "adoption" would diminish the number of illegitimate children to be dealt with, in any appreciable degree, since many of these children were unsuitable for "adoption". The free circulation of information advertising the advantages of "adoption" inevitably produced a fictitious increase in demand for this relief from parents and relatives of the children. On the other hand, applicants whose request to "adopt" was refused might become prey to unscrupulous persons who offered to arrange "adoptions" with evil intentions.

The formation of adoption societies for promoting "adoptions" was therefore undesirable for the reason that their existence tended to
encourage young mothers to part lightly with their children before
their maternal feelings had fully developed and to increase immorality
by fostering a sense of irresponsibility in the parents of illegitimate
children. Both Miss Clara Andrews, representing the N.C.A.A. and C.
Drysdale Woodcock, representing the N.A.S., dissented from this conclu-
sion, on the grounds that adoption societies offered valuable safeguards
against unsuitable "adoptions".

In the midst of these conclusions, asserting the value of the
more common methods of caring for children and emphasising the dangers
of the new approach, it is somewhat startling to come across the follow-
ing:

"The adoption of a child is such a serious step
that it ought to be regulated by Statute. The
relative rights and liabilities of the parties to
the transaction and of the adopted child, should
be defined, and all adoptions should require the
sanction of some judicial authority and be offici-
ally recorded."

It may be that the Committee, despite its doubts, realised that chil-
dren were being disposed of through "adoption" by a number of bodies
including the well-established societies; that there was no method in
existence of controlling the establishment of adoption societies, nor
their activities; and that the best step, in the circumstances, was to
provide for the judicial scrutiny of each transaction.

The Committee may also have been impressed by some of the
evidence it had heard. For example, Dr. Hudson, Superintendent of the
Boarding Out Department of Dr. Barnardo's Homes spoke of the weaknesses
of "adoption" both for the child and the adopter. The "adopted" child
had no standing in the household and could be cast off at any moment. He could be left penniless on the death of the adopter unless he was specially provided for since he had no other claim on any property. The child might, in addition, be left with no one to look after him on the death of the adopter. The motives for "adopting" were often dubious. Sometimes the applicant was simply a go-between who handed the child over to someone else perhaps with some ulterior motive, often as a household drudge to work on a farm. On the other hand, the adopter had no legal claim to the child. Although, if a law suit were brought, it was possible that the adopters would win, it was by no means certain. There was also a risk in relation to the future development of the child, physically, mentally and morally.

This evidence was reinforced by that of Mr. F. J. Sherwood, Recorder of Worcester. He was opposed to "wholesale adoption" and felt that the practice ought to be limited and fenced about by rules and regulations. These would help limit the practice of "adoption". On the other hand, in the exceptional circumstances where "adoption" was favoured, then it should be finally subject to proper scrutiny by a court or an official.

The conclusions of the Committee illustrate the conflicting issues in the "adoption" field. The fear of increasing sexual immorality had to be weighed against the old problem of legal rights. The Committee tried to support both points of view but by conceding the need to regularise "adoption" arrangements it was to help to overcome the obstacles standing in the way of legal adoption. Indeed, the final resolution of the Report is that the Home Secretary be asked to receive a deputation
urging him to introduce legislation on the subject of adoption.

3:4 The Home Office had already received representations on the question of child adoption. In 1917, a journalist and writer forwarded an article which she had written for the "Sunday Pictorial" and enquired if nothing could be done to safeguard foster parents from annoyance from parents when the child became capable of earning money and had become a desirable asset to mercenary parents. The Home Office memorandum notes that it would be useful to know the law on this matter in other countries, but that under war conditions such enquiries would be incomplete.

Then in November, 1919, a letter from Mrs. Gray was forwarded to the Home Office from another Department for comment. The Home Office comment reads: "I do not know what Mrs. Gray means by saying that the legal recognition of adoption must be 'done'. It seems to me that there are many more practical ways in which the problem of infantile mortality can be tackled." Temperance, housing, education are mentioned as alleviating measures for this problem. Moreover, the possibility of the natural parents stepping in later and claiming the child was rather remote.

On the 18th August, 1919, Earl Winterton had asked the Home Secretary if his attention had been called to the number of cases

5 Probably of the National Council of Women (This society developed in 1899 from the Ladies' Association for the Care of Friendless Girls established in 1876 by Miss Alice Hopkins who "during strenuous efforts to educate public opinion on questions of morals", began to establish these associations for the purpose of preventive and rescue work).

6 Hansard House of Commons, Vol: 119
"lately and at present before the courts of ill-treatment of farmed-out children?" Would he cause instructions to be sent to the police authorities throughout the country urging them to use all possible vigilance to bring offenders to book? Mr. Shortt replied that since the beginning of 1918 the attention of the Home Office had been called to four such cases including two now before the courts. He did not think that there was any need for special instructions to the police under Part I of the Children Act 1908.

In March, 1920, the National Council of Women of Great Britain sent a deputation to the Home Office. According to the Home Office files, the "deputation made it fairly clear that what they were mainly concerned with was the disposal of the child of the unmarried mother. The powers of inspection and safeguards under Part I of the Children Act was evaded". The Home Office memorandum goes on to say: "As regards the question of adoption .... it does not seem to me that any case has been made out to justify a Committee of Inquiry".

The National Council of Women had first applied in January for a deputation to be seen in February. However, the deputation was not received at that time "on the grounds of pressure of work and the impossibility of dealing with the question in the present session". The note ends: "If Mrs. Gray returns to the charge with the plea of dying infants then we can refer her to the Ministry of Health".

This deputation was the result of a Conference of representatives of the interested societies which had been summoned by the Executive Committee of the National Council of Women. At the conference 7

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a statement of the care for legalizing adoption was made by Mrs. Gray and after useful discussion a resolution was passed unanimously:

"That the conference agree with the National Council of Women Executive that it is desirable in the interest of children that the principle of adoption be recognised by the Law with the object of securing the continued responsibility of foster parents, that the government be urged to initiate the necessary legislation and that the broad principles embodied in the New York State laws be recommended as suitable for this country".

In April, 1920, the Scottish Office forwarded a letter from the Association of Parish Councils of Scotland urging the amendment of Part I of the Children Act, 1908. The Association also expressed itself in favour of legalising adoption.

The files do not reveal the reason for the shift in Departmental policy between March and April, 1920. But in that month, the Home Office was "quite agreeable to support a proposal to set up a Committee" to investigate the question of adoption. It is possible that the proposal, in fact, came from the Ministry of Health who had responsibility for infant mortality and for "baby-farming".

The Home Office prepared a memorandum outlining a number of aspects of the existing situation and stating that arrangements for "adoption" were far from satisfactory. The memorandum describes the current situation: the springing into existence of two societies for "adoption"; the existence of numbers of childless couples and others desiring to "adopt"; the existence of babies needing permanent homes. It was felt that the N.A.S. was run by "rather doubtful people" and that the N.C.A.A.
operating on a much larger scale and placing out vast numbers of babies into a Home or Hostel from which they were weeded out — showed both the need for a system and the dangers of the existing lack of it.

In this situation, the Home Office was now of the opinion that "the only question is how far it is desirable to go on removing children under any circumstances from their own parents." A permanent home with adopting parents under proper safeguards was the best solution for:

1) Children whose parents had died without making provision for them;

2) Illegitimate children of married women. This was a problem which was puzzling all "rescue workers" at that time.

But there might also be some cases of "ordinary" illegitimate children for whom it was the best solution, and the difficulty of securing foster-mothers was inducing various organisations to seek adoption for children as an alternative. There was no doubt that it was from this class that the great majority of adopted children came. On the other hand, the evidence presented by deputations showed that children were taken up and dropped again by adoptive parents. "People....adopted a baby and returned it because its eyes were not as blue as they expected". At a Conference held in January, 1919, a Mr. Price mentioned a sisterhood carrying on this work with great enthusiasm which ended by landing a number of children in the workhouse.

It may have been the cumulative effect of such evidence that led the Home Secretary to decide to set up a Committee and by August 1920, the Home Secretary was sufficiently convinced of the case to appoint a Departmental Committee under the Chairmanship of Sir Alfred Hopkin—
son to consider:

1) Whether it is desirable to make legal provision for the adoption of children in this country; and

2) If so, what form such provision should take.

3i5 The written evidence which was put to the Hopkinson Committee in support of legalising "adoption" by the various witnesses falls into two main classes. One line of argument followed and expanded the question regarding parental rights and the need for legal change to modify these rights as far as "adoption" was concerned. Another line of argument developed in a different way, relating de facto adoptions to the concern which had grown in the nineteenth century over the exploitation of children through "baby-farming".

Attempts to control baby-farming had begun in the second half of the nineteenth century with the Infant Life Protection Act 1872 which prevented any person from receiving for hire more than one child under the age of one for the purpose of nursing or maintaining them for longer than twenty-four hours, except in a house registered under the Act. Experience showed that the age fixed by the Act was far too low. Children over the age of twelve months could be taken to an unregistered house and often suffered neglect and premature death. The measure was extended by Infant Life Protection Act 1897 but this too proved to be insufficient, as evidence to the Select Committee on Infant Life Protec-

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8 The other members of the Committee were: Mr. Neville Chamberlain, M.P., Mr. James Seddon, C.H., M.P., Hon. Lady Norman, C.B.E., Mrs. C. E. B. Russell, and Mr. F. W. Sherwood.
This Committee was appointed to inquire and report "as to the desirability of extending the provisions of the Infant Life Protection Act, 1897, to homes in which not more than one infant is kept in consideration of periodical payment and of altering the limit of age prescribed by Section 2 of that Act". As a result of this Report, Part I of the Children Act 1908 extended protection to children under the age of seven who had been placed in the care of a third party for reward. Such person was now obliged to give notice of any such reception in writing to the Local Authority. The Act also provided for the appointment of visitors whose duty was to satisfy themselves that the infant was being properly nursed and maintained. A visitor could apply to a magistrate or to the local authority for an order directing him to remove the infant to a place of safety.

Nonetheless, witnesses to the Hopkinson Committee spoke of ways by which the legislation could be avoided. For example, parents and foster-mothers simply denied that money was being transferred. The Director of the N.S.P.C.C. said that the practice of "adoption" had received the close attention of the society since its formation in 1884. Some of the more serious criminal cases involving cruelty to children had affected children who had been "adopted", for example, Sachs v. Walter, 1903; James v. Willia, 1907 and Hooper v. Newton, 1905. Callous and mercenary people made a business of "adoption" with no desire to care for the children who passed into their hands. There was overwhelming evidence which showed the necessity for a change in the law, and

9 B.P.P. 1908/9.
he felt that it was difficult to understand why this reform had so long been delayed. In the body of the evidence which he put to the Committee is the following example of the kind of incident which, in the present state of the law could happen:

"An Inspector found an old-age pensioner and his wife living in a four-roomed cottage. They have six children of their own and a nurse-child. The way they got this child is peculiar. A neighbour replying to the advertisement of an Adoption Society sent her own name and that of the other woman as willing to take children. No visit of inspection was made, nor were references asked for. One day, a man drove up in a motor-car to the cottage, left a baby, paying fifteen shillings with it, and saying that the mother of the child would call on the following Sunday. The man's promise to the wife was that if she looked after the child 'she would not be forgotten'. From that time nothing was heard of the man, beyond the fact that he stayed with a woman at a local hotel and left without paying the bill."

A further example of the weakness of the system was the way in which children were handed over at railway stations by some recently-formed adoption societies. Two women were interviewed by the Chief Constable of a Northern city and a N.S.P.C.C. Inspector after handing over two children in this way. The women gave particulars of their activities and they admitted that they very seldom went to see what the homes were like before the children were handed over.

The Ministry of Health was the central authority for the administration of Part I of the Children Act which dealt with infant life protection. Miss A. L. Pursey, Special Assistant for Maternity and Child Welfare from that department spoke of many recommendations which were being received for an amendment of the law. The payment of a lump sum for caring for a child was usually not notified to the authorities and
could not be detected.

In the provinces, the administration of this legislation was entrusted to Boards of Guardians. According to Tom Percival, Clerk to the Guardians of Tynemouth Union, although there was a staff of inspectors, including a woman, who visited for the purpose of locating and supervising cases where children had been taken "for reward", the act did not provide for another group of children, that is, those fostered without payment being made. This group of children was continually coming to the attention of the Poor Law Guardians. The circumstances might be that an abandoned child was featured in the newspapers and a number of people applied to "adopt" it, but then, in the majority of cases, the foster-parents tired of the child after a time and returned it to the Guardians in "a very unsatisfactory condition".

For such reasons, several witnesses supported the legalisation of "adoption". They saw it as a method of checking haphazard arrangements and as a deterrent to irresponsible persons who adopted children and then desired to be rid of them. The Salvation Army, for instance, preferred children to be "adopted" when under the age of six or seven. People who wanted an older child were too often actuated by the desire to obtain a cheap domestic drudge. They therefore thought it better to keep older children in the homes and orphanages which they provided. For such reasons, too, the supervision of all "adopted" children was desirable in the child's interests.

In the present state of the law, if a foster-parent died no-one was even morally responsible for the child. Even during the life-time of the foster parents the position of such a child was very precarious
and it was recognised that children suffered from changes of home and
environment. A child might be brought up in comfort for years and then
be discarded on caprice to be brought up in a totally different environ­
ment.

At the same time, some regulation of the work of adoption
societies was much needed. It was possible for anyone to start a society,
appeal for funds, and carry on an improper traffic in children. Drysdale
Woodcock advocated their supervision by a Department of State. Any
person or body of persons acting as an intermediary in arranging adop­
tion should be registered under conditions that within a specific period
particulars of every case should be lodged with the responsible Depart­
ment. The work of such persons or societies should be open to govern­
ment inspection and control and, on the cessation of its activities,
all records should be handed over into the State's keeping. For unscrup­
ulous persons the child was the last consideration. In fact, the death
of the child was a thing to be desired: "Traffic in young lives is
camouflaged under the name of adoption".

However, a group of witnesses felt that what was needed was
to strengthen Part I of the Children Act, 1908 so as to supervise
"adoptions".10 Something "beyond a legalised system of adoption was
required to cover .... cases of where a breach of the measure occurred."11

10 Clerk to Guardians of Southwark Union; and Principal Medical Officer
of Health of London County Council (Dr. Kay Menzies).
11 Miss Puxley, Ministry of Health.
The arguments outlined above illustrate one approach to the legalising of "adoption": it could be seen as a method of curing an abuse. There was also that strong line of argument, already put forward in the 1890s, that to legalise "adoption" would ensure the stability and permanence of the arrangement by giving security to the "adopting" parents. Such a step would encourage adopters who held back because of lack of tenure; it would deter some unsuitable adopters because of the permanence of the arrangement; it would protect the inheritance rights of the child; and it would enable the adopter "to protect and coerce a child who had reached the age of sixteen, often a most critical age."

Legal adoption was thus "a missing link in the chain of laws in this country having for their object the protection of the child."\(^12\)

The Clerk of the Guardians of Tynemouth Union spoke of those who came seeking his advice in "adopting" a child "for love only" and who desired some legal protection in respect of the proposed arrangement. Agreements, although of no legal value, were frequently drawn up by solicitors in the district but where applicants were unable to afford a solicitor's fee, such arrangements had been prepared by the Clerk's Office. Several witnesses spoke of the general belief that prevailed in regard to the legality of a written document. People appeared to think that by signing a piece of paper they had performed a legal and binding act. On the other hand people who were aware of the lack of security were deterred by the lack of legal safeguard. According to one piece of evidence, "The best kind of adopting parents

\(^{12}\) National Council of Women.
are very anxious to feel that they are legally responsible so that the child should not be reclaimed on frivolous grounds or because it has grown to the age when it might work and be useful.\textsuperscript{13} Indeed legal sanctions would not increase the number of adoptions but, on the contrary, would tend to make all parties consider very seriously before they embarked upon the formalities which would be prescribed by an Act. There was also the question of the proper environment for a child. For instance, H. Drysdale Woodcock, Chairman of the N.A.S. said that for children born into homes which offered them no chance of becoming decent citizens, it was idle to talk of weakening the sense of parental responsibility and using this as an argument for opposing the "adoption" of children of some married parents. The best thing possible for the children in such cases was to remove them from their environment and to place them in good homes if that were possible. A preoccupation with a possible deterioration in conventional morality is to be found here: "..... it is inconceivable that the mere fact that a parent can get a child legally adopted would lead directly to the reckless procreation of children". There was, also, the case of the parent with a large family who found that the strain of bringing up all their children was intolerable.

On the other hand, there were many people - many among the idle rich - who would come forward to "adopt" a child if they had no doubt about the propriety of doing so and did not feel that there was risk of a scandal through the parents turning up and claiming the child.\textsuperscript{14}

\textsuperscript{13} R. J. Parr of the N.S.P.C.C.
\textsuperscript{14} op.cit.
It was infinitely better for a child to be brought up in a family than in an institution. "Adopting parents are the next best thing to natural parents". But as the law stood, the lack of security made people reluctant to "adopt" a child, while for the child, there was the possibility of being cast off at any moment. For this reason, Dr. Barnardo's Homes did not encourage "adoption" and only permitted it in limited circumstances. An amendment in the law was also desirable so that the parents "owned" (sic) the child and the natural parents had no power to reclaim it. Any measure which would induce a suitable type of person to offer to "adopt" children would be an advantage to the children and "a relief to the rate payers".

These were the two main arguments presented to the Committee in support of legal adoption. However, not all the evidence was favourable. The fear of encouraging immorality was again raised. For instance, Drysdale Woodcock in considering the problem felt that if a mother was separated from her child she tended more easily to fall again and that instead of being reformed she might ultimately become a professional prostitute. He felt that the argument could not be ignored but that it could be "easily overdone" and that it failed in its application to one case which had come to his notice, of a woman who having had a first illegitimate child was devoted to it and would lend herself to prostitution in order to support it. There was also the problem, an offshoot of

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15 op.cit.
16 Clerk to the Guardians of Southwark Union.
the war, where a soldier came home to find his wife with a child by
some other man.

Mr. Cohen, General Secretary of the Jewish Association for
the Protection of Girls and Women, felt that adoption was an incentive
to immorality as it offered an easy way to get rid of a child. On the
other hand, adoption took place in ways which were undesirable and often
dangerous to children and encouraged their exploitation. He goes on:
"It is our actual and frequent experience that when an unmarried mother
has disposed of her first child by means of adoption, she is thereby
directly encouraged to have another and to drift into an immoral life.
We have other and better ways of helping the mother, which at the same
time enables us to keep her and the child together. Adoption ...
encourages illegitimacy."

But he felt it was impracticable and undesirable to prevent it
altogether and in special cases, e.g. where the mother herself was only
a child, it might be the best thing possible. It had to be controlled
by the State and the interests both of the adopting parents and of the
child should be regularized and safeguarded by the law under the sanction
of some responsible public authority. The status of the adopted child
should be put on a definite basis with provision for subsequent inspec-
tion and proper recording and registering of the adoption.

Often adoption was sought by a girl because her parents
forced her into it. It was they who wanted to get rid of the baby.
The girl herself might be anxious to keep the baby after its birth but
more often than not the parents refused their home until the baby was out
of the way. The girl therefore clutched at any possibility of getting
the child 'adopted'. Consequently children often fell into the wrong hands. Therefore, when adoption was desirable Mr. Cohen felt that it ought to be under stringent legal provisions, arranged by a court of law and with some form of registration. This would be a double safeguard; of the child, and of the adopting parents. The fathers of illegitimate children were unknown, and even if the mother was healthy there might be some hereditary streak which did not show itself until the child grew up. Cases of mental deficiency, consumption, venereal disease, criminal tendencies and so on did not always show themselves in the young baby and if discovered later on by the adopting parent they desired as speedily as possible to get rid of the child. The children of mentally deficient parents were not to be adopted by private individuals; they ought to be placed by the state in such a position as to prevent them from having children.

On general grounds this witness felt adoption was undesirable because:

(a) It broke up natural ties between parent and child.
(b) It left the child when grown up in a state of difficulty as to parentage and inheritance.
(c) It often militated against marriage of the child.
(d) It encouraged immorality.
(e) It was an encouragement for child exploitation.

Despite these reservations, the general opinion was favourable. It ranged, it is true, from the out and out advocacy of the adoption societies to the cautious admission that whatever the evils of "adoption", the evils of this unregulated and uncontrolled situation were even greater.
The Committee also heard evidence not only on the principle of "adoption" but also on the machinery by which it should be carried out. This area was to prove an issue of great importance.

Witnesses generally favoured either the County Court or the magistrate's court, although some saw advantages in both, and others simply favoured a judicial tribunal of some sort. Another group advocated the use of a government Department. A number of County Court judges were heard who were in favour of using the County Court. For instance, His Hon. Judge E. A. Parry did not think that jurisdiction of this kind could not be undertaken by County Court judges, or that it would throw much additional burden on them. There was a comparable parental jurisdiction already exercised by the judge in the administration of funds under the Workmen's Compensation Act and also with regard to guardianship under the Guardianship of Infants Act, 1886. He was of the opinion that the judge should be allowed a wide discretion as to the form in which the order was made. People wanting to "adopt" were to apply to the local court so that the judge might more easily satisfy himself as to the character and nature of the applicants. The Registrar or his Clerk would probably know something about the parties and would be able to give the judge any necessary information about them. Judge Parry was against keeping things too secret since there might be reasons why the "adoption" should not take place and it might be that local people ought to know that the "adoption" was proposed. He also suggested that the child should be made a ward of court and that the judge should be entitled to see the child as a ward, from time to time, and that the child should have access to him.
This latter point was not supported by His, Hon. Judge Sir Edward Bray who felt that it would be onerous if the court had to acquaint itself with the subsequent progress of a case. However, there ought to be liberty to apply to a court and power to reverse or vary an adoption order. It would be helpful if there was a trained person, possibly a woman inspector, to whom the judge could turn when enquiries were needed. This point was also made by Judge P.R.Y. Radcliffe who felt that such an assistant could help the bailiffs attached to the court and who were extremely well-informed. Often the bailiffs were retired policemen of good character who were not regarded with any hostility by the community. Judge Radcliffe wanted powers of revocation to be vested in the judge and a wider discretion to decide such questions as whether to dispense with the consent of the parents.

On the other hand, W. Clarke Hall, a Metropolitan Police Magistrate felt that the best court was the court of summary jurisdiction where there would not be expense and there was an excellent staff available to make the necessary enquiries. This opinion was echoed by a colleague, Mr. Cecil Chapman, who advocated the Metropolitan Courts for their speed, whereas the County Courts were often over-burdened with extremely tiresome work involving continual delay. Magistrates, who were looked on as friends, already had power under the Children Act to make orders as to the custody of children and this power might be extended with advantage so as to cover more cases. This would enable the court to protect adopting parents and see that their duties towards the child was carried out. But Mr. Chapman was less confident of the Petty Session Court in the provinces and in those areas he felt that
the County Court judge "has time to do the work and can sit in private
in his ordinary clothes you could not have a better man for it."

The evidence was marginally in favour of the County Court,
even among those who had no direct professional connection with it.
For instance, Mrs. Gray of the National Council of Women felt that
although her council had not reached a decision as to the best court of
these two, yet she herself felt that the County Court was the most
suitable. She recognised that the Children's Court was a sympathetic
body, often closely in touch with the life of the people, and presided
over by magistrates who by reason of the work they were doing were
almost social reformers. Yet the taint of the police court made it
undesirable for the purposes of adoption, so that the County Court
judge, preferably with a woman assessor, for instance, a woman magis-
trate, would be the best person to administer an adoption act.

Two other suggestions were made. Dr. Margaret Hudson suggest-
ed that a Department of State would be better equipped than a local
judicial tribunal. Whatever the body, it ought to have adequate means
of conducting preliminary investigations and for exercising subsequent
supervision over adopted children who should not be lost sight of after
the adoption. On the other hand, Miss Puxey felt that in the limited
number of cases where adoption might properly take place, the sanction
of a public authority was necessary which could be assisted by the local
health tribunal to obtain information about the prospective parent or to
keep an eye on the adopted child. The Maternity and Child Welfare
Committees which were to be found throughout the country, included
women members and were in touch with voluntary workers in each district.
There were also health visitors to do the visiting, although probably
the Medical Officer of Health or his assistant (generally a woman)
might be the most suitable people to investigate the "better class
of case".

During the years 1919 and 1920, the initial interest in legal
adoption became more widespread, although not all the opinion expressed
were favourable to it, and even among its supporters, the degree of
enthusiasm varied. However, evidence to the Hopkinson Committee was,
in the main, in support of a change in law although two quite
different arguments were presented to the Committee. One group of
witnesses wished to see a strengthening of infant life protection measures
while another group saw legal adoption as a mechanism for transferring
parental rights.

The interest now centred on the conclusions which the Hopkinson
Committee would draw from this evidence, and whether the government would
accept its recommendations.
CHAPTER IV

A PLACED ANSWER - THE HOPKINSON REPORT, 1921

The task facing the Hopkinson Committee was to decide on the principle of legal adoption in the first place. If it was favourable to this, then it had to consider the second of its two terms of reference: what form the provision should take. The formula it might provide for legal adoption was of great importance as it might colour the "model" to be incorporated in legislation. This in turn would affect future practice in the field.

The Committee submitted its final report on 9th February, 1921. It was "clearly of the opinion that legal provision should be made...... We are further of the opinion that the question is now urgent". The question then arose as to the nature of the urgency. Was a change needed in order to prevent abuse of infant life, or was its aim to give security to adoptive parents? The machinery needed to provide for inspection and scrutiny in order to prevent "baby-farming" would be far more elaborate than the purely legal sanction necessary to ensure a proper transfer of parental rights and control. The answer to this question might also affect the suitability of one court as against another and on this point the Hopkinson Committee came out in favour of the County Court. Here their choice was unfortunate in the sense that it did not meet with official approval, and led to a government decision not to implement their recommendations.
The Committee considered that the concurrence among witnesses with experience in social work pointed to an increase in the numbers of those desiring to bring up some child or children who would be treated in law and generally regarded as occupying the position of natural and lawful children. The reasons for this were varied, including the losses sustained by families in the war and the growing interest in child life and child welfare both in this and in other countries. Witnesses were all agreed that some system of regular legal adoption was desirable, although some widely experienced witnesses regarded with apprehension the possible results of a wide-spread system of adoption without careful safeguards.

In any case, it was generally felt that where natural parents provided no proper home it was very much better to place children in some other home as members of a family under the care of a suitable and responsible person, where a tie of affection was likely to be established than that children be gathered together in an institution with a number of others. The exceptions to this general rule would be children with marked physical and moral defects who were generally best provided for in an institution. Family life should be the normal condition, and witnesses had stressed that it was of the utmost importance that the tie between the natural parent and the child should not be broken except for some strong reason to secure the welfare of the child. "Adoption" was "the next best thing" to the care of a natural parent.

Therefore, in the interest both of the "adopting" parent and of the child, "adoption" should be regulated by law and definite legal

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1 In an Interim Report in October 1920, the Committee advocated legitimation by the subsequent marriage of the parents. Although outside the terms of reference "it is intimately connected" and would help to maintain the relationship between children and their natural parent even where the child was illegitimate. An Act to this end was passed in 1926.
effects given to it. The Hopkinson Committee was primarily concerned with the lack of security of the adoptive parents. They recognised that the result for the child of being "adopted", although in many cases beneficial, had to be counter-balanced by the evidence of serious evils. If "adoption" became more frequent, these evils might become still more serious unless accompanied by proper safeguards. The Report refers to evidence of the N.S.P.C.C. that in the previous two years it had enquired into six hundred and twenty two cases affecting seven hundred and sixty four "adopted" children with proof in many cases of definite acts of cruelty, of gross neglect and of exposure to grave moral danger.

Yet the conscientious foster parents who took permanent charge of a child suffered from lack of security. They ran the grave risk that at any time the natural parents might appear and disturb the child, claim to take it away and even attempt to levy blackmail. "The sight of the child after it had enjoyed all the advantages of a good home may awaken in the natural parents a desire to recover it". According to witnesses it was no uncommon thing when a child had reached an age at which it could work and earn wages for parents, who had habitually neglected it, and left it to be brought up by a relative or even a stranger, to claim it back simply in order to make its earnings. This insecurity also deterred suitable people from coming forward to "adopt" the child for fear of subsequent claims, and the possible necessity of litigation to retain the child, the issue of the litigation being uncertain. Legal adoption would ensure for such people a definite legal status and attempted interference by the natural parents would be summarily restrained. In
addition, it was the child's due to ensure, on the one hand, that the "adopting" parents realised the serious character of the obligations they undertook; that the relationship created between them and the child is a permanent one; and that they could not at any time give up their responsibilities and leave the child unprovided for; on the other hand, if there were natural parents or guardians that their consent was freely and deliberately given and that they duly understood the effect of it.

The Committee therefore came out in favour of the line of argument that legal adoption was a mechanism for giving security of tenure to "adopting" parents, and securing them from the fear of the biological parents making demands for the child's return.

4:2 Having recommended "adoption" primarily as a method of giving security to the parties to "adoption", the Committee, in Part III of the Report, laid stress on the fact that legislation making adoption legal could not be a solution to the whole question of providing for the upbringing and welfare of children for whom there was no proper parental care.

The absence of proper control over "adoption" of children over seven years of age and children under that age if no payment was made, resulted in an undesirable traffic in child life with which no one could interfere unless proceedings were taken against the "adopting" parent for cruelty or neglect. Children might be handed over from one person to another without payment, be advertised for disposal, and even be sent out of the county without any record being kept; intermediaries might accept children for "adoption" and dispose of them as and when they
chose; and Homes and institutions for the reception of children existed
which were not subject to any inspection or control.

The evidence showed that the "adoption" of children was be-
coming more frequent. The Committee thought that there were three
reasons for this. There was, in the first place, a preference for the
"family home" as the most suitable environment for young children where
the only alternative would be an institution. Secondly, there was an
increasing tendency to value child life and to desire association with
and companionship of children on the part of those who had no children
of their own or desire another child. Thirdly, the fact that some women,
lacking the "mother sense" (sic) or for some other reason, such as
economic pressure or a desire for greater personal liberty, were unable,
or unwilling to carry out the obligations they should feel towards their
children. These reasons, the Committee felt, were good and worthy of
encouragement with safeguards, except for the last. In any case, persons
would always be found willing and anxious to transfer the custody of
their children to others for inadequate or improper reasons and where
the suitability of the home chosen had not been sufficiently investigated.
Having accepted that fact, the Committee recommended an extension of
provisions in the Children Act, 1908 for safeguarding child life.

They made four recommendations for the tightening up of the
Infant Life Protection Code. For instance, the provisions of the Act
should be extended to include children under the age of fourteen whose
custody and control was undertaken whether for payment or not, unless
under an order of the Court, and Section 11 was to be amended so as to
render all homes and institutions undertaking the entire control and
custody of children liable for inspection.

In this section of their Report, the Hopkinson Committee were taking the line that even if "adoption" were legalised, there would be no control over informal proceedings where, for example, judicial sanction had been refused. This decision marks the first step in the process which was ultimately to determine the legislative model for "adoption" in this country. The "legal formula" approach to "adoption" was to have its effects on practice in the 1930s which led to much exploitation of children and to a number of scandals.

The Committee also examined one of the points which had run, as a kind of leit-motif, through the early arguments advocating legalisation. The argument was that most other civilised countries had a legal code for "adoption". The Committee felt that little advantage would be gained by attempting to use other European codes as precedents with the possible exception of recent legislation introduced in Scandinavia. The laws of most continental countries were based, to a large extent, on ideas with regard to the family, and other social conditions, which differed in important respects from those that obtained in this country.

The Committee attached great importance to the recent legislation in English-speaking countries, particularly in certain of the Dominions and in the United States. It believed that valuable assistance could be gained from these. In all the forty-eight States legislation had been passed beginning with Massachusetts in 1841.
The law of New York seemed to call for special consideration, since conditions there seemed to resemble more closely than those of most other States the conditions existing in the United Kingdom.

Other useful examples were to be found in the Dominions. Australia and New Zealand had recognised legal adoption and would afford very valuable precedents as would the laws passed in some Provinces of Canada, particularly in British Columbia in 1920.

But the Committee stressed that in making its recommendations it had not followed the legislation of any one country but had arrived at its own conclusions on the evidence after considering and comparing the laws of other countries on the subject.

Having considered the arguments for accepting the principle the Committee then considered its specific recommendations. In the first place, it was of the opinion that the sanction for "adoptions" should be given by a regular judicial authority rather than by an administrative department or local authority. What should this court be?

In the first place, the Court was to be readily accessible. In many cases both the natural parent and the adopting parent possessed small means and it was essential that they should be able to make application to a place close to their own homes. The choice was therefore between the Courts of Summary Jurisdiction, that is, the Stipendiary Court or the Magistrates in Petty Session, and the County Court. For

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2 Legislation along these lines had been suggested by the National Council of Women in Occasional Paper 86 (1920).
many reasons the County Court was preferable. They felt that it was preferable to have one class of tribunal dealing with adoption throughout the country. It was important to keep the sanction of agreements for adoption away from the atmosphere of the criminal courts. Thirdly, there were facilities available in the County Courts for recording orders which might affect property as well as personal rights.

The main questions for consideration would be very similar to some of those which were then within the jurisdiction of the civil courts, and the County Court had similar jurisdiction under the Guardianship of Infants Act, 1886. In addition, the County Court judge exercised important discretionary powers affecting the welfare of families in dealing with questions arising in the administration of funds under the Workmen's Compensation Acts. The judge could easily arrange to sit privately in chambers and see the parties there without bringing them in contact with litigants and witnesses in ordinary court business.

It had been the policy of the legislature in recent years to extend the jurisdiction of the County Courts and assign new subjects to them. Although some additional work would fall on the courts, it seemed that it would not be of a very heavy character. The procedure in chambers would involve very little expense and if the "adopted" child had property the County Court Judge could arrange a proper scheme for dealing with it when seized of all the facts concerning the child and its natural and adopting parents.

Concurrent jurisdiction was to be given to the High Court although it was unlikely that any large number of cases would be brought before the Judges there.
The next question upon which the recommendation of the Hopkinson Committee was to prove vital in relation to the future of legal adoption, was the question of property belonging to the "adopted" child. The Committee recommended that if the child had property, the judge should have power to exercise a jurisdiction similar to that of the High Court over its wards to make allowances for maintenance, education or advancement of the child either out of income or capital. The Court should also have power, on behalf of an infant who is "adopted", to give directions for the settlement of property or for the safe custody and investment of the property either with the Public Trustee or otherwise.

When the "adoption" was once sanctioned, the relationship between the "adopter" and the person "adopted", and their relative rights and duties, were to be the same as those of the natural parent and child. This meant that as regards property belonging to the "adopter", or over which the "adopter" had absolute rights of disposition the "adopted" person was to have the full rights of a child. This right was not to extend to succession in case of intestacy of any relative of the "adopter", or where a gift was made by another person in favour of the issue of the adopter, unless it appeared that it was the intention of the donor to include "adopted" children.

The question of the "adopter's" rights in property of the "adopted" child, and whether the "adopted" child should retain rights of succession to the property of its natural parent, gave rise to difficulties. On the whole, the Committee felt that the best rules would be:
(i) That the adopting parents should have the same rights of succession to the property of the adopted child, in the case of its death intestate as if they were the natural parents. This was subject to a judge’s order for the settlement or application of property mentioned above;

(ii) That the adopted child should retain any rights of succession in the case of the intestacy of the natural parent and should also take under gifts made to the children of the natural parents, in the absence of any expression of intention to the contrary.

The Report was given a cool reception by the Home Office. The Bill Papers relating to adoption contain the following points:

"The Report is not a very good one. Part IV is entirely outside their reference and the recommendations are extremely vague … but it must be published". Another comment was: "Part IV is likely to be more troublesome than helpful as it may lead to a premature demand for amending the Children Act and the case for consolidation is much exaggerated and inaccurate."

In March 1921, a question was asked in Parliament as to the fate of the Report, and on 15th March, the Home Secretary parried a query as to whether he would publish the findings of any evidence to the Committee by stating: "The Report of the Committee in its final form only reached me yesterday and I have not had time to consider the Committee’s recommendations".

Similar questions were asked on three other occasions, 12th April and 20th April and in June. On 20th April, it was stated, in

3 Hansard H. C. Vol. 139,
4 Hansard H. C. Vol. 140.
5 Hansard H. C. Vol. 143.
reply, that the Report would be "available shortly"; it was in fact published in May. On 23rd June, Sir J. Butcher asked the Home Secretary whether he had considered the report and whether he would soon be in a position to introduce legislation on the subject. The Report was "receiving consideration" but the Home Secretary was not yet in a position to make any statement as to legislation.

A Home Office memorandum of 6th June discussed the implications of the Report for the formation of policy. It is noted that the report had been favourably received by the public and that several resolutions had been sent to the Home Office approving the Committee's findings. These had come from such bodies as Boards of Guardians, the H.S.P.C.C., and from Women's Organisations. Mr. Harold Spender, in an article in the Daily Chronicle, had expressed the hope that Lord Birkenhead would add to his excellent record as a law reformer by passing the Committee's recommendations into law. Spender praises Lord Birkenhead on establishing the separate juvenile courts, and hopes he will add to his record by introducing a law of adoption. It was also noted that one difficulty concerning the Report was that the Committee did not appear to have taken evidence as regards the administrative questions involved from the Lord Chancellor's Department or from the Home Office or Ministry of Health. The proposals were not in every case sound from the administrative point of view. The Lord Chancellor's Secretary, Sir Claud Schuster, had already made some criticism of a number of the proposals. The Ministry of Health was also asked for its

6 11th July, 1921.
observations on the proposed amendments of Part I of the Children Act, 1908 which was contained in Part III of the Report.

A conference was held on 28th November, 1921 with representatives of the Lord Chancellor's Office, the Ministry of Health, the Board of Education and the Ministry of Pensions (which had specific powers under section 9 of the War Pensions (Administrative Provisions) Act, 1918 for dealing with the neglected children of soldiers), to advise the Home Secretary whether the government should introduce a measure to legalise adoption. Alternatively, if a Private Member introduced a Bill the question would arise as to the proper attitude of the government towards such a move.

Sir Stanley Blackwell, on behalf of the Home Office, pointed out that the Hopkinson Committee had regarded legalisation of "adoption" as an urgent matter but had given little or no information in support of their recommendations. The legal adoption proposed in Parts I and II of the Report would do little or nothing to check evils attendant upon the disposal of illegitimate children. It would be out of the question to say that no child could be boarded-out unless he was legally adopted. The evils of "baby-farming" required tightening up of Part of the Children Act and its administration. The Home Office had no figures showing how far "adoption" 'in its proper sense' was being practised but Sir Stanley read a letter from the Registrar-General in which it was stated that applications were being received daily from people who were anxious to have their "adopted" children's names changed to their own.

Sir Claud Schuster, on behalf of the Lord Chancellor, strongly opposed the Committee's recommendation that the sanction for "adoption"
should be given by the County Court. The Lord Chancellor was not at all disposed to agree to administrative work of this kind being placed on the County Courts. Besides, the judges in these courts, were, as a rule, neither qualified to form an opinion on the merits of these applications nor would they have any staff at their disposal for making the necessary enquiries. Moreover, it was a mistake to suggest that the County Court judges or the other officials of the court were closely acquainted with the conditions of people living in the district. As for the Committee's suggestion that the investment of a child's property should, by the judge's direction, be given to the Public Trustee, Sir Claud stated that the Public Trustee could not accept any duties except upon the payment of a fee and that work of this kind was very expensive.

The conclusions of the Conference are summed up in the Home Office memorandum: "So far as can be judged from the Committee's Report there is no real necessity for any measure legalising 'adoption'." Such a conclusion reads strangely in the light of the urgency expressed by the Hopkinson Committee. But, as can be seen from the above comments, two of the Committee's recommendations in particular were causing the government to hesitate. These were the problems concerning the devolution of property, and the question of jurisdiction. The result was to be a delay in achieving a change in the law for another five years since, in November 1921, there seemed no satisfactory solution to either problem.
CHAPTER V

PARLIAMENTARY PRESSURE 1921-1924

The result of the interdepartmental conference had been a decision not to introduce legislation. The Home Office, however, anticipated that deputations, Parliamentary questions and Private Member’s Bills would inevitably follow upon the publication of the Hopkinson Report and the lack of Departmental action to implement it.

The first of these moves came in the form of a deputation from the Associated Societies for the Care and Maintenance of Children which presented a draft Bill which "embodied the recommendations of the Committee". This Bill was similar to one which was to be presented in 1922 as a Private Member’s Bill by Reginald Nicholson, Chairman of the Executive Committee of the N.C.A.A. The Home Office memorandum relating to this deputation pin-points the two approaches to the problem which had by now quite clearly emerged:

"Although they talk a good deal of the legalisation of adoption and the rights of adopted children what they really have in mind is the satisfactory disposition of illegitimate infants and the prevention of mischief in connection therewith. The draft Bill hardly touches the latter question and it seems that Part III of the Committee’s Report as to tightening of the law for the prevention of baby-farming and kindred evils can be dealt with separately without introducing the question of altering the law as to the status of genuine adopted children".

1 18th May, 1921
There is more than a hint here of the attitude of the Home Office to the subject. But what also emerges from Home Office notes is the concern of the Associated Societies at the "export" of children by at least one adoption society. As the note puts it: "... these people want to get at the National Adoption Society ...". Apparently children were "being emigrated" for "adoption" to Holland and to America.² (Other groups involved were the Mission of Hope and the Homeless Children's Aid and Adoption Society, both of which were to be a subject of further considerable concern in the 1930s).

The headline in the Daily Mail, 14th May, 1921, reads: "To be met at New York like Ambassadors". And goes on:

"With their identity surrounded by secrecy and all immigration laws waived in their behalf by the United States government to enable them to enter this country, 13 British babies, all less than a year old, arrive in New York in a few days in the Aquitania.

In the same way as Ambassadors and other great personages are greeted on their arrival in this country, their infant majesties will be met at the three-mile limit by representatives of their hosts, when they land smart motor-cars will carry them away to their final destinations.

Where these actually prove to be will probably never be known because the babies have been adopted by some of the most prominent families in New York. In a few years their names will appear in the social register.

As the Daily Mail has announced, plans for what is described as 'New Mayflower Pilgrimage' were made by the National Adoption Society of England with the co-operation of the British American Adoption Committee of New York, one of several agencies existing in this country to supply the great demand from childless parents for healthy babies of the best stock."

² See, for example, Daily Mail, 14th May, 1921.
It is probable that this link was made because of the association of a Miss Plows-Day with the National Adoption Society in its early days. She was an American who had worked as a counsellor for emotional development at the Spence School for Girls in New York, whose principal had adopted one child legally and fourteen others informally. The senior girls and old girls of the school worked for a little adoption society associated with a nursery in which Miss Spence was interested and it was through this connection that the idea of adoption work had first been brought to Miss Plows-Day's mind. She had been involved in rescue work in this country before the 1914-18 war, "occasionally finding a home for the baby of a decent type of girl, and it was her interest in the unmarried mothers, about whose fate she sincerely cared, that brought her into the adoption field here."^4

Her interest had brought a number of Americans on to the committee of the N.A.S. in the early days. These included Lady Sandwich, the mother of Lord Hinchinbrooke, Miss Spence and Dr. Henry Dwight Chapin, founder of the Spence-Chapin adoption agency in New York. "These American sympathisers, imbued with the pure crusading instinct, gave enthusiasm and financial help to the young society, but American interest did not go uncriticised, especially as it was the early policy to let children go not only to the Dominions, but to the U.S.A. as well, although the adoptive homes were vouched for and duly recommended. The children were 'orphans, semi-orphans and illegitimate'".5

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5 Child Adoption No. 26, Spring 1958, p. 9
4 op.cit.
5 op.cit.
The result of this publicity was the publication of two letters in The Times. The first, on 22nd June, 1921, was from the committee of the N.C.A.A., deploring the adverse and hostile criticism it had received as a result of the fact that the public mistook one institution for the other. The N.C.A.A. had no connection with the N.A.S., nor did it encourage sending children out of the country before the adopting parents had actually seen the children in England and had themselves been interviewed by the Case Committee. To help identify it, the N.C.A.A. wished the public to know that its patrons were H.R.H. Princes Alice of Athlone and S.A. La Princesse Victor Napoleon.

This letter was answered on the 5th July by Miss Spence, as chairman of the British American Adoption Committee. She pointed out that although there might be confusion in England between the identity of the two societies, there was none in America. Moreover, it was unfortunate, since the N.A.S. was the original society, that the N.C.A.A. had chosen such a similar name. If there had been criticism of the fact that the children had travelled first-class it had not reached her. In any case, the kind of American family to whom the children would go would not have wished them to travel in the steerage. "The future well-being of the children is more secure and better safeguarded in the land of their adoption than it is even in Great Britain, as in our country the adopted child enjoys very legal privilege as though born of the family".

It is interesting to contrast this incident — indicative, as it is, of the middle class, or even upper middle class flavour of the "adoption" movement — with the emigration of another group of children reported in The Times on the 4th April, 1922. These children were emigrat-
ing to Australia to be trained in farm work or, if girls, in domestic work, dairying and poultry-keeping. The majority of the children were orphans of service men or children of disabled soldiers. Their destination, however, was not "adoption" into a middle class home, and their destiny was rather different to that of the young "ambassadors". They were providing the much-needed developers of the overseas territories, under the auspices of such bodies as the Child Emigration Society founded in Western Australia by Mr. Kingsley Fairbridge, a Rhodesian who had been previously a Rhodes scholar.

This work was again under the auspices of the middle and upper middle classes. But the president of the Society said at a luncheon in London on the 23rd November, 1922 (attended by the Duke of Devonshire as Secretary of State for the Colonies, and Mr. Amery, First Lord of the Admiralty): "... escape from the thraldom of life in our great cities seemed well-nigh impossible but the society believed they could rescue some of the children and provide them with a real chance in life. They took them in hand when quite young, and carried them away to Western Australia where the climate was the most delicious in the world, and when they got to man's estate, they went out into the world familiar with the methods incidental to farm life in Australia.....".

There is, however, a common theme in both movements: that is, the belief and the faith that social problems could be solved through removal of a child from its bad environment. "Nurture not nature" seems to have been the slogan of the times.
Despite this publicity over the emigration of children, no government action was taken. Activity now centred on Parliament where a number of questions were being asked of the government in terms of its attitude to the legalising of "adoption". These were to be followed by a number of Private Members' Bills.

In February, 1922, Neville Chamberlain asked the Home Secretary if he proposed to introduce any legislation upon the subject of child adoption in the course of the current session.

"Mr. Shortt: I hope a Bill may be introduced to give effect to the Committee's recommendation as to the legitimisation of children by subsequent marriage of their parents; but there appear to be great difficulties in the way of carrying out proposals for legislation of adoption.

Viscountess Astor: Is it true that in other countries where it has been tried it has been a great success?

Mr. Shortt: I think that is so generally and I hope that eventually it may be tried here. I shall be very glad if Members interested would discuss it with me."

The next move by the Parliamentary supporters of "adoption" was to introduce the first of several Private Members' Bills. The Bill was presented by Mr. Reginald Nicholson supported by Mr. Hopkins, Mr. Inskip and Sir Robert Newman, and it was "to make further provision for the adoption of children by suitable persons". Mr. Nicholson was then

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6 Hansard H. C. Vol. 150.
7 Hansard H. C. Vol. 154.
8 The feature of these Bills is the inter-party support that they received.
chairman of E.G.A.A. This short Bill of four clauses enabled the parents or guardians of any child to transfer to any other person (referred to as the 'transferee') their rights and duties in respect of the child, and upon approval of the transfer by the court, the rights and duties of the parents or guardians in the adopted child would vest in and be exercisable by the transferee to the exclusion of any other person. The second clause provided for the court to be the High Court or the County Court, and the expression "child" was to mean a person under seven years. This, the Adoption of Children Bill, 1922, further provided that proceedings of the court should be regulated by rules which would also ensure that hearings would be in camera if the court thought fit and if the parties to the proceedings consented thereto. The application to the court could be made either by parents or guardians or by the transferee. Lastly, the Bill if passed was to come into operation on the 1st January, 1923.

The Home Office, however, felt that this Bill was "delightfully simple but it ignores all the difficulties and it would be disastrous to let it pass. The task of amending it in committee so as to make it work would be hopeless. It disregards all the conditions recommended by the committee and the committee's recommendations are not considered to be workable in practice......" Another Home Office comment notes that the Bill made no provision whatever with regard to the rights of the child, for example, in regard to succession to the estate of its natural parents or of acquired rights of succession to its "adoptive" parents.

The Bill was introduced on the 23rd May, 1922, issued on the 25th and was down for Second Reading on that day. The Home Office, therefore arranged for the Whips to block the Bill until further notice to give
time for consideration. By the 18th June, the Secretary of State had decided that the Bill should not be blocked and the provisional block was withdrawn, and on the 27th June the Bill was read a second time and committed to a Standing Committee. On the 14th July, a conference was called by the Secretary of State with the promoters of the Bill which Sir Alfred Hopkinson attended. The main objections to the current Bill were outlined:

1. The Bill provided for cases to be taken before the County Court, a proposal opposed by the Lord Chancellor. He opposed it partly on the ground that the County Court had no machinery for making enquiries that would be necessary in cases of this kind.

2. The Court would have to approve the application for adoption on the information before it and would have no means of discovering the character of applicants or the intention of proceedings. Consequently it would be possible for baby farmers to use the Bill as a cloak for their operations. By making use of the machinery for adoption, baby-farmers would be able to escape from Part I of the Children Act and the child would be left with no protection.

3. The Bill says nothing on the question of rights of succession. (At this point Mr. Nicholson interjected to say that the Bill had been purposely drawn so as not to have any effect on property.)

4. The Bill contains none of the other safeguards recommended by the Committee.

These points were discussed and the Home Secretary stated that he was afraid it would be impossible for the Home Office to put down amendments to the Bill. That would mean transforming it into an entirely different measure. He suggested that the promoters should put down amendments, in particular amendments to secure that proper enquiries should be made before a court gave its approval to an application for adoption and that
they should also remember that if the Bill got to the House of Lords, the
Lord Chancellor would certainly cut out the jurisdiction of the County
Court.

The promoters then asked whether courts of Summary Jurisdiction
could be substituted. It was the Home Secretary's opinion that the question
whether Stipendiary Magistrates might undertake work of this kind was worth
considering but he did not think that ordinary Petty Sessions ought to
have these functions. The promoters then said that if the County Courts
were cut out they were afraid the Bill would be almost useless, since,
without the County Court, legal machinery for adoption could only be used
by comparatively wealthy people.

The discussion ended with the Home Secretary saying that it
would be impossible for the Whips to find time for the Report stage of the
Bill before the Recess and he doubted whether even in the Autumn, the time
could be found for this.

On the 27th June, the Adoption of Children Bill was read for a
second time and committed to a Standing Committee. The Bill was amended
in Committee but it could not be considered by Parliament at the Autumn
session since dissolution intervened.

1923 began with something of a boost for the advocates of legal
adoption with the case of Doris Hawker, a child of seven, who was sent out
of England to Madras for "adoption". The "adoption" was arranged by the
matron of a nursing home on behalf of the child's mother. The father of
the child had been a soldier who was killed during the 1914-18 war. The
adoptive family turned out to be Eurasian; it was alleged that both the
mother and the matron believed that the child was to go to an English family.

Several Parliamentary questions were asked about this affair in the early months of 1923. On the 21st March, Mr. Stewart asked the Home Secretary "whether his attention had been drawn to the case of an English orphan girl of seven years of age, named Doris Hawker, whose father was killed in the war, who had been sent to Madras by a certain charitable institution and handed over for adoption by a family of Eurasians in that city; whether the sanction of any government office was obtained before the departure of the child; and whether he would consider the desirability of introducing legislation to specially protect children of tender years from similar treatment." The Home Secretary replied that no consent of any government office was required. He would however enquire through the India Office as to what had happened to the girl.

An oral question was put by Mr. Becker on the 26th March to the Under-Secretary of State for India asking if Doris Hawker was still with her Eurasian foster-parents or if she had been removed to the European quarter of Madras; and whether it was the intention of the Madras authorities to return the child to England? Earl Jinterton replied that the government of Madras had reported that arrangements were being made to place her in a home in the Nilgiri Hills pending further inquiry in this country. Inquiry was now proceeding. In reply to another question as to whether she was now with English guardians he said that he had no doubt that the arrangements were wholly satisfactory.

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10 Hansard H. C. Vol. 162.
On the 27th March, Mr. Becker asked the Home Secretary if he would form a committee of inquiry to inquire into the case of Doris Hawker, and to make general inquiries as to how girls were disposed of by charitable institutions formed to take care of young girls. The Home Secretary (Mr. Bridgeman) replied that he had asked the Chief Inspector of Reformatory and Industrial Schools to investigate by personal visits the question of disposal of girls from voluntary institutions.

The situation of Doris Hawker was again discussed on the following day when Lieutenant-Colonel Archer-Shee asked the Under-Secretary for India whether in the case of Doris Hawker who had been emigrated to Madras for adoption he would ask the Madras government to arrange for her immediate return to England in view of the fact that her passage money was now guaranteed and that several offers of adoption in this country had already been received. Earl Winderton replied that subject to satisfactory arrangements being made for provision of passage money the Government of Madras would be requested to make arrangements for Doris Hawker to be sent home without further delay. He would be grateful if the Honourable and gallant member could supply him with any definite information as to the guarantee which it was said to have been given for passage money.

On the 12th April, Sir John Hewett asked the Home Secretary whether in order to prevent recurrence of a case like that of Doris Hawker he would, until provided with the necessary legal powers in the matter, make

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11 Hansard H. C. Vol. 162.
12 op. cit.
13 op. cit.
known to societies or institutions which undertook the charge of children that it was undesirable on moral, educational and physical grounds, to send orphan children to India at an age when parents of British children resident there, who could afford to do so, would be arranging to send them out of that country. The Home Secretary promised to give careful consideration to this suggestion.

Doris Hawker was eventually returned to her mother.

A second Private Members Bill was introduced on the 17th April, 1923 by Sir Leonard Brassey supported by Sir Ernest Pollock, Sir Rylant Atkins, Sir Robert Newman, Lieutenant-Colonel Courthorpe and Mr. Hopkins "to make further provision for adoption of children by suitable persons." This was identical to the first Bill except that it applied to children up to ten years of age. Although, with a change of government, one of the supporters of the first Bill was now the Solicitor-General, and Neville Chamberlain, a signatory of the Hopkinson Report, was Minister of Housing, the Bill was blocked.

A third Bill was introduced in May by Mr. Gerald Hurst supported by Sir John Butler, Sir Henry Norman, Mr. Wintringham, Mr. J. Murray, Mr. Harney, Mr. Fairbairn, Mr. Lees Smith and Mr. Mosley. This Bill - The Adoption of Children (No. 2) Bill - was to make further provision for the "adoption" of children by suitable persons. The Home Office felt

14 Hansard H. C. Vol. 162.
15 A new government was formed by Mr. Bonar-Law in October-November, 1922.
16 Hansard H. C. Vol. 164.
that this was "so far the best Bill that had been introduced on the subject of the adoption of children. It is based on the Report of the Hopkins Committee on Adoption and provides most of the safeguards recommended by that Committee. It however contains no provision regarding the religious persuasion of the parties or as to the name to be taken by the adopted child." However the main objection to the Bill was the fact that "it is still proposed to use the County Court as well as the Chancery Division of the High Court as the judicial machinery for the working of the Bill .......". This Bill was permanently blocked by the Whips after consultation with the Lord Chancellor.

In early June, the Associated Societies for the Care and Maintenance of Infants (probably the instigators of the Bill through Gerald Hurst) were asking the Home Secretary to receive a small informal deputation "to discuss the position". The Home Office felt that this would be a waste of time since, according to the memorandum, "so far as I know the government has not yet decided that some method of legal adoption is desirable in itself." This note goes on to suggest: "If the government was ever to decide that effect ought to be given to the principle, I suggest that it would be very wise that the machinery proposed should be overhauled by a small committee of experts".

On the 16th June, Gerald Hurst asked the Home Secretary if he could hold out any hope of the government bringing in or giving facilities to any Bill for child adoption. The Home Secretary replied that "the government cannot undertake to introduce legislation on this subject at the present time and the pressure of Parliamentary business makes it impossible........

17 Hansard H. C. Vol. 166.
to give special facilities to a Private Member's Bill”.

A letter to The Times in October from Reginald Nicholson refers to a previous report in that paper of a meeting “presided over by the Mayor” in support of the Adoption of Children (No.2) Bill. The letter goes on to point out that no reference was made in it to the fact that the Bill introduced in the previous Parliament on behalf of the N.C.A.A. had got to its third reading but had then lapsed because of the dissolution of the Parliamentary Session. It was suggested that its success during its early stages was due to three factors: practically no opposition in the House of Commons; the fact that Lloyd George’s government had been anxious to feel the pulse of the public on the matter; and to the fact that most questions of hereditary property were left in statu quo.

Mr. Nicholson fully supported Mr. Hurst’s Bill and felt that it was a scandal that Britain practically alone of the civilized countries had no law of adoption. He felt that “there are an extraordinary number of people ...... who would be only too willing and who have the means to adopt and educate and bring up children giving them a real chance to become useful citizens of the Empire”.

The contents of the Bills presented to Parliament were of interest to those bodies concerned with the question of legalized child adoption. An example of this concern is to be found in the letter-received by the Home Office from the N.S.P.C.C. in May, 1925. The letter urged the Government “not to give its consent to any measure that does not fully safeguard the interests of the children adopted.” The phrase “fully safeguard” is further defined: “Our anxiety centres around the child and our desire is that no adoption shall be sanctioned until parties adopting
have satisfied the court as to personal fitness and suitable home conditions.
We desire further that a report at regular intervals should be submitted
to the Court so that if any unsuitable person succeeded in obtaining a
child the chances of its retention would be reduced*.

A similar concern is found in the question of Mr. Briant to the
Home Secretary on the 14th June, 1925. He asked if "in view of the many
cases of hardship and cruelty inflicted on children by persons adopting
them, he will promote legislation making it compulsory for satisfactory
references being provided by such persons and for formal adoption to be
sanctioned by a magistrate or other authorised person or body?" Mr. Bridge-
man replied that he regretted that he was unable to propose legislation on
this subject at the present time, but the consideration referred to by the
questioner "would not be lost sight of".

A Home Office memorandum concerning the H.S.P.C.C. letter sums
up the two attitudes which are to be found running through the movement
at this date: "There are two directions from which the question of adoption
is being approached. Firstly, those who wish to give adopting parents
fuller control over the children they adopt - this is the point of view
of framers of the Bill. (This was the Bill presented by Mr. Gerald Hurst). Secondly, those who wish to prevent baby-farming or otherwise protect
children who are adopted by undesirable persons*. This dichotomy of
approach was to prove highly crucial since the acceptance of one formula
rather than the other shaped the future of the institution of adoption in
this country.

18 Hansard H. C. Vol. 165.
CHAPTER VI

THE QUESTION RECONSIDERED - THE TOLLMAN REPORT, 1924

The first Labour government in British history was formed in January, 1924 with Arthur Henderson as Home Secretary. Even if it was true that some "professed to believe that under Labour the marriage tie would not be sacred and that free love would receive official sanction," the newly formed government certainly did not prove eager to introduce social reform in the field of legal adoption. Three further Bills introduced into Parliament during 1924 failed to achieve Royal Assent. The first of these - "to make further provision for the Adoption of Children by suitable persons" - was presented on the 5th March by Sir Malcolm Macaghten supported by the Duchess of Atholl and Mr. Harne on the Conservative side, Miss Lawrence on the Liberal side and Mr. Pethick-Lawrence on the Labour side. The Bill was modelled on the Bill earlier introduced by Mr. Hurst but with some variations. It was a fairly comprehensive measure. For instance, the judge before sanctioning the surrender of all rights and control over the child was to satisfy himself:

(a) that all necessary consents had been obtained;

(b) that the proposed adopter or adopters are of good repute and fit and proper to have care and custody of the child, and in a position to provide for it with suitable and proper maintenance and education.

2 Hansard H. C. Vol. 170.
and (o) that the proposed adoption is likely to promote the welfare of the child.

In addition, before the adoption was sanctioned, the consents of a number of persons were to be obtained:

(a) The adopter, or in the case of a joint application by husband and wife, the adopters;

(b) The spouse of the adopter if the adopter is one of a married couple who are not adopting jointly, unless such couple are legally separated;

(c) In the case of a legitimate child its parents or surviving parent.

(d) In the case of an illegitimate child its mother and, if he is contributing towards the maintenance of the child, but not otherwise, its father;

(e) In the case of a child, legitimate or illegitimate, who has no parent living or no parent who can after reasonable enquiry be found, the guardian or other person or body or persons having for the time being the custody and control of the child;

(f) The child to be adopted if over twelve years of age; Provided that the judge may dispense with the consent of the parent of a child in any case in which such parent cannot be found, or has abandoned the child or is incurably insane, or has been guilty of persistent cruelty to or neglect of the child, or has been deprived of the custody of the child by law, or is bringing up the child in such conditions as are likely to result in serious detriment to its moral or physical welfare.

The judge or some suitable and responsible person acting on his behalf shall in every case see the child proposed to be adopted and if it is of sufficient age or intelligence ascertain its wishes and consider its inclinations.

Clause 5 provided:

Unless the judge in his absolute discretion shall in any special circumstances think fit to make an exception, no person shall be allowed to adopt a child less than twenty years younger than himself or herself, and no person shall be accepted as an adopter who is under thirty years of age.
The Bill also provided the judge with power to adjourn the case for not longer than six months; in the meantime, he might permit the child to be placed with the proposed adopter during the adjournment of the application. The judge would be empowered to order inspections and inquiries as he thought fit to be made concerning the child and its surroundings whilst the child was with the proposed adopter.

If for any good cause the adopter or the adopted child after attaining the age of sixteen years, or any relative of or other person interested in the welfare of the child, desired that the adoption be abrogated, the adopter or the child or such relatives or other person might apply to the court for an order abrogating the adoption, and if the judge thought fit to do so, he might make an order to that effect, and as from the date of such an order the adopter and the adopted child would be restored to their original rights as if no adoption had ever been sanctioned; provided that where the application was made by the adopter the judge must, unless he thought it undesirable so to do, make it a condition of an order abrogating an adoption that the adopter must make some provision or otherwise confer some benefit on the adopted child. The Bill further prohibited a legally adopted child from marrying its adoptive parent until the adoptive relationship had been abrogated by the court.

Jurisdiction was to be given to a judge of the Chancery Division of the High Court or a judge of the County Court. The County Court to which application could be made was to be the court in the district in which the adopter or the person surrendering the child, or the child, was resident at the date of the application. All subsequent proceedings were to be made to the court of original application unless or until the matter
had been transferred to some other court. All proceedings relating to adoption were to be heard in camera. There was to be a right of appeal to the Court of Appeal.

With regard to the vexed question of the transfer of property rights the Bill provided that the adopted child would be entitled to succeed to the property of the adopter or adopters to the same extent as would have been the case if such child had in fact been the lawful child of the adopter. There was to be the proviso, however, that the child would not have any right of succession to the property of a relative of the adopter or adopters dying intestate, nor under any testamentary or other disposition made by a person other than the adopter or adopters in favour of the issue of the adopter or adopters unless it appeared that it was the intention of the testator or settlor, as the case might be, to include adopted children as objects of such disposition.

Departmental comment on the Bill was brief: "This Bill is practically the same as one introduced by Mr. Hurst last year. Variations are indicated in pencil in the margin of the Bill". Despite its comprehensiveness, the Bill was doomed to failure since it faced government opposition to the use of the County Court, and it also prescribed for the transfer of property rights from the adopted child to its adoptive parents. The Whips were, therefore, to be asked to block the Bill throughout the Session as the Secretary of State had already decided to set up another Committee to enquire into this matter.

A further short Bill was introduced into the House of Commons in
March, 1924 by Sir Thomas Inskip, and was similar to the Bill presented in 1923 by Sir Leonard Brassey and by Mr. Reginald Nicholson in 1922.

There was one alteration in clause three which now read:

"Provision shall be made by rules of court for regulating the proceedings upon an application for the approval by the Court of the transfer, and the rules shall provide for the hearing of the application in camera if the court thinks fit and the parties to the proceedings consent thereto. The application may be made either by the parents or guardians or by the adopting parent, but the court in determining the application shall have regard solely to the interests of the child."

This clause introduced the concept of the welfare of the child as a relevant and primary issue in deciding whether to grant an adoption order. However, in view of the announcement in the House of Lords of the intention to appoint a second Departmental Committee, this Bill, too, was blocked.

62 The Bill introduced by the Duke of Atholl in the House of Lords got further than these two. In introducing the Bill for second reading on the 18th March, 1924, the Duke stated that there were three other Bills on the matter of child adoption under consideration in the House of Commons. All were intended to 'assist a common cause'. He suggested that, so as to consider the good points in each and, in order to save time and trouble, it might be possible for them to be considered by a Joint Select Committee. The Lord Chancellor replied that the Government intended to set up a Committee to deal with the technical matters at issue which could not be dealt with by a Joint Committee of the two Houses. The Duke of

3 Hansard H. C. Vol. 170.
Atholl welcomed the statement and agreed that, though the Bill was to be read a second time, he would not press the Committee stage.

In the eyes of the Home Office, the Bill, (introduced by the Duke of Atholl), which followed broadly upon the lines of previous Bills, had, in addition to using the County Court as the judicial authority, one or two objectionable features of its own. They were that Clause two might be interpreted as meaning that adoption could confer nationality; that there were no powers of abrogation of adoption in the Bill; and that it proposed that rules of the court should provide for concealment of the identity of the child from the adopter and of the identity of the adopter from the child's parents. It is interesting to see at this point official objection to secrecy, an issue which will be discussed more fully in Part 2 of this thesis. Another proposal, to issue "a sort of hybrid certificate of birth" to an adopting person, might also be held to be open to criticism.

Notes on the Bill were sent at this point from the Home Office to Sir Claud Schuster, Permanent Secretary to the Lord Chancellor.

"This is the sixth Bill on the subject of the Adoption of Children which has been introduced by Private Members since the report of the Departmental Committee was published in 1921. This shows, on the one hand, the great public interest in the subject and, on the other, the difficulty which has been experienced in arriving at anything like an agreed measure. This Bill is better than some of the others .... because it does attempt to provide safeguards against improper adoption and also attempts to deal with the difficult question of secrecy and with the rights of succession to property but it does not surmount the difficulties. For this failure, the promoters cannot altogether be blamed because, for instance, as regards provision of safeguards they have adopted the recommendation of the Departmental Committee as to the use of the County Court. Unfortunately, the Committee in recommending use of the County Court machinery did not realise that they were attempting to impose upon the County Court duties which they could not adequately perform; and consequently the safeguards which they hope to secure by using the County Court are illusory. This defect is seen in the present Bill. Under Clause
three, before making an order of adoption the court must be satisfied on five or six separate points some of which can only be established by independent inquiry. County Courts, however, have no officers attached to them who could make these enquiries so it would consequently be impossible for the courts to comply with the requirements of the Bill.

The Bill includes other provisions not among recommendations of the Committee and some of these raise controversial issues. It would appear that following from Clause 2 a serious change would be made in the law of nations... etc. The government therefore feel great hesitation in taking part in a Bill of this character until further consideration has been given to some of these questions. While they are in favour of legalising adoption... they do not see how a satisfactory Bill can be framed without further investigation...

6:3 The new government decided that a fresh enquiry into the question of child adoption was needed. On the 25th March, 1924, Lord Corell asked the Lord Chancellor whether the government was in a position to state the reason for their decision to appoint a new Committee. Had the matter not been fully investigated by the Hopkinson Committee? The Lord Chancellor replied that the Hopkinson Committee had recommended the County Courts oblivious of the fact that they had no machinery to enable them to deal with the matter. The primary purpose of this new Committee would, therefore, be to obtain this machinery.

A memorandum prepared by the Home Office for briefing the Home Secretary states:

"It is perhaps not unnatural that the policy of the government in regard to child adoption should call for a little explanation because on the face of it the fact that a Departmental Committee was appointed less than four years ago would make it appear strange to those interested in the question that it is now necessary to appoint another committee and as the appointment of a committee of enquiry has sometimes been used as a method of shelving an unattractive proposition the suspicion of those who are anxious to see some form of adoption legalised may have been aroused."

This rather cool approach must have been found irksome by those
Members of Parliament who for three years had failed to move the government's resistance to legislative change. A letter to The Times from A. J. Allen, Chairman of the Associated Societies for the Care and Maintenance of Infants, on the 9th April, expresses the disappointment of many who had interested themselves in the question in recent years.

Since there were already Bills before Parliament, it seemed to him that the obvious course would have been to refer these to a Joint Select Committee of the House of Lords and House of Commons and not, as the government was now doing, to disregard all that had been done and start de novo. The letter goes on to urge the support of the public in protesting against the scrapping of much good work, and the deferment of this urgent question.

In fact, the impasse concerning the use of the County Court had not been resolved and the problem concerning property had also to be determined. In addition, the advocates of legal adoption were still fighting along two fronts as a Home Office Memorandum notes: "Some confusion has been imported into the whole question owing to the fact that persons who are advocating the legalising of adoption are advocating it for different reasons." There was a group who wished to establish beyond doubt the legal claims of persons who had "adopted" children and who wished to bring the children up as their own offspring. Another group was anxious to prevent baby-farming and other forms of exploitation of children out of mercenary motives.

Parliamentary evidence of this second approach can be seen from a speech made by Lord Gorell in the House of Lords on the 20th February.
in which he called attention to a case of cruelty to a child which had been "adopted". This was a case which had been reported in the "principal journals of the day" in this way:

The maximum sentence of six months' imprisonment with hard labour was passed on Harry Hickman, a young sapper in the Royal Engineers, and his wife, Edith Hickman, for cruelty to an infant they had adopted. It was stated that the child was strapped round the arms and legs and trussed up like a fowl wearing only one slender garment; it slept on a sack on the floor, it almost lost the power to walk, and crawled about on all-fours like a dog. One witness stated that she never saw such a sight before. The child did not appear to be human except for its eyes.

Lord Gorell having discussed the crime and its punishment, goes on to discuss the relation of this case to motives for "adoption":

"One may ask for what possible reason could people who intended to treat a child like this adopt it. One answer may be that this was a demented pair who had a lust for cruelty. That is rare. But the other reason why people do in such circumstances adopt children is not so rare, and that is for money with the intention of putting out of the way an unwanted child. Here I should like specially to say that I would be very sorry to utter any word in disparagement of the excellent work which is being done by some of the reputable, good adoption societies. There is very much to be said on their side, and there have been many cases of great and beneficent kindness done under adoption; but, when all is said and done on that side, there still remains a very dark side, and a case like this brings it pointedly to the fore.

There are two main reasons why people who afterwards brutally ill-treat children adopt them. One is that adoption affords them the means of getting cheap forms of labour, employing a small child as their slave — by no means, I am afraid uncommon — and the other is that money passes, usually in the case of an illegitimate child, and the people who adopt know perfectly..."
well that they will be carrying out the wishes of those who place it in their hands if they get rid of it. And it does not take very much neglect or even cruelty, to get rid of a very small infant.

Lord Gorell leads from this case to the Report of the Hopkins Committee pointing out that the committee was unanimous and it had stated that the matter was urgent. Three years had since elapsed and nothing had been done to remedy the situation.

This approach is closely connected with the tightening up of the Children Act 1908 and the problem of infant life protection. There was a Private Member's Bill in the House of Commons which attempted to strengthen the power of the law to inflict greater punishments and the supervision of adopted children. Lord Gorell, however, was seeking reassurance that this was a matter which the Government intended to take up without delay. Replying for the Government, Earl de la Warr spoke of a marked decrease in the offences relating to the cruelty to children. With regard to the subject of "adoption" the Home Secretary had decided to appoint a strong Committee to consider the question.

In fact, as the Note ends by saying, the government was, by this point, in favour of the principle of legal adoption. But "the experience which has been gained and the diversity of proposals submitted to Parliament in various Private Members' Bills that have been presented since the Committee's Report was issued, have shown that there are matters which need further investigation before any definite scheme can be recommended with any measure of confidence. It is necessary to devise effective means that will, at the same time, secure protection of the child from exploitation and safeguard civil rights. The government
has therefore come to the conclusion that the best method is to appoint another committee to investigate the matter further having regard to the difficulties which have been disclosed and to prepare a scheme which it is hoped might be passed into law without raising any controversial issues."

6:4 The Tomlin Committee was set up by the Home Secretary in April 1924 under the Chairmanship of Mr. Justice Tomlin.

Other members of the Committee were:

The Duchess of Atholl, C.B.E., M.P.,
W. R. Barker, Esq., C.B., of the Board of Education,
R. G. Gwyer, Esq., C.B., of the Ministry of Health,
S. J. Harris, Esq., C.B., C.V.O., of the Home Office,
Miss Dorothy Jennson, M.I.,
and Geoffrey W. Russell, Esq.

In November, the Duchess of Atholl resigned and the Hon. Mrs. Wilson-Fox, C.B.E., took her place. Their task was "to examine the problem of child adoption from the point of view of possible legislation and to report upon the main provisions which in their view should be included in any Bill on the subject". The terms of reference were extended in March 1925 by the addition of the words - "and further to enquire into the working of the provisions of the Children Act, 1908 which deal with the protection of infant life and the visitation of voluntary homes and to report what changes, if any, in the law or its administration are required." This is an indication that it had been decided that the problem of ill-treatment of "adopted" children should be dealt with by a strengthening of the Children Act, 1908, and that legal adoption would

5 It is not known why she did so.
be a means of solving the problem of security for the adopted child and for the adoptive parents in that the transfer was legally sanctioned.

This was by now the official line and the number of Civil Servants appointed to the committee may reflect the government's desire for a Report reflecting this viewpoint. The Report states the only reason for favouring legislation; there might be a case for recognition by the community of the relation between the adopter and the adopted; on this ground, it was felt that a case was made out for a change in the law.

This attitude runs through the Report:

"There have no doubt always been some people who desire to bring up as their own the children of others but we have been unable to satisfy ourselves as to the extent of the effective demand for a legal system of adoption by persons who themselves have adopted children or who desire to do so. It may be doubted whether any of such persons have been or would be deterred from adopting children by the absence of any recognition by the law of the status of adoption. The war led to an increase in the number of de facto adoptions but that increase has not been wholly maintained. The people wishing to get rid of children are far more numerous than those wishing to receive them and partly on this account the activities in recent years of societies arranging systematically for the adoption of children would appear to have given adoption a prominence which is somewhat artificial and may not be in all respects wholesome. The problem of the unwanted child is a serious one; it may well be a question whether a legal system of adoption will do much to assist the solution of it." 6

The Committee, bearing these factors in mind, decided to approach the problem from the angle of the evils for the remedy of which adoption is to be invoked. They therefore tried first to ascertain the evils, and secondly to examine how adoption would provide a

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6 para. 4, page 3.
They saw the arguments for adoption as falling into the two categories which we have already discussed; there were those who were concerned with the security of the adoptive parents against the interference of the natural parents who had de facto surrendered their rights or abandoned their children; and felt that the position of the child adopted and perhaps also of the adopting parent needed defining and strengthening, not only from the legal but also from the social point of view. If these ends could be attained it was felt that there would be an increasing number of people ready to adopt children for whom the natural parents were unable or unwilling to provide. The second group of advocates comprised those who were concerned with the evils which resulted from traffic in children and who believed that the establishment of some form of legal adoption would diminish those evils.

The Committee dealt first with the second group and states plainly that "those who look to adoption to remedy the evils they have in mind are attributing to it a force which it does not possess". The Tomlin Committee felt that the mere existence of a legal system of adoption would not and could not of itself put an end to those transactions out of which the chief evils arise. A legal system of adoption would not be resorted to by those persons whose transactions gave rise to the greatest evils. The prohibition of all transactions involving the bringing up of other people's children unless they were legalised by an adoption law was "a proposal the mere statement of which is sufficient to disclose its impracticability." For this class of evil the remedy lay not in the

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8 op.cit.
introduction of a legal system of adoption but in the strengthening and improvement of those statutes such as the Children Act, 1908, which related to child protection. With the extended terms of reference this was a matter which fell within their scope and would form the subject of a subsequent report.

The Committee then returned to consideration of the first group. Here the Report tended to the opinion that the fears have been exaggerated: "The Courts have long recognised that any application by the natural parent to recover the custody of his child will be determined by reference to the child's welfare and by that consideration alone. The apprehension, therefore, in most cases has a theoretical rather than a practical basis." But, they add, 'there is also a sentiment which deserves sympathy and respect, that the relation between adopter and adopted should be given some recognition by the community.' It is on the basis of this sentiment, and on this alone, that the Committee felt that a case had been made for an alteration to the law 'whereby it should be possible under proper safeguards for a parent to transfer to another his parental rights and duties, or some of them.'

Having come to this decision swiftly, and without further discussion, the Committee moved on to consider two other matters: first, the forms and procedures by which the transfer should be made operative, and, secondly, what in law should be the effect of such a transfer. They felt that the general opinion of those who had given evidence was that some form of judicial sanction should be required. This was a view with

9 para. 11, page 5.
which the Committee concurred; the transaction was one which might affect the status of the child and have far-reaching consequences and from its nature was not one in which, without judicial investigation, there was likely to be any competent independent consideration of the matter from the point of view of the welfare of the child. In practice, it was felt that, as many cases of "adoption" had their origin in the social or economic pressure exercised by circumstances upon the mother of an illegitimate child, it was desirable that there should be some safeguard against the use of a legal system of adoption to compel her to make a surrender of the child which would be final even though she might wish for only a temporary arrangement for the care of the child. In addition, many felt that, in so far as adoption tended to encourage or increase the separation of mother and child, it was of itself an evil and should be, if introduced, operated with caution. These, and other considerations, justified the conclusion that if there was to be a transfer of parental rights and duties, it should receive some form of judicial sanction.

This brought the Committee to that great stumbling block in the history of legal adoption - the question of jurisdiction. There was here a practical difficulty.\(^{10}\) It would be easy to give jurisdiction to the Chancery Division of the High Court where there was machinery and officers for obtaining the necessary information, the interests of the infant could be adequately and independently represented and the Court could exercise true judicial discretion. But the High Court was not sufficiently accessible for all cases; an alternative local jurisdiction was needed.

\(^{10}\) Para. 12, page 5.
The two local tribunals available were the County Court and the magistrates' court. Both had drawbacks. The County Courts were not equipped with machinery for investigating whether the arrangement was in the child's interests. But there was opposition to the use of the magistrates' courts on the grounds that it dealt with criminal matters. Nevertheless, juvenile courts now existed, and magistrates dealt with a considerable range of civil jurisdiction which gave them and their officers experience in matters which would need to be considered in relation to adoption applications. The magistrates courts were, therefore, more appropriate, and this was an argument which could well be strengthened if the juvenile courts were developed and civil jurisdiction was increased.

The Tomlin Committee in recommending the magistrates' court to dispense with this matter came up with the "right" answer. Would it also prove compliant with regard to the question of succession and transfer of property rights, another matter of "acute controversy"? The Committee's answer was again along the necessary lines. It felt that "in introducing into English law a new system, it would be well to proceed with a measure of caution and at any rate in the first instance not to interfere with the law of succession." This proposal was based on two grounds: the impracticability of putting an adopted child in precisely the same position as a natural child in regard to succession; and the grave difficulties which would arise if any alterations were made in the law of succession for the purpose of giving an adopted child more limited rights. They therefore
proposed no change in the adopted child's position on succession but suggested that the tribunal sanctioning adoption should have the discretion to require an adopting parent to make provision for the child.

The Committee realised the many difficulties which might emerge when an attempt were made to reduce general ideas to a concrete form. They therefore proposed to prepare a draft Bill to effect the changes which they were recommending. In the meantime, there had been a change of government and the Home Secretary was now Sir William Joynson-Hicks.

In the light of these recommendations, and of the draft Bill presented by the Committee, one would have expected an immediate government response. Indeed, a Home Office minute assured that "the government will wish to introduce a Bill on these lines as soon as the state of business allows. By this means we shall get rid of an agitation which is more vocal than substantial. Apart from this, there is a good deal to be said for taking the moderate and experimental step recommended by the Committee." Another minute states that "there is no question as to the desirability of a Bill on this subject". The legalising of "adoption" had been one of the items of the Prime Minister's Election Address in December, 1924.

The Home Office, thereupon, sent the draft Bill to the Lord Chancellor's Office for a detailed examination in August, 1925. A reminder was sent in January, 1926 which was followed by a telephone call. The Lord Chancellor's Secretary replied on the 3rd February stating that the Lord Chancellor had examined and minuted the original letter on the 1st January. The minute read: "I am not enthusiastic about the Bill, but
will agree to what the Home Secretary proposes”.

The possibility of introducing a Bill was mentioned in a Memorandum to the Cabinet outlining proposed Home Office Bills for 1926. However, when on the 8th February, Sir Geoffrey Butler put down a question for the Home Secretary enquiring if the government intended to introduce legislation, the Home Office briefings for the Minister’s reply all express doubts as to the possibility of this action being taken. One draft answer reads: “I am in communication with the Lord Chancellor but in view of the heavy programme before us, I doubt whether a Bill can be taken in this Session.”

In fact, the Home Secretary chose another of the possible replies and, in answering Sir Geoffrey Butler, he said: “The matter is still under consideration but if my hon. friend will repeat the question in a fortnight’s time, I hope to be able to give him an answer”.

In the meantime, the Home Office was again in communication with the Lord Chancellor, reminding him of the favourable position that had been secured in the Ballot by a Bill on child adoption and pointing out that a decision on this matter had now become a matter of urgency. The Lord Chancellor replied that he thought that the best course would be to let the matter go forward as a Private Member’s Bill, particularly since Mr. J. T. W. Galbraith was sponsoring, as a Private Member’s Bill, the draft Bill which had been included by the Tomlin Committee in their Report. This Bill was presented on the 5th February. It was the ninth Private Member’s Bill to be presented in the House of Commons, since two

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13 A Bill introduced to make adoption legal in Scotland is not discussed in this thesis.
more had failed to become law during 1925. One of these, Sir Geoffrey Butler's Bill was given its second reading on the 3rd April. It was identical to the Bill introduced by Sir Thomas Inskip in 1924. The Home Office asked Sir Geoffrey Butler to withdraw the Bill because of the pending report from the Tomlin Committee. The Under-Secretary for the Home Office (Mr. Locker-Lampson) promised that the Government would:

(a) do their utmost to expedite the Committee's Report
(b) ask the Committee to report on child adoption without waiting until they had completed their work under their extended reference
(c) bring in a Bill on the subject during the life of the present Parliament.

The debate on the Second Reading had shown, according to the Home Office, that it 'was clear that the House of Commons was overwhelmingly in favour of the legalising of adoption'. During the debate Sir Geoffrey Butler said: "I suppose no one will deny that modern democracy is confronted with no more urgent and pressing question than the upbringing of children for whom there is no proper parental care .... the decision is ultimately a political, that is, a Parliamentary decision. It is really ultimately a question of just how much importance the community attaches to having a system of adoption at all, and that, if the question be answered in the affirmative, if importance be attached to it, then it becomes a question of distributing the powers which it will be necessary to take for the carrying out of the mechanism of adoption". The motion

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14 Introduced by Sir Gerald Butler and by Sir Malcolm Macnaghten
15 Hansard, H. C. Vol. 182.
was seconded by Sir Henry Slessor who had been Solicitor-General in the previous government.

Mr. Locker-Lampson stated at the end of the Debate: "I think the whole House wants to see an Adoption of Children Bill brought into law, and the government want to see it ... We will ... pledge ourselves, as a Government, to bring in a Bill dealing with this question in the life of the present Parliament". The Debate was accordingly adjourned.

As can be seen from these many attempts and many failures to introduce legislation, the introduction of a law of adoption was frustrated by long and continuous government opposition. Even when the principle of legal adoption had been accepted, successive Lord Chancellors maintained a rigid stance over the two controversial issues of jurisdiction and succession. Until these questions had been resolved according to an acceptable formula, the fate of each successive Bill was in jeopardy. In addition, the case being put forward by the supporters of legal adoption was not helped by the division in their ranks between those who favoured an Act which would be primarily aimed at abolishing the practice of "baby-farming", and those who were advocating a measure aimed at legal security for the adoptive parents. The next and final stage of the struggle centres around the search for a measure which would satisfactorily resolve these conflicting standpoints.
CHAPTER VII

"ONE STEP FORWARD" - THE ADOPTION OF CHILDREN ACT, 1926

The Second Reading of the Adoption of Children Bill was taken on the 26th February, 1926. This was the draft Bill which had been submitted by the Tomlin Committee in their Second Report. Mr. Galbraith, after outlining the Parliamentary history of the matter from 1920, attempted to stress the urgency of the question. For instance, since September, 1917, one society alone - the N.A.S. - had arranged no less than 2050 cases of adoption and no less than twelve adoptions a week were being arranged by the Society. Moreover, this country was, as the Hopkinson Committee had pointed out, lagging behind other countries in dealing with this important matter. He stressed that this measure was in no sense controversial or party measure. It was a matter in which members of all parties had taken a great interest and members of every party had contributed a great deal to its solution.

The seconder of the Bill, Mr. Renoult, also stressed similar points. The Bill proposed to "afford definite sanction and recognition to that status of adoption which in actual practice and in spite of difficulties under which it had hitherto laboured had proved of incalculable benefit to thousands of children and had been a consolation and a solace in many bereaved or childless homes. In addition to

1 Hansard H. C. Vol. 192.
bringing the legal system - "which one is glad to think in most other respects is a model and a pattern to other countries" - into line with the practice in practically every other civilised country in the world and every other part of the British Empire, it proposed to remove from those who had adopted children the unceasing dread that at some time or other the actual parents would turn up and claim the child. Unfortunately, the danger of his doing so was almost automatically increased in proportion to the devotion and attention which had been showered on the child by the "adopting" parents. The marketable value of the child had thereby increased, and if the natural parent could claim the child with the entire weight of law on his side, all the love and devotion and sacrifice of the adopting parent might "count as nought".

The Bill was supported in principle by the Home Secretary who said that "the Government are fully satisfied that this Bill is an experiment well worth making, an experiment giving a new form to legislation which might well have been made, I think, many years before in this country." This was a sentiment no doubt fully in accord with the feelings of the proposers of the eight previous Bills on the subject. Indeed, Sir J. Joynson Hicks expressed himself a whole-hearted supporter of this Bill, refusing to find any fault in it, despite the reservations expressed by Mr. Galbraith and Mr. Renoult over certain clauses. He added that he held the view strongly that if the system were "well-managed" the position of the child was better in a home than in the best institution in the world, and he found, indeed, that in the civilised countries the system had been fully and frankly adopted, particularly in the English-speaking world.
The Bill was generally welcomed by the House, although most members did not feel that it went far enough. This feeling was expressed by Mr. Pethick-Lawrence when he said: "This Bill is a conservative Bill. I do not use that word in a party sense, but the Bill is one which takes one step, though it may be a long step forward. There are, however, other steps that ought to have been taken. But it is our habit in this country to go slowly and perhaps that is, after all, not a bad thing...." Mr. Kennedy, too, though regarding it as a distinct and important advance, felt that its effect would be very limited. "Perhaps", he speculated, "its limited nature is calculated to ensure general acceptance ....".

The Bill, as Mr. Kennedy recognised, was conservative - in the sense that it touched on only one aspect of the problem. It did not affect nor could it diminish the traffic in child life which was still causing concern to social workers. He felt that the Bill did no more than encourage what might be called the best class of "adoption", that is "adoption" which arose out of childlessness, "adoption" arising out of affection and "adoption" arising out of the spirit of service, a desire on the part of people to fulfill some function in life to the greatest advantage of their fellow-creatures. To those people who were acting from such motives the Bill afforded a great advantage since it gave them a security which they sorely lacked.

Within these limits the Bill was satisfactory. But it left untouched the real problems which existed in the crowded areas of the country. Mr. Kennedy therefore went on to suggest that there were many problems which still needed a solution. There was the presence of unwanted children who were turned over to people to be kept for reward in circumstan-
... the State had incomplete powers of inspection. He also advocated complete powers of inspection by the State of all institutions and homes which took in children. In the opinion of this Member the House in discussing the Bill was merely on the fringe of a greater problem.

The single voice of dissent from the chorus of praise which the Bill received came from Miss Ellen Wilkinson. She felt that there were dangers which ought to be pointed out. There was the case of "rather empty-headed women, without children of their own, but feeling they would like a child, and being casually attracted by some fluffy-haired, blue-eyed little thing, will adopt that child while it is young and pretty in the rather casual and haphazard way they do." However, when the child grew older, and got to the gawky stage of childhood needing a good deal more attention, and not being a pet to play with, then the woman wished to get rid of her responsibility and the child was probably finally sent to the workhouse, or got rid of in some other way, perhaps by being boarded-out. On the other side of the coin was the problem of the girl who in desperate straits wanted some temporary provision for her child and who might seize on an offer for legal adoption. It might only be later that she would realise that she had parted with the child for ever and had no means of getting it back. Another serious difficulty might arise from the case of married people in poor circumstances who might be induced to allow one of the children to be adopted. The circumstances might later improve, and they could then support the child, only to find out that the step they had taken was irrevocable.

But Miss Wilkinson's was the single dissenting voice. The attitude of most Members was to welcome the measure, but to see it, in
the words of Mr. H. Williams, as a Bill which "is not a Bill to encourage adoption; equally it is not a Bill to discourage adoption. Its object is to regularise something which is happening and to put it in a form that will protect all concerned".

An interesting point which occurs in several speeches is the belief that institutional life was not a suitable method of caring for a child. It has become recognised that "institution life tends very largely to a return to institution life, either in the form of prison, workhouse, or homes of that description".  

This general support for the Bill was to mask for a while the areas where the two major themes of dissent had to be resolved. It was at the Committee and Report stages of the Bill that the conflict arose and where it was resolved.

On the question of property the Bill had followed the Tomlin Committee's recommendations. Clause 5(2) of the Bill reads:

"An adoption order shall not deprive the adopted child of any right to or interest in property to which but for the order, the child would have been entitled under any intestacy, or under any will, settlement or other disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter, and the expressions "child" "children" and "issue" where used in any instrument disposing of property whether made before or after the making of an adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child".

Mr. Galbraith in moving the Second Reading of the Bill described the clear difference of opinion which had emerged between the Hopkinson...
Committee and the Tomlin Committee on this point. The Hopkinson Committee had come to the conclusion that with regard to the free property of the adopting parent, or any property over which the adopting parent had a full power of disposition the adopted child was to be placed in exactly the same position as one of the children of the adopting parent but that the rule was not to apply with regard to property coming from any other branch of the family. The adopting parent would have the same rights of property to any property of the adopted child as if he was the natural child.

The Tomlin Committee, on the other hand, had recommended that the adopted child should have no rights of succession to the property of the adopting parent on an intestacy. In order to meet to some extent the difficulty, Clause 4 provided that the court could, as a term of making an adoption order, request the adopter by bond or otherwise to make for the adopted child such provision if any as in the opinion of the court was just and expedient. Here were two quite distinct opinions.

On the whole, Mr. Galbraith favoured the solution proposed by the Tomlin Committee on the grounds that if any person had gone to the trouble of adopting a child, the probability was that that person would take steps to make proper provision for the child.

Mr. Renault was not so whole-heartedly in favour of the Tomlin position. He recognised that the difficulty was one that only arose on an intestacy since no child had the right of succession to any of the property of his parents except on an intestacy. The old laws under which a child had a right to a certain proportion of its parent's property before the parent could indulge his preferences and eccentricities had
been swept away long ago. But he thought there was a good deal to be said for giving an adopted child certain rights in succession and suggested that the question might be given further consideration when the Bill went to a Standing Committee.

The Home Secretary then presented the government's standpoint and the orthodox line on the question of succession. The Bill had been carefully drawn so as not to deal with the question of property. It would not impose upon the adopted parent who had perhaps his own children the necessity of sharing the property with the adopted child. In the speech one finds a reaffirmation of the classic position, safeguarding the natural and legitimate offspring as against the stranger or the changeling from outside the traditional legal family group. After all, as the Secretary of State went on to say, the Bill did not take away from an adopted child the right to a share in the property, if any, of his natural parents. It was possible that the natural parent, after giving up the child, might make good in the world from a financial point of view. The child who had become an adopted child might still reasonably expect to share in the property of the natural parent on an intestacy. Cases of intestacy were in any case rare and it might be assumed that the parents of the adopted child would exercise their rights to make a will, and that the adopting parent would also ensure some interest by will of the adopted child.

Mr. Hurst corrected the Home Secretary on this point. Sir W. Joynson Hicks, probably by a slip of the tongue, was in error when he said that intestacy would probably be rare in the case of adopted children. If an adopted child on the intestacy of the parents was to be
left unprovided for, that was wrong and proprietary rights on intestacy ought to be recognised in the Act. After all, "when you once recognised adoption as conferring the benefits of ordinary family life, the consequences of ordinary family life ought also to ensure".

The Home Secretary then interjected to ask if Mr. Hurst would extend his views to give the adopted child rights under a settlement as if he were a natural child? Mr. Hurst retorted that that was a very different point. He would suggest a compromise position. The rule on on an intestacy could be an exception since normally it was poor people who died without a will and settlements did not, as a rule, apply to such persons. He would also favour the converse; that when people brought up a child and spent money lavishly on it, the child attained the age of 21 and died possessed of some means the proper persons to inherit those means on intestacy were the adopting parents and not the natural parents.

The father of an "adopted" child, Colonel Headlam, was also not entirely satisfied with the Bill on this point. He wanted to see the adopted child placed in exactly the same position as the "natural legal born child" of its parents. "But", he conceded, "you cannot run before you walk. And the last person to be expected to do such a thing is a Judge of the High Court of Chancery" — a reference to Mr. Justice Tomlin and his chairmanship of the second Departmental Committee.

A number of speeches during the Second Reading of the Bill expressed similar doubts which were to bear fruit during the Committee stage.
At the Committee stage, a number of amendments proposed by Mr. Hurst, were carried which altered the sense of Clause 5. For instance, the right of the natural parent to succeed to the "adopted child upon such child dying intestate shall be extinguished" and were to vest in the adopter. A second amendment provided that the adopted child would succeed to a share in the property of the adopter upon his intestacy. These alterations quite changed the position with regard to inheritance, a move which did not meet with government approval.

Indeed, at the Report stage, the Solicitor-General succeeded in a bid to re-insert the original position. In his speech, he conceded that the question of succession to property was a difficult one, which could be approached in three ways. The first approach would have been to leave things exactly as they would be if the child had not been adopted. The second was to place the child in the same position as the natural child; and the third was to have some sort of intermediate arrangement by which the child got the best of both worlds, retaining some of its rights in its capacity as a natural child and acquiring some new rights in his capacity as an adopted child. He felt that the House would agree that the third course was an inconvenient one and that either of the other courses was more desirable. Nevertheless, this was the position which had been achieved by the amendment since, as a result of these, the child would acquire some rights upon the intestacy of the adopter, but not all the rights of a natural child, that is to say, rights in respect of

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2 Proceedings of Standing Committee A, 16th March, 1926.
3 Hansard H. C. Vol. 196.
the intestacy of near relations of the adopting parents.

The Solicitor-General was, therefore, proposing that this position should revert to that originally inserted in the Bill, and so to leave the position as regards property in exactly the same state as it was before the order was made providing for the adoption of the child. It would, of course, be open to the adopting parent to make a will, or disposition or settlement leaving the property expressly to the child.

Mr. Hurst said that he did not propose to resist this amendment but did wish to point out that the previous amendment had been carried by a large majority in Committee, against the wishes of the promoter of the Bill and against the wishes of the representatives of the Home Office. The Bill, in its present form, was not the result of an accident, but of long discussion on the merits of the question. He outlined an example to show the effect of preserving the rights of the natural parents.

A child who had been abandoned in infancy by its natural parent might be brought up as a member of the new family with care, attention, love and money lavished upon it in the new family. In adult life, it might acquire property and then die. The legal position would be that the natural parent, who might not have seen the child for perhaps a quarter of a century, would be given the right to succeed on the intestacy of the child. It seemed to him that natural justice was very much more in favour of the adopting parent than in favour of the natural parent who had abandoned his child in infancy. However, in view of the time factor, and the general desire to get the Bill through Parliament he did not propose to say anything more about the matter except to express his regret.

In this way, the problem of property rights was at length
resolved. It retained the link between the natural parent and the child, in this respect, despite the abrogation of such important rights as custody, and despite the sweeping changes of the Law of Property Act, 1925. But it was a battle which was not won easily; indeed, it was more of a limited victory than the government might have hoped for. In order to retain this principle, they had to strike a bargain and concede a point on which successive governments had previously stood firm. That was on the question of jurisdiction.

Clause 8 had provided that the court, having jurisdiction to make adoption orders, was to be the High Court and any magistrates' court within the jurisdiction of which either the applicant or infant resided at the date of the application for the adoption order.

In introducing this Bill, Mr. Galbraith had said: "... both Committees agree, and I think that those who have experience of these matters will come to the same conclusion, that the ideal tribunal to deal with these matters is the Chancery Division...". With regard to the subsidiary tribunal, he said: "For myself, I say quite frankly that in my view the County Court is the better of the two, but that is obviously a matter upon which the opinion of members of the House will be of great importance and value when this matter comes to be considered in Committee". Mr. Renault, in seconding the Bill, also favoured the County Courts. He felt it essential to preserve, in regard to adoption, the atmosphere of civil rather than criminal jurisdiction. In his opinion, what was involved was the registration and recognition of a civil contract. County Court judges were well accustomed to carrying out social work of this nature, for
instance, under the Workmen's Compensation Acts which raised analogous issues. There was also the jurisdiction awarded to the County Courts under the Guardianship of Infants Act, 1925 added to which the County Court judge was accustomed to making orders in regard to property as well as to personal rights. Lastly, there was the small, but nevertheless important, matter that the County Court had ample facilities for keeping permanent records to which reference could be made when required.

But the Home Secretary felt that the magistrates' court was "the people's court" to which they went with their troubles. It was not as formal as the County Court, and in addition, in the children's courts and in the magistrates' courts outside London, "you get local knowledge, you get magistrates of all classes now sitting on a bench, you get a magistrates' clerk who lives in the town and they know, and are pretty well likely to know, the people whose children are going to be adopted, and the people who are going to adopt children, and it really will be a kind of parental jurisdiction which the courts will exercise rather than any purely legal one, such as the Chancery Court or even the County Court would be likely to exercise".

However, he did not wish to say that the government would stand out in this matter against anything approaching a unanimous decision of the Committee upstairs in favour of the County Court. But the advice he would give to the Committee on behalf of the government would be to try the proposal contained in Mr. Justice Tomlin's Report.

He was supported in this by Mr. A. R. Kennedy who was glad to hear the Home Secretary come down heavily on the side of the magistrates' courts in this matter. The County Courts were seriously overburdened with
work. He compared them to Justices of the Peace in the sixteenth century described by the historian Stubbs as carrying stacks of statutes on their shoulders. Although the magistrates’ courts were burdened with work, the County Court judges were much more overworked. Besides the County Court judges were not qualified to do this kind of work in the best possible manner; the County Court was not a suitable tribunal for this purpose. Magistrates’ courts had experience of juvenile work already they were cheaper, they were less formal, and much more accessible and they sat more frequently. Moreover, the Guardianship of Infants Act, 1925 had deliberately extended the magisterial jurisdiction to cases affecting the custody of children.

Mr. Geoffrey Hurst wondered if the Home Secretary would consider the advisability of giving concurrent jurisdiction to the two courts, a precedent already set by the Guardianship of Infants Act, 1925 under Section 9. Since it had worked well, he could not see why it should not work well in the analogous case of the adoption of infants.

Mr. Mellor speaking as a magistrate in a fairly large district felt bound to express the opinion that it would be advantageous to place jurisdiction in the hands of the County Court only. He felt that adoption cases, coming at the end of a long list of prosecutions and at the end of the day, would not get the scrutiny and examination which he thought desirable in dealing with the future life of a child. He wanted a real examination to be made into the bona fides of the adopter and the wishes of the parents to dispose of their child, rather than the scanty treatment of grievances given to people with complaints by the magistrates court.

Sir Malcolm MacNaghten dealt with the point made by the Tomlin
Committee that the County Court would not have proper machinery. This he could not quite understand. It was his opinion that the High Court and the County Court had parallel features: judges, registrars and other officers of the court. Possibly the "machinery" which the Tomlin Committee was thinking about was the Official Solicitor? If so, why could this official not act in both courts as a sort of common guardian ad litem?

Section 8 was not amended in Committee since a proposal to amend put by Sir Malcolm MacNaghten was withdrawn. But, at the Report Stage, Sir Alfred Hopkinson proposed an amendment "to allow the County Courts to deal with adoption cases". He regarded this to be a vital amendment since the whole question of the law of adoption depended on getting the right tribunal to sanction adoption. The Hopkinson Committee had considered this point very carefully and had taken the evidence of County Court judges and a large number of people in all parts of the country who were interested in the subject. He believed that it was the case that nearly all the societies interested in child welfare were strongly in favour of recognising the County Court as an alternative sanctioning body. For well-to-do people there was no better tribunal than the High Court but it was perfectly ridiculous to imagine that for the poor people in Newcastle or Carlisle, the High Court was a possible tribunal. The only tribunal was the County Court sitting at their own doors. They did not want the association of the Police Court in dealing with a civil matter. Two of the most distinguished County Court judges had given evidence that they had the machinery for dealing with these cases, their registrars had considerable experience of the district and there was ample opportunity
for hearing these cases in the Judge's private rooms.

On behalf of the government, Captain Hacking said that there were only two reasons why the County Courts should not be used. These were, in the first place, that they were very busy at the moment, which would tend to congestion, and, secondly, that they would not have such full knowledge of the homes into which the children would be adopted. But since there was very considerable feeling in the House that the County Court should deal with these cases, the government would have no objection to the proposal.

The Under-Secretary's statement represented a complete volte-face on the part of the government and it was quite contrary to the policy maintained so firmly since 1921. Home Office notes also indicate that this amendment was accepted without the express concurrence of the Lord Chancellor. A copy of a letter to Sir Claud Schuster states that the Home Secretary was given to understand that if this amendment was accepted by the government, no opposition would be offered to the government amendment, restoring the position with regard to rights of property. The Secretary of State had felt that he ought to agree, though he much regretted that he had had no opportunity of consulting the Lord Chancellor before doing so.

The present tripartite jurisdiction over adoption is thus to be seen as the outcome of a Parliamentary compromise, almost as an historical accident. The Home Office foresaw dangers in the situation, feeling that alternative use of the County Courts and the Petty Sessions in the same area would lead to overlapping and inconsistencies of administration.

The Adoption of Children Act, 1926 found its place on the Statute
Book after a Parliamentary struggle which had lasted for five years.

In its final form, it illustrates several aspects of the process of formulating social policy. In particular, it shows both the strengths and weakness of attempts by individual members to introduce legislation. The need for government support is clear; but the final chapters of the history show that governments are often prepared to concede individual points and make compromises where they feel the pressure upon them is strong. This particular piece of law-making also shows how proposals for legal change emerge out of a particular social setting and ambience and that, probably, few measures can be quite divorced from their social context. It also illustrates how proposals for social reform may meet with strong resistance when they are seen as a threat to other parts of the social structure. In this case, resistance sprang, on the one hand, from fears that standards of social morality would decline, and from a reluctance, on the other hand, to tamper with legal concepts such as parental and property rights. This reluctance was reinforced in this case by an administrative problem concerning the court system.
PART II

"... it is one of the most painful conclusions which follow from a study of Acts of Parliament, and the cases arising out of them, that there appear to exist in the world a large number of people who make a practice of perverting to their own nefarious ends the beneficent intentions of legislators. And it is to be feared that such persons will find only too many opportunities in the Adoption Act for the exercise of their favourite pursuit."

Edward Jenks: Recent Changes in Family Law
CHAPTER VIII

LEGISLATIVE POLICY AND PROBLEMS

The legislation to allow legal adoption which finally reached the Statute Book made provision primarily for the transfer of legal status. Since a certain view of adoption - "to safeguard the adopters from interference on the part of the natural parents and to establish a secure form of guardianship of the child" - had prevailed the Adoption of Children Act, 1926 provided the necessary means for putting a legal seal to informal arrangements which were found to comply with a prescribed formula. There was little concern in the first statute with the practices of those arranging adoptions and a negligible amount of control existed over the methods which were being employed by them.

The main aim of the Act was to authorise a court to extinguish "all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child" and to vest them in the adopters "as though the adopted child was a child born to the adopter in lawful wedlock" (section 5) with the proviso that rights in property were not to be transferred. The power of the court to make the adoption order arose on an application by the intending adopter in the manner prescribed by the Act, and this power could be exercised, subject to the other provisions of the Act, in relation to an infant (that is, a

1 M. de M. Rudolf: Everybody's Children (1950).
person under the age of twenty-one) who had not been married.

The voluntary nature of the abrogation of parental rights was safeguarded by section 2, subsection 3, which provided that an adoption order was not to be granted except with the consent of every person or body who was a parent or guardian of the infant. The requirement concerning consent also applied to any person or body having actual custody over the infant or who was liable to contribute to the support of the infant. In this respect, the basis on which an adoption order was to be granted resembled the concept of a contract, that is, a legally enforceable agreement. Sir Geoffrey Butler speaking in the House of Commons in 1925 quoted a judge of the Appellate Court of New York who in 1917 had "expressed obiter in his judgement on an important case, the view that proceedings for adoption are not, on ultimate analysis, judicial proceedings at all, the position really being that you have a contract for adoption made effective by the Court, and the only judicial element in the process is that determination, which rests with the judicial officer, as to whether or not it is for the moral and temporal interest of the child that the adoption should be allowed".

But there are also quite basic differences between adoption proceedings (which aim to make an informal agreement into a formal order, and to affect the legal status of the child) and legal proceedings regarding contracts. In the latter, the court becomes involved in the situation only upon the failure of the agreement, either because the original transaction did not comply with the essentials of a contract, or because one

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2 Hansard, H. C., Vol. 182.
party has failed to carry out his obligations under the agreement.

However, in proceedings concerning an adoption, the court's sanction is necessary from the start, in order to validate and approve the agreement between the parties. The court's presence, in witnessing the transaction is needed because a matter of public policy is involved when a change of legal status is contemplated. The role of the judge is thus primarily inquisitorial in such cases, rather than (as in the bulk of English legal actions) adjudicatory in nature. Furthermore, whilst in most cases the existence of the consensual basis can be taken for granted, yet, since a question of social policy is involved, the need for the consensual basis to the action can be disregarded in certain circumstances. From the beginning, legislation has made it possible to dispense with the requirement regarding consent in those circumstances where it was felt that the parent or guardian had, through his or her conduct, jeopardised against the exercise of the basic right to withhold consent. The statutory justifications for dispensing with consent illustrate the tendency, already noted, which had begun in the nineteenth century and which allowed intervention by the State with parental rights where it could be shown that the parent's behaviour did not comply with certain standards.

The Adoption of Children Act, 1926 allowed the court to dispense with the consent of a person if it was satisfied of one of the following conditions:

that the person had abandoned or deserted the child;
or could not be found;
or being liable to contribute to the support of the infant, had
either persistently neglected or refused to contribute;

or was a person whose consent was, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

8:1 Most of the other provisions of the Act related to the existence of certain characteristics in the adopters, particularly in regard to age and sex and therefore constituted a number of restrictions upon adoption arrangements. In the first place, an applicant could not succeed in his application if he was under the age of twenty-five. He had, in addition, to be at least twenty-one years older than the child, except that, if the applicant and the child were within the prohibited degrees of consanguinity, then the court was able to make an order, if it thought fit, despite the lack of difference in age.

A similar proviso had been introduced into the Bill during the Report stage. Major Hills proposed to insert that the age difference should not apply where the applicant was "related by blood within the prohibited degrees of marriage" to the infant, at the discretion of the court. Major Hills pointed out that the reason for the original restriction had been stated by the Hopkinson Committee. This was to secure a parental relationship between the adopter and the adopted infant. He submitted that there was a class of exceptions to that sound rule. There was, for example, the case of an uncle who wished to adopt his deceased brother's son who was less than 21 years younger than him. In seconding the amendment, Lieut. Commander Kenworthy quoted the additional case of a young aunt whose niece was left an orphan. He felt that it would be hard to prevent an adoption in such a case, particularly since "blood
relationships are the very ones for which we should legislate most...

The amendment was agreed. It was, however, subject to a drafting amend­ment during the Committee stage in the House of Lords so that the sub­clause then read as above.

The Home Office was asked to define this proviso in a letter received from a magistrate's clerk in October, 1934. The difficulties inherent in its wording are also to be seen discussed in a note in the Justice of the Peace for the 7th August, 1937, which points out that the words "prohibited degrees of consanguinity" had been the subject of much discussion. It had been argued that the phrase referred only to persons of opposite sex since prohibition related to marriage. Such an inter­pretation would lead to inconvenient conclusions: for example, a mother might adopt her son, but not, in certain circumstances, her daughter.

The other argument emphasised the word "degrees", so that the test was no longer sex, but degree of blood relationship which would in the case of persons of the opposite sex make marriage unlawful.

The Home Office felt that a clarifying amendment might be needed. In fact, the difficulty was later resolved by the case of Re G, in 1937, which settled the point by deciding that the term "prohibited degrees of consanguinity" referred to degrees of blood relationship. This meant that a mother could adopt her illegitimate daughter although there was less than twenty-one years difference in their ages. In Re C, the mother of an illegitimate girl of nineteen had applied jointly with her husband for an adoption order with regard to her. Both were less than twenty-one years older than the infant so that they could not adopt unless the proviso on consanguinity applied to them. The male applicant

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3 3 All E.R. 783.
was in fact no blood relation to the child, and the judge, holding that the statute referred to consanguinity alone, and not to affinity, held that the husband could not adopt. He held, however, that the mother could adopt and so set at rest the previous doubts whether a mother could, in all cases, adopt her own child.

The sex of the applicant was relevant, if the sole applicant was a male and the infant, in respect of whom the application was made, was a female, unless the court was satisfied that "there are special circumstances which justify as an exceptional measure the making of an adoption order". A Minute of the 7th September, 1936 refers to a court case which rested on the application of this proviso. A mother had placed her child with foster-parents six years previously and since that time she had continued to pay for the child's maintenance. In 1935, the foster-parents had applied for an adoption order in respect of the child, and, despite the opposition of the mother, an interim order had been granted. The wife had then died and the husband applied alone for an adoption order to be made in his favour. The court, in this instance, had taken the view that there were special circumstances, within the meaning of section 2(2), which justified the adoption of a female by a male applicant and they had granted an interim order to the widower. This had been done despite the fact that the mother, who had a considerable amount of savings, was said to have changed her occupation so that she could look after the child. Nonetheless, the court had considered that she was a person whose consent might be dispensed with under section 2(3).

The Home Office Minute on this case comments that this was a monstrous decision. It was felt that the mother's right to her child
should be as jealously guarded as possible, a view which had been reasserted by the High Court in some remarks made in the case of Re Carroll\(^4\) in 1931. In any case, the proviso to section 2(3) had never been intended to apply to any but the most exceptional circumstances. In this case, the solicitors for the mother were basing their application to the court on two technical grounds. In the first place, no guardian ad litem had been appointed; in the second place, the required notices had not been given, nor had the required consents been requested at the second hearing where the husband was the sole applicant. The justices were maintaining that the reason for not appointing a guardian ad litem was that they were not granting a final adoption order. The Home Office felt that this was hardly a convincing reason. Moreover, in the view of the Home Office, it was quite clear from the Rules made under the Act that the appointment of the guardian ad litem was to be made before the hearing of the application. Indeed, one of the functions of the guardian ad litem under the Rules of 1936 was to advise on the question of an interim order. The second point being argued was also a technical one, since, whether a formal notice had been given to her or not, the mother had, in fact, attended and had opposed the application.

Although the Home Office felt that it was not their function to advise solicitors on a matter of this kind, yet in the circumstances, it ought to be explained to the solicitors in this case that there was no provision for an appeal to be made under the Act. Therefore, the only way of proceeding would be perhaps by way of a case stated to the High Court. At the same time, it might be advisable to draw the attention of the justices to the irregularities of the case. Fortunately, the

Minute goes on to add, it was not necessary for the Home Office to give advice as to whether the irregularity was such that if it were challenged in the High Court on a writ of certorari or otherwise, it would be likely to be quashed. However, the Home Office felt that it might be useful to have the views of their Legal Adviser on this matter. Since the order that had been made was an interim order, the case would be reconsidered at the end of two years, but that was small consolation for the mother, particularly as arguments in favour of leaving the child in the foster-home were likely to be strengthened by the lapse of time.

Another restriction on making an adoption order came into operation if one spouse applied to the court without the consent of the other. This condition could also be waived in certain circumstances; if, for instance, the court was satisfied that the person whose consent was to be dispensed with could not be found, or was incapable of giving consent, or that the spouses were separated and living apart, and that the separation was likely to be permanent.

Finally, there was a restriction on making an adoption order where the applicant was not resident and domiciled in England and Wales or where the infant was not a British subject and not resident in this country.

8:2 The next function of the court was to satisfy itself on certain specified matters before granting an adoption order. In the first place, the court was to be satisfied that the consent, if not dispensed with, had been given with an understanding of the nature and effect of the adoption order, and that a parent giving consent understood that the
order would permanently deprive him or her of all parental rights.
In the second place, the court was to ensure that the order was for the
care and welfare of the child, due consideration being given to the wishes of
the infant, having regard to his age and understanding. Finally, the
court was to satisfy itself that the applicant had not received or
agreed to receive any payment or other award, and that no person had
made or given or agreed to make or give the applicant any payment or
reward, except as had been sanctioned by the court.

This latter provision was clearly an attempt to avoid the
problems of "baby-farming", an attempt which was to prove weak and open
to abuse. The section contained no penalties for non-compliance, and
it would, in any case, have been difficult for the court to discover
whether such payments had taken place. The weakness of this section
had been perceived by the National Council for the Unmarried Mother and
her Child before the passing of the Act. According to the minutes of
the Executive Committee of the Council for the 9th February, 1926, it
was agreed to draw the attention of the promoters of the Bill to the
fact that Clause 9 of the Bill did not make it clear what the penalty
would be for receiving payment or reward for the adoption of a child.
The Secretary of the Council was directed to ask the promoters of the
Bill whether acceptance of money without the permission of the Court
would be a criminal offence, or in contempt of court, or whether it
would invalidate an adoption order which had already been made. The
Committee was anxious that it should be treated as an offence and that
 provision should be made for money to be recovered by the person who
had paid it. This suggested change was not, in fact, made.
Another section of the Act provided for implementing a suggestion of the Tomlin Committee\(^5\) that the judicial sanction "should be a real adjudication and should not become a mere method of registering the will of the parties respectively seeking to part with and to take over the child". This was incorporated in section 8(3) of the Act. As Mr. Galbraith said during the Second Reading debate: "It is obviously of extreme importance in dealing with matters of this kind that the Court should not merely register the views of the parties but should be satisfied not only that the parties on each side are consenting but that the order is for the benefit and welfare of the infant...".\(^6\) In other words adoption proceedings were extra-contractual since they involved a change of status, environment and circumstances for the child.

The Rules made under the Act defined this role more specifically. For instance, the Rules of the Court of Summary Jurisdiction\(^7\) provided that it was to be the duty of the guardian ad litem to investigate as fully as possible all the circumstances of the infant and of the applicant and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant before the court. In particular, the guardian ad litem had the duty to include in his investigation the following questions:

(a) Whether the written statement was true and complete, particularly as regards the date of birth and identity of the infant;

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\(^5\) Hansard, H.C. Vol. 192.
\(^6\) 1926 No. 1585 L.41
\(^7\) para. 15.
(b) Whether any payment or other reward in consideration of the adoption had been received or agreed upon and whether it was consistent with the welfare of the infant;

(c) Whether the means and status of the applicant were such as to enable him to maintain and bring up the infant suitably, and what right or interest in property the infant had;

(d) What insurance, if any, had been effected on the life of the infant;

(e) Whether it was desirable for the welfare of the infant that the court should be asked to make an interim order or, in making an adoption order, to impose any particular terms or conditions or to require the adopter to make any particular provision for the infant.

The Rules of the County Court were identical in this respect.

Despite these concessions to the fears concerning "baby-farming" and malpractice, the Act was primarily a "legal" measure, in that the centre of interest and concern in the Act was the court hearing and the formalities leading up to it. It was unfortunate, but not perhaps unexpected, that the statute was to prove too weak to prevent abuse in the field of adoption. Indeed the Act proved to be an encouragement rather than a deterrent to the mercenary and the callous, and the accumulating evidence of this was to lead to growing social concern in this field in the 1950s.

813 However, there was another aspect giving rise to concern. Circumstances in the immediate post-legislative period gave rise not only to problems in relation to "baby-farming", but also, it was alleged, inhibited those whose true concern was to arrange legal adoptions. It was felt that the policy which permeated the Act in regard to such matters
as secrecy was unhelpful. The arguments for confidentiality, which had been strongly put by the adoption societies before the act was passed, were based upon the risk that the natural parents could legally claim the child at any time, unless the particular provisions of a measure such as the *Custody of Children act, 1891*, could or would be applied by a court. It was, therefore, a device to protect the "adopting" parents when legal security was lacking. The policy of the Act, on the other hand, was that since legal security had now been achieved, all the circumstances of the adoption should be made known to the natural parent, so that the consent given could be a real one.

There was soon a reaction from the adoption societies on this point. They continued to favour retaining a cloak of secrecy despite the existence of the legal position. Their attitude is a reflection, largely, of the social climate within which adoption existed, where the arrangement carried with it a certain social stigma for the adopters. This stigma arose basically from the fact that the child was often born illegitimate. It may well have been reinforced by the couple's feelings in failing to produce their own family, or over the loss of a natural child. But the statute, having granted full security to the adopters, took no account of the social or emotional susceptibilities of the adopters nor of the ethos surrounding adoption arrangements.

The problem of secrecy had aroused considerable interest when the Bill was being debated. Mr. Galbraith had examined the practice of adoption societies and found that they had taken every step to prevent

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8 op. cit.
the natural parents from knowing where the child had gone. He saw that such a programme of secrecy was necessary so long as there was no legal ratification or sanction of adoption. This matter was raised by Clause 11 of the Bill which provided for the Registrar-General to compile a register of adopted children. On this matter the two Departmental Committees came to different conclusions. The Hopkinson Committee had recommended that, when the adoption order was made, notice was to be given to the Registrar-General that such an order had been made but not giving details of the adopting parents. The Tomlin Committee, however, had come to the conclusion that the necessity of secrecy was done away with once legal effect and force had been given to adoption. Mr. Galbraith felt that this was the correct view.

The necessity for some point of identification was emphasised by Mr. Renoult. He saw the advantage of secrecy because of possible interference from the natural parent and because of the fact that 75 per cent of children adopted were illegitimate so that the adoption societies felt that if a child was being given a fresh start in life it was better to veil from them the facts of their origin. However, he saw a practical difficulty if all traces of the natural parents were destroyed since the Bill did not interfere with the right of the natural child to succeed on intestacy to the property of its natural parent. Therefore, a register might be necessary, not to be freely accessible, but which could be referred to when necessary in order to trace the whereabouts of a particular child.

However, the Home Secretary wished to correct Mr. Renoult on this point. Until legal adoption was secured then obviously the adoption
societies had kept the parties away from each other in case of blackmail. But where legal rights were secure to the adopting parents such a situation could not arise. The Tomlin Committee in paragraph 28 of their Report had said:

"Apart from the question whether it is desirable or even admissible deliberately to eliminate or obscure the traces of a child's origin so that it shall be difficult or impossible thereafter for such origin to be ascertained, we think that this system of secrecy would be wholly unnecessary and objectionable in connection with a legalised system of adoption, and we should deplore any attempt to introduce it".

Miss Ellen Wilkinson was not anxious for secrecy, having doubts as to how far it was wise to cut away from a child all memory and knowledge of its natural parents and their surroundings. "Even if those surroundings were bad, even if the people were immoral, even if it were an illegitimate child, nothing but trouble would ensue from an attempt to keep the facts from the child when it was old enough to understand.

A great deal of misery might be avoided if the child were told the truth and knew the whole circumstances of its case. If we are to have legal adoption it ought to be made as open as possible; it should be an honourable act and not something which the child should be made to feel had cast a stigma upon it, so that when it left school it should be told, "You have not got any real parents; they are not your own". In the public mind there ought to be a feeling that it was a perfectly honourable relationship between the child and the adopted parents. If you had that, there was not only no question of blackmail but the child could be told the truth about its parents. That would be very much better for the child
and its adopted parents”.

Mr. Geoffrey Hurst, on the other hand, was in favour of secrecy, because he thought that the natural parents, although they might not have the right to reclaim the child after the child had been adopted, might in certain bad cases make themselves a great nuisance. He thought that it would be a mistake to make the records too accessible and too publicly available in a manner which might render the after-life of the adopted child disagreeable and in some cases might lead to blackmail on the part of the natural parent.

But Lieut.-Colonel Headlam felt that the real reason for secrecy had been missed. It was that in many cases a child would never be legally adopted unless there was a large measure of secrecy. There were children who, for obvious reasons, their parents did not wish to openly recognise, that is, the mother did not wish it to be openly known that she was the mother of the particular child. For children of this class, secrecy was absolutely essential for these were the children most in need of adoption. He felt, therefore, that this was a matter which could be more closely looked at in Committee than had been the case in Mr. Justice Tomlin’s Report.

Yet, as Mr. H. Williams pointed out, there had to be some way of ensuring that benefits accruing to the child reached him and so: “we cannot erect a Chinese wall between the natural parents and the adopters”.

This debate summarised the various approaches to the question of secrecy and illuminates the different aspects of it. The major concern, however, arose within the adoption societies since it was a central issue for any organisation primarily concerned with arranging adoptions.
Reactions against the policy of the Act began to reach the Home Office very quickly. For example, a Home Office memorandum of the 21st February, 1927 discusses Rule 2(1) that applications for adoption should be made to a court of summary jurisdiction for the place where the infant or the applicant resided at the date of the application. Some adoption societies complained that this rule was an obstacle to those who wished to legalize the adoption of children in their care. There was, for example, the case of an illegitimate child adopted at birth, who was seven years old in 1927. If an adoption application was not to be made before the local justices where the parents and child resided, the situation would become known to the magistrates some of whom were neighbours of the family. The application would also reveal the name of the putative father. The provision for the case to be heard in camera did not provide adequate protection in such a case. In answer to this, the Lord Chancellor's Department simply pointed out that, in such circumstances, the parents had the alternative of bringing the application in the High Court where the hearing would be before a judge in Chambers. This reply reveals an inconsistency in executive policy on the matter in that it is, in fact, offering a method of retaining secrecy.

This concern about secrecy is a recurring point. For example, "nearly all adopters are people who know the local magistrate and feel it a great hardship after having for some years kept the secret of the child's birth and merely called him an adopted child, that friends on the bench should learn the history of the child, whether he is legitimate or illegitimate and from what stock he springs". The magistrates and the clerk "could hardly forebear to impart a little of the information gleaned on the bench to their nearest relatives".
Another case was of a boy of ten adopted nine years previously by a prominent tradesman at Exeter. The "Adopters" had jealously guarded the secret of the boy's birth especially as he was illegitimate. The adopters were applying through their solicitor at the Children's Court, and had been told by the magistrate's clerk that the boy had to be produced in court and that his whole history was to be given. The boy did not know he was adopted as it had been intended to withhold the information from him until he left preparatory school at Exeter where he was doing remarkable well, both in his studies and in sport.

The Rules of the Summary Jurisdiction Court provided in fact that an adoption order could not be made except after the personal attendance before the court of the applicant and all the respondents, notwithstanding, in the case of any of the respondents, that written consent had been obtained, or the court was asked to dispense with consent. The infant in respect of whom an application had been made was one of the respondents within the meaning of the Act. The court could waive this requirement only if it was satisfied that the respondent could not be found or was incapable of giving consent, or that, in view of any other special circumstances, it was right to do so.

The Rules of the County Court were not so stringent. They provided that the Judge could refuse to make an adoption order unless all the parties including the infant were present but he had power, in his discretion, to dispense with the attendance of any party including the infant. Both courts could direct that a respondent should attend

9 1926, N. 1602
and be heard and examined separately and apart from the applicant or any other respondent, but in the court of summary jurisdiction this could only happen if the court was satisfied that this was desirable and that it would not prejudice the determination of any question involved. The County Court judge had wider powers to enable this to happen. He could also interview any party, including the infant, privately.

When the Rules and Regulations under the Act were published, the H.A.S. received a number of enquiries asking for information on how to adopt a child without the parent, who was often an unmarried mother, being informed of the identity of the adopters. The adopters were anxious that neither the child nor their friends should know of the child's illegitimacy. This led the H.A.S. to send a deputation to the Lord Chancellor's Department on the 12th April, 1927. The H.A.S. put the point that all adopters felt that if a mother knew where the child was being placed, she would at some time be prompted for varying reasons — curiosity, affection, emotional stress, jealousy, blackmail and so on — "to see the child and wreck the natural tie of parent and child which all adopters hope would and, in fact, did develop".

A letter from Miss Margery Fry was received on the 30th November, 1936 concerning the case of a woman who had recently married. She had not told her husband that the child he knew as her nephew was in fact her illegitimate son. Her brother and sister-in-law now wished to adopt him without informing the husband of the facts of the child's birth.

The Home Office Minute states that the Lord Chancellor strongly objected to the introduction of a rule to allow an amendment of the
current position. It would mean that an adoption could be made without
the respondent knowing anything about it. However, the Home Office note
points out that Rule 4 of the County Court Rules allowed a County Court
judge to dispense with the service of notice on a respondent at his
discretion. It had "no doubt been thought safe to give the County
Court powers which could not be entrusted to ... juvenile court".
Therefore, in an exceptional case where it was desirable to dispense
with notice the best advice for the applicant to apply to a County
Court instead of the Juvenile Court. 10

Another section which could affect secrecy was section 3(b) which
provided that a court was to be satisfied that the order, if made,
would be for the welfare of the infant, due care being for this purpose
given to the wishes of the infant, having regard to the age and under­
standing of the infant. A case concerning this provision was referred
to the Home Office by a justices' clerk in 1935. A child of thirteen
was to be adopted by his step-father and mother, not knowing that he
was in fact the wife's illegitimate son. The applicants did not wish
the infant to know these facts. In view of section 3(b), the Justices
felt that they could not conceal the facts in view of "consideration
being for this purpose given to the wishes of the infant...". The
Justices felt that in such cases they ought to have discretion as to
whether the infant's wishes were to be ascertained.

The attitude of the Home Office and the Lord Chancellor's
Office in regard to this policy can be found in Home Office Minutes. For
instance these bodies felt that as a matter of policy it was right that

10 The rules for the Courts of Summary jurisdiction were altered from
1st April, 1936 to allow attendance of a respondent to be dispensed
with at the Court's discretion.
the court should see the real parent and that the real parent should
know what is going to happen to the child. The adopter would be acquiring
rights which could be protected by the courts and the natural parent
would expose himself or herself to grave penalties if they attempted to
interfere with the relations between the adopted parent and the adopted
child. It was essential that before legal adoption took place the natural
parent(s) should have sufficient knowledge with regard to proposed adopter
to give a real consent. Adoption was to be treated as a serious form-
ality requiring time and full enquiry; that the work was entirely new and
still unfamiliar to the courts; and that there was bound, particularly at
first, to be some difference in views and in practice in the various
courts of summary jurisdiction.

Another cause of dissatisfaction concerned the appointment of
the guardian ad litem. According to the N.C.A.A. adopters were unani-
mously opposed to school attendance officers being appointed as the guar-
dian ad litem to visit the home. Even if "special" school officers
were appointed, Miss Andrews felt that the officers were not of the
class and education of the majority of the adopters who had taken children
from the N.C.A.A. and could not be expected to act with tact and discre-
tion which the officers of the Association would have. Since they wanted
to see the Act of Parliament working smoothly they were willing to act
as guardians ad litem voluntarily for all children adopted through their
agency. She felt that "we should have been the right people to do it
as we have always kept in touch with children and we take utmost pains in
getting information about adopters before they take children, spending
far more time than a paid officer would be likely to do". Adopters
would not have any objection to visitors from the Association and would
feel that they were not admitting any more people into their secret.

This point of view seems to be based upon a misunderstanding of the role of the guardian ad litem who was an official of the court charged with the duty of securing the rights of the children who was subject to the adoption order. In order to fulfill this role properly the guardian ad litem had to be independent of any particular vested interest. The role of the guardian ad litem has never been a satisfactory one, and a recent recommendation \(^{11}\) that he should be appointed only at the discretion of the court is in part a reflection of this.

Related to the problem of secrecy was that of inspection and supervision of the adoptive situation. Some evidence to the Hopkinsin Committee had stressed the need to make a complete break between the child's past and future. An advocate of this point of view was J. Clarke Hall who felt that one of the most important provisions of legislation would be that from the moment of adoption "the whole past history of the child should be shut down... its life from that time forward should start de novo". From the time when the "deed of adoption" was signed by the adopting parents, this witness felt that it should be made perfectly clear that no enquiry into the previous history of the child would be permitted. However, he conceded that the question of inspection after adoption was a difficult one, and he suggested a mechanism which would amount to an interim order, that is "the court might have discretion to make an order placing the child in the custody of the adopting parents for a limited period, say six months".

But the National Council of Women although considering the question of inspection to be "a vexed one", was of the opinion that it

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was better that adopted children once they had been handed over to
parents who accepted full legal responsibility for them should not be
singled out from other children by being subject to inspection. It was
felt that no more risk attached to this situation than was run by large
numbers of children whose parents through ignorance, bad temper or bad
character ill-treated them. In fact less risk would be run, as under a
law properly administered, the foster-parents would be carefully selec-
ted people - which was more than could be said for ordinary parents.
In any case, all children were, to a certain extent, supervised by
Health Visitors, Education Authorities and others, and there was a very
strong public opinion in favour of treating children with care and kind-
ness and a growing horror of cruelty to children. It was preferable to
trust to such safeguards as these than to treat adopted children as in
any sense set apart from others and subject to different treatment.

The adoption societies favoured this approach. Reginald
Nicholson of the N.C.A.A. felt that adopters while desiring the fullest
possible protection, resented any form of government inspection quite
as much as would natural parents. The safeguard would lie in the super-
vision or inspection of adoption societies and their bona fides and a
form of registration or license should be granted solely to approved
societies. This suggestion for registration of adoption societies
foreshadowed the experiences of the 1930s.

The Superintendent of the Boarding-Out Department of Dr.
Barnardo's Homes suggested that there should be provision for subsequent
supervision over adopted children who should not be lost sight of. Two
other bodies associated with the protection of children favoured inspec-
tion. The N.S.P.C.C. would have favoured an arrangement through the Ministry of Health for inspection to be carried out by Infant Protection Visitors or by officers appointed by in connection with the Child Welfare Committees. The Associated Societies for the Care and Maintenance of Infants preferred periodic reports upon the health and welfare of the child, the report being entered on the child's record.

The arguments on this point continued when the Adoption of Children Bill was introduced. The two viewpoints are summed up in the speeches of Miss Ellen Wilkinson and Mr. Hurst. Miss Wilkinson stressed that this was "not a blood tie but an artificial relationship" and therefore it was important to safeguard the child with inspection. It would safeguard the child from adoption for the purposes of domestic slavery or other purposes which might cause unhappiness. But for Mr. Hurst: "... the moment you establish inspection you interfere with the intention of the Bill which is to absorb a child as soon as possible into its new home. The inclusion of an element of inspection would be a great deterrent to adoption and when you bear in mind that the Court before sanctioning any adoption has to make a most searching inquiry into the whole case, I think it will be found that the disadvantages of inspection would far outweigh all its advantages".

The Act in fact contained a compromise by allowing an interim order which gave custody of the infant to the applicant for a period not exceeding two years by way of a probationary period. The interim order could be upon such terms as regards the provision for the maintenance and education and supervision of the welfare of the infant as the Court thought fit.
CHAPTER IX
TACT, SECRECY AND DISCRETION

In the light of legislative policy, it is salutary to examine the methods of the early adoption societies,¹ such as the N.C.A.A. and the N.A.S., and the effects if any of the legalising of adoption arrangements upon their practice. The immediate effect on the N.A.S. was twofold²: in the first place there was an ever-increasing number of adopters "of the educated classes who are attracted by the full responsibility and security which this Act now gives them". Secondly, a large amount of additional work resulted in making existing adoptions legal, as well as in dealing with those new applications which were being received. The Annual Report of the N.A.S. for 1927 shows that 74 legal adoptions had been granted as a result of arrangements made by the Society, another 190 cases were still before the courts, and a number of enquiries as to the procedure for adopting a child were being received.

The motto of the N.A.S.³ was: "The Homeless Child for the Childless Home". In order to fulfill this satisfactorily, the Society made itself responsible for sifting applications from would-be adopters. A Special Committee satisfied itself that the home offered was loving

¹ Of the three adoption societies established in this early period, only the Annual Reports of the N.C.A.A. and the N.A.S. survive.
² Annual Report 1927.
³ This phrase is also used by the Church Adoption Society.
and suitable and that the adopting parents were in such circumstances as would enable them to give the child a proper start in life. To this end, a personal interview was always arranged and at least two satisfactory references had to be obtained by the Society before the adopter was accepted. It was suggested that one referee should be a doctor, a minister of religion, a solicitor, a government official, a justice of the peace, or a business man of good position. The second reference was to be from a professional woman, or if possible, someone who was either a mother or had had experience in the care of children. No adopter was considered if he required any payment with the child. These requirements again point to the middle-class status of these early adoption societies, and indeed the whole ethos of the early adoption movement. The rules as to references might not cause such difficulty in rural areas, but in cities these referees of professional status must have seemed very remote to working class applicants.

The Special Committee realised "how great was its responsibility, and it is their intention to leave no stone unturned in their endeavour to ensure for the children passing through their hands permanent welfare and happiness". The Case Committee of the H.C.A.A. also recognised that responsibility for the work of arranging an adoption was a grave one. After all, the "sentence of imprisonment pronounced by a Judge is of limited duration but the decision to hand over a child to adopters is one which may and does usually influence its whole life. It is this fact that renders it so important that decisions of this nature should be in the hands of properly qualified persons who have no ulterior
interest in arriving at them...".

Equally great care was to be taken to accept as suitable for adoption only those children who had little or no chance of a happy upbringing with their own relations. The general class of child accepted by the N.A.S. was the homeless orphan, the "semi-orphan" and the first illegitimate child where this was felt to be desirable for both mother and child. The intrinsic merits of each case were "most carefully examined". A personal interview was arranged with the parent, guardian or relations offering the child for adoption and at least two satisfactory references were required from trustworthy people before the child was accepted for adoption. A point which was particularly emphasised to the child's parent or guardian was that it was the welfare of the child and not financial considerations only which ought to prompt his or her desire for the child's adoption.

The N.A.S. also required a detailed Medical Certificate to be produced for the child, and if necessary a blood-test was taken. Health and heredity were felt to be important considerations. Both societies, the N.A.S. and the N.C.A.A. insisted upon a probationary period before legal adoption was sought. The Annual Report of the N.A.S. for 1927 speaks of its practice of insisting on not less than one month's probationary period, and the Annual Report of the N.C.A.A. for 1932-33 speaks of applicants taking a child at first for a probationary period of not less than three months in order that the adopters could satisfy themselves as

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4 Annual Report 1933.
5 sic.
to the suitability of their choice. During the probationary period a
further visit was paid by a representative of the Association to the
applicant's home. Such visits were not made by "formal inspectors" nor
were they "of a nature to arouse the curiosity of servants and neighbours".
They were merely ordinary social visits paid by persons specially
selected for their tact and sympathy. There is here again an attempt to
protect the social susceptibilities of the middle class applicant, and
a stress on the need for secrecy concerning the business of the "visitor".
"Tact, secrecy and discretion; on these the work was built up right from
the start". 6

The Association reserved the right to withdraw a child from
applicants at any time during the probationary period. Applicants had
the similar liberty of returning the child within that period, but had to
give a week's notice if the child was to be returned to a hostel maintain-
ed by the Association. The N.C.A.A., in addition, laid down the condition
that if the applicants decided to keep the child after the customary
probation period, they were obliged to apply to the court for an adopt-
ton order within eighteen months. By 1933-34 the Annual Report shows
that the period within which an order was to be applied for had been
reduced to twelve months, although the Association would not assist in
this procedure until the child had been with the prospective adopters
for at least four months.

6 Child Adoption No.22 Spring 1957. p.12
Another trend was for more and more families to adopt very young infants and the average age at adoption was becoming increasingly younger. The majority of babies adopted during 1936 had been under three months old. It was felt that, apart from the fact that early care and training were all important in establishing good habits and a sound constitution, the helplessness of the baby and his complete dependence fostered a real parental instinct in his new parents. "He endears himself to the adopters as though he were their own and thus a natural link is formed". An adoption was the nearest equivalent to a family having a baby of their own and the baby would grow up normally as part of the family. Experience showed that the most satisfactory age for adoption was babyhood under 12 months, when "the child can be transplanted to his new home with no recollection of earlier surroundings".

Another interesting trend was emerging. One of the reasons for the rise in interest in legal adoption had been the loss of sons in the first World War but in practice girl babies were preferred to boys. For instance, the N.A.S. notes that by 1933 the proportion of boys adopted compared with girls was improving but there still was a need of more homes for boy babies. In that year, 143 boys were adopted and 218 girls. The Society felt that many people "could not understand this disparity as most parents long for a son". The Report goes on to urge that "in these days of keen competition when it is so necessary for a man to be properly equipped and trained to earn his living, it is hoped that the needs of the many little boys will appeal to those who wish to help a child by adoption".

Apart from this preference for girls, prospective adopters made other demands. At the Annual General Meeting of the N.C.A.A. at Kensington Palace reported in The Times on the 3rd July, 1935, Miss Clara Andrews described how adopters usually wanted everything—great beauty, good family and generally a girl with blue eyes. People were, however, "remarkably reasonable and kind when it was pointed out to them that they did not keep a factory (Laughter)." The Association had been asked for children born on a certain day at a certain hour. On one occasion, they were asked for a baby born with a squint. They had replied that the Association did not accept children with defects and were told: "No child has ever been born in our family with straight eyes". This is an interesting example of "matching"—in this case by the adopters—a practice which was to become fashionable among adoption societies in the 1940s.

Another couple had asked for the child of a great artist and others for a child of a musician. Miss Andrews had been very rude to one couple, "a very ordinary couple", who insisted they must have a child of great beauty as they had most artistic feelings". She had replied at once: "You have no business to expect a child of great beauty for you would not have had one yourselves!" (Laughter)." The fantasies of the adoptive parents, and frankness of these reports strike the reader strangely and show how "sophisticated" both case-workers and adopters have since become in relation to motives and inner needs.

Some sections of public opinion, however, remained opposed to widespread use of legal adoption even after the Act had been passed.
There is an echo in some statements made in the 1930s of the opposition which had been expressed in the pre-legislative period. The Annual Report of the N.C.A.A. for 1932-33 speaks of a certain section of public opinion "which is definitely hostile" to adoption believing that a mother was in no circumstances to part with her child. Even some of those who were in favour of the principle, saw its use as a "last resort" in arranging care for a child. For instance, in the Minutes of the Executive Committee of the National Council for the Unmarried Mother and Her Child in 1931, there is a decision to support a resolution which it had received from the British Branch of the National Council of Women. The resolution reads:

"... that the National Council of Women whilst welcoming the recent Adoption Act is of the opinion that adoption of the infant of an unmarried mother is usually contrary to the best interests of both mother and child and should be suggested only after every other solution of the problem has been explored. The Council considered that the aim of statutory and voluntary bodies should be to make provision for adequate care during ante-natal and nursing periods and to advise and help the parents of an illegitimate child to carry out their obligations".

The concern of the adoption societies over such criticism is reflected in the statement of the Scottish Branch in the N.C.A.A.'s Annual Report for 1933. The Association was aware that some people feared that the results of its activities might be "to loosen the moral fibre of women exposed to temptation". Although few social workers would agree to this view, the Association not only took steps to guard against it happening by putting every obstacle in the way of a woman parting with her child when she might reasonably be expected to keep it, but went even further than this in its practice. By establishing a Mother and Infant Care Committee it had undertaken the task of giving every
assistance to mothers of illegitimate children who were prepared to make an effort to retain their babies. For instance, for those willing to take up domestic work a place would be found wherever possible, either in a hostel with the baby, or in private service where the baby was also allowed. The aim of the Association was "to strengthen the will to start afresh with a sense of the responsibility incurred" which was a more worthy task than "to cast the first stone which strikes down child and mother together".

It had been the Association's definite policy to advise adoption only in the last resort: "adoption was primarily intended for orphan children". However, where children could not be maintained by one or both parents and in view of the "known scarcity of good foster mothers even where payment for one could be made by the parents, then it was the association's opinion that a normal home and family life were better than institutional surroundings".

A statement along similar lines is to be found in the Annual Report for the following year in the section relating to the Lancashire and Cheshire Child Adoption Council, which was a branch of the N.C.C.A. In finding homes for unwanted children, the Council had always recognised its responsibility to the community. For this reason, it took a great deal of care to prevent its work from encouraging illegitimacy. They felt that proof of this lay in the fact that in no case where an illegitimate child had been placed for adoption had there been a request by

9 Annual Report 1933-34.
a mother to find adopters for a subsequent child. Yet, the Council
could point to many girls helped to start a new life by relieving them
of a financial burden they were utterly unable to shoulder successfully,
and who had subsequently married and settled down to have children of
whose origins they were not ashamed. And of 150 mothers whose illegiti-
mate children had been legally adopted, only one had expressed regret
at the step taken. The Society believed that the security and status
given to the child through legal adoption largely accounted for the many
excellent homes now offered to the babies.

Furthermore, apart from giving the child a normal and happy
chance in life, adoption could be seen as a great service, relieving
the community of considerable expense in that many of the adopted children
would inevitably drift towards being maintained by charity or the state.
The Report goes on to note that the cost of supporting a child through
the Public Assistance Department of the L.C.C. was £1-14s per week during
the first three years and then £1-0-2d during the next thirteen years
entailing an expenditure of £1,165-10-6d until the child was of an age
to earn his own living. If only one quarter of the children adopted
through the N.A.S. in 1933 had fallen to be supported by the ratepayers,
then within the next sixteen years some £99,000 would have had to be
expended. It cost the N.A.S. some £9-3-2d to settle each child for life.
The N.C.A.A. felt that certain public bodies had been somewhat slow
to perceive the advantages offered by adoption "to children and ratepayers
alike". Such arguments have a familiar ring: they are part of the battery

of arguments commonly to be found in the debate concerning institutional versus community care in several areas of social policy. It is interesting to find the adoption societies adding the "hard cash" argument to the appeal to philanthropic feelings. In their case, the argument did not have to be based on the comparison of one set of charges against another, but could rest on the fact that the cost of bringing up the adopted child was completely removed from the public purse.

Another criticism which is discussed by the N.C.A.A. related to the use of the Association's Hostels. "It is sometimes said that the scale on which our Hostels are maintained is too luxurious and that the cost compares unfavourably with that of other child welfare institutions". The Association believed that it was a "wise policy" to present the children to possible adopters under attractive conditions and to give them every possible chance of improving their lot in life. The policy could be justified by the fact that the great majority of those in the care of the Association were placed with adopters whose circumstances were better than those of their own parents.

It is interesting to note the need felt by the Societies to define their activities in this way and to respond to that current of thought and opinion which still opposed a widespread use of adoption. But the Reports also begin to note a more favourable tone in public comments as the years passed. For instance, the announcement of the London County

11 op. cit.
Council in 1932 that they were prepared to receive applications for the adoption of children in their care was seen by the adoption societies as a definite sign of acceptance of legal adoption even amongst those who were at one time the most strenuous opponents. The N.C.A.A. believed that this was due to a closer study of the Association's aims and methods and to the realisation that a mother who was forced by circumstances to place a child with a foster-mother rarely saw it and was unable to give it the loving care which it could obtain from adopted parents.

In 1932, the N.A.S. were able to report the encouraging fact that there had been a marked increase in adoption work in 1931 with 326 babies legally adopted compared with 305 in the previous year; in 1933-34 there had been an increase of 51 over the previous year. Indeed, in spite of hard times, many generous offers to adopt a baby were continually received. This was a reference to the economic recession of the time and the high rate of unemployment which went with it. By 1936, the N.A.S. felt that the idea of a childless married couple adopting a baby had now become so unusual that it was accepted as a "natural and happy" step to take and, compared with the 466 offers to adopt received in 1926, the Society had received 1,481 applications in that year.

The N.C.A.A. too was able, as the years went by, to report similar developments. For example, 1933 proved to be the most successful of the previous four years, if success was measured in terms of the number of children adopted or who had passed through their hostels. The N.C.A.A. had found that by 1933 the movement of public opinion in favour of adoption had extended to the courts of law and that officials of the Association no longer received complaints of difficulties encountered by adopters
when they made applications to adopt a child.

9:4 Despite the changing climate of opinion in favour of child adoption which, in the eyes of the adoption societies, was taking place, there was also mounting dissatisfaction with the lack of control over adoption practice, a dissatisfaction shared by both the N.C.A.A. and the N.S.P.C.C. There is a report in The Times on the 3rd July, 1935 of the Annual General Meeting of the N.C.A.A. at Kensington Palace. The Princes of Athlone presided and in her presidential address, she mentioned that, with the support of the N.S.P.C.C., it had been decided to approach the Home Secretary to ask for a thorough investigation into the working of the Adoption Act because of malpractice in some quarters. An example of this was given; the Association had regretfully turned down for adoption a baby suffering from a congenital heart disease. A few weeks later, an adopter had arrived at the Association's office with a baby which she had adopted through another agency. She was not satisfied about the baby's health. It turned out to be the same baby, which had been presented to the adopter as being in quite normal health.

Princess Alice regretted that there were many places where adoptions were not so carefully carried out, and to which the ugly name of "baby-farming" could be applied. This statement was affirmed by the Director of the N.S.P.C.C., Mr. J. Elliott. It was, he said, a sad reflection of the corporate life of the country that it was easier for a person to secure a child by adoption than to purchase a prize canary or a bull dog. He gave an example of a case which had come to his notice. A boy of eight had been adopted by a man separated from his wife on the
grounds of his cruelty to her and her children. It had been eight weeks before the N.S.P.C.C. had heard of the case and when they examined the boy they had found that he had forty seven wounds on his body. Another case was that of a girl of twelve who had died recently and was the fifth or sixth child adopted by a man and his wife both aged over eighty who were evidently adopting children in order to obtain cheap domestic labour.

A memorandum was sent to the Home Secretary on the 3rd July, 1955 asking for a Royal Commission to be set up. It expressed concern that there was nothing to prevent anyone opening an adoption agency without any precautions being taken as to the way it carried out adoption arrangements. Adoption agencies were under no legal duty to make enquiries into the character and circumstances of prospective adopters. Agencies could and did accept money both from the natural parents and from the adopters as well. The duty of the court was limited to satisfying themselves that no pecuniary award had been given or taken by the applicant or the adopting parent. The law was silent concerning intermediaries. Since agencies could demand money with impunity, some preferred not to have the adoption made legal, it was alleged, so that they could retain a hold over the mother in the form of a threat that the child would be returned to her. There were, in addition, allegations that children were being sent abroad without any kind of control over their movement, particularly to Holland where there was no law of adoption.

The exploitation of adoption was beginning to attract the attention of the popular press. For instance, an article in "John Bull"
in July, 1935 stated that though the shocking conditions which prevailed before the passing of the Act of 1926 had been modified, it had failed to stamp out the evils associated with "baby-farming" in its worst aspects. In fact, the article does not separate adoption from fostering, illustrating probably that in the public mind de facto and legal adoptions were still not clearly distinguished. It is also questionable whether the reduction in the incidence of "baby-farming" was directly connected to the passing of the Act but had more to do with the strengthening of the infant life protection measures. Indeed, the Act of 1926, because of its particular emphasis on status with lack of control of adoption societies may have, at one and the same time, encouraged people to turn towards adoption and also provided a field-day for pecuniary exploitation of the practice. The Ministry of Health was, in fact, asking Medical Officers of Health to keep a closer watch on baby-farming. The "John Bull" article asserts that often a mother was threatened with publicity and frightened into payment by this "deadly form of blackmail", and that there was big money for unscrupulous people in the baby-farming racket. A thorough investigation was needed, at once, it alleged.

The Sunday Dispatch also "exposed" another bad feature of the situation. Agencies existed with contacts in other countries for

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12 Another article headed "Selling Babies Abroad" appeared on the 13th March, 1937 alleging that "baby traffickers" were doubling their activities. A Home Office note states that the author refused to divulge the name of the informant but there was some talk of a "notorious Dutchman", Dr. [name redacted] a [name redacted] [description of man redacted] the [name redacted] Health Improvement Campaign.

13 14th July, 1935.
"adopting" children and selling them abroad, it alleged. Generally the children were sold to families in countries which had not adoption law. But it was also suspected that children went to persons of bad character who did not hesitate to use them as unpaid drudges. Following the registration of a birth the agents would visit mothers of illegitimate children and make tempting offers for the children. The mothers were led to believe that the caller was from a genuine adoption society. All that the agent had to do was conform to the Children Act 1908, and then there was no measure to prevent the child from being transferred to the care of other persons whether in this country or abroad.

In 1934, in answering a query from Miss G. Abbott of the United States Department of Labour, Children's Bureau, the Home Office felt that there was little evidence of the abuses mentioned in an article in Day Nursery Journal for August, 1933 to which Miss Abbott referred. The statements regarding purchase of children and payments to adoption societies were exaggerated and a travesty of the facts. But a Home Office Minute adds that the question of the supervision of adoption societies would have to be tackled some day.

Much of this material has a familiar ring since the problem of "baby-farming" through adoption societies had been recognised, and indeed the problem of infant life protection had been put forward as a reason for passing a law of adoption. A Home Office note now revealed that certain members of the Tomlin Committee had expressed the wish to include in the Report some strong reflections upon the adoption agencies
and their methods. Four points concerning this problem had been made at the time. These were:

1. It was impossible to view without apprehension the uncontrolled assumption by private bodies of functions the exercise of which might affect so profoundly for good or ill the fortunes through life of the children concerned.

2. There was reason to believe that in many cases the welfare and interest of the mother were not sufficiently taken into account and it was open to question even if the mother willingly abandoned the child that it would not be found better to attempt to revive the maternal instinct and to assist the mother to maintain her child by her own efforts.

3. The rule of strict secrecy upon which the societies laid so much emphasis might cause great mental anguish and distress to the mother in some cases and might lead to loss of all evidence as of the child’s real identity.

4. The methods used by some adoption societies were highly reprehensible and transactions often assumed the character of nothing less than a sale of the child.

It had been decided however to overrule these expressions of concern on the grounds that the adoption societies "should be given a chance to defend themselves." But the growing concern in the post-legislative period seems to bear out the validity of these earlier comments. Indeed, a proposal for public control of adoption societies had reappeared in 1932 during the debate on the Children and Young Persons Bill. Mr. G. Mander had proposed a new clause, drafted by the Magistrates' Association, to be inserted in that Bill. Under the clause, adoption societies would have been subject to inspection and no child could have been sent abroad without the consent of the Secretary of State. Concern had also been expressed over the large sums of money which were changing hands in respect of adoptions.
Replying for the government, Mr. Stanley had stated that if legislation was needed it appeared to him eminently a matter for the local authority concerned. Mr. Mander had then withdrawn his clause.

Since that move which had been made in 1932, the Home Office had collected a considerable amount of additional information concerning adoption societies which "set the matter in a somewhat different perspective". In 1932 the Home Office had been aware of the existence of only three societies. These were the Homeless Children's Aid and Adoption Society, the National Children's Adoption Association and the National Adoption Society, all of which were London Societies. However, by 1935, they had knowledge of others, such as the Mission of Hope, the Church of England Adoption Society, the Lancashire and Cheshire Child Adoption Council, the Scottish branch of the N.C.A.A., the Bath branch of the N.A.S., and the National Children's Home and Orphanage. There might possibly be others which did adoption as an ancillary activity as was the case with the National Children's Home and Orphanage.

The Home Office memorandum then goes on to state what is known about each society. The N.C.A.A. was "an entirely respectable body" which had been founded in 1917 and had the support of a large number of distinguished people, including Princess Alice of Athlone. Among signatories petitioning for a Royal Charter for the society had been Princess Alice, Dame Margaret Lloyd George, Mrs. Baldwin, Mrs. Snowden and Sir Thomas Inskip. The Charter had in fact been refused - mainly on the grounds of the society's policy of secrecy which the Home Office felt conflicted with the principle which lay behind the Adoption of Children Act.
Concerning the N.A.S. there was comparatively little information available, but it had always been regarded as being above board. On the other hand, it had been criticized in a number of periodicals such as "Truth" and "John Bull" because of the high expenditure on administration. At that time—that is 1928 and 1929— it had been run by Rev. J. F. Buttle whose reputation "is not very high" but who had in any case since left the N.A.S. to found the Church of England Adoption Society.

The Homeless Children's Aid and Adoption Society and its Secretary, Mr. Beesley had, for a long time been under suspicion, not only from the Home Office but also from the Ministry of Health, the N.S.P.C.C., the C.O.S. and the police. There was strong reason for believing that the main raison d'être of the society was to make money for Mr. Beesley. Amongst the complaints made against this society were the fact that it extorted high sums from the mothers of illegitimate children, from the putative fathers and from the adopters; that there was lack of proper enquiry concerning the adopters; that children in its care suffered neglect, and that children were being sent abroad without proper care. The Church of England Adoption Society, run by Rev. J. F. Buttle was felt to be of the same type. Similar bad reports had been received about the Mission of Hope of whom the Home Office knew much, "and little but ill". This organisation had been founded in 1893 by the late Mr. Ransome Wallis who had been fined £25 in 1910 for neglecting a child.

The Home Office was concerned, by this point, with the question of whether the societies needed regulating or not. It was felt that this was
one aspect of the wider problem of the illegitimate child, since the vast majority of the children handled by the societies were illegitimate. The Home Office felt that society had special responsibility for two unprotected classes of persons, the illegitimate child and the unmarried mother. Was it socially desirable that there should be wide and unrestricted facilities for disposing of illegitimate children through adoption? Often "adoptions" arranged by adoption societies were never legalised, and the Home Office was concerned at the lack of safeguards in such cases, compared with those required when an adoption was legalised. Further, should there not be safeguards against abuses and irregularities on the part of adoption societies which were not bona fide charities or were run by irresponsible people? This was the view of the H.C.A.A.

The complaints against adoption societies were numerous. In the first place, there was the problem of secrecy, a legacy from pre-legislative days but the Adoption Committee, and the Adoption of Children Act, had taken the view that all the circumstances of adoption were to be made known to the natural parents. The N.C.A.A. occasionally acted with subterfuge. For example, in 1934 they had advised an applicant to apply in the County Court rather than in the juvenile court because it was easier to dispense with the attendance of the mother in the County Court. Recently a mother of a child had applied at Bow Street police court for advice on how to find whether her child had been legally adopted, and if so, where it was. A notice of the hearing had been sent to the mother at the address of the society but it had not been forwarded and the court had dispensed with her attendance. It was also the practice of adoption societies to obtain the mother's signature to the form of
consent before it had been filled so that the mother would not know who were the adopters.

Another complaint was the failure of adoption societies to obtain the consent of the mother. The N.C.A.A. had failed to obtain the consent of a mother whose child had been sent to Nigeria. The court had been told that the mother's address was not known so that her consent could be dispensed with. There had also been a few scandals when children were sent abroad without due precautions and there was recently the case of a girl sent by the Homeless Children's Aid and Adoption Society to Ceylon who had been returned because of her physical condition. There was also evidence of a steady export of children abroad by all adoption societies although the extent was hard to gauge. While the more reputable societies probably took adequate precautions, others did not make adequate enquiries. The N.C.A.A. would only send children abroad after seeing the adopters here but the Mission of Hope among others did not take such precautions. The Passport Office had received requests for passports for 14 "adopted" children since August 1934. Three had been adopted by relations in the United States, and the other eleven had gone through arrangements made by adoption societies. But it is probable that only a small minority of the number in fact left the country in this way. It was anomalous that children could be emigrated in this way by adoption societies whereas if a child were committed to the care of a "fit person" he could not be emigrated without the consent of the Secretary of State.

The N.C.A.A. complained that many children rejected by them on the grounds of health were found adopters by other societies. It was
felt, however, that the N.C.A.A. itself was not above criticism in this respect. There was an example of a child being received "on approval" from this Association which was found to be delicate. There was the greatest difficulty in returning the child. The adoptive parents were asked in the end to provide the child with clothes and to pay for its keep with foster-parents for a fortnight.

In addition to these criticisms, there were four main charges against the Homeless Children's Aid and Adoption Society and the Mission of Hope which might have wider application. There was, in the first place, the discouragement of legal adoption by some societies, since they preferred to hold over the mother the threat of the return of her child. The N.C.A.A., on the one hand, encouraged, if they did not demand, that the adoption should be legalized. In the case of the Mission of Hope, on the other hand, only about a half of the children were legally adopted. Thirdly, there were allegations that large sums of money were extorted from the mother and the putative father. The Homeless Children's Aid and Adoption Society apparently required instalments of five shillings until £60 had been paid by the mother. Payments were also obtained from the father. About £5000 to £5500 per annum out of a total income of about £9900 was obtained from payments by the mothers and fathers of children placed by the society.

There was also concern over the condition of children in the care of the Homeless Children's Aid and Adoption Society and the Mission of Hope. In neither case had the Home Office inspection disclosed anything radically wrong but there was cumulative evidence of many scandals of all sorts. For instance, at the Mission of Hope Home there was a very high infant mortality rate which had given rise to concern by the Ministry
of Health and Croydon Council some years previously. Babies were said to be weaned too early, and children had been found with unsuitable foster-parents, for example, women who had served a sentence for manslaughter in respect of foster children. Lastly, there often seemed to be inadequate enquiries regarding adopters. For example, two children had been found in the care of a drunkard and his wife who were completely unfitted to have charge of them.

The conclusions of this long Memorandum is that the information possessed by the Home Office was disquieting but that it had been acquired in a haphazard manner and was necessarily very fragmentary. It was not known how many societies existed in various parts of the country nor the numbers of adoptions being arranged by them, while it was impossible even to guess at the numbers being sent abroad. These feelings may well have been reinforced by a Deputation received by the Home Secretary (Sir John Simon) on the 21st October, 1955 from representatives of the N.G.A.A., the N.S.P.C.C., the C.O.B., the N.C.U.M.C., the National Council of Women and Kensington Inner Wheel Club to request an official inquiry concerning the licensing of societies and individuals making arrangements for adoptions. The result was a decision to set up a Departmental Committee to look at some of the problems which had been becoming prominent during the years since the Adoption of Children Act, 1926 had been passed.
CHAPTER X

THE HORSBURGH COMMITTEE, 1935

The Committee which was set up in 1935 was asked "to inquire into the methods pursued by adoption societies and other agencies engaged in arranging for the adoption of children and to report whether and if so what measures should be taken in the public interest to supervise or control their activities". The Committee was under the chairmanship of Miss Florence Horsburgh, M.P., and the other members were: J. E. Harris, a Metropolitan magistrate and chairman of a magistrates' court; Mr. G. J. Mallen, the Warden of Toynbee Hall; Mr. Montague Norman; Mr. Astbury, Assistant Secretary of the Charity Organisation Society; Mr. Geoffrey Russell; and Mr. B. Manning.

In carrying out its terms of reference, the Committee did not confine its examination to legal adoption alone, although it expressed the opinion that from the number of adoption orders being granted there could be no doubt of the social importance of that practice. More than five thousand children had been the subject of adoption orders in 1936 alone. It was more difficult to estimate the numbers of de facto adoptions which were also taking place, and which must involve a large number of children. Although there was an increasing tendency to make use of the Adoption of Children Act, these informal adoptions continued to exist and it was impossible to exclude them from consideration. Therefore, the Committee had decided to examine all arrangements, legal or informal, where an adoption society or any other agent had acted as an intermediary.
It is clear that public and government concern, at the time of setting up this Committee, was with the exploitation of children through "third party" arrangements and the Committee in this interpretation of its task was recognizing that fact.

However, the Committee was more cautious in defining that part of its terms of reference which referred to "the adoption of children". It was of the opinion that there were a number of situations involving the creation of "an artificial family relationship analogous to that of parent and child" or "sonship" and which was accepted by all parties as a permanent arrangement. The essence of adoption was that "the child is absorbed into the family of the adopters and is treated as if it were their own natural child".

1011 How was an "adoption agent" to be defined? There had doubtless been adoption agents as long as there had been "adoption" although adoption societies were of a more recent origin. But the essential characteristic of all agents seemed to be that of acting as a middleman between the parties to the adoption neither of them being previously known to one another.

Would it be better not to encourage the work of adoption societies and agencies? This was a point of view which had been put to the Committee by some witnesses mainly because of the risks which were felt to be inherent in the very existence of the practice of child adoption. But this was not an opinion held by the Committee. It felt that

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1 para. 1.
for the child a good family life is to be preferred to life in an
institution, however excellent, and adoption has the additional advantage
that a child brought up as a member of the adopters' own family enjoys
a sense of security which otherwise it might not acquire. Adoption
might be a good solution for the difficulties of the unmarried mother,
and her child, if, on the one hand, the mother, after due consideration
had definitely made up her mind to part with her child, and the child
was suitable for adoption, and if, on the other hand, the adoptive parents
were genuinely anxious to adopt the child and were suitable persons to
be entrusted with its care and upbringing. "It is our view therefore
that adoption societies and agencies which carry out their work satisfac­
torily and with the appropriate safeguards are fulfilling a useful function."

But it was hardly necessary to draw attention to the heavy
responsibilities of the agents and the serious consequences which might
result from the absence of proper safeguards. The children concerned
were mostly illegitimate children and therefore belonged to a particularly
defenceless section of the community. Frequently, the chief anxiety of
their parents was to be rid of them, sometimes without much regard to
their future well-being. An unmarried mother usually lacked the necessary
knowledge and experience, and was unable to exercise sufficient care
over the disposal of her child because of the difficulties of her situa-
tion. However anxious she might be for its future welfare, it was not
unnatural for her to leave everything to be arranged by the agent. Con-

2 para. 5.
3 op. cit.
siderable responsibility for the future happiness of the child therefore rested with that person or body.

This was particularly so since the extent of the activities of the adoption societies and other agencies seemed extensive. In 224 consecutive cases coming before the High Court, adoption societies had acted as intermediaries in no less than 118, and other agents in 7 cases. In one County Court from which particulars had been collected, adoption societies were involved in 17 applications and other agents in 11 cases out of 37. In 500 consecutive cases in the Metropolitan Juvenile Courts, adoption societies acted as intermediaries in 100, and other agents in 23 applications. In the Birmingham Juvenile Court there were agents, including adoption societies involved in 209 out of 501 cases during the period from January 1933 to May 1936. In Manchester this had been the situation in 202 cases out of 990, and at Liverpool the percentage of applications in which agents were concerned in the last two years was given as 23 per cent., with adoption societies being the agent in about a half of these. Information supplied by other courts supported the conclusion that adoption societies and agents were instrumental in arranging a large proportion of legal adoptions.

From figures furnished by the adoption societies themselves, it appeared that there were four societies which were responsible between them for more than 1,000 cases a year and four others averaged more than 40 adoptions a year, each which made a combined total of about 200 a year. It seemed, then, that more than 1,900 children were placed with adopters every year by societies describing themselves as adoption societies and probably several hundreds by other agencies, such as local
authorities, voluntary societies and private persons.

The Committee, though clearly not averse to the principle of arranging adoptions, were concerned that the practice of adoption agents of all kinds should be subject to greater scrutiny.

The Committee next turned its attention to the various categories and classes of adoption agents. It found that these could be conveniently divided into four groups. In the first place, there were those organisations which existed solely for the purpose of arranging adoptions and those bodies which arranged adoptions as part of their regular work. Eight organisations fell into this category and the term "adoption society" would be used only in connection with these. They were the R.A.S., the N.C.A.A., the Homeless Children's Aid and Adoption Society, the Adoption Society (that is, the Church Adoption Society as it is now known), the National Children's Home and Orphanage, and the Church of England Homes for Waifs and Strays.

The second group consisted of voluntary homes and other organisations which, without including adoption as part of their regular work, occasionally arranged adoptions. Many of these were institutions or associations interested in the welfare of unmarried mothers which made use of adoption in "appropriate circumstances" as the solution to the difficulties of the women and children whom they were assisting. Children's Homes also arranged adoptions on occasions since they might receive applications for children from would-be adopters. Even where the general policy of the society might not be in favour of adoption, cases could arise where adoption seemed appropriate. For example, the
Crusade of Rescue which was ordinarily opposed to adoption as a method of dealing with illegitimate children had arranged 47 adoptions since 1924.

There were many occasional agents of this kind and the number of children dealt with by some of them was considerable. A local Non-conformist Mission in Manchester had been an intermediary in 15 legal adoptions since 1926, while another 13 adoptions had been brought about through various maternity homes and 30 by a rescue and protection society. In Liverpool, 8 per cent of the children adopted in two years were said to have come from nursing homes and similar sources. The Salvation Army though not regarding itself as an adoption society had arranged 63 adoptions since 1930 including 16 in 1935.

The third category of agent consisted of the local authorities who carried out this work through their public assistance committees. Under section 52(7) of the Poor Law Act, 1930 these authorities were able to consent to the adoption of children deemed to be maintained by them.

Lastly, there were private persons who acted as agents. All the evidence suggested, however, that these were few in number. The Committee left discussion of these until a further section of the Report and their comments will be considered later.

The Committee now turned its attention to what, in their view, was properly to be expected of adoption agencies having regard to their serious responsibilities, and to what extent inquiries had suggested that practice fell short of the minimum standards which the Committee felt
were necessary. Criticism of practice had ranged over a wide field, some of these being of general application and others being related to certain societies only.

The Committee first looked at the question of the inquiries to be made by an adoption society. It considered that the first duty of the adoption society was towards the child, since the child's future was at stake. Therefore the society was to take very reasonable steps to satisfy itself as to the suitability of the prospective adopters on all grounds, before the child was handed over. Full inquiries were to be made, not only into the economic and social circumstances of applicants but also into their suitability on other grounds to receive the care of a child. For example, to place a child in a home where there was matrimonial disharmony would not prove conducive to its well-being. Nor were financial considerations the only criterion since "it is hardly necessary to say that happy adoptions are not confined to any one class of society." 4

But even in the best run adoption society, there might be a certain reluctance to turn down applicants without very definite cause. The Committee, therefore, felt that "it should be a first principle that no applicant has a right to a child, and any suspicion that the adoption may not be successful should be sufficient justification for rejecting an application even if this might involve apparent hardship to the applicants. The child and not the would-be adopters should be given the benefit of any doubt." 5

4 para. 10.
5 loc. cit.
What could be considered to be a thorough investigation? They felt it essential that certain steps should be taken. These included submission of a form of application; the taking up of references; a home visit; and a period of probation during which a further visit was made to the home. They had therefore been disturbed to find that some societies, on their own submission, would dispense "in special circumstances" with one or more of the requirements—sometimes with the interview, sometimes with the home visit. In the Committee's opinion, the "consequences of a mistake may be so grave that ... in no circumstances should any of them be waived".

The concern of the Committee was that there should be both a strengthening of such procedures and, in addition, more formalities should be observed. They expressed doubt whether in practice the societies were sufficiently thorough and whether the persons who carried out the investigations possessed the necessary qualifications. None of the chief adoption societies appeared to possess trained social workers on their staff. One society arranged for the home to be visited by a local health visitor, a practice which the Committee felt to be the most suitable arrangement in many cases.

Unfortunately, other societies were less thorough and their representatives had admitted that applications were accepted without a home visit and that in some cases, for example, where the applicants lived at a considerable distance from London, even the personal interview was dispensed with. Witnesses from two of the societies agreed that home visits were desirable but said that want of staff made it impossible to arrange for them in the ordinary way. The Committee felt that a home
visit was, in fact, "absolutely essential". The unreliability of many references, especially references given by persons named by the parties themselves, was a commonplace, and the impression made by applicants at an interview might be very different from that which was obtained when the home was visited.

The Report contains a number of examples of the worst cases where failure to make adequate inquiries had had serious consequences. There was the instance of the child placed with adopters without either an interview or a home visit. It was handed to the adoptive mother at a railway station. Her husband had described himself as a baker earning £150 per annum and he gave a clergyman's reference which was duly obtained and regarded as satisfactory. In consequence of complaints about the treatment of the child by the adoptive parents inquiries were made and it was found that the man's statement was false, and that he had been unemployed for some years. His character was found to be unsatisfactory, and he was said to have taken the child round with him while he hawked produce stolen from allotments. The society's representative had admitted, in evidence before the Committee, that the man had adopted the child for the purpose of exploiting it as an object of pity. The child had been removed.

There was also the example of a girl of three who had been adopted by a labourer and his wife and was found to have been ill-treated by them. The Society removed her. The secretary had admitted in evidence to the Committee that she should never have been placed with the adopters. Yet the same society had previously placed three other children in this home, all of whom had been later taken back by it.
Yet another case was that of a child placed with a couple who were dependent on unemployment benefit and Poor Law relief. Two months after the adoption the husband was admitted to the local mental hospital suffering from general paralysis of the insane. Two children had been placed with a man who was said to have been well-known in his neighbourhood as a heavy drinker. His wife, who was an elderly woman and who understated her age on the form of application was described to the Committee as being quite unsuitable to have the care of children. This case had come to light when the man was charged with theft.

Having quoted a number of other bad examples, the Committee conclude:

"We realise that even under the most thorough system of investigation mistakes will sometimes occur, and that a home which at the time of the adoption is entirely satisfactory may deteriorate. On the other hand, there can be no doubt that if there had been adequate inquiries in the above cases, it would have been clear in most if not all of them that the applicants ought never to have been given a child".6

The Committee then considered what responsibility of the adoption society should be towards the adopters of the child. To the claim that the adopters ought to be able to look after their own interests and that it was their own fault if they took a child without satisfying themselves fully as to its suitability, the Committee's rejoinder was that the adopters would not be the only sufferers if a mistake was made. To place a child which was congenitally defective or otherwise unsuitable for adoption was to do an ill-service to the child as well as to the adopt-

6 para. 12.
ers, unless the latter took it with full knowledge of its deficiencies and were able to make proper provision for its special needs. The average adopter was naturally inclined to trust the adoption society not to give him a child which was prima facie unsuitable for adoption.

The Report goes further than this, however. It was not simply a matter of deciding whether the child was suitable for adoption in general. An attempt had to be made as far as was possible to place the right child in the right home. It followed that no child was to be placed without the fullest consideration of the question whether it was suitable for adoption by the particular applicants. What steps were to be taken to secure these aims? The first and elementary precaution was a thorough medical examination of both the physical and mental condition of the child. The origins of many of the children offered for adoption made it desirable that the medical examination should include a Wassermann test, or, where the child was too young, that there should be a Wassermann test on the mother. Another step ought to be in the form of inquiries into the social and medical history of the child's parents and for the adopters to be informed of any circumstances of which it was desirable that they should be made aware, and which might require special consideration in the upbringing of the child. The Committee felt that there ought to be no hesitation in rejecting a child if there was any doubt about its suitability for adoption. This might cause apparent hardship but the possibilities of suffering if a mistake was made were so great that only very exceptional circumstances would justify departure from this rule.

What was the normal practice of adoption societies? The
Committee found that most adoption societies insisted upon a medical examination and one society insisted upon a Wassermann test being carried out as a matter of routine. Another arranged for a Wassermann test very frequently and a third arranged for this "in almost every case".

But the Committee had been disturbed to find that in the case of a fourth society, a medical certificate was dispensed with in about one case in ten, and the fitness of the child was judged on sight by the officials of the society. In the case of this society, and of another, the medical report could be filled in by the mother herself. The representative of this society had not denied that in some cases they had taken the babies of girls who after their confinement in public assistance hospitals had obtained a half day's leave of absence with a view to getting rid of their children. The babies were accepted on the basis of a single interview without any communication passing between the authorities and the hospitals. Two of the girls had been suffering from venereal disease, and, in one case, it was subsequently found that the children were also infected. In another case, when inquiries were made by the hospital it was found that the society had lost touch with the mother. The practice of this society was in marked contrast with that of another which informed the Committee that it had refused many babies for reasons which included bad health, mental defect in the mother, dubious parentage and a lack of information concerning the father.

Having set out recommendations for the pre-placement period, the Committee then considered the situation after the child had been placed in the adoptive home and felt that a period of probation was needed as a final precaution. Although the chief anxiety of many adopters
appeared to be the completion of the transaction with the maximum of speed, the period of probation ought not to be curtailed for that reason. Many adopters had had no previous experience of looking after children and though apparently suitable might be temperamentally or otherwise unfitted to have the care of a child. It was also important that the adopters should have an opportunity of thoroughly satisfying themselves that the child which they had chosen was likely to settle down happily as a member of the family. Even with young children an association of a few months might reveal the existence of incompatibilities between the child and one or both of its adoptive parents and where there were other children the advent of a newcomer was sometimes the cause of serious disharmony.

All the adoption societies arranged for a probationary period varying from one to six months. However most societies regarded it primarily as an opportunity for the adopters to assure themselves that the child was suitable and if the adopters wished it the period of probation was often curtailed. One society which ordinarily insisted on four months probation arranged for the home to be visited and a report to be made to its Case Committee. The Horsburgh Committee thought that this was the right procedure and it recommended a probationary period of not less than three months. This was the shortest period to enable both the society and the adopters to satisfy themselves that the adoption was likely to be successful.

The Committee dealt at some length and quite fully with the problem of secrecy. Several witnesses had spoken of the anxiety expressed by many adopters over the disclosure of their names and addresses to the
parent of the child. The security of the adoption order was felt not to be sufficient; the fear was that the parent might disturb the child, or might even attempt a mild form of blackmail. Some adopters even went so far as to move to a different part of the country in order to avoid the possibility of being embarrassed by the parent. In fact no cases had been mentioned of adopters having had cause to complain on this ground. On the other hand, parents were often very anxious to know where their children had been placed and to receive information as to their progress with their new parents.

The form of consent to adoption prescribed by the Adoption of Children (County Court) Rules, 1926 and 1955 and the Adoption of Children (Summary Jurisdiction) Rules 1956 provided for the insertion of the adopter's name. In the case of the County Court rules, the address of the adopters was also needed. The petition in the County Court had to be served on the parent or guardian or other respondents and the petition contained the name and address unless the Judge dispensed with this requirement. The notice of application to the juvenile court provided for the name of the adopters to be inserted.

The chief argument put forward by the societies and other witnesses against disclosing the identity of the adopters to the parent was that the most desirable adopters were usually anxious that the parent should not know where her child was being placed. The societies were unanimous that if the identity was disclosed, many of their best adopters would be unwilling to take children. While recognising that this fear on the part of would-be adopters was both "prevalent and real", the Committee pointed out that they had been told of no case of actual interference.
Because of the importance attached to the subject by a large number of witnesses they had been careful to inquire of witnesses whether any cases had come to their knowledge. For instance, the Committee had been told by the Chief Education Officer at Birmingham that in only three out of 1,200 adoptions in that city had the mother subsequently made a nuisance of herself.

Nevertheless, most societies had admitted that in the interests of secrecy and because of the risk that the mother might disappear before the adopters had been found, they had sometimes arranged for the form of consent for the adoption to be signed before the name and address of the adopters had been inserted. Often the signature was appended when the child was handed over to the society. Sometimes the name and address was covered over when the mother signed it. Some societies appeared to make a regular practice of having the consent form signed in blank, and there was no way in which the court could discover this. Occasionally, it was noticed that the date on the form of consent was considerably earlier than the date of the application for an adoption order or even before the date when the adopters approached the society. Another procedure was for the address of the applicants to be given as "care of the society" and some courts seemed to accept this as sufficient.

No first-hand evidence had been produced that this practice had caused hardship to the parents of the child, but there were no grounds for assuming that hardship could not, in fact, occur. A case had been brought to the Committee's notice of a mother who was genuinely anxious for the welfare of her child. She had been refused all information by the society and was unable to learn whether the child was alive and happy.
The decision of the High Court in the case of Re Carroll\textsuperscript{7} was relevant to this situation. In that case, Scrutton, L. J. had described the signing of a blank consent form as a "very unsatisfactory form of procedure". He also made the following comment: "I do not think that a form in which the mother consents to adoption by any one nominated by the society without knowing whom should be acted upon by any court". Slesser, L. J., in his judgment in the case said: "... it is scarcely necessary to point out that the form of consent which had already been given by the mother with the name of the applicant absent is a nullity. It is clear from section 2, sub-section 3 that parental consent can only be given to a specific adoption by a named adopter". These judicial statements clearly indicated that where a mother signed her form in blank and there was no other evidence of her consent, the court might refuse to grant an adoption order.

The Committee also pointed to the recently amended Rules for adoption in the courts of summary jurisdiction. By these Rules only the name of the adopter had to be inserted in the form of consent. This would go far to remove the fear, while it ought to disappear entirely with wider knowledge of the protection afforded by legal adoption. This would be particularly the case if, as the Committee recommended, application for an order were made a condition to the placing of a child by an adoption society. The societies had also a role to play in educating adopters by explaining to them the advantages of legal adoption and the effect which it had of depriving the mother of all her rights over

the child.

But unless there was a good reason to believe that the information would be misused, adoption societies ought always to be ready to answer any reasonable inquiries by the mother as to the character, the position, and so on, of the people who had taken the child, at any rate up to the time of legal adoption. At the same time it could be impressed upon the mother that it was important to avoid any sort of interference, and it was to be made clear to her that her rights over the child would entirely cease when the order was made.

Another object in obtaining a consent given in blank was to ensure, as far as possible, that the society had a free hand in the choice of adopters. There was also the problem that the mother might disappear before an application for an adoption order was made, and so it was felt better to have her signature to a blank form, than none at all. But the Committee was not convinced that all societies were sufficiently concerned to keep in touch with the mother once the child had been handed over to them. Societies were sometimes anxious to prevent a meeting between the mother and the adopters when the application was heard. This was either because the adopters had expressed a wish to avoid meeting the mother, or from apprehension that the mother might repent the step she had taken and refuse her consent to the adoption. On the other hand, if the court could be told that the mother could not be found there was the chance that she might be held to have abandoned her child and consent dispensed with on this or another ground. Another complaint was that even when a society knew the address of the mother they did not always assist the guardian ad litem, particularly in the case of the juvenile court, to find her or to facilitate her attendance at court.
The Committee was of the view that the best way of controlling these practices was by constant vigilance by the courts. These practices indicated that the societies regarded themselves as owing no duty to the mother in the choice of adopters but only to the child and those who wished to adopt it. In the words of the Report, "this cannot be right, for after all, it is the mother who supplies the child and the fact that her consent is required to the making of an order in favour of a particular person or persons implies that she should at least be placed in possession of information—certainly if she desires it—to enable her to decide whether to give or withhold her consent to the adoption of her child by these persons".

The practice of dispensing with the presence of the mother in court was also examined. It appeared that some courts were less strict than others in insisting upon the attendance of the mother. Indeed, the Adoption of Children (Summary Jurisdiction) Rules, as amended in 1936, provided that in any case where the court dispensed with the personal attendance of a respondent the written consent of that respondent verified by a declaration purporting to be made before and signed by a Justice of the Peace was prima facie evidence of such consent.

The Committee pointed to a serious hardship which could result from this practice. In the absence of the mother it might prove difficult to identify the child with the child named in the birth certificate. It might therefore prove impossible to include in the adoption order the necessary further direction to the Registrar-General to mark the original entry in the register of births with the word "adopted". In such circumstances, the certificate of adoption would not include any date of
birth, and the child might in consequence be seriously handicapped in later life. The attendance of the mother afforded some safeguard against the risk of substitution, whether by accident or design, of one child by another.

In the County Court the conditions for dispensing with the mother's attendance were less stringent, and in the High Court, it was not usual for parties to attend in person so that they did not necessarily meet, nor was the identity of the adopters necessarily disclosed to the mother. The Committee thought that the more stringent rules in the juvenile court was due to the fact that the parties were not usually in a position to acquire the services of a solicitor to make enquiries for them and protect their interests. However, the difference in practice sometimes resulted in an adoption society recommending adopters to apply in the County Court or the High Court if was desired to avoid bringing the mother to court.

The Committee was of the opinion that parents ought to understand fully the consequences of handing over a child for adoption. They ought to be made aware that they had both a duty and a right to attend court, and by attending have the opportunity of satisfying themselves personally as to the suitability of the prospective adopters and on all the other matters with which the court was concerned. A safeguard, therefore, would be for the parents to receive a memorandum setting out in simple language the effect of adoption and the rights and duties of the parents in connection with the adoption application at the time when they first applied to an adoption society. The signature of the parent on a prescribed form would be evidence that the memorandum had been read.
and understood.

The Horshurèh Committee, although seeing for adoption societies a valuable role as long as their work was properly safeguarded, was concerned at the lack of proper care on their part, which some of the evidence had revealed. The Committee wished to impose more stringent obligations upon these "social" agents who, unlike commercial agents, were bound by few legal rights and duties, despite the fact that the consequences of their acts could be so serious for the parties for whom they acted. The problem was therefore seen in terms of achieving a balance between the different interests of the parties involved. Of the three groups to whom a duty was owed, the most important was the child. Next, there was a duty to the adoptive parents. The obligations towards these first two parties would be discharged only upon the completion of a thorough social investigation, the contents of which the Committee carefully considered. There was, thirdly, a duty towards the parent. This, the Committee saw in terms of a duty to reveal, or a right to withhold, information which, in particular, might be relevant to the crucial question of whether the parent's consent to adoption was a full and proper one. There is an interesting contrast here: the duty towards the parent is limited to ensuring that the consensual basis to adoption is secured. It is interesting to contrast this with the growth in interest in the motives and personality of the natural parent, particularly the mother, which was a feature of a later period in the history of adoption, particularly the 1950s.
CHAPTER XI

FINANCE AND OTHER MATTERS

The question of financing adoption societies, which was dealt with next, raised questions about the prevalence of "baby-farming". Societies apparently derived their income from four main sources. These consisted of: contributions from the charitable public, including income from endowments; payments by mothers; payments by putative fathers; and payments by adopters.

In relation to the first source, that is, the charitable public, the Committee had received no suggestion of undesirable methods with the exception of the practice of one society which called for separate comment. This society\(^1\) had for some years built up an Endowment Fund with the object of reaching a capital of £100,000 so as to provide a regular income adequate to carry on the society's work. The main source of income was a scheme of "returnable donations" by which the public was invited to lend sums of money without interest on certain conditions. One condition was that the money would be repayable only if the donor asked for repayment. The large sums collected had been invested in the purchase of tithe rent charges. The advantage to the society was that the income from these and the capital appreciation were

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\(^1\) It seems that this was The Adoption Society (now the Church Adoption Society) and that the Chairman referred to was Canon Buttle. (See Bulletin No. 7 of the Standing Conference of Societies Registered for Adoption, May, 1953).
enjoyed without the payment of interest upon capital. In this way, a very substantial fund had been built up. "Returnable donations" had also been utilised to invest in property, the purchase of rights in an invention and for making interest-free loans in return, usually, for a donation. The scheme had now been discontinued.

Without the opportunity thoroughly to investigate the society's finances, the Committee did not feel justified in criticizing the financial methods in detail but there were three general criticisms to be made. In the first place, most of the society's rules had been ignored. There was, for example, a provision that there should be a President, a Vice-President and Council, a Committee which was to meet at least monthly, a chairman, and an honorary treasurer, together with a Finance Sub-Committee, to advise on and check on all financial outlay and receipts. Three trustees were to be appointed unless one was a corporation. The Rules also provided for an Annual Meeting open to members and to the public, and for the annual auditing of the accounts for presentation to the meeting.

On the Chairman's own admission, most of these rules had been ignored and, in his words, the society was a "one man show". The only officers were the Chairman and a paid Secretary. No treasurer had been formally appointed but the Chairman did the work. The two trustees were the Chairman and a Corporation of which he was the sole director. The meetings of the Committee were infrequent, and few of the members who were described as "busy and elderly" attended these meetings, except by proxy, the proxies being vested in the Chairman. There was no Finance Committee and in two successive years there had been no annual general meeting. In 1935 the accounts were prepared and audited for the first
time in five years. The Chairman's explanation for this omission had been that he wished to retain unfettered control over the fund which he was building up and for which he was personally liable.

Secondly, the Chairman claimed that liabilities in connection with the Endowment Fund were his personal responsibility and were in no way shared by the society which was, however, the normal beneficiary of it. The Committee felt that a charitable body ought to possess full responsibility for the raising and disposing of its funds and considered it extremely undesirable that sums of money for the purposes of the society were the responsibility of, or at the disposal of, any other body or person.

Thirdly, a very small proportion of the society's income was expended on its adoption work, although adoption work was the only ostensible object of the society. The Chairman admitted that the staff was inadequate and that this was one of the reasons why home visits could not ordinarily be arranged although he agreed that they might be desirable.

The Horsburgh Committee felt that this state of affairs was obviously unsatisfactory. The most elementary methods of control and supervision was lacking. Money had been collected avowedly for the purpose of the society but had in fact been invested with the object of providing a sufficient annual income in the distant future and without any guarantee other than the personal responsibility of the Chairman that they would not be dissipated in unwise speculation. There was no safeguard against the society's funds being mixed with the Chairman's personal monies. Furthermore, it was admitted that the expenditure on purposes for which the society ostensibly existed were insufficient to maintain satisfactory standards.
The second and third methods of obtaining income used by adoption societies were to ask for payments from mothers and putative fathers. The practice of societies in this respect varied. Some societies made no charge except in respect of the child's maintenance in the society's hostel or with foster-parents pending adoption. These societies did not solicit any voluntary payments from the mother in respect of the adoption. Others, however, invited a payment to be made for the services rendered in arranging the adoption.

Was there any objection in principle to the receipt of payments from the mother? Witnesses from some adoption societies had put forward the argument that there was, since even a "thanks offering" might easily become indistinguishable from a compulsory repayment. These societies based their belief and practice on the theory that payment "creates a wrong relationship between the client and the society" and that it was undesirable that a charitable organisation should make any kind of charge. But another society took a different view; if there was no suggestion of any monetary return "the sense of thankfulness and gratitude thus created would in itself create a moral and religious basis for the work".

Having examined these arguments, the Committee had come to the opinion that there was no objection in principle to the receipt of payment from mothers. "A woman whose child is adopted through the agency of an adoption society is relieved, thanks to the society, of heavy financial responsibilities and it does not appear unreasonable to us that she should contribute to the best of her means to its expenses. It may also be desirable that she should be reminded of her responsibilities and that the impression should not be cultivated that adoption societies
exist for the cheap and expeditious disposal of illegitimate children".

But approval of the principle did not always extend to the methods which on occasion were used. For instance, one society's practice had been to ask mothers to pay ten shillings a week for three months after adoption plus an annual fee of £1 for inspection. Another society stated that formerly mothers had been asked to pay ten shillings a week for maintenance of the child until it was handed over to the adopters. After that, any arrears of maintenance were claimed plus weekly payments up to a total of £50 or five shillings a week for two years. These requests for payment were justified by the society on the grounds of out-of-pocket and overhead expenses in arranging the adoption and the cost of supervision until the age of sixteen years. There was in fact little or no supervision by the society.

The financial methods of this society were discussed at length by the Committee, since there were various unsatisfactory features. Sometimes a mother entered into a written agreement which expressly stated that the society will make "no claim against the mother or any other person whatsoever". Yet the Committee had received documentary evidence that considerable pressure was brought to bear on women who fell into arrears with payments. Even where there had been no formal agreement to pay the mother had sometimes been given to understand that legal proceedings would be taken if the default continued.

The high charges were also explained as arising from the supervision of the child until it reached the age of sixteen. Yet the society's representative had admitted that contact was usually maintained only by correspondence and that visits, if made, were irregular and infrequent. Moreover, if adoption was legalised, - which the society recommended, -
then no supervision was carried out. The total charge of £60 was consider­ably higher than the average cost of adoptions arranged by other societies whose methods appeared much more thorough. The Chairman of the society had informed the Committee that it had revised its methods and that in future only letters of a "persuasive but not of a threatening nature" would be sent to those who had defaulted.

The Committee felt that the widespread feeling that there should be no payment at all in connection with adoptions was based upon a fear that to allow payments would open the door to "baby-farming". The Committee agreed that there were a number of serious practical objections to any system of obligatory payments unless there were very strict safeguards against abuse. But if the recommendations of the Committee were implemented for the regulation of adoption societies, then there would be no objection to charges being made as was done in the case of voluntary hospitals and other charitable bodies, if the charges were adjusted to the mother's ability to pay - which was not defined by the Committee. They would also recommend an extension of section 9 of the Adoption of Children Act to cover all payments made in connection with adoptions and not simply to payments to the adopter or the parent or guardian.

The Committee's statements on payments by the mother applied equally to payments asked of the putative father and relatives of the mother.

The Committee then turned to the levying of charges on the adopters. None of the societies made any fixed charges but all received contributions from time to time. Some societies invited such contributions and then appealed at intervals for further donations. Another society
wrote to adopters for financial help on the child's birthday. This kind of practice seemed to the Committee to be "natural and proper" provided it was not taken up until the adoption was completed. The Committee viewed with "grave concern" anything resembling the sale of a child to the adopters or of fixing a price on a child according to its desirability for adoption. For such reasons it firmly opposed any suggestion of payment until after the adoption had been carried out, but distinguished this from subsequent requests for contributions. The concern over "baby-farming" is quite clear in this discussion.

The Committee dealt finally with two other points: advertising by adoption societies, and the practice of some societies of sending children abroad.

Some witnesses had wished to prohibit or restrict the freedom of adoption societies to advertise mainly on the grounds that it was undesirable that the facilities which they offered should be widely known, particularly among mothers of illegitimate children who might be too readily tempted to take advantage of this apparently easy method of obtaining release from their responsibilities. But in the Committee's opinion the advertisements were designed as much to bring the work of societies before the charitable public and possible adopters, as they were to inform women who had illegitimate babies of their work. Since the societies were performing a legitimate function the Committee could see no grounds for imposing on them restrictions to which other charitable organisations were not subjected. To do this would only restrict the number of adoptions unduly and also increase the difficulty of obtaining funds with consequent detriment to their work. The expenditure of
the societies on advertisements and propaganda was not extravagant.

It was the practice of some adoption societies to arrange for children to be taken abroad. This had been subject to much comment in the Press and the Committee had received much evidence in relation to it. Adoptions abroad fell into three categories. There were adoptions by persons domiciled in the United Kingdom but resident abroad. Secondly, there were cases of adoptions by British subjects in the Dominions and Colonies and, thirdly, there were adoptions by aliens in foreign countries. Different considerations applied in each case.

The Committee first of all considered the numbers of children involved in such arrangements. One society had arranged 83 adoptions within the British Empire with British subjects living in foreign countries. Another society had arranged 13 in the previous five years, and a third had arranged 10 since 1923. But some societies had made no such placements and there was no evidence that the numbers had at any time been large in comparison with the number of adoptions within the United Kingdom. Children had been placed in France, Belgium, Norway, Denmark and Switzerland, but the great majority of foreign adoptions took place in the United States and in Holland. One society had placed nine children in the United States in the last five years and another had been responsible for another twenty-seven being placed since 1920. Four societies arranged adoptions in Holland. These were seventy-two (since 1920), fifty-two (since the war), thirteen (since 1920) and three (since 1930).

The reason for placing children in Holland was that Dutch law made no provision for adoption and that the Dutch authorities were opposed to any form of adoption in the British sense. The number of children available for fostering was not sufficient to meet the demand and so
Dutch citizens turned to the services of the English adoption societies. The Dutch authorities were concerned by the number of British children coming into Holland in this way, both because of the unsatisfactory position of the children and because of lack of control in the immigration laws. Evidence had been received from the Dutch government on this point.  

The Horsburgh Committee was concerned about the practice from the point of view of the children themselves. Children were taken to be brought up in foreign communities, very often without the consent or knowledge of their parents at an age when their wishes could not be consulted. Moreover, in a country such as Holland where no facilities existed for legal adoption, the child could not obtain any status corresponding to that which legal adoption conferred in this country. A result was that the child was liable to deportation until it became of an age to be naturalised.

These were not theoretical risks only. There was evidence of perfunctory inquiries before children were taken out of the country, and cases had been brought to the Committee's attention of the difficulties which could result to the child. The Committee had therefore seriously considered whether adoption societies and other agents should be prohibited from sending children abroad in any circumstances. But this was felt to be too sweeping a recommendation, particularly in the case of British people temporarily resident abroad. There were greater dangers involved in the case of adoptions by British people in the Dominions and Colonies but the Committee would be reluctant to close the door to

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2 See page 221
these. With the above exceptions, however, the disadvantages of adoptions abroad greatly outweighed any possible advantage and the Committee therefore recommended (with two dissenting voices) that adoptions abroad should be entirely prohibited unless the adopters were British subjects or relatives of the child living abroad.

But even in the case of adoption by British subjects resident abroad it appeared essential that the sanction of some authority should be obtained. The Committee felt that a court was the best body and therefore proposed that a license from a magistrate of the Metropolitan Police Courts appointed by Order in Council should be obtained. It might, in practice, be possible to limit hearings to magistrates at the Bow Street court since the numbers would not be large.

11:3 Having discussed the activities of adoption societies at some length, the Committee next turned its attentions to agencies other than adoption societies. These included national organisations such as the Salvation Army which had arranged 16 adoptions in 1935, the Church Army and the Crusade of Rescue, which although ordinarily opposed to adoption, had been responsible for 47 adoptions since 1924. There was also a number of bodies such as orphanages, diocesan welfare associations, missions and similar bodies concerned with the welfare of children which might arrange adoptions with more or less frequency. For example, one diocesan maternity home in the North of England had been responsible for 21 adoptions in the last five years, and a Roman Catholic Home in London

3 Following the analogy of sections 25 and 26 of the Children and Young Persons Act 1933 under which a young person under 18 might not go abroad to perform in singing, dancing etc. without a licence from one of specified Magistrates, in practice, those at Bow Street Court.
had been responsible for 23 in the same period.

The Committee was satisfied that thorough inquiries were made by some of these agencies but there had also been evidence that this was not the practice of all of them. Often a home visit and personal interview were dispensed with, by one of the largest agencies, and in the case of other agencies it was not a regular practice to make a home visit.

The Committee concluded that most of the dangers to which they had drawn attention in connection with the adoption societies were also apparent in the case of adoptions arranged by other charitable bodies. An additional reason for taking every possible precaution was that the officials of a society which only occasionally arranged adoptions lacked the experience which was acquired by the officials of an adoption society. So the recommendations which were made in relation to the adoption societies applied equally to other voluntary societies carrying out similar work.

The Committee next examined the work of private agents. The evidence gave no support for the view that there was a widespread traffic in children or that "baby-farming" was prevalent. There were however a number of cases which had come to the attention of the Committee which gave rise to serious cause for concern.

There were first of all cases where the intermediary helped to arrange an adoption as a friendly act, where there was no reason to doubt the good intentions of the intermediary and no money passed. It might be that the mother asked the help of the matron of a nursing home, or the doctor or midwife who attended her, or else she asked the health or infant life protection visitor for assistance. Although the motives of the intermediary might be unimpeachable, it did not follow that such
an adoption had been wisely arranged. It was easy for mistakes to occur when there was no investigation into the character and circumstances of the prospective adopter.

A far more dubious situation arose, however, when money passed and there were reasons to doubt the bona fides of the agent. There was, for example, the case of the wife of an unemployed labourer who had applied to a midwife and "booked" for adoption the unborn child of an unmarried woman. The child was handed over a few hours after birth and the adopter paid £4. 7. 6. ostensibly for expenses. The guardian ad litem found during his investigations that both the labourer and his wife were persons of low intelligence, their home was neglected and their only source of income was unemployment insurance of 26 shillings a week. The court had granted an interim order for six months. On a further visit by the guardian ad litem the child was found in a dirty and unsatisfactory condition. Consequently, when the court heard the re-application it adjourned the hearing sine die.

There were other serious cases where what could only be regarded as trafficking in children took place. For example there was the case of Mrs. A. who inserted the following advertisement in the press:

"I'm a lovely baby boy. I'm lonely and sad without a mummy or daddy to make me glad; will anyone adopt me? Write Box.."

"Good and refined home required for Army Officer's twin boy and girl, fortnight old. Write Box..".

"Adoption - beautiful blue-eyed boy wishes to be adopted where he could give love in return for parents and home. Write Box..".

Mrs. A. also answered advertisements by would-be adopters and advertisements offering children for adoption. Often large sums of money were
paid to her, and she appeared to have made a business of arranging adop-

tions.

In one case, it was said that she had received £40 or £50 from
the mother but had told the adopters that the mother could not pay any-
thing. In 1932, she had been convicted and fined on three separate
charges under Part 1 of the Children Act, 1908 for failing to give notice
to the local authority within forty-eight hours of the reception of an
infant under seven years of age taken for reward.

There was also a Miss C, who was known to have adopted five
children between 1927 and 1930. There were a number of curious features
in connection with the adoptions. Miss C had used several aliases, and
incorrectly registered three of the children as her own under an assumed
name. In one case, she replied to an advertisement of a child for adop-
tion and posed as a married woman who had just lost her only son and
showed the relatives of the child a house in course of construction which
she stated was being built for herself and her husband. Three of the
children had died, and an inquest on one showed that the conditions
under which the child had lived were unhealthy and overcrowded. On
several occasions, she had made it known that she was leaving to be
confined in a nursing home and then she had disappeared for a short
while. She would return with a child and profess to be its mother.
When she did not bring back a child she made it known that the child had
died. There was no evidence that she had received money for the adop-
tions, but she had no apparent source of income.

In the view of these and other examples, received by the
Committee, they recommended that it should be made an offence for a
private person to receive any such payment without the leave of the court.
The effect would be to make it compulsory to apply for an adoption order in any case where it was desired to make any payment to the person or persons responsible for bringing together the adopters and the child in respect of services rendered. It was also suggested that parents and adopters should be prohibited from receiving payments without leave of the court. Although this might be difficult to enforce, the Committee felt that the possibility of criminal proceedings might act as a considerable deterrent.

The Committee then pointed out that advertisements offering or seeking children for adoption were frequently inserted by agents, but also by would-be adopters and by women wishing to arrange for the adoption of their children. Though these latter classes of advertisement might not appear strictly to come within the terms of reference of the Committee, such adoptions were in essence similar to those where an intermediary acted. The mother might not be competent to make the necessary inquiries or might be more concerned with ridding herself of her responsibilities than with the welfare of the child. It was also undesirable that persons who would not be regarded as suitable by any reputable adoption society or agency should be able to obtain a child through the medium of an advertisement. They therefore recommended the prohibition of all advertisements, offering or seeking children for adoption except by regulated adoption societies and agencies.

The Committee had considered whether private persons should not be prohibited from arranging adoptions but had come to the conclusion that such a prohibition would be unreasonable. The prohibition of payments and of advertisements would remove the main dangers in connection
with the arrangement of adoptions by private persons. There remained, of course, the risk of serious mistakes resulting from carelessness or ignorance on the part of the agent. This danger was greatest where the arrangements were made by the parent, or a relative, or by the doctors, or midwives who had attended the mother.

But the Committee was reluctant to prohibit such adoptions. It would be unreasonable and probably vain to attempt to prohibit the parent or other relatives of the child from arranging an adoption and the doctor or midwife might be aware of suitable persons to adopt.

The Committee felt that the licensing of private agents would not be practicable but some form of regulation seemed essential. They recommended that the analogy of the infant life protection provisions should be followed but that the age limit should be sixteen years (rather than nine) in view of the risk of adopting adolescents as a means of obtaining cheap labour or for other undesirable reasons. The duty of notifying authorities should be placed on both the agent and the person receiving the child. The supervision of the local authority would cease when the adoption order was obtained or at the end of three years. The rules were to apply to adoption arranged by a relative or legal guardian including the parent but not where the child was adopted by relatives.

One member, Mr. Geoffrey Russell, of the Horsburgh Committee dissented from some of the majority findings and from one of the recommendations set out in the Report. He was convinced that some of the practices of the societies required amendment and that the recommendations of the Committee ought to be acted upon by the adoption societies. Where he parted company with the rest of his colleagues was in suggesting
that the responsibility of the State should be engaged in setting up some form of statutory control which would make it an offence to carry on an adoption agency without a licence from a statutory licensing authority. In the first place, he was not convinced that there was a mischief which required that remedy and in the second place, he was not sure that even if there was such a great mischief, that this would be the proper remedy. Although the Committee had been pretty widely advertised, although it had sought information in every direction open to it, it had not in his opinion received much evidence of any vital mischief which was directly attributable to the activities of the societies or agencies.

The really important question was whether children were harmed by the "methods pursued by adoption societies or other agencies engaged in arranging for the adoption of children". Instances of cases in which children living with adoptive parents suffered from ill-treatment or lack of good treatment had been brought to their notice and in many (if not all) the cases the adoption had been "arranged" by a society. But this same thing was unhappily true of many children living with their natural parents and, so far as it could be corrected, cured or punished, the remedy was available.

In his view, the infant life protection provisions as to notification might well be extended for the protection of all adopted children, (subject to the limitations suggested in regard to private agencies). This was because the responsibility of all parties to an adoption, - the natural parent, the adoptive parent and the society - should remain in its proper place. By this, Mr. Russell meant that it was for the parent to decide whether she gave her child for adoption, it
was for the adoptive parent to decide whether or not to adopt a child or the particular child; and it was not right for the State to relieve the individual even partially of his clear duty in this matter. It seemed to Mr. Russell impracticable or at any rate very difficult for any licensing authority to exercise much supervision, day by day, and in the detail which would warrant giving a "hallmark of approval" to an adoption agency. If a society received the prestige of a licence there was bound to be a tendency for the parties to shirk their responsibility and to take shelter under the thought that all was well. As a result, their sense of responsibility would be weakened.

This dissenting opinion echoes the concern with the concept of individual responsibility which has played such a central role in debates concerning adoption policy. Now, however, the emphasis has shifted away from a discussion centred on whether the principle of adoption in itself mitigated against the development and growth of parental responsibility. The fear, expressed in this dissenting opinion, was that the State, through the role of regulator of social agencies, would lead to an abdication of individual action. Such fears may indeed be seen as an aspect of that major debate whether the multiplying functions of the State during the twentieth century has encroached to a dangerous degree upon individual liberty and responsibility. In this case, the fears seem exaggerated and with hindsight it is possible to affirm that the majority recommendations were far from extreme, and did not contain within them those dangers which Mr. Russell was indicating.
CHAPTER XII

RULES AND REGULATIONS - THE ADOPTION OF CHILDREN

(REGULATION) ACT, 1939.

The Home Office felt that the proposals of the Committee might, at first sight, appear elaborate, but that, in most cases, they were an extension of existing provisions. For example, in the case of proposed adoptions abroad, the machinery established under the Children and Young Persons Act, 1933 regarding employment abroad could be used; in the case of private persons arranging adoption, the infant life protection provisions could be extended; with regard to licensing, the provisions of the Nursing Homes Regulation Act, 1927 and analogous Acts existed; and section 9 of the Adoption of Children Act, 1926 already existed to cover the problem of adoptions arranged for gain.

A Private Members' Bill was prepared and this was introduced by Miss Horsburgh. It aimed "to regulate the making of arrangements by adoption societies and other persons in connection with the adoption of children; to provide for the supervision of adopted children; to amend section 2 of the Adoption of Children Act, 1926; and for purposes connected with the matter aforesaid". It was supported by Mr. Allan Chapman, Mrs. Hardie, Mr. Henderson-Stewart, Mr. Liddall, Mr. Lipson, Brigadier-General Sir Ernest Makins, Sir R. W. Smith, Mr. Tate and Mrs. Tinker.

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1 Hansard H. C. Vol. 341.
The Bill was read a second time on the 16th December, 1938 and the general mood of the House of Commons was summed up by Mr. Allan Chapman when he said that the House was clearly anxious to adopt this handsome, healthy legislative infant and to find it a home on the Statute Book at the earliest possible moment. Lady Astor expressed herself as glad that child adoption was on the increase because it was better that a child should have the right parents - even though they were not its real parents - than that it should have unsuitable parents who were its real parents. Lady Astor did not however define what she meant by these terms. Mr. Geoffrey Lloyd, the Under-Secretary of State for the Home Department, reminded the House that in dealing with the Criminal Justice Bill, it had become aware that bad and broken homes were a very considerable source of juvenile delinquency. It was therefore important, not only to try to improve the results in cases of children who came from bad homes, but to be careful not to allow the creation of bad homes. This would be the end result if children were sent to parents when they were not suitable.

In regard to adoption, Mr. Lloyd felt that it worked well in general, but there were two classes of abuse: the unscrupulous agent who engaged in a sordid traffic in defenceless young life; and the lack of proper staff, machinery and even funds to do the work properly even in well-meaning organisations. Viscountess Davidson on the other hand expressed herself in much stronger terms. She felt that those who had

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2 Hansard H. C. Vol. 342.
read the Departmental Report must have thought at moments that they were reading from the pages of Dickens rather than from a report issued only that year. It was difficult to understand that there were people who wanted to adopt children for reasons other than the obvious ones that they loved children or desired to have the new generation growing up with the older generation or longed to give some small person a happy time and a chance in life, or wished to make that life useful and bring up the children as normal and useful citizens. Was it realised what infinite hurt could be done to a child by spending even a short time in unsuitable hands in an unhappy environment with bad people? She thought that it was because of this that so many people were neurotic and unbalanced in later life. In her opinion, the Bill was, obviously overdue. It was said, quite rightly, that the bad cases were few compared with the very large numbers of good cases. The other cases might be few but the responsibility for them was on the shoulders of everyone. At the moment the Bill was intended to remedy rare cases, but "if there is a little hole in the bank through which water trickles and ... someone takes the trouble to fill up that little hole at once, no harm is done, but if the hole is allowed to grow until the bank is destroyed by the flood it is too late, and the damage is many times more difficult to repair".

On the other hand, Mr. Rhys Davies felt that the evils should not be exaggerated. He felt that the record of the country in its treatment of children was on the whole exceptionally good. Miss Horsburgh, too, in introducing the Bill, stressed her conviction that there were many good adoptions arranged by adoption societies. She was anxious that
the good work should go on, but was also concerned that where the work was not so well done, by people who were not actuated simply by the motive of helping the child, there should be some supervisions. This the Bill sought to do.

Section 1 of the Act provided that after the appointed day it should not be lawful for any body or persons to make any arrangements for the adoption of a child unless that body was a registered adoption society or a local authority. It was a criminal offence to take part in the management or control of an unregistered society and the penalty on summary conviction could be a term of imprisonment up to six months or a fine not exceeding £200, or both. Sections 2 and 3 dealt with the method of registration; the grounds on which it should be allowed; and the reasons for refusing to register. The registering body, that is a county or county borough council, had to be satisfied, in the first place, that the society was a charitable association. It could also refuse to register an adoption society if it appeared:

(a) that the activities of the society are not controlled by a committee of members of the society who are responsible for the members of the society; or

(b) that any person proposed to be employed, or employed by the society for the purpose of making any arrangements for the adoption of children on behalf of the society is not a fit and proper person to be so employed; or

(c) that the number of competent persons proposed to be employed or employed by the society for the purpose aforesaid is, in the opinion of the authority, insufficient having regard to the extent of the activities of the society in connection with that purpose; or
(d) that any person taking part in the management or control of the society or any member of the society has been convicted of an offence under the Act or of a breach of any regulations made under the Act."

An authority could, at any time, cancel the registration on any ground entitling the authority to refuse an application for registration, or on the ground that the society was no longer a charitable association, or on the ground that the administrative centre of the society was no longer situated in the district of the authority.

Section 3 laid down the procedure for an appeal where registration was refused or cancelled. A society could appeal to quarter session against any such decision. One of the things that had struck the Horsburgh Committee was the fact that anyone could set up an adoption society and call it anything they liked. It had been suggested to Miss Horsburgh that they could set up an adoption society and call it the "Parliamentary Adoption Society". There was in fact the case of the adoption society which took the title of the "Church of England Adoption Society". It had no official connection at all with the Church of England. These societies should be registered as were employment agencies and nursing

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3 There seems no doubt that this is a reference to the Society now called The Church Adoption Society. This is said to have been re-established (after being called the National Adoption Society) in 1931 as The Adoption Society, otherwise known as The Adoption Society of the Church of England" (see, for example, annual Report 1945-46). This Society seems to have had some difficulty with its name. In 1945, the Archbishop of Canterbury informed the Board of Trade that since this society had no full official backing it should not be registered as the "Church of England Adoption Society". Objection was also raised by the Board of Trade to the use of the title "The Adoption Society". On the 20th July, 1945, the society was registered as "The Church Adoption Society". (Documents in the possession of the Church Adoption Society).
homes. This had of course been a majority decision of the committee, with Mr. Geoffrey Russell dissenting. Miss Horsburgh felt that if the regulations were set down carefully it would be possible to stop abuse by ensuring that the public knew what was happening and by ensuring that a registered adoption society went out of business if malpractice occurred.

In section 4 there were definite regulations which would be laid down by the Home Secretary in regard to the work done by an adoption society. These had been extended at the Committee stage. The Departmental Committee had formulated what they considered to be model rules or regulations for an adoption society. It was vital, said Miss Horsburgh, that there should be no carelessness, no neglect, and that the paramount consideration should be the welfare of the child. In Clause 4 of the Bill it had been suggested that when a child was adopted by a society a memorandum should be given to the mother "in the prescribed form explained, in ordinary language"... "This was to ensure that the mother understood the nature of her action. A mother taking her child to an adoption society might be distressed. She might have been told by a friend or had seen an advertisement that children were taken. In how many cases did the woman really understand what was meant and what her rights were? The mother might want to get the matter arranged secretly and quickly. There were cases where a child of one week had been taken to a society for adoption and children of two and three days old. Indeed in some cases the woman went to the society before the birth of her child and registered it for adoption. Miss Horsburgh wanted every woman to have in her hands a statement of her rights and duties concerning her child in simple language which she could understand.
In many cases a woman filled up a form, possibly a blank form, for the adoption society. She thought that she had given up her child for good and all, and could never get it back. Miss Horsburgh quoted a case where a woman went to an adoption society with her baby and within a few hours changed her mind about the matter. She went back and was told that she had consented to give up the child for adoption. She never saw the child again.

There was no legal right to take a child away from its mother until an order of the court had been made, and Miss Horsburgh felt that the mother had a right to know when the order of the court was made.

On the other hand, there were cases of women who took their children and disappeared giving no address to the society so that it was not possible to get her consent. It was the duty of the adoption society to keep in touch with the mother to make her realise her duties and responsibilities. Paragraph (b) of Clause 4 (1) laid down that three persons were to be appointed by the adoption society to consider each case of adoption. This Case Committee was to act as a safeguard against the possibility of mistake if only one official of the society were involved.

Section 5 of the Bill dealt with the inspection of books, reports and accounts. In the previous year, arrangements had been made for 1200 children to be adopted through the courts by adoption societies. But a large section of de facto adoptions remained. One society had informed the Departmental Committee that only 30 per cent. of their cases ever went through the courts for legal adoption. The number of these cases was not known. There were no regulations and no protection
for the children. Such societies ought to keep strict records of the children they took, when they took them and where they placed them. They ought also to keep strict accounts.

Adoption societies were getting considerable support from the public; and they also obtained payments from the mother and sometimes from the putative father and from those who had received children for adoption. There was no objection to any of the parties paying reasonable expenses. Indeed it was wrong that the idea should grow that in the case of an illegitimate child there need be no expense.

Under section 5 a registration authority might at any time give notice in writing to any registered adoption society or any office, to produce books, accounts, and other documents relating to the making of arrangements for adoptions as the authority considered necessary.

Section 6 dealt mainly with a compulsory probationary period, which was already the practice of good societies which varied in their requirements between six months and two to three months. The Horsburgh Committee had suggested that the suitable time would be three months. It was felt that even when the best arrangements had been made, it was well not to take the step of legally adopting a child until the novelty had worn off. There had been cases known to Miss Horsburgh where people had thought they were anxious to have a child by adoption but where, after trial, it had not been found a success.

The Committee had suggested that an adoption society should have to take a child back at the end of three months unless an order had been applied for. This would diminish the number of de facto adoptions. It was proposed to make it an offence either for a society to refuse
to take a child back or for the prospective adopter to refuse to give
up the child if requested to do so. There was the case of a girl of
nine who had been "adopted" and was found by a child welfare society
to be terribly neglected and grossly ill-treated. The adoption society
had been asked at the end of three months to take the child back as she
was found to be unsatisfactory to the new parents. The society had
written to say that they hoped that the child would be given further
trial since their funds at present were very low. There existed the
anomaly that if the adopters applied to the court for legal adoption
and it was refused, the child stayed in the home and there was no power
to take it away unless gross neglect could be proved.

Section 7 dealt with the protection of a child under nine by
the welfare authorities if it was in the care and possession of a person
not its parent, guardian or a relative, where a third party had partici-
pated in the arrangement. This provision was to cover those cases,
drawn to the attention of the Horsburgh Committee, of people who simply
made a business of playing the middleman, of buying and selling children.
Miss Horsburgh described a case of a child handed over immediately after
birth to a midwife and advertised. It was then handed over to an American
variety artist and his wife, and after a time was taken out of the
country. The couple had later met with disaster and the child had
returned to this country at the age of eight.

For such children put out for adoption, almost the same pro-
cedure as under the Public Health Act, 1936 had been suggested, so that
the person arranging the adoption had to notify the local authority seven
days before the child went to the adopting parents, and the parents were
also to notify that they were adopting the child. As a result a welfare worker would visit the home until the child was nine years old or until the child had been legally adopted.

Section 8 was a small amendment of the 1926 Act to cover the situation where a married couple wished to adopt the illegitimate child of one of them. Under the main Act, the ages of both had to be over twenty-five but this could be waived, under the proviso, in the case of the natural mother. To resolve this difficulty the provision allowed that if either the man or the wife was the father or mother of the child the adoption order could be made out to both.

The last part of the Act dealt with miscellaneous provisions such as prohibition on payments in respect of adoptions except with the consent of the court, restrictions upon advertisements, and restrictions on sending children abroad. Miss Horsburgh spoke of certain cases which had caused the Committee considerable anxiety. She had in her hand a "price list", a list of children with descriptions and with prices which were as much as £500 and £600, and other such sums. What happened to the child for whom no price was paid? What happened to the child who turned out to be, not a financial asset, but a financial liability? She feared and had reason to fear that these children were placed in unsuitable homes or were sent abroad. It was known that there were British children abroad who had grown up with no idea that they were British, and who had gone to homes about which even officials in foreign countries had complained.

The large majority had gone to Holland and the Dutch papers contained advertisements of British children to be adopted. She had in
her hand a picture from a Dutch newspaper of British children without homes who were seeking adoption. Dr. Sark of the Dutch Home Office had given evidence before the Horsburgh Committee and had explained that the difficulty lay in the fact that there was no legal adoption in Holland because the authorities were not in favour of it. For such reasons regulations were needed to tighten up the situation.

Mr. Chapman supported this point since he believed a great deal in heredity, not in the narrow family sense, but in the sense of national characteristics. He believed that a child who went abroad in these circumstances would grow up with a kind of tug in his life, with a struggle between himself and his foreign surroundings which would not make for the greatest happiness.

Most amendments at the Committee stage were drafting changes. As Miss Horsburgh said (on moving that the Bill be read a third time) although there was agreement with the main principle of the Bill the difficulty had been to put into words exactly what was meant and what was to be done.

She wished to thank all the societies interested in the welfare of children for the help they had given. The Bill would mean that the societies would have to conform to regulations which had not been the case in the past. She was sure, however, that the adoption societies too were wanting this work properly carried on and that they would be willing and anxious to conform to all the regulations.

Miss Horsburgh observed that she had been struck by the fact

4 Hansard H. C. Vol. 342.
that there were people who took children, sometimes helpless infants, into their homes and made no effort, in many cases, to look after them or to treat them well. It was particularly strange when one considered the love and affection shown in the majority of homes. It was because she believed that by this Bill more children would be helped to get into good homes that she hoped the Bill would receive a Third Reading.

The Under Secretary of State for the Home Department, Mr. Peake, felt that "Good adoption laws have in the past been the hall-mark of a high degree of civilisation". If he were permitted to strike a note of sentiment he would say that no least among its merits was the fact that its principal beneficiaries would be those small persons, the noise of whose pattering feet was indeed "like softest music to attending ears".

12:4 The Adoption of Children (Regulation) Act was due to come into force upon the 1st January, 1940 but, because of the outbreak of war, its introduction was postponed by the Postponement of Enactments (Miscellaneous Provisions) Act, 1939 with the exception of the safeguard than an unmarried mother and her husband could adopt her own child notwithstanding that she was under 25 years, or less than 21 years older than her own child.

Although there was no licensing in 1939, the London County Council in fact advised adoption societies to carry on their work as if fulfilling the requirements of the Act as far as licensing was concerned. This was on the grounds that past practice would be considered by the
Council when the time came for granting or refusing a licence. The Education Officer of the L.C.C. also suggested to the Church Adoption Society that the Council favoured a six month probation period rather than the legal requirement of three months. It was also suggested that the Society should, in the light of the lack of foster mothers, consider the establishment of a small hostel for the reception of children eligible for adoption, particularly since the Departmental Committee had considered that a well-managed hostel was indispensable to the work of an adoption society. The same letter states that the L.C.C. considered the interviewing of the prospective applicants, both husband and wife to be an essential preliminary to adoption. Therefore, where the applicants could not come to London for the necessary interview they should be informed that their application could not be considered and that they should apply to their Local Authority. It was felt that the applicants would make every possible endeavour to come to London for an interview if they were really anxious to adopt children.

The L.C.C. might take this attitude; there was no requirement for other local authorities to exercise such informal sanction. Anxiety grew, as war conditions made themselves felt, over the lacunae left by the non-enforcement of the statute. This was particularly so since the

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5 Unpublished correspondence between this Society and the L.C.C. in the possession of the Church Adoption Society. When the 1939 Act came into force, the L.C.C. refused to register the society for three years and all the work had to be carried out by officials of the society as individuals in a “third party capacity” until 1946. Registration was refused on the grounds that the L.C.C. was not satisfied that the society was a charitable body; nor that there was proper control by a committee responsible to the members; nor that the number of competent persons employed was sufficient.
number of illegitimate births rose during the Second World War. Compared to the figures for the period of the First World War, the rise was very great. From 25,633 births in 1940, the figures went up to 61,420 in 1945. In the six years between 1934 and 1939 the number of illegitimate births had totalled 153,075 whereas between 1940 and 1945, the number was 255,460. So great was the concern of the Ministry of Health over the problems of the unmarried mother that a Circular was published in 1943 urging co-ordination between the welfare authorities and the voluntary moral welfare associations and the formulation of a scheme of work. At the same time various bodies continued to press for the Adoption of Children (Regulation) Act, 1939 to be brought into force.

The twenty-third Annual Report of the National Council for the Unmarried Mother and her Child for 1941-42 expressed the view that the need for the Act had been intensified not lessened by the War, and the fact that it would impose further duties on Local Authorities and their officials at a difficult time did not appear to the Council to be sufficient reason for any neglect in the care of defenceless infants.

The Council had documentary evidence that babies were being offered,

6 See Table 3, page 227

7 S. M. Ferguson and H. Fitzgerald point out that much of the concern over the rise of illegitimacy rates during the first world war seems to have been much exaggerated—Studies in the Social Services (1954) at page 7 and Chapters III and IV.

6 Circular No. 2866 (revised) 16th November, 1943.
sought, and handed over by many people in an irresponsible manner and that no one had a legal right to interfere. At a meeting held at the Mansion House on the 6th October, 1942, Viscountess Galdecots, Chairman of the N.C.A.A. said there were cases of mothers who hawked babies and sold them to the highest bidder. As a result of these pressures and growing official concern, the Act was finally implemented in 1943.

12:5 In the history of legal adoption the period between 1927 and 1943 is marked by an almost complete pre-occupation with the work of agents of various kinds. The first Act by concentrating mainly upon one aspect of adoption, that is, the legal problem of status, gave a carte blanche to those whose motives in arranging adoptions were not always of the best. The guardian ad litem, whose task was to act on behalf of the child, remained a shadowy figure, and it is difficult to find any discussion of his role in respect to the welfare of the child. It seems that the forebodings of those who would have wished to model the legislation more along the lines of the infant life protection measures were proved correct.

It was also the case that the inevitable passing of time which occurred in setting up a Committee, collecting evidence and formulating a new Act, (which was in any case delayed in its implementation) was to mean that an examination of the main Act did not take place until the end of the 1940s. However, when that examination did take place, one of the results of the 1939 Act was to be seen. By insisting upon standards of practice by societies and of qualifications in the staff, in particular, it laid the foundations of a more "professional" approach
to the subject which is to be seen quite clearly in the discussions and proposals of the 1940s and 1950s. However, the Horsburgh Committee refused to grasp that other thorny problem, that of the individual "third party" who arranged adoptions. This is a problem which remains unsolved in 1973.9

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of illegitimate births</th>
<th>Per 1,000 single and widowed women</th>
</tr>
</thead>
<tbody>
<tr>
<td>1940-1945</td>
<td>255,460</td>
<td>10.4</td>
</tr>
<tr>
<td>1940</td>
<td>613,075</td>
<td>5.5</td>
</tr>
<tr>
<td>1941</td>
<td>25,633</td>
<td>5.9</td>
</tr>
<tr>
<td>1942</td>
<td>31,658</td>
<td>7.4</td>
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<tr>
<td>1943</td>
<td>36,467</td>
<td>9.0</td>
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<tr>
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<td>43,709</td>
<td>10.9</td>
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<tr>
<td>1945</td>
<td>55,173</td>
<td>13.8</td>
</tr>
<tr>
<td>1946</td>
<td>62,420</td>
<td>16.1</td>
</tr>
<tr>
<td>1947</td>
<td>53,919</td>
<td>14.0</td>
</tr>
</tbody>
</table>

PART III

"Throughout the whole process of adoption every issue raised involves a judgment about human personality and relationships; the exact nature of the relationship between a mother and her child, the sub-conscious reactions of an infant to what we may do, as we think, in its best interests, when it is small and unable to speak for itself; and also such more political matters as the proper role of the state and intervention by public authority in family welfare work - the question how far we should attempt to substitute the public conscience for the private conscience of the individual, to which for so long, with mixed results, good, bad or indifferent it used to be entrusted. We know so little that is precise in the field of human personality and relationship that errors of judgement are inevitable."

Kenneth Younger, M.P.
(from an address given to a Residential Conference on Adoption 8th-11th July, 1953).
CHAPTER XIII

PROFESSIONAL ISSUES AND AIMS

Nearly a quarter of a century elapsed between the passing of the Act of 1926, which gave legal status for adoption and prescribed a legal process by which this might be done, and the Adoption of Children Act, 1949 which constituted the next major legislative advance in this field. Nor was there an official examination of the total subject between the Tomlin Committee which reported in 1924 and the setting up of the Burst Committee in 1935.

There had, of course, been reviews of limited aspects of the field. In particular, the Horsburgh Committee reflected the main concern of the 1930s, namely the lack of regulation over adoption agents and associated abuses. But adoption per se, and the aims and values incorporated in the process, together with the best means of achieving these ends, was not the subject of comprehensive official enquiry in the period referred to.

Part of the delay is relatively easy to explain. Interest centred on aspects of the field - in particular those which seemed to vitiate the safeguards of the Adoption Act of 1926. This was the field which the Horsburgh Committee investigated and which were the subject of the 1939 Act. This Act was not immediately implemented because of war-time considerations.

After the war, the concern switched to aspects of adoption which were the result of a more specialist professional concern with
child development and tended therefore to raise issues of a kind more likely to be reflected in professional circles than in the circles of administration and law. Thus the story of developments in the immediate post-war years reflected growing concern among professional bodies with the psychological effects of adoption as opposed to the legal, and the "official" strand of the discussion is an offshoot of the Curtis Committee which had a larger concern with the general field of child care.

It was the interweaving of these two trends which was to culminate in the introduction of yet another Private Members' Bill by Mr. Basil Nield in 1949. This became law in that year and was incorporated into consolidating legislation in 1950.

This chapter is therefore concerned with the changing orientation of attitudes to adoption arising out of professional concern with its effects and with the investigation both at the private and official level of the legislative situation and the reform needed within it.

Two main trends can be seen running through the discussion of adoption in the 1940s. There was, in the first place, far more approval of adoption as a method of substitute care since it was felt that this process gave the best opportunity of achieving satisfactory emotional security for the child. The second trend arose out of this assumption. This was a tendency to regard the best adoption as one which would give rise to strong emotional ties between the child and the adoptive parents. This was based upon the theory that the healthy development of a child's
personality depended upon a satisfactory relationship with parental figures within a family context. In part, these changing attitudes were the result of the experiences of the war and of the observations which had been made during that time of the effects on children of separation from their parents, particularly the mother. These observations were often seen through the eyes of post-Freudian writers who related the behaviour which they observed to certain theories of child development.

The wide-scale separation of "normal" children, during the war period, took place either through evacuation or as a result of mothers working in munition factories or in other essential occupations. The children were often placed in residential nurseries. Two books by Anna Freud and Burlingham were a result of the observations which they made of the effect upon small children of institutional life. In "Young Children in War Time," the authors stated that it was not so much the fact of separation to which the child reacted abnormally as the form in which the separation took place. "It is the very quickness of the child's break with the mother which contains all the dangers of abnormal consequences. Long drawn-out separation may bring more visible pain, but it is less harmful because it gives the child time to accompany the events with his reactions, to work through his own feelings over and over again, to find outward expressions for his state of mind, i.e. to abreact slowly. Reactions which do not even reach the child's consciousness can do incalculable harm to his normality".

These and other findings gave rise to concern over the fate of

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1 Dorothy Burlingham and Anna Freud: Young Children in War Time. A year's work in a Residential War Nursery (1942).
children who by force of circumstances were deprived of a normal home life. Quite apart from evacuation, more children went into care during the war period because of the disruption of family life. As Haywood points out: "... an examination of this kind of the traumatic effects of separation was of major importance in centering the thoughts of those whose responsibility it was to care for the homeless child on the satisfying of his need for personal attachment, security, and continuity, and on his ability to understand also what is happening to him, to take part in it, to talk about it consciously as far as he can, not to be treated as a child to whom things happen and are done...". It was also during this time that an evaluation was being carried out of the importance of the family and to weigh this in terms of the advantages and disadvantages of institutional life at different phases of the infant's development.²

The outcome of this new interest, and concern over the quality of public care and over administrative weaknesses, was the setting up of the Curtis Committee in March 1945 to enquire "into the existing methods of providing for children who from loss of parents or from any cause whatever are deprived of a normal home life with their own parents or relatives and to consider further measures should be taken to ensure that these children are brought up under conditions best calculated to compensate them for the lack of parental care". The need for such an investigation had been highlighted by Lady Allen of Hurtwood in a letter to The Times in July 1944 in which she said: "The public are, for the most part, unaware that many thousands of these children are being brought up under repressive conditions that are generations out of date and are unworthy of our traditional care for children. Many who are orphaned, destitute, or neglected still live

under the chilly stigma of "charity; too often they form groups isolated from the main stream of life and education, and few of them know the comfort and security of individual affection. In many "Homes" both charitable and public, the willing staff are, for the most part, overworked, underpaid and untrained; indeed there is no recognised system of training. Inspection ... is totally inadequate and few standards are established or expected. Because no one Government Department is fully responsible, the problem is the more difficult to tackle...". In a subsequent pamphlet, "Whose Children?" published in 1945 she gave a number of examples of the quality of substitute care in some institutions. For example in one Home there were "dormitories and a dining-room but no playroom and no toys or occupational apparatus, not even paper and chalks. In the dining-room there is one table with a big label 'For Pigs'."

The growing concern which was emerging at this time was given tragic point by the death of Dennis O'Neill in January, 1943. He and his brother, Terence, had been committed to the care of Newport County Borough in 1939 on account of parental neglect. They were then boarded out with foster parents in Shropshire. As a result of ill-treatment from the foster-parents Dennis died, the finding at his inquest being that he had died of acute cardiac failure following violence done to the front of the chest and back, while in a state of undernourishment due to neglect. The jury added a rider that there had been serious lack of supervision by the local authority.

As a result the Home Secretary set up a public enquiry under Sir Walter Monckton. The report published in May 1945 revealed the defects in the administrative machinery for supervising children in care, and highlighted the lack of trained workers in the field.

The first part of the terms of reference of the Care of Children Committee quoted above allowed it to consider adoption
as one method of providing for the care of children.

The Committee was of the opinion that adoption, if successful, was the most completely satisfactory method of providing a substitute home. It gave a child new parents with all the rights and responsibilities of such figures and these took the place of the "real parents as far as human nature allows". Adoption was a method of home-finding which was especially appropriate to the child who had finally lost his own parents by death, desertion or other misconduct. But, to a secondary degree, it was also appropriate for the illegitimate child when the mother was unable or unwilling to maintain him.

Adoption was thus highly recommended as a method of care by an influential committee. But this was not an isolated statement of approval but a reflection of a wider body of opinion.

An example of this positive approach to adoption is to be found in a paper given by R. G. D. Gillespie, Lecturer in Psychological Medicine at Guy's Hospital. The paper, entitled "The Psychological Aspects of Adoption", contrasts the two general possibilities in the care of the child deprived of its parents. These were either adoption or institutionalisation. In his discussion of these two methods, Dr. Gillespie refers to the writings of Miss Burlingham and Dr. Anna Freud in their book "Infants without Families" where they describe the characteristics of the institutional child. This child, if it were in a well-

4 At a conference held in London in September, 1946.
5 Burlingham and Freud: Infants without Families.
   The Case for and against Residential Nurseries (1944), p. 75.
run institution, had certain advantages over the average child during the first two years of life. These advantages were in regard to health, hygiene and the development of fundamental skills, and in the child's ability to respond to other children. But in the development of emotional ties the institutional child fell behind, even in such things as speech and habit-training. Enuresis was commoner among institutional children. If the grown-ups in the institution remained remote or impersonal figures or were constantly changing, the child showed defects in character which might have some consequences later on.

The paper goes on to describe the process by which emotional development occurred. Character and even conscience "depend very much on the picture which the child forms in his mind of his parents and the presence of both parents is necessary to satisfy inborn emotional urges and for shaping the pattern to which the conscience and character ultimately conform". The ordinary child, he said, was full of affection which went normally first to the mother and later also to the father. If the child did not find suitable objects of affection, then frustration and unhappiness were apt to result, not only at that time, but in later life. Stealing, for example, was not infrequently the manifestation of a feeling of affection that had been denied or frustrated.

What, then, were the aims and objects of successful adoptions? They were to secure a happy life, to give a feeling of emotional security, and to provide a pattern of social relationships into which the internal urges of the child would fit in a natural way. It followed that what was needed in an adoption was "a normal family life". Since, he added,
"Normal children cannot choose parents but adopted children can have their parents chosen for them," it followed that the choice was to be made as carefully as possible. This was not a matter for amateurs since it was important that the worker should have some capacity for "deciphering the character and temperament of the would-be parents and, not less important, for descyng their motives for wanting to adopt a child."

These points were also made by Miss Irene Stone representing the H.C.A.A. at a conference called by the Women's Group on Public Welfare on the 9th February, 1943. It had been admitted, she said, "by many authorities" that the adoption home was the best possible substitute for the natural home. It was better than an institution because it could provide what they could not, that is, a proper home background with mother, father and family circle, and all those facilities in times of trouble as well as opportunities for the child to display affection which it could not possibly enjoy in an institution. Lastly, it tended to develop in a child a reciprocal sense of duty to the parent which it could not possibly do if it was in an institution. She then goes on to assert that "adoption should be left in the hands of qualified people". By this, no doubt, she means the adoption societies, which, in her opinion, were well versed in the difficulties connected with the work.

It is interesting to note at this time the emergence of a claim of expertise by the adoption societies in the field of adoption the foundations of which may well have been established by the Horsburgh Committee's

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6 See "Children Without Hoses" (1943)
recommendations in 1937.

Miss Stoney added, "It often comes the way of doctors and solicitors to deal with a woman who has a child whom she cannot keep, or with a person who wants to adopt a child. But, however well-qualified they may be in their own line, they are not qualified to undertake the responsibility of adoption work... The work of adoption should be raised to a higher plane, kept out of the hands of those who have no qualifications whatever to entertain it and left to people who have either done a great deal of case-work or who have some suitable social welfare qualification".

Why should this be? Miss Stoney's opinion was that there were many factors to be taken into consideration in adoption. For instance, children were to be placed in a background reasonably suitable to the situation in life in which they had been born; the comparative temperaments of parents and children were of great importance. The adoptive child was infinitely more difficult to deal with than the child in its own home with its own parents. For the adopters the child was "one long surprise". They could not compare its development in any way "to their own" (child). All these and other contingencies had to be taken into consideration and were difficult for people with no experience in adoption work to envisage. If a child was wrongly placed its life might be irrecoverably spoiled, and if it had to be re-adopted from any age above five, it would always have an underlying sense of insecurity.

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6a Own bracket. Is this statement an indication that Miss Stoney regarded adoption as suitable only for married couples without natural children?
Dr. Gillespie, in the paper referred to, goes on to discuss "bad" adoption situations: a woman who wanted to adopt a baby in an effort to cure her husband of drink on the grounds that it would give him a fresh interest; a stress upon wealth as an important factor whereas emotional security was more important than financial security in shaping the child's character; adoption in order to keep a marriage together; adoption by a single person, which was undesirable as a rule; a placement with older parents since the age of the parent was relevant as the child grew into adolescence; placing a child with a couple who had lost their only child tended to be unsatisfactory since the adoptive parents were apt to resent that the adopted child was having what their "own" child would have had. It was also doubtful if a woman who could still bear children of her own should be allowed to adopt a child if an only child of the marriage arrived later, careless remarks or unkind comment produced a feeling of inferiority and rejection which might show itself in indirect ways such as stealing and lying, exhibitionism and so forth.

It was against this background that discussions for reforming the adoption code were made on a number of occasions. There was concern over the need for a revision of the existing law, not only to incorporate some of the new attitudes, but also to strengthen the existing Act and to avoid some of the loopholes in it. Suggestions to this end were made by the Curtis Committee and also by the Gamon Committee which was set up as the result of a Conference held in London in September, 1945, under the auspices of the N.C.A.A., The Church of England's Society, The National Council for Maternity and Child Welfare and the National
Covmcil of Social Service. That Conference had felt that it was clear that in all parts of the country many difficulties were experienced in working the Adoption Acts and, at the end of the Conference, a small committee was set up to consider these difficulties and to make recommendation to the government on how the Acts should be amended. It was agreed that the Committee should consist of each of the five societies responsible for calling the Conference, together with an equal number of individuals especially interested in adoption. The Committee consisted of:

His Honour Judge Gason (Chairman).

Mrs. Henderson (a) representing National Council for Maternity and Child Welfare.


Mrs. D. C. Plummer representing National Children Adoption Society [sic.]

Mrs. Rupert Scott representing Church of England Children's Society (formerly Waifs and Strays Society).

Dr. J. F. Alexander, Ed.D., M.A., B.Sc. (b) Secretary, Association of Education Committees.

Dr. R. D. Gillespie, M.D., F.R.C.P. (c) Psychiatrist

Miss C. Leadley Brown, M.B. Secretary, Liverpool Society for the Prevention of Cruelty to Children.

(a) Resigned—October, 1946.
(b) As owing to other duties, Dr. Alexander was able to attend only one or two meetings he did not sign the report.
(c) Died—October, 1945.
The Gaon Committee met 17 times and at the end of twelve months submitted a draft report to a small private conference of some thirty people with special interest in adoption. The recommendations contained in the draft report were considered and revised.

The Committee worked in detail at the provisions of the Adoption Code consisting of the Adoption of Children Act, 1926, the Adoption of Children (Regulation) Act, 1939, the Statutory regulations made under that Act and the High Court, County Court and Summary Jurisdiction Rules made in respect of adoption and published the recommendations in a report.7

The suggested amendments of this Committee, the recommendations of the Curtis Committee, and the suggestions of various individuals will now be considered to illustrate the main areas of concern.

One area where concern was felt in respect to "third party adoptions", that is, adoptions arranged through the agency of an individual. This concern was a reflection of the growth in professionalism. The Curtis Committee found that in the case of third party adoptions there was considerable room for abuse. Disquieting evidence had been heard concerning adoption agents who were not covered by the requirements

(d) Appointed in place of Dr. Gillespie - October, 1945.

which now applied to an adoption society. Although the "third party" was obliged to notify the placing of the child to the welfare authority, this fell far short of the precautions required from an adoption society. Evidence indicated that there were large numbers of children who were disposed of in this way soon after birth. Insufficient attention was paid to the risks of travel and a change of environment for the child which resulted from such practices. There was nothing to prevent "third parties" who were in a special position in relation to an infant from making a business of arranging adoptions without proper inquiry as to the home to which the child was being sent and without any security that an adoption order would be applied for. There might be no apparent fee for the service, but there was often a concealed charge, for example, in the form of work carried out by the mother of the child before or after her confinement. Or the fee might be concealed in the overall payment made towards the costs of confinement. There might also be an illegal payment made by the person who received the child. This would be difficult to discover.

The Committee, therefore, recommended that private persons should be prohibited from arranging adoptions, in the sense of inviting applications and of handing over the child direct to the adopters. It was admitted that it was difficult to avoid ruling out bona fide acts of personal kindness by imposing such a prohibition but it should be possible to place the onus for showing why he or she should not be regarded as breaking the law on any person who had placed as many as three infants for adoption in a single year. Such persons would come to the notice of the authorities through the notification procedure.
The Gamon Committee was also concerned about this particular area. It felt that, in general, equal safeguards should be prescribed by law in all cases of adoption whether it be an adoption arranged by an adoption society or by a Local Authority, or an adoption arranged directly by the mother herself or by some intermediary on her behalf or where it was an adoption by relations of the child. The vast majority of children offered for adoption were illegitimate and, in consequence, arrangements were made when they were very young. However, the happiness and welfare of the child depended on a careful "matching" of adopters and child, that is, of choosing the right child for the right home, which necessitated taking time and trouble over each individual case. This was a practice which usually happened in adoptions arranged by adoption societies but in adoptions arranged by individuals sufficient care in "matching" was frequently not taken.

In some maternity wards, for example, plans were hurried through either because the mother had nowhere to take her child when she left hospital or because it was felt by the nursing staff that it was better for the adoption to be arranged before there had been time for a tie of affection to be established between the mother and child. There seemed to be no doubt that in some privately-owned maternity homes an inclusive fee was charged for confinement and subsequent adoption.

The Gamon Committee considered it undesirable that any person professionally concerned (for example, as a member of the medical, nursing or legal profession) with the parties to an adoption should make adoption arrangements except through the appropriate Welfare Authority or through a registered adoption society. The Committee also felt that if the mother
herself or relatives arranged an adoption, the needs and difficulties of the mother often received more consideration than the welfare of the child. A registered society, ipso facto, gave priority to the welfare of the child, and its operations were in the hands of disinterested people of experience who had often received special training for the work.

Related to the question of "third party" adoptions was the need for a probationary period for the child in the adoptive home which was to be discussed at some length during the Parliamentary debates on the 1949 Bill. Again, the main area of concern lay in those adoptions which had not been arranged by an adoption society. In 1944 less than twenty-five per cent. of adoptions had been arranged by a society. The rest had been arranged by the parent direct, or by a "third party" or by a local authority. In the case of "third party" adoptions there was a provision for notifying the welfare authority under provisions similar to the child life provisions. No doubt if a local authority was arranging adoptions these precautions were followed although there was no legal requirement for them to do so. But in the case of a "direct placing" by the parent there were no provisions for public supervision or investigation unless and until an application for an adoption order had been made and the danger to the child was great, if not greater, than that which the Horsburgh Committee had found to exist in the case of children placed by adoption societies.

The Curtis Committee therefore thought that the interests of the child required in all cases:

1. a probationary period to enable the adopters to test their own inclinations and to make certain that they could really give a parent's care and affection to the child;
(2) some degree of public supervision during that period;

(3) some provision for removing the child from an unsatisfactory home and finding it a home elsewhere either during the probationary period or when an adoption order had been asked for and refused.

The 1939 Act had not prescribed a probationary period for third party adoptions unless the Court made an interim order. However the Curtis Committee was of the opinion that the court should in all cases require evidence of a successful probationary period of residence with the adopting parents of at least three months, with an extension of the period to not more than six months at the court's discretion. It would be open to the court, in addition, to make an interim order where a longer probation seemed desirable. For instance, if a young child was suspected of some physical or mental defect this might be appropriate, although the Committee had been advised that with developing medical skills and an increase in the number of qualified practitioners it was possible to diagnose such defects with confidence when the infant was nine months old or even as early as six months.

During the probationary period, it was recommended that all children placed with a view to adoption should be under the supervision of the Children's Officer, although the degree and method of supervision might vary in different cases. But, in every case the Children's Officer ought to have the home inspected and visited periodically during the probationary period (unless it was satisfied that officers of an adoption society were carrying out efficient supervision). She (sic.) should equip herself to supply the court with all necessary information when the matter was discussed.
This recommendation, if incorporated in law, would at last recognise that the child placed for adoption needed probation as much as the child placed out for gain and therefore protected by the infant life protection measures, whatever the nature of the arrangement—whether it was through an adoption society, or a third party, by a local authority or directly by a parent.

A similar recommendation was made by the Gamon Committee which was of the opinion that no order should be made authorising the adoption of a child by any adopters until the expiration of three months after the appropriate Welfare Authority had been notified in writing that such adopters proposed to adopt the child, and the child had thereafter been for a space of at least three months in the charge of such adopters on probation. But if on an application for adoption the Court considered that a longer period of probation was desirable the Court ought be at liberty to postpone a final decision on the application and if it thought fit to make an interim order for the custody of the child meantime by the adopters. They strongly endorsed the recommendation made both by the Curtis Committee (paragraph 457) and by the Magistrates Association (see page 16 of its 26th Annual Report) that no adoption order should be made in any case whether the adoption had been arranged by an Adoption Society or otherwise, until the child has been in the charge of the adopter for at least three months. But in order that the Welfare Authority should be in a position to exercise proper surveillance during the probationary period, the Adoption Committee considers that the probationary period should only begin to run from the date on which the Welfare Authority notified by or on behalf of the adopters that they have taken charge of
the child with a view to adoption, and that no adoption order should be
made by the court without the production of a certificate from the Welfare
authority to that effect.

The Gamon Committee also pointed out that the working of section
6(2) of the 1959 Act providing for a probationary period of three months
where an adoption was arranged by a registered adoption society was not
satisfactory as it stood.

The sub-section provided that "no application to the court for
an adoption order in respect of the child shall be made by the adopter
until the expiration of a period of three months beginning with the date
upon which the child is delivered in the care and possession of the
adopter".

The Gamon Committee considered that there were two defects
in this clause. In the first place it was often convenient that the
application for adoption should be instituted shortly after the adopters
had assumed charge of the child, as at that stage it was often much easier
to get the necessary evidence and in particular the consent of and
information about the mother of the child and her circumstances than at
the expiration of the three months period. Not infrequently a mother
who had given birth to an illegitimate child, went away to another part
of the country as soon as she had handed the child over to the care of
the adopters and even disappeared altogether. The Gamon Committee con-
sidered that the real objective of this sub-section could be satisfactorily
attained by merely providing that the adoption order itself should not be
made till the expiration of the three months probationary period.

In the second place, the Adoption Committee considered that
during the three months probationary period, the child was to be continuously in the care of the adopters, whereas the subsection as it stood only required delivery of the child into the care of the adopters at the beginning of the period and not the retention of the child in their care throughout the period.

The Curtis Committee felt that it was important to clarify the positions regarding the responsibility for a child found to be in an unsatisfactory adoptive home, either during the pre-application period or when the application for an adoption was being considered. Again, it was the "direct placing" situation which gave rise to concern. Adoption societies remained responsible for the child during the probationary period and were required by law to take the child back if an order was refused. In the case of third party placings the welfare authority might apply to a court of summary jurisdiction or, in an emergency, the child protection visitor might apply to a justice of the peace for an order for the removal of a child from a "detrimental" environment. There was no provision in the case of a direct placing unless the child's need for care and protection justified action under section 62 of the Children and Young Person's Act, 1953. The Committee felt that application to the court or to a justice of the peace should be open to the Children's Officer of the Local Authority in all cases (though where the matter was in the hands of an adoption society she was unlikely to exercise it).

They further recommended that in cases where the placing had not been made by an adoption society and the order was refused on the grounds that the home was unsatisfactory, the magistrates should be
empowered to make an immediate order, without further application, committing the child to the care of the local authority. It would then be for the Children's Officer to find a child a home if it proved impossible to return him to his parents. However, in a large number of cases the mother could not be traced. The suggested order would not be required if the order were refused for some other reason; in that case the question of legal guardianship might be raised.

The Gamon Committee strongly endorsed the recommendation of the Curtis Committee in paragraph 434 that the "care and protection"(67) powers of the Welfare Authority should be extended so that they should be capable of being exercised in respect of a child under the age of sixteen years instead of under the age of nine years as at present, and in respect of any child who had been taken into actual custody of strangers whether for reward or not and whether with a view of adoption or not.

In order that the Welfare Authority should be in a position to exercise proper surveillance over a child who had been placed in the charge of strangers with a view of adoption the Welfare Authority should be notified by the Court concerned of the result of the adoption proceedings.

On an application for an adoption order by an adopter, the order might be refused on the ground that the adopter or the adopter's home was unsuitable but at that time such a child might remain indefinitely in the charge of the unsuitable adopter unless a case was made for the removal of the child under the statutory care and protection provisions.

The Adoption Committee agreed with the Curtis Committee (para.
and with the Magistrates Association (page 16 of their 26th Annual Report) that these provisions required strengthening with regard to children in respect of whom adoption orders have been refused and considered that the refusal of an adoption order should in itself constitute a prima facie ground for the Welfare Authority to apply to a Court of Summary Jurisdiction for the removal of the child from the care of the unsuitable adopter though it might be legally for the Court to decide whether in the circumstances the order should be made. There might well be a case where a person such as a grandmother might not be a suitable person to have the charge of a child.

The Adoption Committee however did not agree with the proposal made by the Curtis Committee (in para. 454) that the Court dealing with an application for adoption should be authorised on refusing the application for adoption make an immediate order committing the child to the care of the Welfare Authority. The Adoption Committee considered that such an order was only to be made to a specific application after due notice to the would-be adopter and supported by specific evidence with regard to the circumstances of the case.

The Adoption Committee considers that the requirement of subsection 2 and 3 of Section 6 of the 1939 Act that, in certain circumstances, when a proposed adoption arranged by a registered adoption society broke down the child was to be returned to the Society must be modified. An adoption society did not ordinarily take charge of a child whose adoption it undertook to arrange; it merely made itself responsible for making the arrangement for the adoption of the child as an intermediary between the mother and the proposed adopters and commonly possessed no home or
hostel in which a child could be kept pending transfer to intending adopters. If the arrangement for a proposed adoption failed, the Adoption Committee considered that the child should be returned to the mother, if she was available - and this, in fact, was what was usually done - and in default of the mother or any other suitable custodian being available the child should be handed over to the care of the Welfare Authority.

The shadowy figure of the guardian ad litem was given some prominence by both Committees. Since the function of the guardian ad litem was to make the necessary enquiries and represent the interests of the child, the Curtis Committee felt that the appointment of the Children's Officer of each area with the appropriate staff would make it natural for the magistrates to appoint her, or one of her subordinates, as the guardian ad litem. The Committee suggested that the magistrates should be advised to take this course, except in a case where the local authority, through the Children's Officer, was arranging the adoption. In such a case the spirit of the legislation required that an independent person should be appointed guardian ad litem. It had been suggested that the reports of the guardian ad litem were often perfunctory. If so, it was for the court to insist on fuller investigations and the Committee could only stress the importance of seeing that such investigations were made and that the right agents were used to make them.

The Gamon Committee echoed the sentiments expressed by the Curtis Committee that the court should appoint a satisfactory guardian ad litem, who could be relied upon to exercise an independent judgement
and to safeguard the interests of the child and its mother. Commonly an
official of the Welfare Authority would be a suitable guardian ad litem
except in any case in which the Welfare Authority was itself arranging
the adoption. The Committee felt that the report of the guardian ad litem
was of supreme importance and that the current practice in at least some
juvenile courts of relying on verbal reports was highly unsatisfactory.
They recommended that a questionnaire based on the one used in the High
Court should be used, with the addition of specific details regarding the
type and equipment of the home of the adopters. The guardian ad litem
was, so far as was practicable, to obtain corroboration of his statements
from such people as a family case-worker, a doctor, a minister of religion
or from such other reference as might be supplied by the adopters.

Another area of concern was in regard to investigations into
the health of both the child and the adopters in the case of direct
and "third party" placements. They therefore recommended that before
granting an order the court should require the child to be medically
examined in all cases. They also recommended that the adoptive parents
should be required to complete a declaration stating that they had not
suffered from tuberculosis, epilepsy, mental disorder or heart trouble.
Where there was doubt as to their state of health, that is, where a
disease was suspected which might endanger the child's welfare then the
adopters should be medically examined.

The Gamon Committee also examined this question and agreed
with the 26th Annual Report of the Magistrates Association that not only
should a medical certificate be produced in respect of the child to be
adopted but that such a certificate should also be produced in respect
of each adoptive parent. It suggested that the guardian ad litem should
be responsible for seeing that both these certificates were produced. Cases had arisen in which subsequent to the making of an adoption order an adopting parent had been found to have been suffering when the order was made from some serious disease which should have been regarded as rendering the person concerned unsuitable to be an adopter.

Finally, the Gerson Committee suggested that the relationship between the adopted child and its adopters should be assimilated as far as practicable to the relationship between a legitimate child and its natural parents. Indeed, the Committee believed that everything possible should be done to ensure that apart from the accident of birth, the relationship between the adopters and their adopted child should be identical with that between natural parents and their child. To this end, they suggested a number of changes.

In the first place there was no prohibition as to marriage between an adopted child and an adoptive parent. The Committee felt that this was an anomaly and would extend the prohibition to marriage between an adopted child and a natural child of the adopting parents. An second anomaly existed in regard to an affiliation order against the putative father of an illegitimate child. The Committee felt that it was inconsistent with the true relationship that should be established between the adopters and their adopted child that the adopters should continue to receive payments for the child's maintenance from the putative father under the order. Such payments, it was felt, would be a constant reminder that the child was the illegitimate child of the putative father and would tend to thwart the development of real family feeling between
the adopters and the child.

A third anomalous area was in regard to rights of succession. The Committee recommended that from the date of adoption, an adopted child should have, as regards succession to property, similar rights to those that a legitimated child had from the date of legitimation. Correlatively, the adopted child ought to cease on adoption to have any right of succession to property of his natural parents. The existing situation was that if a fund was placed by the adopters in the name of the illegitimate child and the child subsequently died intestate and unmarried the fund went to the natural mother of the child. Or if the mother of a legitimate child being a widow arranged for the adoption of the child, and subsequently married, and other children survived her second husband and died intestate the adopted child would be entitled to share in her estate in competition with her other children.

These suggestions made in the 1940s contrast sharply with the original conception of legal adoption. The emphasis is moving from simply a change of status to seeing the placing of a child for adoption as a delicate transplanting operation which, if done badly, could irretrievably damage, but which, if done properly, might give psychological and emotional satisfaction to both the child and the adoptive parents.
A Bill was introduced into the House of Commons on the 4th February, 1949, by Mr. Basil Field, M.P. for Chester, "to amend the law relating to the adoption of children and for related purposes". The Bill had two main aims: in the first place, it aimed to clarify ambiguities arising out of the first two Acts; and, in the second place, its contents reflected an attempt to bring the adoption "model" nearer to that of the biological family. As Mr. Field said at the Second Reading of the Bill: "In framing the Bill for which I am now asking a Second Reading, I have had in mind two major principles. The first is that while the link between a child and its natural parents particularly the mother, must never lightly be broken, in the case of a proposed adoption, it is the interests, well-being and happiness of the child which are the paramount considerations; it is not only financial considerations which are the test. The second principle I seek to incorporate is that our aim should be to create a relationship between the adopted child and the adopters approximating as nearly as possible to the relationship between the child and its natural parents".

The debate reflects the feeling that, in the words of Mrs. Manning, "the best thing for the deprived child is adoption".

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1 Hansard H. C. Vol. 460.
2 Hansard H. C. Vol. 461.
debate also reflects the fact that Members were aware that there were long waiting lists of people eager and anxious to adopt children. Mrs. Nichol pointed out that adoption societies and local authorities were in a position to be able to select names very carefully because there were so many prospective adopters who desired to have children in their homes. Nonetheless, it was most important that all parties concerned should be carefully safeguarded at every stage.

14:1 Clause 1 was divided into two parts of a quite different nature. Sub-clause 1 was designed to remove doubt and to make it clear that an illegitimate child might be adopted by the mother or by the natural father either solely or jointly with the spouse of the mother or with the spouse of the natural father. Sub-clause 2 was a new provision proposing that a child living in this country might be adopted even though it was not of British birth. There might, for example, be French people living in England who desired to adopt a French child also in this country; or there might be illegitimate children born to foreign women overseas, perhaps during the war, who had been brought to this country and who might be adopted here. The aim of this sub-clause was to widen the scope of section 2, sub-section 5 of the Adoption of Children Act, 1926.

This proposed change was generally welcomed by Members. An aftermath of the war was the plight of refugees and displaced persons, a problem which was vividly in the public eye at the time. Some Members

3 See Chapter 1.
recalled the fate of children who had come to the country as refugees during the Spanish Civil war. Mrs. Leah Manning referred to herself and the Hon. Member for North Cumberland as having at that time "a very large family of four thousand children who were everything that children ought to be: intelligent, high-spirited, good looking and naughty". Many people in this country would have liked to adopt those children who were brought here during the Spanish Civil War, many of them being orphans, or with parents under a sentence of death in political prisons. As the law stood, it had been impossible to legally adopt those children and the same applied to the refugee children who had been thrown into this situation by the Second World War. A great impetus had been given to suggestions for an alteration in the law by the devastation of the war years.

A number of Members rose to support this point and they were followed by the Under-Secretary of State at the Home Office (Mr. Younger) who, rising to welcome the Bill on behalf of the government, pointed out that the reason why under the existing law it was not possible to adopt a foreign child was for the technical and legal reasons that at the time of the original Bill, the lawyers were afraid that to do so might conceivably lead to a conflict of laws between two countries. It was now thought that the dangers of this were somewhat illusory and were certainly outweighed by the advantages of making the amendment. In any case nothing but good could arise for these refugees who were stateless and possessed no nationality at all.
A further amendment had been suggested to clause 1 sub-clause 2 by the N.A.S. along the following lines:

(2) An adoption order may be made in respect of an infant resident in England or in Wales who is not a British subject.

(3) A British family whether domiciled in England and Wales or domiciled elsewhere shall be enabled to adopt a child if temporarily resident in this country always provided that all proper enquiries shall have been made to safeguard the welfare of the child; accordingly subsection 5 of section 2 of the principal Act shall cease to have effect.

To justify this proposed change, the N.A.S. gave the example of a South African couple who were in this country because of an appointment and had enquired about adopting a child through the N.A.S. As they were neither domiciled nor resident in this country, adoption was not possible for them. The only procedure open to them was to apply for a licence from Bow Street Magistrates' Court under section 11 of the Adoption of Children (Regulation) Act, 1939 in order to take the child out of the country when they eventually left, and then to legalise the adoption in South Africa. The N.A.S. wished to point out that it was unsatisfactory to give this family a child knowing that nothing could be done to legalise its position for three years.

The Home Office was not happy about this proposal. It felt that great difficulties and complications, and, possibly, conflicts of law might follow if the question of adoption were to be decided without reference to the domicile of the parties. There might also be conflict with the duty of the court under section 3 of the original Act in deciding whether an adoption order was for the welfare of the child when the child was to be taken out of the country within a relatively short period of
time. The courts had no machinery for making enquiries in other countries and the guardian ad litem might have difficulty in making "all proper enquiries" with regard to the reputation, the home and the general circumstances, and in completing those enquiries within the period of the applicant's temporary residence in this country.

At the Committee stage in the House of Commons, a new clause was inserted which became section 8 of the Act. This covered inter alia the first point made by the N.A.S. by providing that:

"Where an adoption order is made in respect of an infant who is not a citizen of the United Kingdom and Colonies, then if the adopter or, in the case of a joint adoption, the male adopter is a citizen of the United Kingdom and Colonies the infant shall be a citizen of the United Kingdom and Colonies as from the date of the order".

Lord Caldecote, speaking in the House of Lords, felt that clause 1(2) represented a real danger that undesirable aliens might get into the country and become British subjects by virtue of clause 8 of the Bill much more easily than they would if they had to go through the normal process of naturalisation. He felt that the danger could be avoided by putting an upper limit on the age of any foreign child which could be adopted. That would have the additional advantage that the foreign child would therefore be more likely to settle down to a happy life in this country.

A Home Office minute considered this point and expressed the view that if it were proposed to limit the advantage of this new clause to a child under ten then it might be less invidious if adoption itself

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Hansard H. L. Vol. 163.
were limited to children under sixteen instead of under twenty-one. It was felt, however, that the reduction could be made only if little or no use were made of powers to adopt children of sixteen or upwards. Information was sought on this point from the Registrar-General. On a random sample of 2000 cases it was found that 688 adoptions, that is 34% were of babies under twelve months; 44% were in the age-group 1-5 years; 13% were in the age-group 6-10 years; 7% were in the age-group 11-15 years and 1% were in the age-group 16-20 years. In the Home Office’s opinion these figures indicated that it would not be feasible to reduce the age of adoption. It might in any case be difficult to persuade Parliament to agree to a limitation of the nationality benefit to children under sixteen. The House of Commons had warmly welcomed the possibility of adoption of foreign refugee children and might not readily accept an apparent restriction in regard to nationality which, in fact, would apply to very few of the children concerned.

Clause 2 of the Act was also an explanatory section, and replaced subsection (1) of the principal Act. It referred to the age difference between the applicants and the child and retained the rule that the applicant, or in the case of a joint application, one of the applicants, had to be at least twenty-one years older than the infant in respect of whom the application was made. But concessions were made on two grounds: in the first place, if the applicant or one of the applicants had attained the age of twenty-one and was a relative of the infant; and secondly if the applicant or one of the applicants was a mother or father of the infant.
Section 4 was another clarifying section. Mr. Nield, in introducing the Clause, said that it would be at once recognised by Members of the House who were lawyers as seeking to overcome the rule in the case of Russell v. Russell, and to remove the effect of that case where the question of paternity arose in connection with an application for an adoption order. The case had decided that neither spouse might give evidence tending to show that he or she did not have marital intercourse, if such evidence would tend to bastardise a child which, prima facie, had been conceived in wedlock. Mr. Nield referred to the observations of the Committee on Procedure in Matrimonial Causes under the chairmanship of Mr. Justice Denning which had commented upon this rule: "We have had much evidence in favour of its abolition and none for retaining it. We recommend that it should be altered...". Mr. Nield felt that to do away with this "most artificial rule" in adoption cases would save time, trouble and expense and would facilitate justice.

The section read:

"(1) Where in connection with any application for an adoption order any question arises as to the paternity of an infant, and, in order to decide that question, it is relevant to determine whether marital intercourse took place between a husband and wife during a particular period, evidence that such intercourse did not take place may be given in the proceedings on the application of either of the parties concerned.

(2) A person who has given such evidence as aforesaid in any proceedings by virtue of this section may give the like evidence in any subsequent proceedings of whatever nature in which that evidence is relevant."

5 A. C. 697.
This clause was relevant to the question of the consent of the father of a legitimate child. Since the rule in *Russell v. Russell* would not allow evidence to be given to the court which would tend to bastardise a child, the consent of the husband was therefore needed in all cases. Given the abrogation of this rule it was possible to call evidence as to paternity which, if accepted, would obviate the need for the husband's consent.

Although some doubts were expressed as to the clause, it was generally felt that the amendment would be a technical one applying simply to adoption cases. Indeed, the Under-Secretary of State went so far as to say that "the rule has ... no friends in the legal world", and that any dangers which it might be thought to involve were illusory. The clause passed into law unchanged.⁶

Mr. Nield felt that the House would regard the next clause - clause 5 - as one of great importance. Hitherto, a probationary period had only been necessary when an adoption society arranged the adoption. It was now proposed, on the recommendation of the Curtis Committee and the Gamon Committee to make it necessary in every case. However, Mrs. Manning would have liked the clause to have been strengthened to make the probationary period longer. She felt that six months would give a much better guarantee than three months and would ensure that the natural parent did not come to a decision to part with the child too quickly. In their anxiety to find children some societies were inclined to get the natural mother to sign on the spot before she had had a real chance to

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⁶ The rule was abolished by the *Law Reform (Miscellaneous Provisions) Act, 1949*. 
decide whether she would keep the child or not. The mother ought to have sufficient time, after the first shock of hearing an illegitimate child and the realisation of the social obloquy which still attached to it, to decide what she should do about the child. At first, she might be only too anxious to be rid of the child; she might later think that the right thing was to keep it.

The debate again raised the problem of the mother's consent. Mr. John McKay felt that the mother ought to have a reasonable time in which to make her final decision. But Mr. Parker pointed to the problem of the adoptive parents who took a child for adoption and then the child was removed by the mother before the adoption order had been granted. He quoted a case where this had happened twice to the same couple.

At the Report stage an attempt was made by Mr. Benn Levy to insert a sub-clause that the child, if under 18 months, should be in the care of an adoption society for six weeks during which time, but not subsequently, the mother might reclaim her child. Mr. Levy felt that the Bill did a great deal to safeguard the child; it did a great deal to safeguard the interests of the adopting parents. At any time within the three months probationary period the child could be wrenched away from the adoptive parents, simply because the mother had changed her mind.

This amendment is an interesting one in the light of recent proposals that the mother should relinquish her rights to the child to the adoption agency after which she would have no rights to reclaim the child. 7

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After a long discussion on this point the House divided and the amendment was defeated.

14:5 Mr. Nield admitted that clause 6 was inserted rather for expediency but he understood that it did sometimes happen that when children were returned to an adoption society under section 6 of the Act of 1939 the society might have no accommodation or facilities for looking after the child. The proposal was that the society should be empowered to nominate some suitable person to look after the child.

A further suggestion was made by the London County Council that there should be a new clause inserted into the Bill to the effect that a court which refused an adoption order should be empowered to direct the removal of the child to a place of safety until restoration to the parents or guardian or otherwise dealt with. A similar additional clause was suggested by Mr. Banwell, Chief Clerk to the Metropolitan Magistrates' Court.

The Home Office felt that these proposals seemed to assume that a Local Authority had power to take a child into care under section 1 of the Children Act, 1948, which was a mistaken understanding of section 1 procedure. In the view of the Home Office a more satisfactory solution might be an extension of section 61 of the Children and Young Persons Act, 1933 so as to enable a court which refused an adoption order to find that the child was in need of care and protection if such were the case. If this power were given it would be up to the court to deal with the child in any of the ways specified in section 62, and in particular to commit the child into the care of the local authority as a "fit person".
The problem lay in the fact that there might be some difficulty in providing for committal of a child to the care of a local authority as this would involve a financial charge and such a provision could not be included in a Private Members' Bill. If it were not considered desirable for the government to put down an amendment to the Bill which would give effect to the Curtis Committee recommendations then it was hoped that if a Private Member did so the government would not oppose it on the grounds that inadvertently a financial liability was incurred. If this argument were carried to its logical conclusions it would mean that a Private Members' Bill creating an offence would have to be ruled out because a juvenile court dealing with an offender might use any of the methods permitted by the Children and Young Persons Act, such as probation, approved school or a fit person order, all of which could indirectly involve financial liability. Therefore an amendment of section 61 by an extension of the meaning of "care and protection" to include this particular type of case was permissible and desirable. A later Home Office suggestion was that this was a matter which could be dealt with in the Rules.

At the Third Reading of the Bill a new clause was proposed by Mr. Somerville Hastings to provide for the removal of infants on refusal of an adoption order. He said that it would no doubt be urged that machinery already existed under Section 7 of the 1939 Act incorporated in Clause 5(3) of the Bill. Although this was so, it was a difficult process. When the matter came before a court of summary jurisdiction it was difficult to prove that the conditions under which the child lived in the care of the proposed adopters were not very
desirable. Mr. Nield rose to say that the difficulty was already largely met and secondly, that consideration would be given to certain further amendments. The effect of Clause 5(3) of the Bill was that not only after the refusal of the adoption order but at any time after the welfare authority had been notified of the intention to apply for an adoption order, the authority might apply to the court of summary jurisdiction for an order for the removal of the child to a place of safety until other arrangements could be made for it, that is, by receiving it into care under the Children Act or restoring it to parents or relatives, or by taking care and protection proceedings under the Children and Young Persons Act. Further, if there was fear of imminent danger to the child's health or well-being application could be made to a single justice of the peace.

In addition, consideration was to be given to an amendment of Section 7 of the 1959 Act so that a juvenile court refusing an adoption order might have power then and there to hear an application under that section. In view of this, Mr. Hastings withdrew his proposed clause. 8

146 The last clause concerned with definition and clarification was clause 7. This provided that the local authority having power to act for the purpose of child adoption was to be county councils and county boroughs. It was thought, said Mr. Nield in introducing the clause during the Second Reading, that the other local authorities did not have the staff and machinery at their disposal for the purpose.

8 This point was in fact dealt with in Section 35(3) and (5) of the Adoption Act, 1958.
At the Committee Stage a new sub-section was added which read:

"Where any such local authority has established a children's committee, subsections (2) and (3) of section 39 of the Children Act, 1948 (which provided for the discharge by local authorities of certain of their functions through children's committees) shall apply in relation to any exercise of power mentioned in the last foregoing subsection as they apply in relation to the discharge of the functions specified in subsection (1) of the said section 39."

This section brought the law, in the words of Lord Simon, into accord with the spirit of the Children Act (which had been passed the previous year) and which set up Children's Departments at county and county borough levels and which provided for the appointment of a Children's Officer.

The only doubts expressed concerning this section came from some supporters of the adoption societies, notably Sir Thomas Moore in the House of Commons and Viscount Caldecote in the House of Lords. Lord Caldecote felt that it was no light responsibility to place a child for life with those who were to become its parents. He felt that the aim ought to be a state of affairs where all adoptions were arranged by registered adoption societies or by local authorities which had adequate staff as experienced and as painstaking as those of the best adoption societies. He admitted that the Bill took a step nearer that ideal. However, he personally would have liked to have seen some provision in Clause 7 to ensure that before they embarked on such heavy responsibilities they should have properly trained staff for carrying out this delicate and difficult work.

However, the attitude of the government had been expressed by the Under-Secretary of State, Mr. Younger, during the Second Reading in the House of Commons. It was felt that local authorities and others,
given proper safeguards might be suitably qualified and might acquire considerable experience in this kind of work.

The first half of the Adoption of Children Act, 1949 had two aims: it clarified ambiguities in the adoption code; and it helped to strengthen the previous safeguards in relation to the rights of the parties to an adoption process. The second half, which aimed to bring the adoptive family nearer to the biological family in several respects, will be dealt with in the next Chapter.
CHAPTER XV

FROM GUARDIANSHIP TO PARENTHOOD

The second major principle of the Act ~ "to effect a relationship between the adopted child and the adopters as similar as possible to that of a child and its natural parents"~ is to be found in a number of the sections of the Adoption of Children Act, 1949. These sections relate to three main areas, that is, to the law of marriage, to the existence and termination of affiliation orders, and to the old problem of transfer of property. It has been said that this aspect of the Act marks the change from the "legalised guardianship" of the Act of 1926 to the conception of adoption as the creation not only of status but of family.

Clause 8 of the Bill read:

"For the purposes of the law relating to marriage, an adopter and the persons whom he has been authorised to adopt under an adoption order, whether made before or after the commencement of this Act, shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this sub-section shall continue to have effect notwithstanding that some person other than the adopter is authorised by a subsequent order to adopt the same infant;

Provided that nothing in this sub-section shall invalidate any marriage which has been solemnised before the commencement of this Act."

Lord Amulree speaking in the House of Lords on the Second

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1 Hansard H. C. Vol.461.
2 Hansard H. L. Vol.163.
Reading of the Bill was "a trifle worried" by this clause. It sought to bring the adopted child within the prohibited degrees of consanguinity. He did not see how, by making a person into a relative by a stroke of a pen, you necessarily brought about the effect that was required. When people lived together who were no part of the family in the sense of being blood relations, feelings might develop between different parties in the household. It was difficult to confine such matters within any legal terms relating to consanguinity. The tendency of the past had been to cut down the amount of prohibition in relation to consanguinity. There had been reform to permit marriage with a deceased wife's sister, or with a deceased husband's brother. There had also been an attempt by Lord Mancroft which, unfortunately, had not got far to legalise marriage with a divorced wife's sister. That seemed to Lord Amulree to be the general tendency in the world at that time and so he felt a certain amount of apprehension about the clause. This speech seems to indicate a complete misunderstanding of the current feelings about the adoptive family and a confusion of two different principles.

The more generally accepted attitude was expressed by Lord Jowitt who was of the opinion that if the child was to be made "a real member" of the new family then "there was something to be said for the consanguinity rule". He gave as an example a youngish couple of twenty-five to thirty who adopted a child. In this hypothetical case, the wife died after the child had grown up leaving the husband alone with the child. It was surely undesirable, said Lord Jowitt, that the widower should be placed in a position where he could even contemplate marriage with that child. Should not the child be treated as if it had been born the natural
child of the parents? He wondered, even, if the corollary should not be applied to a boy and girl who were adopted into the same family. The boy and girl would become brother and sister in the ordinary way so that the natural home life which happens in a normal family should take place in this family. He expressed no opinion on these matters but that it seemed a matter which merited the consideration of the House. This, however, was not taken up in the discussion on this Bill. The clause was passed into law in this form and became section 11 of the Act.

The second area where a change was introduced was in respect to affiliation orders. Clause 8, sub-section 2, provided that:

"Where an adoption order is made after the commencement of this Act in respect of an infant who is illegitimate, any affiliation order in force with respect of the infant, and any agreement whereby the putative father of the infant has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the affiliation order or the agreement at the date of the adoption order."

Mr. Field saw this clause as another step towards removing the mercenary motive from adoption, and towards helping to draw the relationships of the adoptive family nearer to those of a family. Mr. Silverman saw this point from a slightly different angle: "The interest of the child is paramount and must be paramount" and it was, therefore, desirable to sever the child completely from its past in order that the future might be opened up to it without any of the social complexities which might otherwise result. At present the law was obscure in relation to this matter and there had been no High Court decision to clarify it.

5 Hansard H. C. Vol. 461.
But, Mr. Silverman stressed, a change in the law was desirable because an affiliation order was not intended as a penalty. It was simply intended to be for the support of the child, and it was desirable that with regard to affection, property, support, and responsibility the illegitimate child should be placed in the same position as a normal child of the adoptive parents. He was very glad that an attempt was being made to remedy the obscure position of the law. It would be anomalous for a child commencing a new life to find out - and it would be rather difficult to prevent it - that it depended for its support upon a person other than its adoptive parents.

At the Third Reading of the Bill, Mr. Mield moved an amendment to insert a proviso to sub-clause 2, which had been suggested to the Home Office by the chairman of the Metropolitan Juvenile Courts. This provided that:

"where an infant is adopted by his mother and the mother is a single woman, the order or agreement shall not cease to have effect by virtue of this sub-section upon the making of the adoption order but shall cease to have effect if she subsequently marries."

Mr. Mield said that he had overlooked the situation which would arise if a single woman adopted her own child. Any financial benefit which she obtained from the father by way of an affiliation order should continue, so that she might benefit by it until she subsequently married.

At the Committee stage another change had taken place. Two additional sub-clauses had been added to what was now clause 10, (because of the insertion of two other clauses at the Committee stage). Clause 8,

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4 Hansard H. C. Vol. 466.
sub-clauses 3 and 4 read:

(3) Where an adoption order is made after the commencement of this Act in respect of an infant committed to the care of a fit person by an order in force under the Children and Young Person Act, 1933, the last mentioned order shall cease to have effect.

(4) Where an adoption order is made after the commencement of this Act in respect of an infant of whom a resolution is in force under section 2 of the Children Act, 1948 (which provides for the assumption by local authorities of parental rights in certain circumstances) the resolution shall cease to have effect.

Both these clauses became incorporated into the Act and the whole clause finally became law as section 11 of the measure.

151 The Bill originally appeared without a clause relating to property. Mr. Nield at the Second Reading of the Bill, said that he would have liked to have added proposals dealing with the question of succession and inheritance so as to put the adopted child in a position similar to the natural child, but it had not been possible to frame clauses which would have to deal with complicated questions of settlement and entail, and so on, in a short space of time. He expressed the hope that if the Bill reached the Committee stage the matter might be dealt with.

In fact, when the Bill was considered by the Legislation Committee on the 15th February, 1949, the Lord Chancellor had drawn attention to the present anomaly that an adopted child had no rights in respect of the estate of one of his adoptive parents if the parent died intestate. If, on the other hand, that parent had made a will, the adopted child could bring an action under the Inheritance (Family Provision) Act, 1939, claiming that insufficient provision had been made for him. It was
suggested, therefore, that, unless the government was discouraging other
amendments which widened the scope of the Bill, the amendment might be
moved in Committee to give an adopted child inheritance rights in cases
of intestacy. A Home Office note pointing out the great technical
difficulties of the subject, also speaks of the problems of policy.
The main grievance was that property given by the adopters to their
adopted child might on his death pass to his natural relations. But,
if the position were reversed, property left to a natural child who had
been adopted, possibly after the will was made, might pass on his death
to his adopters or their heirs. Again, there might be objection from
the Inland Revenue if legacies, succession and similar duties were charged
at the lowest rates on inheritances from both natural and adoptive rela-
tions. The cautious policy of the Tomlin Committee had been "at any
rate in the first instance not to interfere with the law of succession"
and "to expect that those who adopt children shall, in preparing their
disposition of property, make it plain in terms whether or not their
adopted children are to be the object of their bounty". Since then the
rule of English law that a child had no absolute right to succeed to any
part of his parents' property had been mitigated by the Inheritance
(Family Provision) Act, 1939 and it might now be right to expect those
whose children had been adopted to make plain whether such children were
any longer to share in the heritage of the natural family. Moreover, the
tendency since the passing of the Act of 1926 had been more and more
towards regarding an adopted child as having been completely transferred
from one family to another. Hence arose proposals that, for the purpose
of marriage, an adopted child and his adopter or a natural child of his
adopter or even another child adopted by his adopter should be regarded as within the prohibited degrees of consanguinity and that the prohibition should continue even if the child had subsequently been adopted by someone else.

To be logical, the Home Office felt that it was essential that the new provisions should not be in any way retrospective or the complications and ramifications might be endless. However, apart from that safeguard, it was desirable to put the adopted child as nearly as could be in the same position as the lawful natural child for all purposes, except marriage, which had been dealt with in clause 8. If it were argued that a child might be adopted to disinherit a relative, the same result could generally have been achieved, except by an elderly woman, by marriage and the normal procreation of an heir. In addition, "in these days" it was probably right to give more weight to the interests of those whose estates were small and who were therefore less likely to make testamentary dispositions than to the interest of those who were likely to leave careful instructions for the distribution of a larger estate.

After the Second Reading of the Bill in the House of Commons, a Home Office memorandum notes that "there was a murmur of approval in the House of Commons whenever any speaker ... referred to the need for a clause to provide for adopted children to be treated as lawful natural children of the adopters for the purpose of succession. And it was even suggested that if Mr. Nield could not draft the necessary clause or clauses the government should come to his assistance". The Home Office note suggests that the general line should be that the adopted child should "die" to his original family and be "born" in his adoptive family except
in regard to marriage with his relations by blood.

15:2 At the Committee stage in the House of Commons a new clause was proposed by Mr. Nield, which became clause 9 of the Bill. This clause covered the position of the adopted child on the intestacy of an adopter, and the adopter upon the intestacy of the adopted child. The new clause read:

1. If on any case where an adoption order has been made, whether before or after the commencement of this Act, the adopter dies intestate in respect of any real or personal property (other than property subject to an entailed interest) leaving the adopted person or issue of the adopted person surviving him the adopted person or his issue shall be entitled to take any interest in that property which he or they would have been entitled to take if the adopted person had been the child of the adopter born in lawful wedlock.

2. If in any case where an adoption order has been made, whether before or after the commencement of this Act, the adopted person or a child of the adopted person dies intestate in respect of any real or personal property leaving the adopter or, in the case of a joint adoption, either or both of the adopters surviving him, the adopter or adopters shall be entitled to take any interest in that property which he or they would have been entitled to take of the adopted person had he or their child born in lawful wedlock and had not been the child of his own parents.

3. Where any person takes any interest in real or personal property by virtue of this section, any succession, legacy or other duty which becomes leviable in respect of that interest shall be payable at the same rate as if the adopted child had been the child of the adopter born in lawful wedlock.

4. Nothing in this section shall affect the devolution of any property on the intestacy of a person who died before the commencement of this Act.
(5) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of the devolution of any property on the death of any person dying intestate after the date of the subsequent adoption order.

(6) Subsection (2) of Section 5 of the Principal Act shall have effect as if after the words "adoption order, or" there were inserted the words "(except as otherwise provided by the Adoption of Children Act, 1949)."

(7) This section shall not extend to Scotland.

Another clause was also considered at the Committee stage which read:

"Where an adoption order has been made in respect of any infant by a competent court under the provisions of this Act, or of the principal Act, such infant shall be entitled to the same rights of inheritance under the will of a deceased adopter (whether such will was made before or after the making of the adoption order) as would be possessed by a legitimate child". Proposed by Mr. Parker.

An amendment to it was also put down and discussed. After debate and a very close vote, the proposal was defeated by 10 votes to 9. It was re-introduced at the Report stage by Mr. Parker, as he felt that the debate on the Committee stage had raised some important points which he thought would be generally accepted on all sides of the House. It had
been pointed out that grand-parents might make wills without having regard to the fact that a child might be adopted, and the wishes expressed in the will might be set aside. "A man, while deciding to leave property to his grandchildren, might not specify in his will who those were, and his son might add to the number of grandchildren by adopting a child and the wishes of the grandparent when originally making the will might possibly be set aside".

Mr. Parker felt that the case made out for the undesirability of trying to control wills made by people other than the adopting parents was quite reasonable. This new Clause had been introduced in order to try to limit the control of wills of adopting parents while excluding all attempt to control the making of wills by grandparents or other relatives of the adopting parents. However, there was a strong case for attempting to govern wills made by adopting parents. Under the amended Bill if an adopting parent died intestate all the children, both natural and adopted, benefitted equally from the division of the estate. But an adopting parent might well decide to make a will leaving his property "to my children" and Mr. Parker was advised by competent authority that there was no guarantee that the phrase "to my children" would necessarily be interpreted in the courts to include adopted children.

This situation could lead to considerable grievance and unfairness. The property of a person who had not made a will might be divided among his natural and adopted children equally while, on the other hand, another person, possibly hoping to safeguard his adopted child might leave property "to my children" without naming them and without saying "my natural and adopted children". The legal position was not certain
and Mr. Parker felt that in a matter such as this it was undesirable that it should be left open to a decision in the courts; the House ought to make its opinion quite clear on the matter.

When the matter had been discussed in Committee the Under-Secretary for the Home Department (Mr. Younger) had pointed out that there was a very strong case for a clause such as this. But he had made a strong case against the other parts of that amendment which had sought to control wills made by grandparents and other relatives.

This Motion, at the Third Reading, was seconded by Mr. Benn Levy who said that the object throughout was to equalise, as far as possible, the status of the adopted child and the natural child. Although the question of inheritance was admitted to present very great difficulties - such immense legal difficulties that it had been agreed to let it lapse in part, and to refrain from the attempt to make a complete parallel between adopted and natural children, - in the new Clause proposed by the Under-Secretary an advance had been made in respect of intestacies. This new Clause took a further step without, he believed, running into any serious legal difficulties or complexities. Mr. Levy felt that the section dealt with the difference between contracting-in and contracting-out. Under this Clause, the adopted child would automatically receive a share of money going to the children unless he were deliberately and specifically excluded in the terms of the will.

Mr. Nield pointed out that at the Committee stage Clause 9 had been added which put the adopted child in the position of a natural child in the event of intestacy. It had been a two-way Clause. Mr. Nield did not wish to seem hostile to this new Clause but the difficulty was its
feasibility and whether it would work, and he was afraid that in its present form it would not. He felt that there were three principles to be adhered to. The first was that if an adopted child was to be deemed a natural child for the purposes of succession, it had to be severed from its obligations, duties and rights in regard to its real parents. In other words, "we desire to remove the adopted child from one family to the other - it cannot have two families". The second principle was that there must be a two-way system: that the child's estate must be considered as well as the adopting parent's estate. Thirdly, the House would be quite wrong, he felt to seek to interfere with wills and settlements made before the Bill became an Act.

He felt that this new Clause offended against some of these principles. It applied, for example to a will executed before the date of the Bill. He felt that the retrospective part of the new Clause was very difficult to defend.

The new Clause also failed to cover the case of a testator who had already died and left his property to his widow, which was a very common form of devise. The position was not clear whether the adopted child was to be regarded as one of his children. Further, the new Clause ignored the problem of the will of the natural relative of an adopted child.

Mr. Younger speaking for the government said that the intention of the Clause was quite acceptable. But the situation was not by any means simple and the House would be quite wrong to pass it and then ask the House of Lords to put it into shape. The government would be willing to co-operate with those sponsoring the Bill in the Lords in trying to find
a formula to meet the objections. Mr. Parker was prepared to withdraw his Clause, and to collaborate with Mr. Hield and the Home Office in trying to ensure that the Lords would be able to deal satisfactorily with all the points raised.

15:13 At the Committee stage in the House of Lords, Lord Simon moved to delete clause 9 and to insert two new clauses dealing with the treatment of adopted persons as the children of the adopters for the purposes of intestacies, wills and settlements. The new clauses were aimed to widen the scope of the clause introduced in the House of Commons so as to refer not only to the situation resulting from an intestacy but also to wills made by the adopter after the date of the adoption. The result of these two rather complicated clauses was to transfer the child as far as property was concerned into the adoptive family from the date upon which the adoption was finalised.

In the middle of this "modern" approach there is an unexpected sub-section. This refers to the devolution of property which was attached to the devolution of a dignity or title of honour. As Lord Simon put the matter: "No one suggests that because a man has adopted a child, property which is essentially attached to the dignity should go to the adopted child, any more than that if any of your Lordships had an adopted child and an only child the adopted child would, by heredity, become a member of your Lordship's House. That is not suggested". The old reservations over property might be weakened but there remained areas, appropriately enough referred to in the Upper House, where the old order remained intact.

5 Hansard H. L. Vol. 164.
However, some peers were hesitant about the other parts of this clause. Lord Maugham, a Law Lord, felt that the provision for succession on an intestacy was right and proper because the adopting person had not in this case bothered to make a will. But if he had made a will it was the duty of the Legislature so far as possible to ensure that the property should go where he wished it to go, and where in nine cases out of ten it would go. As one who had started life as a conveyancer, and so was used to the way in which wills were construed, he gave the concrete example of a man who adopted a child, and his wife, died and he married again. He might then have two children who were his own children and for whom he would naturally feel a great deal of affection. In the meantime, his adopted child might have reached an age for going out into the world, and may have left the home of the adopter. In such circumstances the relations between the adopting parents and the adopted child might become very faint after the lapse of time. The man might then make a will and leave all his property "to my children". By inserting the amendment, there would be a change in the fact that the courts say that "children", in the absence of context indicating otherwise, meant legitimate children. In this clause the word child would also mean "adopted children". Despite the reservation of Lord Maugham, the Amendment was agreed to.

The second half of the Adoption of Children Act, 1949 shows quite clearly a movement towards making the status of the adopted child much closer to the status of a natural-born, legitimate child of the adopters. This aim was not completely achieved even in 1949 since the transfer of property rights still retained some of the anomalies of the past. The traditional legal position upon the question of property had
shown its strength during the fight to introduce legal adoption in 1926. The 1949 Act shows how remarkably difficult it was to overcome the historical reluctance to tamper with rights of succession and inheritance. The position after 1949 remained that the adoptive parent had to make a will upon the completion of the adoption order if he or she wished to include the adopted child in any bequest. A will made before the making of the adoption order would not apply to an adopted child. Further, the position regarding succession to title remained unchanged.

The theories concerning the emotional importance of the family grew in importance in the 1950s, and their influence was increasingly felt in the field of adoption practice. To what extent, and for how long, would the traditional legal position be able to withstand the onslaught of the "psychiatric deluge" which was now influencing the field of child care?

^ See Woodroffe: From Charity to Social Work (1962).
CHAPTER XVI

THE MOTHER, THE CHILD AND THE ADOPTERS

The three Acts of Parliament containing provisions relating to the adoption of children were consolidated (together with the Adoption of Children (Scotland) Act, 1930) into one measure, the Adoption Act, in 1950. By June, 1952, the Home Office was already seriously considering a suggestion that there should be an official enquiry into the general operation of the Act and the Rules made under it.

A Home Office note observes that the Act of 1949 had contained a number of compromises on questions of policy "to conciliate opposition from various quarters with incompatible points of view". It was felt that the new rules of procedure made under the Act had been formulated "too quickly for there to be mature consideration of the appropriate procedure to implement the new policies which reflect substantial advances of thought on questions relating particularly to the relative importance of the interests of the adopted child, each of his biological parents, and the adopters". As a result the Home Office and unofficial organisations had been accumulating a large number of points of varying importance which merited consideration either to adjust the balance between conflicting interests or to improve the machinery in the light of experience. Moreover, the consolidation of the several Acts had brought to light some untidy overlaps, gaps and discrepancies in the law. As
a result of this thinking, a Departmental Committee (the Hurst Committee) was set up on the 26th January, 1953. It was the first official enquiry into the total subject of adoption since 1924. The Committee reported in September, 1954 and the main recommendations of the Report were incorporated into the Adoption Act, 1958. The recommendations of the Committee and their incorporation in legislation will be considered in the following chapters, but the more general developments in the field of adoption will now be discussed.

161 It is interesting to note that the request for an official inquiry came from a newly established body - the Standing Conference of Societies Registered for Adoption - which had been established at an inaugural conference in May, 1950 under the chairmanship of the Hon. Mrs. Geoffrey Edwards. The Standing Conference began to publish a Bulletin in October, 1951 which, as the editorial states was aimed, first to keep the members informed of the organisation's activities but it would also contain general items of news, and would form a "Digest" of adoption matters. The first eight copies were in duplicated form but in November, 1953 it achieved "the dignity of print" and acquired the title: "Child Adoption". The Standing Conference also held annual residential conference and from 1953 onwards the proceedings of these were published.

The establishment of the Standing Conference, and the nature

1 The daughter of Lord Simon.
2 Now the Association of British Adoption Agencies.
3 Edited from the first by Miss Margaret Kornitzer.
of its activities, reflects a growth in those aspects of professionalism which were noted in the discussions on adoption in the 1940s. This was a development which was to be strengthened by another feature of the period - the establishment of Children's Departments, following the recommendations of the Curtis Committee and the subsequent enacting of the Children Act, 1948. The establishment of a Department at County and County Borough level which was concerned with child care in the local community and, particularly at first, with the provision of substitute care for the deprived child, helped to develop a body of knowledge about such problems which had their repercussions in the field of adoption, particularly as the new Departments were themselves involved in placing children in their care for adoption or were often appointed by a court to act as a guardian ad litem. The local authority at this level was also the body with which a voluntary adoption society had to seek registration.

In fact, a note about the Roehampton Conference of 1953 reflects the current uncertainty of the Adoption societies over their own future. "On reflection" the note runs, "one feels that adoption societies will not be abolished".\(^4\) This was an anxiety which arose out of the growing need for formal qualifications for workers in the adoption field which the establishment of the Children's Departments had aroused.

Vol. 9 of the journal discusses this, - one of the most difficult questions facing adoption societies - that is, the engagement at competitive salaries of properly trained young workers. As more and more of the local author-

\(^4\) Bulletin No. 8 October, 1953
itles’ own staff became trained there was no doubt, it was felt, that they would become more and more strict in their definition of “competent persons” within the 1959 Act when considering the renewing of licenses. The Standing Conference set up a working party to consider the matter of training of adoption workers and to report back to the next Annual General Meeting.

A note in Child Adoption for May 1955 even goes so far as to see as inevitable the eventual registration of all those engaged in social work, an idea which was then being considered by the Association of Children's Officers, among other bodies.

This concern with the status and training of workers in the adoption field is one of the trends which were current in the 1950s.

1612 The second trend that may be noted is a continuation and development in the influence of post-Freudian ideas in adoption practice which is found permeating the literature on adoption in this period.\(^5\) The effect of this was to turn a searchlight upon the actors in the adoption drama and to examine them in terms of such factors as motives and personality. At this point, the acknowledged actors were the mother, the adoptive parents and the child, although there was to be a growing interest in the putative father in the 1950s and 1960s, particularly after an Act in 1959 inadvertently strengthened his right to intervene in the adoption proceedings.

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\(^5\) Most references in this chapter are to articles and papers which related current theories to the field of adoption.

\(^6\) Legitimacy Act, 1959, section 3.
The kind of examination which was taking place of the role mother of the child is to be found in a paper given to a conference\(^7\) in 1953 by Eileen Younghusband called: "What about the natural mother?"

Miss Younghusband stated first of all that the unmarried mother was more likely to be mentally sub-normal, or emotionally disturbed or socially irresponsible than the general run of the population. Why did people have illegitimate children, despite the extremely strong social taboos against illegitimacy? By and large, those who had a child out of wedlock knowingly offended against a powerful social standard. Some of those who did so were no doubt too mentally sub-normal or too emotionally immature for the convention to hold, or too irresponsible to take precautions. But on the whole, careful studies of the personalities and life histories of unmarried mothers would seem to suggest that at rock bottom the baby was often much less of an "accident" than used to be thought or that the mother herself professed.

Miss Younghusband divided the mothers into three groups. There were those who ignored the conventions because they loved the man and wanted the baby, optimistically hoping that everything would turn out all right. There was, secondly, the group who "have looked the taboos and their consequences full in the face and decided that their relationship with someone they love and the baby whom they want are worth the price. In so deciding they made someone else also pay the price, who could in the nature of things have no say in deciding whether it is worth it." But she felt that these were exceptional people. The third group were considerably less responsible people: "We all know the passive,

\(^7\) Residential Conference of the Standing Conference of Societies Registered for Adoption, Roehampton 8th-11th July, 1953.
generous, can't-say-no type; often an adolescent girl, whose craving for tenderness leads on to pregnancy. She is often good at mothering, but incapable of taking on the responsibilities of being a mother. Such girls may come from broken homes but they may also come from homes where there had been a good deal of affection of which they had suddenly been deprived later. For them their baby is a shield against the harsh, cold indifference of the world: 'My baby is all I've got'. Some other unmarried mothers are self-centred people who have wanted a tangible proof of love without the give and take of marriage. Some in adolescence have a wish for a child which carries on the little girl's daydreams with her dolly; mostly these remain daydreams, but sometimes if the provocation is too strong or the character too weak the controls give way. Sometimes when the unmarried mother is herself illegitimate she may be responding to a compulsive identification with her own mother. Such compulsive factors are also sometimes the cause of multiple illegitimate pregnancies. Then there are the motives of self-punishment, too, as though something inside said 'if you're going to feel guilty I'll give you something to feel guilty about'. And this feeling of guilt, this acknowledgement of social disapproval, can itself lead to several illegitimate births.

Miss Younghusband went on to say that as society used the unfortunate baby as a weapon for chastising the unmarried mother, so also the baby might be used by her as a weapon of revenge. The baby was sometimes the symbol of her revolt against her mother or against her whole home background and its standards. Hence some of the unmarried mothers from especially "good homes". When it came to keeping the baby,
for feelings might be very mixed, and might swing violently from one extreme to another.

She felt that social workers came to this situation with tremendous responsibilities and with the need for much knowledge, wisdom, freedom from moral judgement or rigid ideas or rules of any kind, and with much understanding of what was involved, not only for unmarried mothers in general but for the particular girl and her baby. It was fashionable to talk of helping the mother to arrive at her own decision. What did this mean? In Miss Younghusband's opinion it did not mean so much putting rational alternatives in front of her as letting the mother have plenty of opportunity to get her feelings off her chest, and to feel she was supported and accepted so that in time she might be able to think as straight as she was capable of doing. The task of the social worker was to ask the questions which would help in the long-term: "Did she have a loving relationship with the father of the baby so that the whole event was in itself something happy and natural? Was she mature and realistic, capable of being a mother to a child and an adolescent as well as to the baby? What were her long term plans at work? Could she have the baby continuously with her? Did her people accept her and her baby? How did it look along this road with his mother" and so on.

What were the solutions? Miss Younghusband felt that in reading some of the literature it seemed that the whole situation was settled if the mother later married and her husband accepted the child perhaps as a party to a joint adoption application. This was often not a happy end, however, but could be just one more stage on an unhappy journey for the illegitimate child. In the busy juvenile court of which
she was chairman it was an all too common experience to have before it an illegitimate child who had at first been accepted but then as children of the marriage came the child was more and more rejected and made to feel the odd man out. He became a reminder to the mother of guilty feelings which she resented and, to her husband, a query concerning her morals. Sometimes the child's protest took the form of truancy and delinquency. Sometimes the child behaved in such a way as to divide husband and wife by playing off one against the other until the marriage might be at the point of breakdown when the child was brought before the juvenile court. Often by that stage, or before, there was nothing for it but removal from the home. Thus the child's worst fears of rejection were finally justified and at an age when, with all his difficulties, it would be impossible to board him out.

But the child who remained with his unmarried mother was also subject to hazards. The high proportion of illegitimate children coming before the juvenile courts in relation to the total child population was significant in this respect. But it was extremely rare in Miss Younghusband's experience to have an adopted child before the courts. When this happened it might turn out that the child was already badly damaged before he was adopted or else that the adoptive parents had been very unwise about telling the child he was adopted.

As one who sat in a juvenile court she was very conscious of her own need to guard against the bias which came from seeing many unhappy illegitimate children with ineffective and inadequate parents unable to make rich and warm family and social relationships, on the one hand; and on the other, from being involved in making adoption orders and
Miss Younghusband, therefore, felt that to part with the baby would always involve a major emotional operation for the mother, but that policies were sometimes advocated which made the operation more acute than it need be. Nor was the mother always supported adequately enough or for long enough when it was over. The emotional operation might not be serious for the baby if it was performed early enough. If it were performed badly or at the wrong time it might damage the child for life. But if the operation was not performed at all there might be a risk of prolonged social illness for both mother and child which might or might not prove more damaging for both than the initial radical operation of separation would have done. Unmarried mothers themselves might not be able to appreciate the degree of this social illness, and its effect on them and on the child, before it happened. This placed a great responsibility on those who advised them to be as widely informed as possible about the social effects of illegitimacy on the child and the mother at every stage, to make a realistic prognosis for this particular mother in the light of all the available information, including her own personality with its strengths and weaknesses, and to help her make her decisions.

from seeing some of the adoptive parents who were accepted by the adoption society of which she was chairman. In the latter, she saw stable, happy couples proudly welcoming the baby into their own homes and if, in what she had said, she had shown a bias towards adoption, it was partly on account of this personal experience and partly because she was so conscious of the long-term problems involved in the unmarried mother trying on her own to give her child a satisfactory babyhood, childhood, and youth.
in the light of it. She ought also to be helped without praise or
blame or coercion to express all her feelings about the baby, her parents,
itself, and the situation in which she found herself and to be given
help and support through all the subsequent stages. Prevention was
the only satisfactory solution to illegitimacy since once the child was
born he was by that fact "at risk" in a way in which the child born in
wedlock was not.

Concern for the unmarried mother expressed in a rather differ­
ent way is also to be found in an article by Kenneth Brill in The
Bulletin of the Standing Conference of Societies Registered for Adoption
in May, 1953. Mr. Brill is concerned about "The Forgotten Mother", and
asks whether, in the concern to give security to the child and to stop
the capricious snatching back of children from substitute families where
they had grown to belong, a fetish had been made of the curtain between
the real mother and her child who had been adopted. He did not wish
for the child to know two mothers or have divided loyalties; but why
was the real mother to be encouraged to forget that she ever bore a
child and to evince no interest in his welfare? He felt that it was
because of this curtain that some of the more conscientious mothers
refused consent to adoption and left the child to grow up in an insti­
tution in makeshift surroundings where she could keep in touch with him.
"When a cutting is taken from a tree there are two scars. In our anxiety
that the cutting should take root we must not neglect the wound of the
parent tree". Therefore, the real mother's continuing concern for her
child was to be understood and satisfied to any extent which was compatible
with the security of the child. For example, adoptions should be arranged far enough from the place of origin to avoid the risk of subsequent identification and recognition. The real mother was to have a single brief interview with the unnamed adopters before the child was placed. Adopters were to be selected from those who "are big enough" to agree to informal visits by the agency after the order had been made so that word could be sent to the mother that all was well.

The mother might be told of her child's prowess on the playing field and in school, and even have photographs, taken from sufficient distance to prevent precise identification. Mr. Brill even suggested that the adopters might draw up their wills so that on their death the mother might have a chance to resume care. Certainly, he felt, that if the adoptive parents failed and the child landed up in a hostel for the maladjusted or in an approved school, enquiry was to be made whether the mother could then provide what the adopters had proved incapable of giving "To deny reality and act as if a child was not born of the mother to whom the Creator gave him is to make a deus ex machina of an adoption agency. Heaven knows the responsibility we bear is great enough. We do not need to arrogate to ourselves more power than that necessary to ensure a stable family life".

One can see the link between this attitude and the Bowlby approach to the unmarried mother in an excerpt from "Child Care and the Growth of Love" which was published in 1953. He speaks of the unmarried mother as no longer a moral criminal, no longer irresponsible, but as an unadjusted personality. Studies carried out in America had made clear that the girl who had a socially unacceptable baby often came from an
unsatisfactory family background and developed a neurotic character, the illegitimate baby being in the nature of a symptom of her psychological ill-health. He goes on to quote the findings of a survey of 100 unmarried mothers between the ages of eighteen and forty. Of these, forty-eight girls had dominating and rejecting fathers, and the girl's relation to the dominant parent "was a battleground on which a struggle was fought and the baby was an integral part of that struggle". No fewer than forty-three of the 100 girls had been brought up in a broken home. All the girls studied had grown up to have "fundamental problems in their relationships with other people... All these girls, unhappy and driven by unconscious needs had blindly sought a way out of their emotional dilemma by having an out-of-wedlock child". Thought it was impossible to know how typical these findings were it was the opinion of many social workers with psychiatric knowledge and experience of this problem that with many girls becoming an unmarried mother was neurotic and not just accidental. In other cases the girls were chronically maladjusted or defective.

It was not only the mother who was the subject of this considerable examination. The growth in interest in 'matching' a child to its adoptive parents, and the need to make the adoption "successful" in the sense of making it as near to a biological family as possible led to an interest in adoptive parents. As the editorial to "Child Adoption" for November, 1953 pointed out: "The present great interest in adoption is..."
among other things, probably a symptom of something that is happening within the private life of families." The role of the adoption worker was to act in some sort of way as the instrument of destiny in the actual making of families. Above all social workers, the adoption worker had, therefore, to know in what the healthy life of a natural family consisted. As a rule, the editorial goes on, in practice and at best, these synthetic families followed a pattern amazingly like the current social ideal: "they are the right size for the Daily Mail house; they are timed and spaced in conformity with the best modern ideas; eugenically, psychiatrically and economically they conform; they are advised and supervised in the making, and our fine techniques are applied most conscientiously to their perfecting... And what is the implicit aim of all this earnest endeavour? Is it to make the adoptive family better in the end than the average muddling, imperfect, natural family, formed without any of these advantages? We know the answer. The adoption worker, far from trying to go one better than nature, rejoices if nature is approximately copied."

On the other hand, an article in Child Adoption in 1957 reports a speech to the Royal Society for the Promotion of Health by Dr. John Bowlby in which he raised the question whether the net result of all the current enlightenment about the proper attitude of parents might not be to create anxiety and increase the very tensions and insecurities it was intended to combat. Perhaps, the article suggests, if there were too many "good" adoption placements by highly trained and very ethical adoption workers with prefabricated ideas or what a "good family" ought to be like, there would be the danger of producing a
standard article whose chief virtue would be uniform behaviour - the Ideal Social Unit, whatever that might be at a given moment. The writer felt that there was a faint flavour of standardisation already in some adoption society adoptions; with greater power and opportunity, local authority adoption agencies would need particularly to be on their guard against the danger.

Despite this note of caution, there was certainly a considerable interest reflected in the literature, to achieve "good adoptions". The motives of the adopters, therefore, came in for a good deal of scrutiny. For instance, the British Medical Journal of the 12th April, 1952 printed a psychiatrist's letter on the "Jocasta Complex in the Adoptive Mothers". According to this letter: "The factor of absence of blood relationship increases the danger of breakthrough of unconscious incestuous tendencies".

The Departmental Committee, in its Report, although not couching its remarks in such jargon, considered the importance of the initial placing of the child. They had received much evidence from many different quarters of the desirability of adoptions being arranged only by skilled workers. It had been represented to them that only adoption societies and local authorities employing suitably trained and experienced workers were to be permitted to arrange adoptions. In such circumstances, no arrangement for adoption would be made without a careful preliminary social survey of the adopters, including, in particular, an assessment of their motives for wanting to adopt a child. No child would be accepted for adoption without similar careful enquiry by means of interview, into

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8 Report of the Departmental Committee on the Adoption of Children, Cmd. 9248, para. 52.
the state of mind of the mother (or both parents if a legitimate child were in question). Despite these, and other points put to them, the Committee did not feel that it could recommend limiting the placing of children to particular agencies.

The Committee's discussion of the point relating to motive was discussed in an article in The Observer for the 31st July, 1955, written by a clinical psychologist. The writer asks: "What are the right motives for adoption?" and proceeds to examine the question in the light of the experience gained from child guidance practice. Although exact figures were not available, there was little doubt that adopted children developed character difficulties more often than children in ordinary families. This was not in itself an argument against adoption; an institutional upbringing was in many ways much more damaging to a child than even an imperfect family environment. But, in the opinion of this writer, the very fact of adoption created special conditions between the adoptive parents and the child which made them less resistant to the usual stresses of family life. Hence, it was particularly desirable that the adoptive parents and the child should be mentally healthy persons and the decision to adopt spring from humane socially-minded motives, rather than from the need to allay a deep personal craving.

An over-eagerness to adopt was thus likely to count against success. The possession of a child might be desired not for its own sake but as a symbol of parental potency and an insurance against a sense of personal inadequacy. Other "bad" motives were the adoption of a child as a substitute for husband or wife where incompatibility existed between the spouses. Another case might be that of a neglected wife who wanted
to adopt a child "for company". But even greater risks were involved when adoption was undertaken with the hope of "curing" a neurotic condition in the adoptive mother or to salvage a marriage about to founder. Disappointment was also likely when a middle-aged couple adopted a child with the thought of ensuring care and assistance for themselves in their old age. Adoption was sometimes undertaken in order to provide an only child with a companion. This might work out well if the parents were aware of the emotional complications such as rivalry and jealousy, but if it were done with the hope of curing character difficulties in their own child, failure was practically assured. A heavy responsibility thus fell on those who had a public duty to decide whether a proposed adoption was to be sanctioned. They needed to be equipped to distinguish between right and wrong motives.

If this was the case, on what evidence was a court to decide that the motives of the adopters were valid? This pertinent question was posed in an article in Child Adoption in November, 1955, written by a magistrates' clerk and referring to the article above. Upon what evidence was a court to decide that a childless couple desired a child as a symbol of sexual potency, or that a middle-aged couple had fears for their future comfort at the back of their minds? The likelihood of obtaining such information was extremely small unless it was volunteered by the applicants themselves. The question was whether the court had power to consider motives.

But even when motives were good and arrangements made carefully an ideal adoption could not always be expected. This was the theme of a paper entitled "Pitfalls in Adoption" which formed part of the volume
"The Child and the Outside World" by D. W. Winnicott, which was reviewed in Child Adoption in the Winter number 1957-58. But, said the reviewer, "good casework prevents many disasters and adoption societies bring about many satisfactory placements which would not otherwise have been possible... Case workers also need to be aware of pitfalls which can only be avoided by a deeper understanding of the motives and emotions of their clients". After discussing the second paper, the review ends by asserting that adoption workers could not too often remind themselves, in their visits during the delicately balanced situation of the probationary period that the new "mother" needed to be free to carry out "her instinctive functions" without interference. If the case worker found persistent evidence of a poverty in the mother-child relationship, then in the interests of the child as well as of the adopters she might need to consider removing the child without delay or to consider seeking psychiatric advice for the adopters.

In the Bulletin for October, 1953, there is a discussion of papers presented to the Annual General Meeting of the N.C.J.U.M.C. for 1952. One of the papers had been given by Dr. Agatha Boalby in which she referred to the motives of adoptive parents and suggested that these frequently hinged on failure in family relationships. With this compensatory motive at work, too much was expected of the adopted child. Although, with reservations, Dr. Bowley was in favour of adoption, she confessed to being a little prejudiced because she had just seen twelve analyses of adoption failures which had been referred to child guidance clinics and she felt that there were many pitfalls.

One safeguard for good adoptions, she suggested was family
counselling available to the adoptive family if they required it.

In the 1950s, there is a growth in the feeling that although adoption was a good method of child care, it was a complex process needing a skilled and sensitive approach. In this, one senses a changing emphasis to the more simple acceptance of adoption as a method of substitute care which was more notable in the 1940s.

16.6 The individual most affected by an adoption order - the adopted child - was also the subject of much concern in the 1950s. It was a concern which continued from the 1940s and was given a considerable boost by the publication of Bowlby's Maternal Care and Mental Health. A review of this book is to be found in the first number of The Bulletin in October, 1951. It is described as "an impressive study of the effect on children of being deprived of a mother's love and care, the central thesis being that a child's future health depends on the steady growth and expansion of the relationship with its mother." But when the mother-child relationship broke down, however, adoption was desirable and Dr. Bowlby was of the opinion that it was to the advantage of the baby who was going to be adopted as soon as possible after birth so as to give "continuity of mothering". Though the circumstances against very early adoption - the need for precipitate decision by the mother, the lack of breast-feeding, the lack of opportunity to assess the child's potential mental development - were briefly dealt with, the author's conclusion was that they did not outweigh the advantages.

Although many people with experience of adoption work believed that a child ought to be old enough to permit adequate psychological
testing before he was placed, Dr. Bowlby thought, said the reviewer, that "scores made in tests before eighteen months are completely useless in the prediction of school-age abilities". Therefore, since it militated against later success of the placement to defer adoption until a child was eighteen months old the earlier the adoption took place the better, and "adoption in the first two months should become the rule".

Although there was this stress upon the relationships of a child within its environment, it would be misleading to regard this as the only approach. Papers read to the early Residential Conferences of the Standing Conference include one on "Heredity as it concerns Adoption" given by Dr. L. S. Penrose, Galton Professor of Eugenics at University College, London. However, in regard to personality Dr. Penrose was very cautious. "... the very worst and most awkward things to deal with in human genetics are mental characters". He goes on "... the very nature of the rules of heredity precludes any certain prediction about a particular individual". Once it was realised what was inherited and how difficult it was to make use of the knowledge about it in practical ways it could properly be appreciated the enormous effects which environment could produce. Dr. Penrose felt that prediction of character was even more uncertain than prediction of intelligence. Clearly the environmentalists were more fashionable at this time than those who would lay greater stress on inherited traits. It was therefore important that the quality of the emotional environment in infancy be favourable as this was regarded as the key to the adult character.

9 Conference held at Roehampton, 8th-11th July, 1953.
Although there was much discussion of the kind outlined above, the assertions made were based on very little research in the field of adoption. Bulletin No.1 contains the valid statement that "it is still too early even for the experts to have reached final conclusions about adoption in any of its aspects". Dr. Bowlby had pointed out the inadequacy of the data available and that if these problems were to be taken seriously, study and research on a greatly amplified scale would be needed.

The first research survey referred to is to be found in Child Adoption for May, 1955. This was "A Survey of Adoption Case Records" undertaken by the National Association for Mental Health. This was based entirely on certain records obtained from (a) a group of six adoption societies in or near London; and (b) two child guidance clinics. The object of the study of adoption society cases was to discover the percentage of successful adoptions, the grounds for success or lack of success and the contributory factors. The group was not representative since only about 15 per cent. of the total number of adoptions were arranged by societies. Of the 163 cases considered, it was estimated that 67 per cent. worked out satisfactorily in terms of the adopters' satisfaction and the child's adjustment. The other part of the Survey looked at 17 cases from one clinic and 12 from the other. Among the group rather more boys than girls were to be found, peak age group being three years and seven years.

Although factors involved in success or failure were analysed the authors stressed the limited nature of the data and the need for "long-term research work in which the skilled workers could follow adopted children through the phases of development to maturity".

The first published follow-up study of adopted children
appeared as a paper "Following Up Adoptions" in the British Journal of Psychiatric Social Work for November, 1953. It had been undertaken by Miss Lulie A. Shaw a Tutor in Social Studies at the University of Bristol. This study was again limited; it consisted of volunteers from among a number of adoptive parents who had announced the adoption of a child in the columns of the Friend (the periodical of the Society of Friends). The families thus showed certain common characteristics, in relation to social class, economic status and religious faith.

Research at this point was therefore limited and much of the accepted wisdom of the period was theoretical rather than empirical in nature. Alongside its development and its influence on practice in adoption, a new trend was occurring which gave rise to some concern in the 1950s. At a time when theories concerning the psychological development of the child within the family held sway, a number of judicial decisions, following the Adoption Act, 1950 upheld the more traditional approach towards parental rights and appeared to subordinate the welfare of the child to these. This conflict will be considered in the following chapter.
CHAPTER XVII

CONSENT TO AN ADOPTION

As was discussed at the beginning of this thesis, the introduction of a system of legal adoption was dependent upon the acceptance of a new legal principle; that is, that for the purposes of an adoption, it would be possible for a parent to make a voluntary abrogation of parental rights and that such a surrender would then be both legally and permanently binding. Consent was, therefore, of the essence of the transaction, and the court had to be convinced that there was evidence of the biological parent's agreement in the matter before granting an order.

However, the legal formula which was established by the Adoption of Children Act, 1926, was not as simple as the above statement implies. In the first place, consent was sometimes necessary from persons or bodies other than the parents of the child. Conversely, a biological parent might - paradoxically - be excluded from the list of those giving consent, in certain circumstances. In the second place, consent which appeared to be the foundation upon which the legislation was built, could be excluded in defined circumstances; ¹ that is, the need for consent could be dispensed with on the grounds of public policy in those circumstances where it was felt that other considerations should be allowed

¹ See Chapter 8.
to override the basic premise.

This latter point is part of a wider problem: that is, the tension which has developed over the last hundred years, in legislative and judicial policy, between parental rights and the welfare of the child. According to Puxon:2 "As the basis of society moves, in the words of Maine, 'from status to contract', so does the child progress from being first and foremost a chattel to a position regulated by law and largely independent of the family. The modern state, living by technology must see that its children are educated and physically cared for to properly survive in a modern society, and parents can no longer be left to bring up children as they please but must conform to the requirements of the state. So the law has come to govern the upbringing of children more and more, in spite of the English distaste for interference in the family, and the area of the parents' discretion is now very much narrowed down".

Whatever the causes, the tendency of statutes, such as the Children and Young Persons Acts, has been to impose standards upon parents and to justify intervention in the family situation whenever acts towards children, whether of commission or omission, do not comply with current concepts concerning the welfare of children. There has thus developed a tension between the traditional primacy of parental rights in the common law and the emerging and widening concept of the welfare of the child. This chapter will examine in what ways this tension is reflected in legislative policy between 1926 and 1958 over the

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question of consent; and the judicial interpretations placed on the legislative provisions. Two other matters will also be discussed: the changes which took place in the list of persons who were called upon to give their consent and, in addition, the nature and timing of the consent procedure which was required to validate an adoption application.

17.1 As has been stated, it was not simply the biological parent of the child who might be asked to consent to an adoption order. Under the 1926 Act, the list consisted of:

"every person or body who is a parent or guardian of the infant, or who had the actual custody of the infant or who was liable to contribute to the support of the infant".

From this list, it may be seen that the putative father of the child was not, prima facie, included, since the father of an illegitimate child was not legally recognised as a parent. Originally, indeed, the common law position had been that an illegitimate child was a filius nullius and accordingly none of the legal rights and duties relating to the relationship of parent and legitimate child were accorded to him or his parents. During the past century, however, the legal position has become considerably modified through judicial decisions and by the changes introduced by legislation. The personal rights of a parent are now vested, for the most part, in the mother to the exclusion of the father, a position reflected in adoption law. The putative father, might, however,

3 See, for example, Bromley's Family Law (1971). p 365
come within the ambit of the adoption statute by reason of the fact that there was an affiliation order in existence against him. In such a case, his consent was required since he was then "liable to contribute to the support of the infant".

The above list of consentors was examined by the Gannon Committee and, as a result, a number of suggestions were put forward to alter the provisions. It was suggested that the persons who were required to give their consent should be altered to the following: the mother; the legitimate father; any other legal guardian; and the spouse of the adopter. Although this suggestion, if accepted, would cut down the number of those required to give their consent, they made a further proposal which would, if accepted, involve the participation in the proceedings of another group of individuals. They proposed that normally when an application was made for an order authorising the adoption of a child, notice that such application was pending ought to be given by the court a reasonable time before the hearing of the application to a number of persons. These were:

(a) the mother's husband when he was not the father;
(b) the putative father who was bound by an affiliation order to contribute to the maintenance of the child;
(c) any person other than a parent or legal guardian who had the actual custody of the child within one month before it was taken into the care of the adopters;
(d) a parent of a deceased father or mother where the child was legitimate.

The purpose to be served by such notice would be to enable such persons to make such representations as they thought fit to the court. But the court would have full power to dispense with notice to any such person
where it was satisfied that in the particular circumstances the consent ought to be dispensed with.

The Committee went on to discuss these categories. As regards the mother's husband when he was not the father, it was felt that the problem here arose when a married woman, who had had an illegitimate child of which her husband was not aware, sought to have the child adopted without the knowledge of the husband so as to conceal her lapse from him. Where it was clear that her husband was not the father of the child, then the adoption could be authorised without his consent or any notice being given to him. But the courts had varied on the point as to whether the order could be made without the husband being informed. The Adoption Committee was of the opinion that this action was contrary to good ethics. Therefore, the husband ought to receive notice of any application to adopt, subject to the court's power to dispense with such notice in the particular circumstances of the case.

The Gamon Committee was further of the opinion that the words "who is liable to contribute to the support of the infant" in section 2 (3) of the 1926 Act were somewhat uncertain. It was probably the putative father of an illegitimate child who was primarily intended. In the Committee's opinion, the words ought to be deleted and replaced by a provision for giving notice of the application to the putative father since generally "the putative father takes no interest at all in the child and is only concerned to rid himself of all liability for its maintenance".

As regards the third group, their inclusion was intended to cover a hypothetical situation described by the Committee. There might be a case, they felt, where the mother of an illegitimate child who had
placed the child in the home of a sister, where it was quite happy, had taken it away from the sister's care and tried to arrange for its adoption out of spite; in such a case, the sister ought to be in a position to make representations to the court.

Finally, where, after the death of one of a married couple, the adoption of a child of the marriage was being arranged by the survivor, and particularly if the survivor was a widow and the adoption was being arranged on the eve of her re-marriage - the Committee considered that notice should be given of the proceedings to the parents of the deceased husband or wife as the case might be, to enable them to make such representations to the court as they might think fit.

17:2 Mr. Nield, in considering the contents of his Bill in 1949, also considered the question of those who were required to give consent and had thought of reducing the numbers and substituting a requirement merely to give notice of the application to certain parties. It was pointed out to him by the Home Office that since the 5th July, 1948, the number of persons liable to contribute to the infant's support had been considerably reduced; and that the provision requiring notice of an application to adopt an illegitimate child to be given to the mother's husband (not being the father) was unnecessary if the child was born during the marriage because of the presumption of legitimacy. The husband's consent would be necessary in such cases. But it might break

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4 As a result of the National Assistance Act, 1948.
5 See pages 258-259.
up a happy marriage if the wife had concealed the birth of an illegitimate child conceived of another man before the present marriage. For these reasons, Mr. Nield decided not to propose any alteration to the persons whose consent was required. The only change under the 1949 Adoption of Children Act was that, the section was narrowed in scope so that the consent of a person was only necessary if that person became liable to contribute to the maintenance of the infant because of an order or an agreement.

This question was also considered by the Hurst Committee which recommended no alteration in the existing law as regards the consent of the legal guardian or the father of a legitimate child. As regards the consent of the father of the illegitimate child, however, they felt that the position was not altogether satisfactory. The Committee had received evidence that, although some fathers voluntarily maintained the child and took great interest in him, they did so under an informal agreement. In such circumstances the father's consent was not only necessary and, as a result, he might be given no chance to state his views about the proposed adoption. But a father against whom an affiliation order was in existence might be able to prevent a perfectly suitable adoption merely out of spite. As a result, according to evidence given to the Committee, some mothers who were entitled to seek affiliation orders did not do so because they wished to have the child adopted and were afraid that the need to obtain the consent of the father would prove a stumbling block to the adoption order being granted.

After much consideration the Committee had come to the conclu-
sion that it was not right that the father of an illegitimate child should have the same powers as the mother as regards giving consent to an adoption. They therefore recommended that the Act should be amended so that it would not be necessary for the putative father's consent to be obtained. However, they were of the opinion that he was a person who ought to be consulted if he had materially contributed towards the child's maintenance or had shown a genuine and continuing interest in the child. They then recommended that it should be one of the guardian ad litem's functions to ascertain and report to the court whether the father had taken sufficient interest in the child to warrant making him a respondent to the application.

The Committee also considered the problem of the mother's husband. A variety of views had been expressed about the difficulties which were caused by the need to obtain the consent of the husband of the mother of a child born in wedlock when the mother alleged that the husband was not the father. The mother was often fearful that the request for her husband's consent would reveal her secret and result in a failure of the marriage. In the magistrates' court, unlike the County Court, there was no power to dispense with or to defer service of notice on the mother's husband even though it was intended later to bring evidence that he could not have been the father of the child and that his consent was therefore not required. If the child was registered at birth as a legitimate child the Committee did not feel that it would be right to open the door to the possibility of his being created as illegitimate on the statement of one parent alone. They therefore recommended that the Rules of all the courts should provide that if the child was registered as illegitimate, service
of notice on the mother's husband might, on special application, be deferred until there had been an opportunity to bring forward evidence about the paternity of the child. Further, they felt that the magistrates' courts ought to be given power already possessed by the County Courts to dispense with service of notice on the mother's husband. A minor difficulty sometimes arose in that the mother's husband who denied paternity then refused to sign his consent as a father. This problem might be remedied by providing that his signature might be given in the capacity of "spouse of the mother".

The Hurst Committee further recommended that other persons, apart from a putative father, whose consent was necessary because they were contributing to the maintenance of the infant should no longer be required to give consent. Instead they should be made respondents if the court thought fit. The Committee also wished it to be made clear that the consent of a local authority with parental rights under the Children Act 1948 or of any "fit person" was not required, but that they should be made respondents so that the view of that body might be taken into consideration.

17:3 The legal position of the putative father in relation to adoption applications under the Adoption Act, 1950 was highlighted by a case heard before the Court of Appeal in 1959. In Re D, the applicants, a husband and his wife sought to adopt a boy, aged nearly three years, who was an illegitimate child. After his birth, the mother had obtained

6 1 All E.R. 427.
an order against the putative father that he should pay a weekly sum for the child's maintenance. The putative father made the weekly payments for some time but then ceased payment at the mother's suggestion. He was later convicted of murdering the mother and was sentenced to death but was then reprieved and was, at the date of the application, serving a life sentence in prison. He opposed the application for an adoption order and stated in evidence that his unmarried sister would come to England from India and would arrange for the child to be cared for. He also said that he wanted his sister to have the child "because he is my son and I love him. That is the sole reason I oppose the adoption".

The Court of Appeal assumed for the purposes of their decision that the respondent was a person whose consent to the adoption was required by virtue of the Adoption Act, 1950 Section 2(4)(a) in consequence of the maintenance order made against him, subject to the court's power under section 3 of the Act to dispense with his consent if it was unreasonably withheld.

Evershed, M.R. in his judgement distinguished the facts of this case from those of Hitchcock v. W.B. and F.E.B. where the child was legitimate and where, therefore, the father "had the rights of parenthood which belonged to the father of a legitimate child". But it had been decided in Re M (and infant) in 1955 that the putative father of an illegitimate child had not the rights of the father of a legitimate child. It was therefore held in Re D that a putative father had not

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7 See page 34.3
8 [1955] 2 All. 479.
the rights of a lawful parent and the primary consideration governing this case was whether or not the adoption order should be made was the welfare of the child. Judged by that test, the adoption order should be made, the respondent's consent being dispensed with as being unreasonably withheld.

The Adoption Act 1958 altered this situation. It provided by section 4(1)(a) that the consent to an adoption order had to be given by every person who was a parent or guardian of the infant; and secondly on the application of one of two spouses, with the consent of the other spouse. The putative father was not included as a "parent" for this purpose. After April 1959 his consent was no longer needed even if he was a person liable by order or agreement to contribute to the infant's maintenance. Under the Adoption Code the rights of the putative father were thus reduced and he joined the list of those who are entitled to receive notification of the proceedings.

The next question was the nature of consent and when it was to be given. Mr. Nield proposed to insert in his Bill that a person might give consent to an adoption without knowing the name of the intending adopter. Clause 3 therefore provided that consent might be given any person without knowing the name of the proposed adopter and might be given whether or not an application for such an order was pending.

There was considerable discussion of this point during the debate on the Bill. Mrs. Nichol was concerned that young mothers might be persuaded to sign an agreement for adoption. It had been brought to her notice that a young mother tired and exhausted was often presented
with a form for her to sign soon after confinement. Often, its nature was not disclosed to her and it was not until later that she found that what she had signed was a form of consent to adoption. There was the second point that the mother should have knowledge so that she might decide if the home was a suitable one for the child. Often the mother was not told that she could withdraw her consent.

At the Report stage the clause was amended so that it then reads: "Any consent required by this section for the making of any adoption order may be given whether or not an application for such an order is pending" and by adding: "and may be given either generally in respect of the adoption of the infant or only in respect of the adoption of the infant by a specified person; and where any such consent is given generally as aforesaid by any person and is subsequently withdrawn after the making of an application for an adoption order on the ground only that he does not know the identity of the proposed adopter, his consent shall be deemed for the purposes of the last foregoing subsection to be unreasonably withheld".

Viscount Simon introducing the Bill in the House of Lords felt that with a general consent it was more necessary to secure that consent was not given until after the child was born. On the other hand it was important that the natural mother should be at arm's length from the people who ultimately adopted the child, so that there was a great deal to be said under proper precautions for a general consent.

Lord Maugham felt however that there were wide powers of

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9 Hansard H.L. Vol. 165.
10 op. cit.
dispensing with consent in the Act. He even went so far as to feel that
"the most valuable part ... of this Act which has now been in existence
23 years is the power it gives the court to take a child away from a
wrong-doing mother ... and to vest all her powers in the adopter".

Other doubts were expressed about the clause. Peers felt that
even where secrecy was maintained, the mother ought to be given some
information as to the adoptive parents' circumstances. No child ought
to be adopted in vacuo, that is, before plans had been made for the child
and an adoptive home found for him. The Bishop of St. Edmunds11 wanted
a general consent to contain certain powers of restriction, for example
as to the religious upbringing of the child. Lord Jowitt, the Lord
Chancellor, was anxious that the consent of the natural parent was a real
consent. "We must see that she is not compelled to give that consent
by force of circumstances; that she is not bullied or harried into it,
but that she gives a mature consent, as a solemn act".

At the Committee stage in the House of Lords the clause was
considered and amended so that the consent of the mother did not become
effective if given earlier than six weeks after the birth of the infant.
Secondly, it was possible for the mother to make a condition as to the
religious upbringing of the child (but the application was to be valid
notwithstanding that the identity of the applicant was not specified in
the consent or known to the consenting party). Lord Simon had discussed
this amendment with Home Office representatives, the L.C.C. and adoption

11 op. cit.
societies. He believed that it would bring about an improvement in the law. It would stop cases which were quite shocking where a girl might light-heartedly give her signature before she had time to reflect. It was only after the birth of the child that the maternal instincts might arise and she had to be given time to think what was meant by giving up her child. The amendment would, however, mean that once the adoption order was made the natural mother was parted from the child and did not haunt the home of the adopters who had taken over the responsibilities for the child.

It had also been recognised in 1949 that one of the most difficult questions was whether the form of consent and the whole proceedings should be so designed as to keep the applicant's identity secret from the infant's parents. This objective was achieved in the High Court by permitting the consent to be in a general form, having no specific reference to the particular proceedings and by making the infant the sole respondent to the application, no person other than his guardian ad litem being served with notice of the proceedings unless the court so directed. In the County Court and in the magistrates' court, however, the identity of the would-be adopters was not kept secret from the infant's parents. For example, under the Adoption of Children (County Court) Rules, 1926 the prescribed form of consent gave the name and address of the applicant and, unless the judge otherwise directed, the petition had to be served on the parents of the infant.

A suggestion on this point was made to the Austin Jones Committee on County Court Procedure, but they had declined to make any recommendation.
They stated that "the question of preserving the anonymity of the adopters involved considerations of social policy which are outside our terms of reference". Clause 3(3) provided that any consent given for the purposes of an application for an adoption order might be given in respect of any order which might be made and was to be made notwithstanding that the identity of the applicant was not specified in the consent or known to the consenting party.

The Austin Jones Committee had recommended that every consent ought to be attested by a responsible person. This was incorporated in Clause 3(4) of the Bill by requiring rules of court to be made for securing that every consent given by the mother otherwise than before the court making the order was to be in writing in a prescribed form and signed in the presence of a justice of the peace.

As a result of these proposals the Adoption of Children Act 1949 provided:

Section 3(2) The consent of any person to the making of an adoption order in pursuance of an application may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up) without knowing the identity of the applicant for the order, and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purpose of the section to be unreasonably withheld.

(3) Where any person whose consent to the making of an adoption order is required by this section does not attend in the proceedings for the purpose of giving it, a document signifying his consent to the making of such an order shall, if the person in whose favour
the order is to be made is named or otherwise described in the document, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings; and where any such document is attested by a justice of the peace ..., the document shall be admissible as aforesaid without further proof of the signature of the person by whom it is executed:

Provided that a document signifying the consent of the mother of an infant shall not be admissible as aforesaid unless

(a) the infant is at least six weeks old on the date of the execution of the document; and

(b) the document is attested on that date by a justice of the peace or, as the case may be, by a person of a class prescribed as aforesaid.

The consolidating Act of 1950 had few new proposals, but one of these was of considerable importance in relation to the nature of the consent to be given by the parent of a child. This was a section which enabled prospective adopters to acquire a serial number which disguised their identity. The consent form then specified only the serial number of the applicants and not their name and address. The consent was not general since the consent form was signed only when a specific application for an adoption order had been made and not before.

However, despite these restrictions on the power of the parent in relation to an adoption, there still remained the problem that the consent could be revoked up to the moment when the adoption order was made (a rule judicially recognised in Re Hollyman [1945] 1 All E.R. 290; in Watson v. Nikolaisen [1955] 22 R. 296, inter alia) although if the withdrawal of consent was made solely on the ground that the identity of the proposed adopter was unknown to the party then it was to be regarded as unreasonable.
The problem of revocation of consent remained a considerable source of concern after 1958 and the recent Departmental Committee has attempted to dispose of the problem by making the consent irrevocable once that it is given.  

The area where the law had the widest power to define rights of parents was in regard to statutory provision for dispensing with consent to an adoption. Section 2(3) of the Adoption of Children Act, 1926 had allowed consent to be dispensed with if, in the first place, the person, whose consent would otherwise be required, had abandoned or deserted the child; or could not be found or was incapable of giving such consent; or, being a person liable to contribute to the support of the infant, either had persistently neglected or refused to contribute to such support or was a person whose consent ought, in the opinion of the court, to be dispensed with.

There was very little litigation in relation to this section between 1926 and the 1950s. However, one case in 1947 did affect parental rights under the section. It had been thought that the consent of a parent of a child could only be dispensed with on the fairly narrow ground that he or she had abandoned or deserted the infant, or could not be found, or was incapable of giving such consent. But in the case of Harris v. Hawkins in 1947 the High Court interpreted the section in a much broader sense. It was decided in that case that a court could

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13 IAll E.R. 312.
dispense with any consent if, in the opinion of the court and in all the circumstances of the case, the person was one whose consent should be dispensed with. This case gave the courts much wider powers than had previously been understood to be the case to dispense with parental consent to an adoption order.

The Adoption of Children Act, 1949 was the first piece of legislation after 1926 which considered questions such as the grounds for dispensing with consent. In discussing his Bill with the Home Office, Mr. Nield suggested that there were reasons for altering the conditions upon which consent could be dispensed with so as to elucidate and somewhat relax these conditions, following the decision in Harris v. Hawkins. Parliamentary Counsel were not altogether happy about this suggestion since it was felt that there might be some difficulty in working in the new proposition. The question arose whether the Bill ought to continue to enable the court to dispense with the consent of a person who was liable to maintain, not merely where his consent was unreasonably withheld but wherever the courts thought fit to do so. Because Parliamentary Counsel felt that it would be difficult to maintain these revisions side by side Mr. Nield decided to drop the existing words and substitute the phrase "unreasonable withholding of consent".

As a result Clause 3 of the Bill contained the proviso:

"Provided that the Court may dispense with any consent required by this subsection if it is satisfied—

(a) in the case of a parent or guardian of the infant that he has abandoned or deserted the infant;

(b) in the case of a person liable as aforesaid to contribute to the maintenance of the infant that he has persistently neglected or refused so to contribute;

(c) in any case that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld,
At the Report stage of the Bill, Mr. Nield moved that the words "or deserted" be omitted and that the phrase "neglected or persistently ill-treated" be inserted. The word "deserted" was left out because it appeared to Mr. Nield that "abandoned" was quite adequate. Additional reasons for dispensing with consent had been inserted because it would appear quite wrong that a parent who neglected or persistently ill-treated a child should be able by refusing his consent to deprive a child of a new home. Both Mr. Skirmard and Mr. Jarrow spoke in favour of this amendment. The former spoke of considerable experience in this type of case where one parent, even while in prison, was able to prevent a child from being removed to a good home and the courts found the family satisfactory in other respects, such as, the good character of the other natural parent. This attitude had always seemed to him to be one of looking at the benefit of the parent rather than at the best interests of the child. He was therefore anxious that the amendment should be accepted. The House agreed.

A further amendment at this stage was moved by Mr. Marshall to insert a new sub-paragraph:

"(e) that the parent of the infant has failed to comply with the duty imposed upon him by subsection (1) of sub-section 10 of the Children Act 1948."

This sub-section of the 1948 Act provided that it was the duty of a parent to maintain contact with local authorities who had the care of their children. The insertion of such an amendment would be very

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14 Hansard H. C. Vol. 466.
helpful in enabling magistrates to arrive at a conclusion on the question of abandonment or desertion. A local authority could give evidence of non-compliance with section 10. Long experience had shown the difficulties that arose over questions of consent. Magistrates, said Mr. Marshall, were sometimes very difficult people to convince. It was therefore very comforting and helpful to them if they could find in the Act which they were administering a sense of direction rather than to feel that in the exercise of their various discretions they might not be doing the right thing.

Mr. Nield did not agree. He felt that if the parents were failing to keep in touch with the local authority then it was more likely that the child would come into a situation where it could be regarded as having been abandoned or where a parent could not be found. Secondly, if some unfortunate parent had quite inadvertently failed to notify the local authority of his address it would surely be very wrong thereafter to make that a reason for dispensing with his consent in the case of an adoption being applied for. The amendment was withdrawn.

The proviso, which was inserted into the consolidating Act in 1950, therefore read:

"Provided that the court dispense with any consent required by this sub-section if it is satisfied –

(a) in the case of a parent or guardian of the infant, that he has abandoned, neglected or persistently ill-treated the infant;

(b) in the case of a person liable as aforesaid to contribute to the maintenance of the infant, that he has persistently neglected so to contribute;

(c) in any case, that the person whose consent is required cannot be found, or is incapable of giving his consent or that his consent is unreasonably withheld."
In the period between 1950 and 1958, a certain amount of judicial interpretation of this proviso took place. Some of this gave rise to concern among the advocates of adoption that the courts were swinging away from a "liberal" interpretation of the section to a more rigid protection of parental rights.

In the first place, the words "abandoned" and "neglected" were considered and held to carry a connotation of misconduct or dereliction of duty which must amount to criminal liability. The facts in Watson v. Milcolaisen were that the mother of an illegitimate child, born in 1952, gave her into the care of the appellants, a husband and wife, who were friends of the mother and were anxious to adopt the child. The appellants, who were then living at Ellesmere, immediately commenced proceedings to obtain an adoption order. The mother gave her written consent. Before the date of the hearing, the appellants moved to Bury and were told that their application should be heard before the justices there. They were also advised not to apply until they had a home of their own. They then applied in June, 1954, the child having lived with them in the meantime, and having been entirely supported by them. The mother had made no visits to the child. Before the application was heard at Bury, the mother withdrew her consent. The appellants contended that, inter alia, she had abandoned the child, and that, therefore, under section 3(1)(c) of the Adoption Act, 1950, her consent was not necessary. The justices found that the mother had not abandoned her child and that her consent was not unreasonably withheld within the meaning of section 3(1)(c).

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16 [1955] 2 All E.R. 427
3(1)(a) of the Act. They dismissed the application, although satisfied that if the test had been the welfare of the child, an adoption order should have been made. On appeal, HELD: (i) a parent "abandoned" an infant within the meaning of section (1)(a) of the Adoption Act, 1950 only if the abandonment was of such a kind as that which rendered a parent liable under the criminal law; and on the facts, the mother had not abandoned her child within the meaning of that section because she had not left her child to her fate (see Mitchell v. Wright (1905)) but had handed her over to people in whom she had confidence.

(ii) in determining whether the mother's consent to the order was unreasonably withheld within the meaning of section 3(1)(e) of the Act of 1930, the justices had made no error in law; it was open to them, on the facts to find that the consent was not unreasonably withheld and the appeal should be dismissed.

But the part of the proviso which gave rise to most concern was that the person whose consent was required could not be found, or was incapable of giving his consent or that his consent was unreasonably withheld. This has already been referred to in reference to Watson v. Nikolaisen. Previous to this there had been two cases, Hitchcock v. W.B. and P.E.B., and Re K (an infant) Rogers v. Kuzmick, both of which were referred to by the magistrates in the Watson case.

In Hitchcock v. W.B., the facts were that the father of an infant was deserted by his wife, the mother of the infant, shortly after the marriage; she took the child with her and did not allow him to see the infant or to know where he was. The father had a criminal record

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17 See Section 1(1) of the Children and Young Persons Act, 1933.
but he had recently made good and wished to have custody of the child which had been given to the mother by an order of the court. The father had no home immediately available where the infant could be received but he intended to put him in a nursery home where he could contribute to his maintenance until such time as he could have the boy with him. The mother wished to have the boy adopted but the father refused his consent to an adoption order, wishing to carry out his parental duties to the infant, and wanting him to remain his child. The justices held that the father's consent was unreasonably withheld within the meaning of section 3(1)(c) of the Adoption Act, 1950, and therefore could be dispensed with under the sub-section, and, being of the opinion that it would be for the welfare of the infant if an adoption order were made, they granted an application for an order.

HELD : in determining whether consent was unreasonably withheld within the meaning of section 3(1) of the Act, the test was not the welfare of the child, but the attitude of the father, that is, whether the father was unreasonable as a father in withholding his consent; if a father has an honest desire to keep his child and could contribute to his upkeep, he could not be said to be withholding his consent unreasonably notwithstanding that he had no home immediately available for the child; and therefore the order of the justices was quashed.

According to the Lord Chief Justice, Lord Goddard, if one of the parents had custody of the child, it by no means followed that the other parent was never to have any rights natural or otherwise in the child. When there was a question of custody or guardianship of an infant the test
which any court had to apply was the benefit of the child. But, he went on to say, the mere fact that adoption would be for the benefit of the child was not an answer to the question whether a parent was unreasonably withholding his consent.

Mr. Justice Devlin pointed to what appeared to him a difference between section 3 of the 1950 Act and the proviso to section 2(3) of the Adoption of Children Act, 1926. The previous provision had allowed much greater powers to the court to dispense with consent. Now, however, the test was different. He felt that it was unnecessary to speculate on the reasons for the change. "The legislature may have considered that, while the welfare of the child is in the end of paramount importance, it would be best for the child to remain with his natural parents, if one of them wanted him." In judgement, the test to be applied was this; "Is the attitude of the father in refusing his consent unreasonable, that is, is the father being unreasonable as a father? If it is possible to say that a father could reasonably come to the conclusion that his child ought not to be adopted, it seems to me impossible to hold that his consent is unreasonably withheld. The welfare of the child is, of course, of indirect importance, because a father who has no regard for the welfare of his child in reaching such a decision is not reasonable but the child's welfare is no longer the sole test."

In the case of Re K (and infant), Rogers v. Kuzmicz, the mother of an infant left her husband, the father, three weeks after the infant was born and went to live with her parents. Later she obtained an
order of the justices giving her custody of the infant and directing the father to pay 15 shillings a week for maintenance. The mother, wishing to go out to work, on the advice of the Children's Officer of the local authority, placed the infant in the care of foster-parents who received 15 shillings from the father and a further 5 shillings a week from the mother who visited the infant from time to time. After about a year the mother began to live with a married man, intending, if and when it became possible, to marry him. The foster-parents approached the mother with a view to adopting the infant and on the 1st March, 1952, the mother consented in writing to the adoption, but, on the 28th April, 1952, she withdrew her consent. On an application by the foster-parents to the county court for an adoption order in respect of the infant, the county court judge held that in the circumstances the mother's consent had been unreasonably withheld within the meaning of section 3(1)(c) of the Adoption Act, 1950 and he made an interim order in favour of the applicants.

**Held:** the withholding by a parent of consent to an adoption could only properly be held to be unreasonable in exceptional cases; in determining in the present case whether the mother's consent to the order was unreasonably withheld within the meaning of section 3(1)(c) the facts that the order, if made, would conduce to the welfare of the child, that the mother had seen fit to place the infant in the care of foster-parents (without in any way abandoning it) and that she had previously consented to the adoption were not evidence that her consent was unreasonably withheld, and, therefore, the county court judge had misdirected himself and his decision was wrong.

The result of these cases was that in adoption cases after the
Adoption Act, 1950 the welfare of the child was clearly not the paramount consideration. The question was whether the parent was acting reasonably or not. These decisions gave rise to considerable concern during the 1950s. It was felt, as L. J. Blom-Cooper pointed out, that "the emphasis on parental rights in testing whether consent to adoption is 'unreasonably withheld' has unduly circumscribed the powers of the courts, in particular the courts of summary jurisdiction".  

This was particularly ironic since, as has been seen, the aim of the section was to emphasise the interests of the child rather than the rights of the parents.

A number of legal articles were written during this period which expressed some concern at these developments in the law, and it has continued to be a focus of attention.

L. J. Blom-Cooper expressed the view in an article in 1957 that "There is perhaps no more delicate a matter than the providing for the consent of adoption, for here there exists an antithesis between the rights of the natural parent and the welfare of the child, a direct conflict which it is never easy to reconcile". He felt that a survey of the cases indicated that the courts were jealously guarding the rights of the natural parents and only in clear-cut cases would they allow consent to be dispensed with. It seemed that the welfare of the child was not then a matter that required any consideration in testing the unreasonableness of the withholding of consent. Referring to Hitchcock v. W.B., Blom-Cooper

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21 "Thirty years of Legal Adoption", Social Service Review, XXX No.2, p.249
says: "The parents' attitude was to be tested subjectively and not objectively since as Lord Goddard stated 'the mere fact that the adoption order will be for the benefit of the child does not answer the question whether consent is being unreasonably withheld'". He would, however, prefer a different test, one of objectivity, "allowing the courts to insist on a high standard of parental behaviour, a parental behaviour which would be tested with direct reference to the welfare of the child. It would be in the final analysis a standard of a parent's behaviour and duty in the face of the adoption order".

In another article, in 1955,22 Blom-Cooper submits that Hitchcock and Kumioz cases are unfortunate for a variety of reasons and hardly consonant with the state of the law in other matters relating to children. He contrasts this position with that under section 1 of the Guardianship of Infants Act, 1925, where in questions of custody and guardianship the welfare of the child was the paramount consideration. The "only substantial difference between the rights of the parents could be adequately protected without subordinating the child's interest to theirs. The author was of the opinion that the word "unreasonable" had been interpreted from the parents' point of view and not the child's, whereas the true emphasis ought to have been on the child's welfare and the courts ought to have insisted upon a higher standard of parental behaviour and held that the parents acted unreasonably unless the interest of the child were put before any consideration of the parents' wishes."

Alec Samuels,23 writing in 1965 discusses the judicial just-

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ifications for the interpretation of reasonableness in terms of the attitude of the mother. He points to Jenkins L.J. in Re K who asked "in what circumstances is a parent not guilty of any misconduct or dereliction of duty, to be held to have acted unreasonably in withholding his or her consent to an order the effect of which, if made, would be to extinguish once and for all his or her parental rights, duties and obligations in regard to the infant, and, indeed, the very relationship between them of parent and child and to make the infant henceforth the child of the adopters in substitution for, and to the utter exclusion of, its natural parents?" Prima facie it would seem eminently reasonable for a parent to withhold his consent. He then gave some examples of behaviour which was not unreasonable. In the first case the withholding of consent would not be unreasonable merely if it was conducive to the child's welfare. "Otherwise a parent in poor circumstances, but guilty of no misconduct or dereliction of duty towards his child, could be compelled against his will to submit to an adoption order being made in respect of that child in favour of any adopters who by reason of more affluent circumstances could make better provision for the child than he could ever hope to do". Samuels, commenting on this point, feels that it reveals a fallacy in measuring the welfare of a child in material terms and submits that it was more cogently argued that a mother as a parent had intrinsic rights to her child which were not to be lightly taken away against her consent particularly where the order was final and irrevocable. A crucial element in welfare of the child must be maintenance of link and relationship with the mother.
The Hurst Committee considered the subject of dispensing with consent in some detail. In the first place, it expressed regret that on consolidation in 1950 the dispensing powers appeared in section 3(1) and were thus separated from the provisions requiring consent which appeared in section 2(4). The Committee felt that some of the "emphasis which had been given in former Acts to the fact that adoption should normally be possible only if it is in accordance with the parents' wishes seems to have been lost by the separation."

But their main concern was over the interpretation by the courts of the new ground for dispensing with consent, that is, that it was unreasonably withheld. The Committee believed that it had been expected that the new power granted in the Act would have tended to focus the attention of the courts on the welfare of the child when they were considering whether they were able to dispense with consent to an adoption.

But two recent decisions had indicated that the words selected had not been apt for that purpose. On the existing state of case law it was clear that the question to which the courts had to direct their attention was whether the parent was maintaining an attitude which it was unreasonable for him as a parent to hold, and not primarily whether the child's welfare was likely to be promoted more by the granting of an adoption order. The practical effect was that the child either reverted to the care of the parent who might merely place him in an institution, or he remained in the de facto adoptive home without the security of legal adoption.

Witnesses had suggested that it ought to be possible for the courts to give primary consideration to the welfare of the child or alternatively that in considering the matter paramount importance should
be attached to the welfare of the child. It was suggested that something akin to the provision of section 1 of the Guardianship of Infants Act, 1925 ought to be incorporated into the statute. But "much as we dislike the proprietary conception of a parent's rights over his child, it seems to us inescapable that different considerations must apply in adoption where the claim is not of one parent against another but of strangers against parents, and the issue is whether the parents' relationship is to be permanently cancelled by artificial means". They regarded the analogy between guardianship and adoption as imperfect.

The Committee felt itself supported in this view by two groups of witnesses. The first group had foreseen a danger that by assigning paramount importance to the welfare of the child, the way would be open for any parent who gave up the care of a child for a time to be deprived permanently of the child, merely because adopters had been found who appeared to be more suitable or financially better able to bring him up than the natural parents. The Committee was of the opinion that this danger was not so remote as it might sound, particularly since so many suitable would-be adopters were seeking children. There was a second view — strongly held in some quarters — that it was generally best for a child to be brought up by his natural parents or parent. Quite apart from the possible value of the blood-tie, the Committee adds, they thought that the importance of preserving parental responsibility was such that the parents' claims ought not to be reduced for the sake of giving greater claims to prospective adopters.

Nevertheless, the Report goes on, there were cases in which a parent, usually, but by no means always, an unmarried mother, had allowed
a child to remain for months or even years, in the care of others, and to
be placed with prospective adopters, but when the adoption order was
applied for, had refused to give consent. In the worst cases, the
parent might in the preceding months or years have shown no interest in
the child, have never visited him, or enquired after his welfare, have
sent no symbol of love or affection, nor birthday or Christmas present,
nor even a letter, nor by any other action shown that her parenthood was
a reality to her. There was sometimes circumstances which excused such
behaviour and it was obviously necessary for each case to be dealt with
on its individual facts and merits; but if the mother could adduce no
reason for her neglect of the child the Committee recommended that the
court ought to have power to dispense with consent. They therefore
suggested the removal from the statute of the ground that consent was
unreasonably withheld and the addition of a further specific ground in
terms which allowed the court to dispense with the consent of a parent
who in its opinion had made no attempt to discharge the responsibilities
of a parent.

Consequently, an amendment would be necessary to the provision
in subsection 3 of section 3 that if consent given without knowing the
identity of the applicant were withdrawn on the ground only that the
identity of the applicants was not known, the consent would be deemed to
be unreasonably withheld.

This recommendation of the Hurst Committee was incorporated in
the Adoption Act, 1958 but in somewhat different terms. Section 5 of that
Act reads:
(1) The court may dispense with any consent required by paragraph (a) of sub-section (1) of section 4 of this Act if it is satisfied that the person whose consent is to be dispensed with —

(a) has abandoned, neglected or persistently ill-treated the infant; or

(b) cannot be found or is incapable of giving his consent or his withholding his consent unreasonably.

(2) If the court is satisfied that any person whose consent is required by the said paragraph (a) has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the infant, the court may dispense with his consent whether or not it is satisfied of the matters mentioned in sub-section (1) of this section.

(3) Where a person who has given his consent to the making of an adoption order without knowing the identity of the applicant thereafter subsequently withdraws his consent on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.

(4) The court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving his consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

The first and last subsections specify and list conditions where consent could be dispensed with, including the withholding of consent unreasonably. The second subsection, however, quite clearly introduces the idea of parental duties and standards of behaviour which, if not complied with, would justify the forfeiture of parental rights over a child, even in those circumstances where such forfeiture would be final and irrevocable. The section makes no express reference to the welfare of the child, and
although the court is to be satisfied that an adoption order, if made will be for the welfare of the child, the question of consent, as the Houghton Committee pointed out has to be dealt with before that stage is reached. Clearly the Act of 1958 widened the power of a court to dispense with consent, but the emphasis remains focussed primarily on the parent's behaviour and attitude rather than on the welfare of the child as the "first and paramount consideration".

24 See footnote 12.
CHAPTER XVIII

THE HURST REPORT 1954

The last two chapters of this thesis will examine some of the discussion of and recommendations made by the Hurst Committee and the steps which led to the Adoption Act, 1958, which is the Act currently governing the making of adoption orders in this country. The issues which have been selected for consideration are those which have formed a recurring theme in policy formation in this field; those which reflect the changing and developing field of practice; or, lastly, those which gave rise to considerable public discussion and controversy.

The recommendations of the Hurst Committee were in the main an attempt to bring the Adoption Code up to date by recognising the changes which had taken place during a quarter of a century of legalised child adoption. Its Report shows, for example, the impact which the establishment of the Children's Departments had made in this field and the accumulation of experience by adoption societies over the years. What it did not do was suggest any but a very few radical or new departures, and those which it made were quietly dropped by the government in the face of public dissatisfaction. The Act of 1958 therefore turned out to be a consolidating statute in more than the technical sense.

18:1 An area where there had been considerable difficulty in achieving
a satisfactory solution in the pre-legislative period was that of jurisdiction. The Adoption of Children Act, 1926 had contained a compromise in this respect by allowing both County Courts and magistrates' courts to have local jurisdiction over adoption. Was there any evidence to show how this compromise had worked in practice between 1926 and 1950?

There was, in fact, very little discussion here - as in other areas of the adoption field - until after the end of the war. The first Committee to look at the question seems to have been the Gamon Committee, which had a County Court judge as its chairman. The result of its deliberations was the suggestion that a special court should be established to do adoption work, which would consist of a County Court judge or a barrister of not less than ten years' standing who would sit with two magistrates, one of these being a woman. The Chairman would be entitled to rule upon points of law. It was felt that this would form a better tribunal for dealing with cases of adoption than either a County Court or a juvenile court.

The reasoning behind the suggestion was that a County Court was a much more suitable tribunal for dealing with a matter of status such as adoption than was a juvenile court which was primarily concerned with delinquency. The judge of the County Court had, as a rule, a much wider experience in adoption cases than had the ordinary magistrates sitting only occasionally in a juvenile court. It was feared that there was a tendency in the juvenile court to deal with such cases in a perfunctory manner and without any clear idea of the policy to be adopted and the points on which the court ought to be satisfied. The magistrates' clerk was responsible for seeing that the technical requirements were observed.
but he was not responsible for seeing that in other respects it was proper that an adoption order should be made and the magistrates, through lack of experience, were apt to assume that compliance with the technical requirements were sufficient to justify an adoption order. The weakness of the County Court as it stood was in the isolation of the judge; this sometimes led him to develop "peculiar views on the subject of adoption and to insist upon some unnecessary requirements". It was also unfortunate that the County Court and the juvenile court should be in competition in the work of dealing with adoption cases. The attitude of the other court in a particular locality was commonly known and there would be a natural tendency to take the case to the court in which it was likely that the adoption order would be the more easily obtained.

The Gamon Committee entirely disagreed with the recommendation of the Magistrates Association that the County Court judge should be deprived of the power to grant adoption orders.

It was in order to resolve these anomalies that the Committee recommended the newly constituted court. The presence of the magistrates might act as a curb on the development by the judge of idiosyncrasies in this class of case, and with their greater means of knowledge of local conditions and the results of other local adoptions, they would be of considerable assistance in coming to the proper decision on the merits of the case. In this way it was hoped to combine the best of the two existing worlds.

Pending the institution of such a court, the Committee felt that

1 "In Loco Parentis" page 19.
the existing conflict of jurisdiction between the County Court and the juvenile court could be lessened by clarifying the Adoption Code and by assimilating the Rules of the County Court and the juvenile court.

In particular, in revising the Rules of both courts it was suggested that the practice prevailing in the High Court should be adopted as model. In the High Court, the adopters were the applicants and the child to be adopted was the sole respondent subject to the power of the court to direct such other person as it might think to be added as respondent. Under the County Court Rules various persons were nominated to be respondents as under the juvenile court Rules but the County Court judge had power to dispense with service of notice on any respondents and that power was freely exercised.

These recommendations were not taken up by Mr. Nield when introducing his Private Members Bill and they did not become incorporated in legislation.

The question of jurisdiction was not discussed officially until the appointment of the Hurst Committee. By 1953 legal adoption had been long enough for it to be seen that adoption applications in the High Court did not constitute a significant number in relation to the total number of orders granted. Between 1929 and 1945 the number did not reach three figures, the highest number being 85 in 1938. Orders in the High Court did jump from 52 in 1945 to 166 in 1946 and reached the highest figure of 199 in 1949 but had descended again to 53 by 1958. The peak years for adoption orders in the High Court, 1946 to 1951, reflect a

\[2\] See Appendix 1.
general upward trend in adoption figures in the immediate post-war period
probably echoing that interest in children that had also followed the
first world war.

It is perhaps more interesting to follow the trends in the
figures relating to the two local courts, over which so much controversy
had raged. The juvenile courts proved the more popular during the period
under study but the popularity of the County Court grew steadily from the
middle of the thirties and the popularity of the magistrates' court began
to decline from around 1950. The relative position can be seen by com­
paring the statistics for 1944 with those for 1954. In 1944, the total
number of orders granted was 13,027 and in 1954 the total was 13,005 so
that the years are roughly comparable in this respect. But, in 1944,
the number of orders granted in the County Court was only 1,928, whereas
in the juvenile court, the figure was 11,041. By 1954, however, the figures
were 4,529 and 8,418 respectively. (In the High Court the figures were
very similar in both years: 58 in 1944 and 56 in 1954). The figures can
also be seen in percentages in Appendix 2.

The reasons for this change in popularity between the courts
is not known.

In the light of these trends, and from evidence it had received,
did the Hurst Committee feel that there might be room for reform? They
had heard from a number of witnesses who felt that the triple jurisdiction
was unsatisfactory and that it should be limited to one type of court only.
But the Committee remained unconvinced of the need for a radical change.

3 There was also an upward-swing in the birth-rate - the so-called "bulge"
of the post-war years.
The Committee first of all considered the jurisdiction of the High Court. This was a court which made only a very small number of orders and the cost was on average £40, whereas, both the County Court and the juvenile courts enjoyed the confidence of the public, both involved a minimum of expense, both were easily accessible, both sat relatively frequently, and both had much experience in adoption work. But nevertheless, the Committee was of the opinion that the maintenance of the jurisdiction of the High Court in adoption was in the public interest because if their recommendations as to appeals were accepted, the judges who heard them would not be entirely without personal experience of adoption cases in courts of first instance. Moreover, the High Court seemed to attract a number of adopters who lived at a distance from London and imagined that proceedings there would afford an additional security against the curiosity of neighbours.

A memorandum had been submitted to the Committee suggesting the possibility of special domestic courts being set up for all matrimonial and similar proceedings and that adoption should properly be dealt with by them. The Committee felt that this might well be the case but that until such time as specialised courts were established, it would not be right to deprive any one of the existing tribunals of jurisdiction in adoption proceedings. However, they recommended that as far as possible differences between procedure in the County Courts and magistrates' courts ought to be assimilated so as to reduce the impression that one court was

4 para. 81.
5 para. 83.
"easier" than another in that area. It was inevitable that among the hundreds of courts which had jurisdiction in adoption cases, variations in outlook and in the exercise of discretion were unavoidable.

18:3 Having recommended the maintenance of the status quo, the Hurst Committee did however make certain recommendations with regard to procedure. In the first place, they suggested that there should be an appeal procedure. Under the law as it stood, there was no specific statutory provision for appeals from any County Court or Court of Summary Jurisdiction. Without such a provision, the general right of appeal from a County Court to the Court of Appeal, except on a point of law, was of no practical use because the making or refusal of an order upon an application for adoption was a matter of judicial discretion, and unless such discretion had been exercised in some obviously improper manner the Court of Appeal would not normally override its exercise. There was no right of appeal from a discretionary decision of a juvenile court but, on the rare occasions where a point of law arose, a case could be stated to the High Court.

The omission of any statutory provision for appeals in the Adoption Code had on occasion led applicants whose application had been refused by a court of summary jurisdiction to seek to avail themselves of section 8(1) of the Adoption Act, 1950 which (according to one possible construction) enabled them to apply de novo for an adoption order to the High Court notwithstanding Rule 4 of the Adoption of Children (High Court).
Rules 1950. If the interpretation put on that section was right, there was no need for the applicants to rely on any alleged change of circumstances since the earlier hearing by the magistrates. The Hurst Committee felt that Parliament never contemplated this method of appealing by way of a fresh application to another court with concurrent jurisdiction.

Whatever the proper interpretation, the Committee felt that the grant or refusal of an adoption order was of too important a nature to justify the withholding of a right of appeal. They could, for instance, conceive of cases where prospective adopters believed that their application had been dismissed because the guardian ad litem or some other respondent had raised and been upheld upon a capricious illusory objection which the applicant wished to challenge before a higher court. Similarly a mother or any other respondent, including the guardian ad litem, might wish to appeal against an order being made. In this type of case it was of no practical advantage to provide for an appeal to a tribunal which would not hear oral evidence or see the parties; or to one which would be inflexibly reluctant to override the discretionary jurisdiction of a court of first instance.

For these reasons, the Committee felt that an appeal by way of rehearing would be the best method and that the most suitable tribunal to hear appeals from inferior courts would be the two judges of the Chancery Division to whom the High Court jurisdiction in adoption cases was currently entrusted, sitting together as a Divisional Court. They therefore recommended that 

(i) the parties, the guardian ad litem and necessary witnesses (if any) should appear in person before the judges;

(ii) oral evidence was to be given at the hearing;

(iii) notice of appeal was to be required to be given within a specified (and very short) time after the decision became to the knowledge of the appellant, and arrangement made for appeals to be heard at the earliest possible moment;

(iv) no proceedings to invalidate an adoption order was to be initiated without the leave of the High Court after the expiration of twelve months from the date of the order.7

As to (iii) it was of some importance that questions of status should be settled without delay, and it was also recognised that few appeals could involve more mental distress than those in relation to adoption. It was also desirable that the costs of appeals should be kept as low as possible and for legal aid to be available for them. The Committee assumed that the appeals would be heard in camera but recommended that provision should be made for the Divisional Court, in its discretion, to give judgment in open court when a point of principle or of public importance had been at issue.

The result of these recommendations of the Hurst Committee was to retain the court structure but to make the jurisdiction of the courts of first instance more open to the review of the courts of appellate jurisdiction. In this way the Parliamentary compromise of 1926 was retained and re-incorporated in a new Adoption Act.

The current situation as regards appeals is as follows: From orders made by the High Court, the appeal is to the Court of Appeal, which court also hears appeals from the County Court, under the County

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7 para. 133.
Courts Act, 1959. After the 1st April, 1959, section 10(1) of the Adoption Act, 1958 provided that a specific right of appeal to the High Court lay from a decision of a magistrates' court with regard to an adoption application. The right of appeal would cover both the exercise of discretion in addition to the general right of appeal on points of law.

18:4 As the Hurst Committee pointed out, the appointment of the guardian ad litem with the "duty of safeguarding the interests of the infant before the court" had also been part of adoption legislation since 1926. On the advice of the Home Office, many courts adopted a practice of appointing the local authority which until 1948 generally delegated the work to its Education Officer. Other courts appointed a probation officer, while others preferred to appoint private individuals who seemed to them fitted to carry out the task and were willing to undertake it.

After the establishment of Children's Departments by local authorities under the Children's Act, 1948 and after the passing of the Adoption of Children Act, 1949, it was suggested in a memorandum of advice issued jointly by the Lord Chancellor and the Home Secretary to County Courts, magistrates' courts and local authorities in England and Wales that, where a local authority was appointed guardian ad litem, the Children's Officer was the appropriate officer to whom the duties should be delegated. Most local authorities had acted upon this advice, with the consequence that the work was now mainly carried out by Children's Officers and their staffs except in areas where the courts preferred to appoint probation officers or other persons.

8 para. 70.
The Committee had been told of certain local authorities who accepted appointment as guardian ad litem in adoption cases when they themselves had participated or even taken the main part in the arrangement. This was contrary to the advice, which had been given to the courts and to local authorities by the Lord Chancellor and the Home Secretary, and it appeared that many local authorities did not approve of the practice. Some continued to participate, however, at the wish of the courts notwithstanding that the Act stipulated that they might not be appointed without their consent. Nearly all the witnesses were strongly of the opinion that the guardian ad litem should be able to report independently upon the case and the Committee concurred that someone who was even remotely concerned in the placing of the child should not be appointed. They recommended that the Act should clearly provide for this and should make it clear that where a local authority was responsible for placing a child no officer should act as guardian ad litem.

It was suggested that the enquiries made by the guardian ad litem put too much emphasis on material conditions and that there was a tendency for the far more important factor of the emotional relationship between the child and the adopters to be overlooked. This was not a matter which could be dealt with by any specific alterations in the duties of the guardian ad litem as laid down in the Rules. Whatever might be in the Rules, such aspects of the matter as the attitude of the adopters towards the child and their reasons for adopting him could only be adequately assessed by a skilled worker. The Committee appreciated the difficulty which courts might have in finding skilled workers but

9 para. 75.
they deplored the practice of some courts in not expecting the guardian to carry out all the prescribed duties but allowing some of them to be performed by the solicitors for the applicants or by some other interested party. They were uneasy too about the practice of certain courts which regularly appointed persons such as solicitors, clergymen and others who, however willing and however admirable as individuals they might be, were neither by training nor even by experience really competent to do work of this specialised nature on the efficiency of which the future happiness of the child must very largely depend.

They therefore recommended that the statute should require the court to appoint a person who was suitably qualified and experienced. They did not think that more specific directions than this could be given and realised that the effect of such provision would be to limit the field of choice to a Children's Officer, a probation officer or some other trained social worker. In some parts of Wales there was a fairly strong objection to the appointment of a probation officer apparently partly based upon the connection of probation officers with the criminal courts, and partly on the fact that their time was already fully taken up, while some witnesses thought that their training did not qualify them for adoption work. The Committee understood, however, that probation officers were now performing many duties besides those connected with the treatment of offenders, for example, matrimonial and other domestic proceedings and the more they did so the less justification there was for any prejudice against them. The Committee was convinced that in England and Wales they were the most suitable persons to carry out the
duties of guardian ad litem in cases where it would be improper for an
officer of the local authority to undertake them.

In the High Court the Rules provided for the Official Solicitor
to be appointed guardian ad litem unless he did not consent or unless
the applicants desired some other person to be appointed. The principle
underlying this arrangement appeared to the Committee to be obsolete.
It would be anomalous if the recommendation in the preceding paragraphs
did not comply also to applications made to the High Court. While the
Report of the Committee had been in draft, attention had been drawn to
the case of Re P.11 (an infant) in the Court of Appeal in which it appeared
that the guardian ad litem had tried to persuade the mother (who had
intimated her intention to withdraw her consent to the adoption) to change
her mind telling her that the proposed adopters might make a claim for
maintenance of the child while he had been with them during the probation-
ary period. The court had said that this statement was unjustifiable
and regrettable. In the Committee's view, it was no less regrettable
that the guardian ad litem should seem to take sides in the matter. It
was improper for a guardian ad litem or any agent of his to try to influence,
or even give the appearance of attempting to influence the decision of any respondent, whom he might interview. His duty was to make
enquiries and to report the facts impartially to the court. As an officer
of the court he should not bring any pressure to bear on any party.

18:5 Some witnesses to the Hurst Committee had spoken of the diffi-

11 (1954) 118 J.P., 139.
culty which arose through undue delay in fixing the date of the hearing; others had said that the hearing was sometimes fixed too soon after the appointment of the guardian ad litem to allow him enough time to make his enquiries. In the Magistrates' Courts, the Rules required that the court should fix the date and time of the hearing at the time of appointing the guardian ad litem. In County Courts the guardian ad litem was appointed by the Registrar, who then fixed the date and time of hearing. In both the County Court and the magistrates' court the appointment of the guardian ad litem, fixing of the date of hearing and the issue of notices were to be done "as soon as practicable" after the application was made. The Committee could see no reason why these steps should not be taken immediately the application was lodged. They therefore recommended that the Rules should provide accordingly and that the form of application should have appended to it a receipt for completion by the Registrar or the Clerk to the Justices, as applicable, to show the date and time of hearing. The Rules would require that this date should be as soon as possible after the expiration of a period of six weeks from the lodging of the application. Because of the provision suggested\(^\text{12}\) whereby an application could not be lodged until the child had been in the adopter's home for two months, the applicants would already have had the child in their care for at least this length of time.

The role of the guardian ad litem was also considered. The Act provided that the court, before making an adoption order should be satisfied "that the order if made will be for the welfare of the infant". Some of the evidence heard had led the Committee to the conclusion that

\(^\text{12}\) para. 66.
some courts were satisfied by reports which contained little information in support of the recommendation of the guardian ad litem. No doubt this could be explained by the fact that the court had come to rely on the experience and skill of the guardian ad litem; nevertheless the responsibility for making or refusing an order rested upon the court and it was necessary that it should be supplied with adequate information on which to base its decision. Some of the later recommendations were directed to strengthening the Rules in this respect. It was important "that no colour should be given to the impression that the court acts as a mere rubber stamp for giving effect to the views of the guardian ad litem".\textsuperscript{13}

It had been suggested that the duties of the guardian ad litem specified in the Second Schedule to the Rules were too concerned with material aspects and not enough with the more important emotional side. It might be that these witnesses had overlooked the fact that the Second Schedule was headed; "Additional matters subject to investigation and report by the guardian ad litem". There could therefore be no doubt that the attitude of the adopters and the child to each other, and other emotional factors should be inquired into under the Rules which ran; "It shall be the duty of the guardian ad litem to investigate as fully as possible all circumstances relevant...".

The Committee had also been told of cases in which adoption orders had been granted to persons wholly dependent on national assistance, and the circumstances were such that it was difficult to believe that the courts making the orders were aware of the fact. The Rules required

\textsuperscript{13} para. 86.
the means of the applicants to be inquired into, but the Committee recom­
ded that this be amended so as to ensure that the source as well as the
amount of the applicant's income was made known to the court.

18:6 Despite the recommendation of the Hurst Committee, in the High
Court, the Official Solicitor continued to be the official who was nor­
mally appointed the guardian ad litem of he consented and unless the
applicant desired otherwise.

However, in the County Court and the juvenile court the new
Rules provided that the guardian ad litem should be:

(a) if the local authority concerned consented, the
Children's Officer or an officer of that authority
who assisted the Children's Officer in the
exercise of his functions;

(b) a probation officer; or

(c) if in any particular case the court considers it
not reasonably practicable or that it would be
undesirable to appoint one of these persons, some
other person who appears suitably qualified.

But the Rules of the courts made certain persons not eligible for
appointment, namely:

(i) a person who had rights and powers of a parent
of the infant or who have taken part in arrange­
ments for the adoption; and

(ii) members, officers or servants of a local
authority, adoption society, or other body
of persons which has such rights and powers or
which has taken part as aforesaid.

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14 The Adoption (County Court) Rules 1959 S.I. 1959 No.480;
The Adoption (Juvenile Court) Rules 1959 S.I. 1959 No. 504.
15 op. cit.
The general duties of the guardian ad litem are, so far as is reasonably practicable, and with a view to safeguarding the interests of the infant before the court:

(a) to investigate all the circumstances relevant to the proposed adoption, including all matters alleged in the statement of application and those specified in the list of particular duties of the guardian ad litem; and

(b) to perform such other duties as are specified or as the court might direct.

The Hurst Committee was of the opinion that the requirement in all cases of a probationary period of at least three months under the supervision of the "welfare authority" was perhaps the most far-reaching of the provisions introduced by the 1949 Act. (The Committee felt that the use of the term "welfare authority" in the 1949 Act had led to misunderstanding and they therefore recommended replacing it by the term "local authority"). The Committee felt that it was now generally recognised that a waiting period during which it could be seen whether the child would settle with the adopters, and whether they would accept him as wholeheartedly as they should if they were to assume permanent parental care of him, was necessary in all ordinary adoption cases. It was a protection for the adopters as much as for the child. 17

The position of the local authority in adoption work was complicated. They could have three quite separate functions. In the first place they might be involved in arranging an adoption. There were, however, divergent views as to whether local authorities were entitled to

16 op. cit., and the Adoption (High Court) Rules 5.I. 1959 No. 479.
17 para. 58.
arrange adoptions of children other than those who were in their care. This was because of two possible interpretations of section 43(1) of the Adoption Act, 1950 which empowered local authorities "in connection with their functions under any enactment relating to children, to make and participate in arrangements for the adoption of children". It was plainly desirable that legislation should leave no room for doubt on the point. If local authorities could arrange only for adoptions of children in their care, they were unable to give any help in arranging an adoption unless the conditions for receiving a child into care under the Children Act were fulfilled. This was particularly unfortunate in certain types of cases, for example, children not in the care of the local authority but whose mothers were accommodated in local authority welfare homes.

The Committee recommended that local authorities should be specifically empowered to arrange for the adoption of any child for whom adoption was sought without receiving the child into care. 13

The second function was that of the supervision of certain children and arose as a result of section 34 of the 1950 Act and a third function might arise if the local authority were appointed as guardian ad litem. The Committee felt that it was very important to differentiate between the local authority's functions in a supervising authority and its functions as guardian ad litem. The former arose whenever notice of an intention to apply for an adoption order was received and were analogous to the ordinary duties of a local authority under the child life protection legislation. The latter did not arise until after an application for an adoption order had been lodged (and then only if the court

13 para. 24.
appointed the authority as guardian) and were performed on behalf of
the court to whom the guardian was responsible.

18:8 By this point in time, as the Report points out, there were
between 60 and 70 registered adoption societies in England, Wales and
Scotland; these included the "introducing agencies", adoption societies
run by children's homes and moral welfare associations dealing particularly
with the unmarried mother. The Committee expressed itself to have been
greatly impressed by the work of the societies; but they had also received
criticism and suggestions as to how improvement could be achieved. 19

The criticism felt to be most valid related to the amount of
care taken in placing a child. It had been pointed out that a society
of the introducing type "which may accept a child from Land's End and
place him with adopters at John O'Groats" had not the facilities and in­
deed did not attempt to arrange for the adopters to be visited by its own
worker (except when their home was comparatively near the society's office)
and therefore could not effectively "match" the child and the adopters.
The Committee appreciated the value of the same worker being able to see
and know the child, the parents, and the adopters in their home surround­
ings, when considering whether to propose a particular placing; and they
thought that societies which arranged accordingly were to be preferred.

A second major criticism was that many societies did not employ
trained workers. 20 It had also been pointed out by local authorities

19 para. 34.

20 para. 36.
that the Act, which allowed the registration authority to cancel registration on the ground that insufficient competent workers were employed by the society, failed to define the word "competent". It was clear, said the Report, that the staffs of many societies had not received formal training, but they were nevertheless aware that some "untrained" workers had had experience which rendered them highly skilled. The crux of the matter seemed to be that both training and experience, including a wide experience of normal homes, was required by the ideal adoption worker and even these were not enough if the person concerned was not temperamentally suited to the work. Adoption societies were to aim at employing trained workers and where this was impossible efforts were to be made to co-operate with case-work agencies which did. In particular it was felt that adoption societies which did not concern themselves with the mother of the child ought to be ready to consult with other bodies which dealt with this aspect of the matter. It was of vital importance to establish before the child was placed that the mother was not seeking adoption merely as a means of overcoming present difficulties but understood what it meant to part with her child and had really made up her mind that she wanted the child to be adopted.

The Committee did not feel able to make any recommendations with regard to the field of operation of adoption societies and their carrying out of visits, or to the employment of trained workers, because it was clear from the evidence that most societies were financially unable to carry any further burdens and the effect of such recommendations, if put into effect, would be to close down a number, perhaps a considerable number, of societies. Such a result "would be regrettable".
It had been suggested that local authorities should give adoption societies more encouragement in the shape of regular contributions under section 46(2) of the Children Act, 1948 which enabled a local authority, with the consent of the Secretary of State, to make contributions to any voluntary organisation whose object or primary object was to promote the welfare of children. "There must be many cases where an adoption arranged by a society prevents a child from coming into the care of a local authority and so being for however short a time a burden on the rates. Further it seemed that many registration authorities took little or no interest in the work of the societies registered with them and made little use of the information which the Adoption Societies Regulations required to be annually furnished to them. They considered that a greater interest ought to be taken and closer touch kept by the registration authorities and that this extended interest might well be coupled with regular financial assistance. In particular it was suggested that with a view to assisting in the provision of better qualified workers, local authorities ought to consider making special contributions towards the expenses of those adoption societies which employed trained workers.  

18;9 The Committee reported that almost all the witnesses examined had stressed the undesirability of third party adoptions, that is, "those in which the mother places her child with prospective adopters through the agency of a private individual acting as a go-between". The attention of the Committee had been drawn to a number of cases where a mother had

para. 43.

21
been induced to part with her child to people who were grossly unsuitable to care for him. Whether the third party acted chiefly for the benefit of the mother or of the adopters the interests of the child did not usually receive much, if any, consideration.

In this category there was the "deplorable" cases in which a doctor acted as third party for the benefit of a patient whose neurotic condition he sought to remedy or whose marriage he hoped to stabilise by this means. Although the Committee did not wish to suggest that it was typical of the attitude of doctors they wished to quote from a letter from a doctor to a voluntary worker which had been submitted to them:

"I wonder if you can help me with this unfortunate woman and her husband? They both want another child - the first being now 8 - and he has proved impotent while she has not 'taken' after three attempts at Artificial Insemination (Donor)."

Some time ago they had an adopted child 'on appro' but Miss ... decided they were not suitable to keep it.

Mrs. X tells me that her husband threatens to leave her unless another baby is forthcoming, and adoption is the only way. I feel myself that although the home is not ideal, a baby might go a long way to settle down the whole family and without itself suffering in the process.

With such a brisk seasonable trade in 'illegits.' I feel one might perhaps be spared!"

The Committee had also been given examples of cases in which an ostensibly "direct" placing had been made by the mother. That is, she had placed the child with someone who was a friend of hers and to whom she was introduced merely for the purpose of handing over the child. In such circumstances the third party did not usually admit that he had taken part in the arrangements, or, no doubt through ignorance did not
notify the placing to the local authority as required by section 31 of the Act. Some of these direct or semi-direct placements were wholly unsuitable and their prohibition had been urged by many witnesses. Others had advocated granting a power of veto to the local authority if, after notification, the home did not come up to their standard. It was generally agreed that, if evasion were to be prevented, such a power of veto would have to cover all placings with persons other than relatives, even where adoption was not contemplated.

But, while having great respect for the motives underlying the proposals, the Committee doubted if their advocates appreciated either the complexity of the problem or the extent of the interference with individual liberty which the suggestions would entail. Facts to be taken into consideration were, for example, that over the whole country only about one quarter of the adoption orders made were in respect of adoptions arranged by adoption societies or local authorities. No exact statistics were available but even allowing for those cases where the child was adopted by father, mother or relative there was no doubt that more than one-third of the adoption orders made annually were in respect of children placed outside their own families either direct or by third parties. While this large number included the kind of placing to be deprecated, it included also many personal arrangements prompted by neighbourly goodwill and often by genuine affection for the child and his family. Although no exact information was available courts were familiar with applicants who were friends of the mothers, fellow workers or landladies who had developed an affection for a child entrusted to their care. Such persons were prompted by the highest motives and were prepared to accept the
child as he was and to incorporate him into their family although they would never have set out to adopt a child in the ordinary way. Again some adopters set their hearts on a particular child, rather than on a child selected for them by others, however competent. The reasons for their choice might defy analysis, but nevertheless seemed to them compelling and might cause them to accept the child more completely "for better or worse", just because he was their own choice.

This then was the situation as the Committee perceived it, and in the "present state of our knowledge it would not be right to fetter all this goodwill. No careful research into the comparative results of adoptions carried out through the agency of adoption societies, local authorities or third parties or arranged direct has, so far as we know, been undertaken and, in the absence of reliable data, no conclusion as to the relative value of these methods can be drawn. We believe that any restrictions on third party and direct placings could and would be evaded and that such placings would continue but adoption orders would not be applied for in those cases. Prohibition of such placings would increase de facto adoption". For these reasons the Committee did not think it wise or practicable to prohibit either direct or third party placings.

They did recommend, however, that third parties should accept responsibility for their actions and be made respondents to the application. This would mean that they would be served with notice of the application and would be interviewed by the guardian ad litem; they might also be required to attend the hearing. In order to assist the guardian ad litem to trace any persons who might have acted as a third party they recommended that the form of consent should contain a statement by the
They also recommended that any person except a guardian or relative defined in the Act who was about to receive a child except from a local authority or an adoption society, with a view to legal or de facto adoption, should be required to give fourteen days' notice to the local authority of the area in which he lived. The notice was to include certain listed particulars. A further recommendation was that the terms of the Act should be strengthened in such a way that its requirements could more easily be enforced. It was hoped that local authorities would take more active steps to ensure that the requirements of the law were widely known.

Although the period of notice was lengthened to fourteen days in the Bill, the recommendation that third parties should be made respondents to applications was not included, as Lord Gorell pointed out during the Second Reading of the Bill in the House of Lords. Lord Gorell, expressing his disappointment, added that "those with whom I have been associated — and I speak with twenty-one years' presidency of the National Council for the Unmarried Mother and Her Child — feel very strongly on this point".

At the Report Stage, Lord Latham moved to insert a clause which provided that third parties should become respondents. Lord Chesham, on behalf of the government, opposed the move; it was felt that the Committee's recommendation "goes rather too far". The Lord Chancellor

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23 Hansard H. L. Vol. 208.
24 op. cit.
followed up this speech by stating that there were points to be considered. In the first place there was the endeavour to ensure that agents were seen by the guardian ad litem. This could be done in the Rules without joining them as respondents. On the other point if the court required the attendance of any agent who was not a respondent it could so insist. The amendment was then withdrawn.

Although there was further discussion of this point during the passage of the Bill, the suggestion of the Hurst Committee did not become law, and a "third party" per se is not a respondent to the proceedings.

From the above discussion of the Hurst Report, and the legislation which followed it, it can be seen that the aim was primarily to strengthen and to encourage good adoption practice rather than to restrict or prevent those aspects of the field which were regarded as doubtful and open to criticism. Very little that was radical or new became part of the Adoption Code in 1958.
The Report of the Departmental Committee was presented to Parliament in September, 1954 but no government action was taken for nearly four years. The Home Office reaction was that the Report "is a clear, detailed convincing document proposing no major changes of policy but a series of minor changes and improvements of law and procedure designed to facilitate adoption in straightforward cases, and to improve and add safeguards. The numerous recommendations would require individual examination but appeared, in the main, to be quite acceptable. It was suggested that the Report be printed and that authority should be sought for drafting a joint English and Scottish Bill with a view to its introduction in the 1955-56 Session of Parliament. However, further notes indicate that there was insufficient justification for including the Bill in that Session since other Home Office matters took precedence. No further action was taken at that stage, that is, December, 1955, "in view of impending changes in the Children's Department".

But because of the mounting public concern it was felt that it would be difficult to continue to resist pressure for legislation and that an endeavour should be made to get an Adoption Bill on the legislative programmes for 1956-57.

A letter to The Times from Sir Gerald Hurst and the Hon. Mrs.
H. A. Edwards on the 30th January, 1956 pointed out that the Report had been unanimous and that it had been favourably received by the public, particularly by those whose work brought them into contact with deprived children. They were fearful that there was a real danger that the recommendations might be lost in the press of larger and more spectacular questions. "It should hardly be necessary to add that human happiness is not measured by the number of those who suffer. Reform is no less due because the numbers of adopted children are comparatively small and they cannot be organized into a pressure group. A campaign was being set on foot by the adoption societies to press for action and it was noted that the letter in The Times on the 30th January had been accompanied by a number of letters from Members of Parliament instigated by adoption societies. However, a note of the 16th October, 1956 says briefly: "We have not succeeded in getting a place for an Adoption Bill in the programme for the coming Session".

Between 1955 and 1958 when legislation was eventually introduced the Home Office files reveal that communications were received incessantly, either direct, or through Members of Parliament expressing considerable concern over the lack of legislation. A resolution was passed at the Women's Annual Conference of the Conservative and Unionist Party on the 21st May, 1957 which read: "This conference urges that legislation based on recommendations of the Hurst Committee Report of September, 1954 on adoption of children be immediately laid before the House". By the middle of 1956, a Home Office note was suggesting that since they were subjected to considerable lobbying along these lines, perhaps "some soothing public announcement might be made when a suitable opportunity presents itself".
It is not known if such an opportunity did, in fact, arise.

This agitation was finally put to rest by the Queen's Speech of the 5th November, 1957 which included a statement that "My Ministers will continue to promote the social welfare of My people. ... They will also introduce legislation amending the law relating to the adoption of children and providing for the supervision of those who take children into their care for payment...". A similar statement appeared in Hansard for the 23rd October, 1958 when the Queen's Speech again referred to adoption legislation when she said the important reforms "affecting the welfare of children are being effected by an Act amending the law of adoption and making fresh provision for the supervision of those who take children into their care for payment".

The reason for this was the changes in adoption laws were first introduced as Part II of the Children Bill which became the Children Act, 1958. After the passage of this Bill it was decided to introduce consolidating legislation and so an Adoption Bill to this end was introduced into the House of Lords on the 4th November, 1958. After being read, a Second Time on the 12th November without a debate, it was referred to a Joint Committee on Consolidation of Bills. An amendment recommended by the Joint Committee was agreed, and the Bill was then sent to the Commons. On its return from the lower House it was given the Royal Assent as the Adoption Act, 1958.

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1 Hansard H. C. Vol. 577.
2 Hansard H. C. Vol. 592.
Although the Home Office reaction to the Hurst Report was that the proposals were uncontroversial and not urgent, there were two provisions which were urgently needed. These would provide for members of foreign and overseas services and other United Kingdom citizens resident abroad to obtain an adoption order in this country; and secondly, to prescribe the circumstances (if any) in which citizens of other commonwealth countries and foreigners would be allowed to adopt United Kingdom children. These were points which were likely to be controversial.

The Hurst Committee in discussing adoption with a prospect of living abroad referred back to the Horsburgh Committee which had made recommendations affecting such arrangements. That Report had illustrated how much more serious a failure in adoption was in its consequences to the child if the child had been adopted in a strange country than if the family lived in this country, and they seriously considered whether societies and others should be entirely prohibited from placing children with persons resident abroad. However, they had recommended the licensing system through the Chief Metropolitan Magistrate at Bow Street Magistrates' Court. This was embodied in section 11 of the Adoption of Children (Regulation) Act, 1939 and the Rules made thereunder. This section reappeared as sections 39 and 40 of the Adoption Act, 1950. Section 39 prohibited the transfer of a child to a foreigner who was not a guardian or a relative of the child, or, without a licence, to a British subject who was not a guardian or relative of the child. Section 40 provided for the grant of licences to British subjects. Before granting a licence
the licensing authority had to be satisfied by a report of a British Consular officer or any other person who appeared to the authority to be trustworthy that the person to whom the child was entrusted was a suitable person to be entrusted with the child and that the transfer was likely to be for the child's welfare. There was no requirement for the appointment of a guardian ad litem and a licence could be granted without the attendance of the person resident abroad to whom it was proposed to transfer the child.

In this and other ways, it was felt that the provisions did not seem to be what the Horsburgh Committee had intended, and, in any event, the analogy with employment of a child abroad was felt by the Hurst Committee not to have been a happy one. Moreover a decision of the High Court in 1951 had reduced the possibility of making adoption orders in this country for the benefit of applicants resident abroad. It had always been a pre-requisite for obtaining an adoption order that the applicants should be domiciled in this country and that the applicant and child should be resident here. As the Hurst Report pointed out, the word "resident" was not defined in the Act and until the decision of Mr. Justice Harman in Re Adoption Application No. 52/1951 many courts had acted upon the view that persons domiciled in England and Wales but working overseas were resident here during the period of their leave. But the decision in that case had been that a temporary sojourn during a period of leave fell short of "residence" within the meaning of the Act. As a result people in such circumstances had to rely upon the licensing system in order to trans-
fer a child to their care and take him abroad.

This was a much less satisfactory situation than if an adoption order were granted in this country, because it gave no security of status to the child in a foreign country at any moment. On the other hand, the rights of parents were not acquired and the natural parents could recover the child at any time, if they were able to trace him.

Moreover the system of granting licences was not in all respects as satisfactory as could be wished. An application for a licence could be made on behalf of prospective "adopters"; they themselves did not need to appear. As the Committee pointed out, this could mean that a child was sent to people who had never seen him and was delivered over to them in a foreign country when there was no certainty that they would take to the child, nor he to them.

Further, the Committee felt that "the contemporary conception of adoption as a means of providing a full and happy home life for a child who would not otherwise have that advantage and not as something for the comfort and gratification of adopters, had led to the requirement that the child had to live with the prospective adopters for a probationary period before an order could be granted". The advantages of this were clear, and it would be wrong for a child to be taken abroad without such a safeguard. On the other hand, the advantages to a child of legal adoption were so great that the Committee was strongly of the opinion that any person domiciled in this country even though not resident should be able to apply for an adoption order. Domicile would, therefore, be the basis of eligibility to apply for an adoption order because domicile was the basis of the jurisdiction of the courts in matters of personal status.
This provision would mean that "place of residence" would coincide with the place where the applicant intended to live while the child was placed with him during the probationary period. They also recommended that in the case of a couple both must have been in this country for six weeks after the application had been lodged so that both would normally be present at the hearing. This was to cover the situation where the wife came to this country to adopt while the husband remained at his work abroad.

The Committee could see no reason why licences should be granted only to British subjects. They were confident that the licensing authority would not grant a licence to foreign nationals who could not show special reasons for their application. They also saw no reason why licences should not be granted to those beginning a long temporary residence in this country. The procedure would be similar to that required when application was made for an adoption order. There would be a supervised probationary period, a guardian ad litem would be appointed and be required to make the fullest inquiries about the applicants with competent persons in their own country.

It was also recommended that the new type of licence should vest in the applicants rights equal to those of a parent, since the existing licence gave the prospective adopters no authority to act on behalf of the child, for example to give consent to an emergency operation. Further, they recommended that it should be an offence for any person (except a parent, guardian or relative of the child) to attempt to remove a child without a licence with a view to adoption to any destination outside "the British Islands" unless the child had entered Great
This recommendation aroused a certain amount of concern. For example, in April, 1956, Princess Alice of Athlone asked the Home Secretary to receive a deputation from the N.C.A.A. to discuss recommendations of the Hurst Committee. The question of transfer abroad was one of the issues which gave rise to anxiety, since the Committee's suggestions might mean that "British born children could be taken to a foreign country by foreign nationals, thereby losing their British heritage". Apart from this, the deputation was of the opinion that there was a danger, especially in the adopted child's years of adolescence, of incompatibility of racial temperaments. In any case, there were many "desirable young couples in our own Commonwealth where there is legal adoption who were only too anxious to adopt babies from England". There were also many more desirable couples in this country waiting to adopt than there were children available for adoption.

The Home Office felt that the Association's views were reasonable enough but that they failed to take into account the inescapable fact that some British parents preferred to place their children with Americans with whom they were acquainted, rather than offer them to adoption societies for placement in this country, or for transfer abroad to British couples under conditions of secrecy which the Association defended so strongly. It was felt that the position was bound to continue as long as there were American families stationed in this country. It was also probable that some of the children so placed were the offspring of American fathers. It was decided that if the deputation was received it should be
told that the Home Office had not come to any conclusions on the recommenda-
tions of the Hurst Committee and would give full consideration to any
views of the deputation; and that it was in any case likely to be some
little while before there could be an opportunity for legislation.

Another discussion in the Home Office arose out of a letter to
J. H. Craine of Bow Street Magistrates Court on 1st November, 1955. It
was felt that it would be of considerable help in considering the
Committee's recommendation to have an analysis of classes of cases in
which Bow Street had granted licences during one year. It seemed that a
fairly high proportion of those who had been granted licences were dom-
iciled in the United Kingdom and resident abroad under condition that
would usually make it impossible for them to comply with the regulations
that the Hurst Committee recommended. In the majority of cases, arrange-
ments were made by or through an adoption society and it was a surprise to
the Home Office to learn that so many adoption societies were prepared
to arrange such adoptions. It also seemed that in a high proportion of
licences arranged by Catholic adoption societies, the proposed adopters
neither attended court nor saw the child before the licence was granted.
The number of adoptions arranged for members of the Services were few.

The current procedure seemed to work well and no complaint had
been received about the way in which the Bow Street Court administered
its responsibilities, but one Home Office note expresses the feeling
that to allow a child to be sent abroad for adoption by persons who had
never seen the child seemed quite fantastic. It was felt that some way
of preventing this ought to be considered when legislation was formulated.

One of the reasons for the public concern in the 1950s over the
transfer of children abroad arose from the publicity given to the story of the film star Jane Russell and her attempt to adopt a child from this country. Bulletin Number 2 in January 1952 discusses the story:

"Everybody has heard about the saga of Jane Russell and Tommy Kavanagh: how the film-star scoured Europe to obtain a child for adoption, how someone in this country offered her child, how he went off by plane at a moment's notice with Jane and her mother, how the press stories dropped the word "adoption" like a hot potato and then gave out that the little boy was merely going to America on a nice long holiday, how the tumult and the shouting died, and how Jane now thinks she may adopt Tommy after all. We have had too much of Jane. We are a little tired of her. But is is not our present concern to argue whether a mother should give her children away to strangers, or whether film-stars make good mothers. What must seriously concern us is the nation-wide revelation that it is perfectly easy to drive a coach and four horses through section 40 of the Adoption Act, which lays down that a British child must not travel overseas for the purpose of adoption except via a Bow Street licence, one of the conditions of which is that the adopters (or rather consignees) of the child are British. In this case the child travelled, it was reported, on a passport issued by the Irish Embassy; and he went on a "holiday" though the facts of the case seem to have been flagrantly - even notoriously - otherwise."

17:3 The government was clearly unhappy about the licensing system since it was abolished under the new Bill. The Bill revoked the provision in section 40 of the Adoption Act, 1950 under which a Bow Street licence could be granted to British persons resident abroad. As the Lord Chancellor said during the Second Reading of the Children Bill in the House of Lords on the 11th March, 1958: "The Hurst Committee thought - and the Government thought - that the licensing scheme was unsatisfactory because it omitted the three months' probationary period". From the 1st April, 1959 the licensing system was abolished and in its place a different scheme came into operation. In the first place, no full adoption order can be granted unless the applicant is domiciled in this country. But

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5 Hansard H. L. Vol. 208, 5.
an adoption order may be granted under section 12 of the Act to applicants domiciled here but resident abroad. Such persons may apply to the High Court or a County Court (but not a magistrates' court) for a full or provisional adoption order. The requirement as to the probationary period may mean, however, that a non-resident applicant would need to live temporarily here for a period of at least three months. But if spouses apply jointly they satisfy the statutory conditions if the child has been in the care and possession of one of them during the previous three months provided that the applicants have lived together in Great Britain for at least one of those months (section 12(3)).

As far as applicants who are not domiciled here are concerned the Act contains a power to make a provisional order. This is allowed by the High Court or a County Court if the court is satisfied that the applicant intends to adopt the infant under the law of or within the country in which the applicant is domiciled and wishes to remove the infant from this country for that purpose (section 53(1)). Evidence of the law of adoption in the country concerned must be produced. The effect of a provisional order is to grant custody to the applicant but it does not affect devolution of property or citizenship. However, the court had jurisdiction to make such an order only if it would have had such power if the applicant were domiciled in this country.

A recommendation made by the Hurst Committee which gave rise to considerable controversy was that an adopted child should be enabled upon reaching the age of twenty-one to apply to the court for a full copy of the adoption order which would give as much information as the Registrar
General would be able to supply from his records. The situation under the 1950 Act was that an adopted person's origin could not be traced in the Register of Births by means of the Adopted Children Register except when an order of the court was made for the Registrar-General to furnish information from his confidential records which showed the connection between the Register of Births and the Adopted Children Register. There was no evidence that the procedure was much used and it was assumed by the Committee that the court would normally only grant such an order to a person who could show that he had reason to think that he was closely concerned. The corresponding provision in Scotland allowed an adopted person who had attained the age of seventeen to obtain particulars about himself direct from the Registrar-General for Scotland. Most Scottish witnesses had said that they would have regretted the repeal of that provision, and a number of witnesses had thought that English law should allow the adopted person the same right but that application in both systems should in future be to the court at the age of twenty-one.

The Committee had realised that the recommendation might occasionally involve a risk of embarrassment for the natural mother of an illegitimate child if the adopted person went so far as to seek her out. But they believed that most adopted persons would be content with knowledge of their natural parentage, and would take no steps to make contact with their natural family - if indeed they could trace its current address - so that the risk would be slight and in any event it was one "which we think that a mother who offers her child for adoption should be prepared to take. It is of course, one of the matters which should be explained to

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6 para. 201-2.
her when she consents to the adoption".

A considerable amount of concern was expressed in correspondence to the Home Office with regard to this paragraph. There is some evidence that many of the correspondents were responding to a letter sent to them by the adoption society which had placed a child with them for adoption.

Examples of the reaction to the proposal include the following: "We had supposed that the whole aim of adoption was to give the adopted child as complete security as possible and to feel itself 'part and parcel' of its adoptive parents' family, even although it knows it is adopted. This security may be completely destroyed with possibly disastrous consequences psychologically if he or she is encouraged to investigate a background which may sound somewhat discouraging". Another letter expressed the view that the Hurst Committee had had a very small experience of adoption and that they had learnt very little from their enquiries and research into adoption. This correspondent goes on to say that it did not need much imagination to see that through this recommendation there was a risk of making many lives miserable through one person's account. There was the possibility of a complete breakdown of two or more families "for 'skeletons in cupboards' to some people are very frightening and should be left there". Another writer felt that the fact that a child was available for adoption implied that there was something abnormal or unusual in connection with its birth or circumstances of its parents; it followed that the great majority of young men and women in seeking to satisfy their natural curiosity would find something which was psychologically very disturbing. He adds that the paragraphs involve expressions of general belief based on no factual evidence.
The result of these expressions of disapproval was a decision not to insert the recommendations into the legislation of 1958. A letter of the 24th February in the Home Office files states that since the proposal had caused anxiety to some of those with experience in adoption matters, the Home Secretary had decided in favour of leaving the law as it stood.

It might be appropriate, in the light of the past history of the subject, to examine the Hurst Committee's discussion of the laws concerning property following an adoption.

The Committee discussed the situation which followed the consolidation of the 1949 Act in the Adoption Act, 1950. Section 13 and 14 of that Act governed the disposal of real and personal property by will, and the position regarding intestacies was to be found in paragraph 4 of the Fifth Schedule. Under these provisions, an adopted person was, (subject to exceptions with regard to hereditary titles, interests under existing entails, etc.) regarded for the purposes of inheritance as the child of the adopter born in lawful wedlock, both on an intestacy and (unless the contrary intention appeared) in any will or settlement provided that the intestacy occurred or the disposition was made:

(i) after the commencement of the 1949 Act, and
(ii) after the making (whether before or after that date) of an adoption order in respect of him.

The first of the conditions above seemed to the Hurst Committee to have been inevitable. Legislation which would have retrospectively

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7 para. 155-160.
altered the meaning of the word "child" would have obliged all such persons to make fresh wills in order to give effect to their original intentions. This would have been "an intolerable burden" and was therefore out of the question. But the second condition appeared to operate inconsistently. It applied, in the event of an intestacy, to all persons adopted before the relevant death. However, in its application to dispositions of property it included only persons adopted before the date of the disposition and excluded all persons adopted between that date and the death of the testator.

This provision did not "fully implement the principle of integration" into the adoptive family. Further, it might involve discrimination between persons adopted by the same adopter, and for a testator who wishes to honour the principle it still remains necessary to provide expressly for any child who may be adopted in the future, or, alternatively, to make a new will whenever he or a beneficiary of his adopts a child". The Committee therefore recommended that amending legislation should provide that in any disposition made after a specified future date the rules of construction in section 13(2) should apply whether the disposition was made before or after the date of an adoption order.

These recommendations became incorporated in the Adoption Act, 1958 in sections 16 and 17, and both sections applied to full adoption orders but not to interim or provisional orders. Section 16 provided that where, at any time after the making of an adoption order, the adopter or the adopted person or any other person died intestate in respect of any real or personal property, that property would devolve in all respects as if the adopted person were the child of the adopter born in lawful
wedlock and were not the child of any other person. Sub-section 2 refers to the construction of instruments inter vivos or wills and states that in any disposition of real or personal property made after the date of an adoption order any reference express or implied —

(a) to the child or children of the adopter would be construed as, or as including a reference to the adopter;

(b) to the child or children of the adopted person's natural parents or either of them shall be construed as not being, or as not including, a reference to the adopted person;

(c) to a person related to the adopted person in any degree shall be construed as a reference to the person who would be related to him in that degree if he were the adopter's child born in lawful wedlock and not the child of any other person;

unless in all cases the contrary intention appeared.

The result of these sections was to give the adopted child with one exception the same status as a biological child as far as the dispositions and devolution of property was concerned. These changes — in one of the bastions of the English legal system — illuminate, perhaps most clearly of all, the changes which had taken place between 1926 and 1938 in the history of legal adoption in this country.

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The Hurst Committee was of the opinion that in the past far more attention had been paid to the health of the child than to the health of the would-be adopters. Since 1950, a medical certificate "as to the physical and mental health of the infant" had been required to be included among the documents normally lodged at the court when an application for an adoption order was made. The Committee understood that "the purpose of this requirement was to ensure that the applicants had an opportunity of obtaining for themselves a report on the child's state of health so that they could not afterwards be heard to complain that a local authority or an adoption society had misled them as to the child's condition."

In terms of practice, the Committee had heard of some local authorities and adoption societies which were chary of placing children who were not completely healthy in every way, and that some courts declined to grant an adoption order in respect of such a child. The Committee felt that it was wrong to suppose that only the robustly healthy and highly intelligent were suitable for adoption and that any below this standard should be denied the opportunity. It was probably much nearer the truth, in their opinion, that almost any child was adoptable or, with care, could become so. They were anxious that there should be no discouragement of adoptions of handicapped children for there were, happily, still people who will accept the extra burdens which a handicapped child may entail and take an even greater pride and joy in bringing up such a child successfully than others take in rearing a more fortunate child. What was of most importance was that the adoptive parents should know all that could be told them about the physical and mental health of a child for whom they were assuming responsibility and should appreciate the difficulties which might arise.

The growth in this trend in opinion can be seen, for example, in a report in Child Adoption (Summer 1957) of an "appeal on behalf of the imperfect child" which had been
made by Miss G.E. Richards of Dr. Barnado's Homes, at the Annual Meeting of the Ashton and District Adoption Society.

By an "imperfect child", Miss Richards meant any child who was handicapped in one of several ways: there was, for instance, the child with a squint, or with two thumbs, or the one who lacked a limb, and there was the child handicapped by epilepsy or asthma, disabilities which, even if not inherited, nevertheless were bad. The child who was the result of incest was also regarded as imperfect from the adoption point of view.

For any of these children, adopters were to be most carefully chosen and first-class case work was needed for a successful placing.

It is also interesting, in the light of current concern over the shortage of babies available for adoption, that articles in Child Adoption in the late 1950s refer to the possibility of placing coloured children for adoption. An article in Child Adoption, Volume 22, Spring 1957 asserts that adoption is "not a social instrument for resolving all ills, but there is surely room for it to be used more aggressively, particularly in the present circumstances where the queues are so long and the demand for children so desperate."

There was, however, a different trend so far as the prospective parents are concerned. The Committee felt that insufficient attention had been paid to the fact that it was not in the infant's interests to be adopted by applicants whose prospects of good health and normal length of life were in doubt. It was of the utmost importance that the court should be fully apprised of the circumstances if there were any reason to suspect that before the child had reached an age at which he would be capable of social and economic independence, either of the adoptive parents might be dead or an invalid.

Before 1958, the situation was that one of the duties of the guardian ad litem was to enquire whether either of the applicants suffered from any serious illness, and whether there was evidence of tuberculosis, epilepsy or mental illness in their families. The Committee did not feel that this was wholly satisfactory since it meant that to a great extent the guardian ad litem was dependent upon information which
the applicants chose to give him, and the family doctor, if consulted, could not be expected to disclose medical history to a layman. In cases arranged by an adoption society, the Adoption Societies Regulations, 1943, applied and these required that the report on the prospective adopters should state whether they "appeared to be in good health". A lay opinion as to good health could have little, if any, value, and in practice most adoption societies required a medical certificate to be submitted by would-be adopters. The Committee, therefore, recommended that in all applications for an adoption order other than by the father or mother of the child (and his or her spouse on a joint application) should be required to undergo a medical examination by a doctor appointed by the court and remunerated from public funds.

In this case, it seems legislation was to follow existing good practice of most societies so that section 7 of the Act of 1958 provides that the court is to have regard to the health of the applicants, and in certain circumstances, a medical certificate is required.
An aspect of adoption legislation since 1939 has been the introduction of additional safeguards over the child placed for adoption. Under the Adoption of Children(Regulation) Act,1939 a system was established whereby the local authority exercised a protective function with regard to certain infants placed in the care of strangers (whether for adoption or not). It was extended, as has been seen, under the legislation of 1949. These supervisory aspects of the local authority's role were strengthened in 1958 both with regard to foster children maintained for reward and children placed for adoption but the two aspects became incorporated in different Acts passed in that year.

As far as the Adoption Code is concerned, the present provisions are to be found in Part IV of the Adoption Act 1958. That part covers "protected children", a phrase which is defined in section 37 of the Act. The introduction of this concept followed the recommendation of the Hurst Committee at paragraph 63. The Act provides that every local authority is under a duty to visit every child who has become a "protected child" by virtue of notification to that authority of intention to adopt a child, if he is to be adopted otherwise than by his parent, that he will be below school-leaving age at the hearing of the application and that he is in the care and possession of the person giving the notice. The local authority must visit from "time to time" until the order is made or until the child reaches the age of eighteen whichever occurs first. Local authority officers are also authorised to inspect any premises in their area in which such "protected children" are to be or are being kept. The local authority must ensure the well-being of the child and give such advice as to care and maintenances as appears necessary.

Through these and other safeguards there is a mechanism in operation which should ensure the welfare of children who are in a somewhat anomalous and precarious
position. In this respect the early advocates who wished to see "infant life protection" measures introduced into the first Act have had their arguments vindicated by historical developments.
CHAPTER XX

CONCLUSIONS

This thesis is an examination of some aspects of social and legal policy in child adoption in England and Wales from 1913 to 1958. The main concern, therefore, is to elucidate the development of policy in this matter over a period of time. But, in the course of this debate, matters of principle were raised which have a relevance beyond the field of adoption. These include the areas of conflict between proposed reforms and established legal principles, and the impact of practice and professional concern in this field upon legislative provision. This concluding chapter, therefore, while summarising the main themes of this thesis, draws particular attention to these aspects.

In the first place, it examines the rise in interest in child adoption which emerged in the second decade of this century. This interest - in establishing a new method of caring for a child through a legal as well as a physical transfer - had diverse origins which became focussed upon legal adoption as a result of the profound effects which the first world war had on British society. Legal adoption emerged as an appropriate solution to a number of social problems such as the wartime rise in illegitimacy; the frighteningly high infant mortality figures, particularly for illegitimate children, at a time when the birth rate was declining and when the casualties of the war were vividly in the public mind; and the difficulties arising from a decline in the traditional
methods of caring for the illegitimate child in the community which were
giving cause for concern. The movement was thus the result of a need
felt in several areas of child care which, it was thought, the mechanism
of child adoption could meet.

The movement for the introduction of child adoption had,
therefore, a philanthropic aim. But, by definition, adoption is as much
a legal as a social institution. Thus, a study of its history illustrates
how a movement which is philanthropic in aim may well meet resistance
where it touches upon other areas of the social structure, particularly
upon questions of legal principle. The resistance to Parliamentary
pressure from 1922 to 1926 well illustrates this point. Successive Lord
Chancellors proved intransigent upon those issues which had a direct
bearing upon the legal system, despite the recommendation of the first
Departmental Committee in 1921, which was favourable to the principle of
child adoption. Its more particular recommendations were unacceptable at
those points which involved matters of legal principle or administration.
It was only when a second Departmental Committee produced the "right"
answers that a Private Members Bill incorporating the principle of child
adoption was allowed to reach the Statute Book. These legal issues con­
cerned the definition of parental rights, the devolution of property, and
the question of jurisdiction.

The re-defining of parental rights which has taken place over
the last hundred years is still in a state of flux. Within the common
law, parental rights had two main characteristics. In the first place,
it was almost impossible to intervene with the rights of a parent —
originally those of the father — over children. This was a position which
was gradually being modified in the latter half of the nineteenth century through legislative intervention. Secondly, parental rights, although strongly safeguarded, were inalienable, and, therefore, permanently vested in parental figures. Thus legal adoption could not exist as a concept in the English common law and the statutory embodiment of the principle in this one instance constituted a major breach in the traditional common law definition of parental authority over children. This was in contrast to legal systems influenced by Roman law. In those systems, adoption was a means of ensuring an heir and was, therefore, dynastic in character. In the English common law system, the opposite was the case. Adoption might mean inheritance by a "stranger", which was contrary to the English legal view of inheritance through the biological family. The movement for legal adoption, being philanthropic in nature, had to overcome this traditional resistance.

Despite the fact that adoption was based on consent, legislation, from the start, allowed the courts to dispense with parental consent in certain circumstances. This is consistent with the first trend noted above - the intervention with parental rights on the basis of public policy. This provision gave the court power to uphold the rights of the applicants for adoption in the face of parental opposition. In such circumstances legislative and judicial policy may diverge.

Divergence did not in fact appear with any significance until late in the period under discussion when a legislative decision misunderstood the attitude which the judges - trained within the common law tradition - would take. Following the Adoption of Children Act, 1949 and the consolidation of the Adoption Code in 1950, a number of judicial decisions emphasised that a
parent's action in withholding consent was unreasonable only in extreme cases. This clash in policy led to a change in legislative policy on the matter in the Adoption Act, 1958.

The policy of that statute has been generally approved by the recent Departmental Committee. In part their retention of the existing grounds for dispensing with consent was the result of a House of Lords decision in Re W, which established that the withholding of consent must be tested against the standard of what a reasonable parent would do in all the circumstances of the case. The Committee felt that in adoption applications there were a number of interests to be taken into consideration and that the objective reasonableness of the parent was an appropriate test. They therefore suggested that statute law should provide that, in deciding whether a parent was withholding consent to an adoption unreasonably, the court should have regard to all the circumstances, first consideration being given to the effect of the parent's decision upon the long-term welfare of the child. One witness at least would have wished to see the concept of parenthood pushed still further from the traditional blood-linked family of the common law. "What should clearly be the paramount principle of child care practice is the prevention of the separation of a child from his mother whether natural or sociological. The crucial defining factor is not the blood tie but the bond of continued and devoted daily contact and care". Rightly or wrongly, this viewpoint is not at present embodied as a principle in the law of adoption.

1. 1971] 2 All E.R. 49
The transfer of property was another field in which well-established legal principles were affected. However, when discussions were taking place concerning the early legislation, the law of property in this country was about to undergo massive reform. Nevertheless the Lord Chancellor was able to retain the traditional common law position over property, illustrating the reluctance to allow inheritance to the "stranger" to the family group. From 1926 to 1949, the adoptive child remained tied to the blood relationship as far as rights of devolution to property were concerned. The principle of assimilation was accepted finally in the Adoption of Children Act, 1949 but more changes were needed in 1958 to bring the adoptive child further into the adoptive family circle, and the position is not free from anomaly even today. The bargain struck by the Home Secretary in 1926 to meet the Lord Chancellor's point on property resulted in a compromise in the field of judicial administration. Successive governments had refused to concede jurisdiction to the County Courts despite the recommendation of the Hopkinson Committee and the popularity of that Court with Members of Parliament as illustrated by successive Private Members' Bills. The result in the first Act was tripartite jurisdiction at first instance - in the High Court, the magistrates' court and the County Court. This is an area where there has been no change, although public interest in the idea of a family court during the 1960s has had repercussions in this field - as the discussion at paragraphs 77-89 of the Departmental Committee Report indicates.

Part I of this thesis thus illustrates a number of issues in the early development of policy. It traced the multiplicity of social factors which went into the child adoption "movement"; it also shows that
proposals which may seem entirely "social" in origin may meet with considerable resistance when they are seen to involve changes in other parts of the social structure, particularly over questions of legal principle.

201 The case put forward by the advocates of legal adoption was not helped by the fact that they presented two distinct approaches to the problem of formulating legislation. On the one hand, some supporters of the case for a change in the law were concerned primarily with the legal problems involved in a change of status for the child. On the other hand, the second line of argument pointed to the existence of "baby farming" and stressed the need for supervision over the adoption situation, even after the order was granted.

The first approach was the one which gained favour with governments. This was for two main reasons: because of their preoccupation with the legal issues involved; and because governments favoured the strengthening, if necessary, of the existing infant life protection measures, rather than the duplication of these in adoption legislation. There was also very little in the way of existing practice which the legislators could draw upon. It is therefore ironic to note that successive legislation has imposed upon the essential transfer of status an accretion of regulations and control over the arrangements for adoption.

The events of the 1950s illustrate the weaknesses of the first Act in this respect. The period is marked by an almost complete preoccupation with the work of agents of various kinds, and with concern over exploitation of the new law by a minority of unscrupulous operators in the
field. The second Departmental Committee dealt exclusively with such matters and its recommendations led to the second measure – the Adoption of Children (Regulation) Act, 1939 – which was passed in 1939 but did not become law until 1943. The result of this central concern was two-fold; first, by channelling Departmental energies into this field it partly resulted in the postponement of a fuller investigation of the field until the post-war period; secondly, it laid the foundations for a more "professional" attitude among adoption workers which had repercussions later when more general examination of the field, took place. The outcome was also a concern for "good" adoption practice which emerged clearly during the latter half of the 1940s.

After the war concern in the field of adoption moved to those aspects which resulted from a more specialist and professional concern with child development and tended therefore to raise issues concerned with psychological effects of adoption. Adoption involved "a judgement about human personality and relationships". There was also a more widespread approval of adoption as a method of child care since the placing of a child with two parental figures was regarded as affording considerable emotional security. But the quality of the relationship within the adoptive group was also seen as crucial to a successful adoption.

This two-fold concern arose out of the influence of theories of child development which became coupled to concern over the quality of public care and the problems of administrative deficiencies which were

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3 Kenneth Younger; From an address given to a Residential Conference on Adoption 8th–11th July, 1953.
well documented by the Curtis Report and tragically revealed in the case of Dennis O'Neill. These resulted in growth in the opinion that a revision of the existing law was needed not only to incorporate some of the new attitudes but to strengthen, in this direction, the existing Adoption Code, and to gradually modify the traditional legal attitudes.

to parental rights and property.

In the 1940s and 1950s the result of these developments are to be found in growing concern over, for example, third party adoptions, over the role of the guardian ad litem, and over the need for a probationary period in every case. The concern over third party adoptions had been shown in the 1930s. But no recommendation for including such individuals in the procedure for regulating adoption societies was made by the Horsburgh Committee, although an extension of child life protection measures were a part of the new legislation in 1939. With the growth in professional practice in the 1940s, further discussion of the role of the third party in adoption took place as can be seen in the report of the Curtis Committee, the Gemon Committee and the Hurst Committee. The latter Committee had an opportunity if it so wished to propose abolition of third party adoptions. But despite the fact that all the witnesses examined had stressed the undesirability of third party adoptions, the Hurst Committee felt that without good evidence of the comparative results of adoptions carried out by different methods, it would not be right to fetter the good will which existed in this field. They believed that any restrictions on third party and direct placings could and would be evaded and that such placings would continue. Prohibition of such placings would, it was felt, increase de facto adoptions. This line of argument may be taken to illustrate the limit.
of legislative intervention in the field of adoption. In the case of adoption societies set up with the express purpose of arranging adoptions, control was felt to be justified; where the arrangement was made by a third party it was interpreted as an act of friendship or neighbourliness or goodwill, and it was felt that to impose restrictions would be wrong in principle and of doubtful efficacy. The arguments for a "professional" approach to adoption practice cannot therefore be regarded as completely persuasive during this period.

Nevertheless, the influence of "good" practice is to be seen in such matters as the provision of a probationary period in every case before the granting of an adoption order, not only when the arrangements had been made by an adoption society; and in the strengthening of the role of the guardian ad litem. The result was that as time went by there were far more elaborate rules concerning the arrangements for an adoption; it was seen as a delicate transplanting operation to be performed according to a growing body of statutory rules and with considerable skill and in the light of theories concerning the psychological development of children and the conscious and unconscious motivations of adopters.

It should be noted that there were two important aspects to the growth of "professionalism". One of these was the founding of the Standing Conference of Societies Registered for Adoption in the early 1950s, which became a medium through its conferences, through the Bulletin (later Child Adoption) for a discussion of current issues and a means of bringing the wider issues of child psychology and development to the fore. The second was the establishment of Children's Departments at local authority level which provided another set of social workers whose concern was with
the deprived child. Workers in this department became involved in adoption both in the role of guardian ad litem, and as placing agencies, first of children in their care, and later as general adoption agencies. These developments strengthened existing practice and began the trend to see adoption as one aspect of a wider service for the deprived child.

At the same time, a parallel trend could be observed. Once the adoption had been granted, there was a tendency to regard the adoptive family more and more as a mirror reflection of a biological family. This trend can be seen, for instance, in the change in the law of succession which came first in 1949 and proceeded and developed along that path in 1958. It can also be seen in the ending of affiliation orders when the adoption order was granted, except when the mother adopted her own child, and it may be seen in the rule prohibiting marriage between the adopters and the child which was introduced in the Adoption of Children Act, 1949.

There have been thus two parallel trends in the period leading up to 1958. On the one hand, arrangement of adoption was regarded more and more as a specialized field involving professional skills. But once the order had been granted, then the second development is to be seen: that the legislative "model" became increasingly that of the biological family in legal terms. It may be said that the "legalized guardianship" of the Tomlin Committee envisaged so cautiously by the Adoption of Children Act, 1926 had become a transformed institution by 1950 and that, through social work practice and legislative change, the "adoptive family" had taken its place.
## APPENDIX I

### STATISTICS OF ADOPTION ORDERS

<table>
<thead>
<tr>
<th>Year</th>
<th>High Court</th>
<th>County Courts</th>
<th>Juvenile Courts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1927</td>
<td>332</td>
<td>184</td>
<td>2,626</td>
<td>2,943</td>
</tr>
<tr>
<td>1928</td>
<td>324</td>
<td>236</td>
<td>2,910</td>
<td>3,476</td>
</tr>
<tr>
<td>1929</td>
<td>72</td>
<td>224</td>
<td>2,598</td>
<td>2,598</td>
</tr>
<tr>
<td>1930</td>
<td>74</td>
<td>317</td>
<td>4,120</td>
<td>4,511</td>
</tr>
<tr>
<td>1931</td>
<td>69</td>
<td>274</td>
<td>3,777</td>
<td>4,113</td>
</tr>
<tr>
<td>1932</td>
<td>38</td>
<td>264</td>
<td>4,163</td>
<td>4,465</td>
</tr>
<tr>
<td>1933</td>
<td>61</td>
<td>282</td>
<td>4,201</td>
<td>4,482</td>
</tr>
<tr>
<td>1934</td>
<td>45</td>
<td>320</td>
<td>4,491</td>
<td>4,796</td>
</tr>
<tr>
<td>1935</td>
<td>64</td>
<td>342</td>
<td>4,428</td>
<td>4,844</td>
</tr>
<tr>
<td>1936</td>
<td>62</td>
<td>372</td>
<td>4,746</td>
<td>5,100</td>
</tr>
<tr>
<td>1937</td>
<td>78</td>
<td>413</td>
<td>5,096</td>
<td>5,479</td>
</tr>
<tr>
<td>1938</td>
<td>85</td>
<td>446</td>
<td>5,662</td>
<td>6,103</td>
</tr>
<tr>
<td>1939</td>
<td>65</td>
<td>655</td>
<td>6,126</td>
<td>6,782</td>
</tr>
<tr>
<td>1940</td>
<td>59</td>
<td>645</td>
<td>7,071</td>
<td>7,716</td>
</tr>
<tr>
<td>1941</td>
<td>44</td>
<td>709</td>
<td>6,676</td>
<td>7,429</td>
</tr>
<tr>
<td>1942</td>
<td>55</td>
<td>1,155</td>
<td>9,201</td>
<td>10,409</td>
</tr>
<tr>
<td>1943</td>
<td>57</td>
<td>1,504</td>
<td>9,987</td>
<td>11,540</td>
</tr>
<tr>
<td>1944</td>
<td>50</td>
<td>1,928</td>
<td>11,041</td>
<td>13,027</td>
</tr>
<tr>
<td>1945</td>
<td>52</td>
<td>2,622</td>
<td>13,645</td>
<td>16,269</td>
</tr>
<tr>
<td>1946</td>
<td>166</td>
<td>3,815</td>
<td>17,291</td>
<td>21,272</td>
</tr>
<tr>
<td>1947</td>
<td>185</td>
<td>3,663</td>
<td>14,409</td>
<td>18,072</td>
</tr>
<tr>
<td>1948</td>
<td>170</td>
<td>3,962</td>
<td>14,409</td>
<td>18,371</td>
</tr>
<tr>
<td>1949</td>
<td>199</td>
<td>4,337</td>
<td>12,781</td>
<td>17,127</td>
</tr>
<tr>
<td>1950</td>
<td>152</td>
<td>3,448</td>
<td>9,139</td>
<td>12,739</td>
</tr>
<tr>
<td>1951</td>
<td>114</td>
<td>3,757</td>
<td>9,379</td>
<td>13,650</td>
</tr>
<tr>
<td>1952</td>
<td>74</td>
<td>4,800</td>
<td>9,540</td>
<td>15,694</td>
</tr>
<tr>
<td>1953</td>
<td>75</td>
<td>4,397</td>
<td>8,623</td>
<td>12,520</td>
</tr>
<tr>
<td>1954</td>
<td>56</td>
<td>4,599</td>
<td>8,416</td>
<td>12,967</td>
</tr>
<tr>
<td>1955</td>
<td>73</td>
<td>4,791</td>
<td>8,437</td>
<td>13,001</td>
</tr>
<tr>
<td>1956</td>
<td>44</td>
<td>5,118</td>
<td>8,036</td>
<td>13,198</td>
</tr>
<tr>
<td>1957</td>
<td>44</td>
<td>5,553</td>
<td>7,804</td>
<td>13,401</td>
</tr>
<tr>
<td>1958</td>
<td>53</td>
<td>5,999</td>
<td>7,351</td>
<td>13,203</td>
</tr>
</tbody>
</table>

Note: A very small number of orders are in respect of more than one child, so that the number of children adopted is slightly higher than the number of orders made.

From: Report of the Departmental Committee on the Adoption of Children,
### Appendix 2

**Percentage of Orders Made in Different Types of Court: England and Wales 1927-60**

<table>
<thead>
<tr>
<th>Year</th>
<th>High Court %</th>
<th>County Court %</th>
<th>Juvenile Courts %</th>
<th>All Courts %</th>
<th>No. of Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>1927-30</td>
<td>2.9</td>
<td>6.6</td>
<td>90.3</td>
<td>100%</td>
<td>14,026</td>
</tr>
<tr>
<td>1931-35</td>
<td>1.2</td>
<td>6.3</td>
<td>92.5</td>
<td>100%</td>
<td>22,708</td>
</tr>
<tr>
<td>1936-40</td>
<td>1.1</td>
<td>8.0</td>
<td>90.9</td>
<td>100%</td>
<td>31,521</td>
</tr>
<tr>
<td>1941-45</td>
<td>0.4</td>
<td>15.5</td>
<td>66.1</td>
<td>100%</td>
<td>58,732</td>
</tr>
<tr>
<td>1946-50</td>
<td>1.0</td>
<td>21.0</td>
<td>77.2</td>
<td>100%</td>
<td>68,123</td>
</tr>
<tr>
<td>1951-55</td>
<td>0.6</td>
<td>32.4</td>
<td>67.0</td>
<td>100%</td>
<td>66,743</td>
</tr>
<tr>
<td>1956-60</td>
<td>0.3</td>
<td>44.4</td>
<td>55.2</td>
<td>100%</td>
<td>69,106</td>
</tr>
</tbody>
</table>

Note: The number of adopted children sometimes exceeds the number of adoption orders because the High Court does not issue a separate order for each child where an adopter adopts more than one child at the same time.

APPENDIX 3

PARLIAMENTARY BILLS 1922-1926


3. Adoption of Children (No. 2) Bill, 1923 introduced by Mr. Gerald Hurst on 16th May, 1923. Bill blocked.


5. Adoption of Children (No. 2) Bill, 1924 introduced by Sir Thomas Inskip on 7th March, 1924. Bill blocked.

6. Adoption of Children Bill, 1924 introduced by the Duke of Atholl in the House of Lords on 6th March, 1924. Bill read a second time on 18th March. The Duke of Atholl did not press the Committee Stage on the assurance of the Lord Chancellor that a second Adoption Committee was to be set up.

7. Adoption of Children Bill, 1925 introduced by Sir Geoffrey Butler on 13th February, 1925. Second Reading taken on 3rd April. Withdrawn at the request of the Home Office pending the submission of the Tomlin Report.


APPENDIX 4

OFFICIAL REPORTS

1926-1958

1. Child Adoption Committee Report (Hopkinson Committee) 1926, Cmd. 1254 ix.

2. Child Adoption Committee Report
   - Second Report
   - Third and Final Report (Tomlin Committee) 1924-25, Cmd. 2401 ix.


4. Adoption of Children Committee Report (Hurst Committee 1953-54 Cmd. 9248 viii.)


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Barnardo v. Ford (1892) A.C. 326 H.L.
Humphry v. Polak (1901) 2 K.B. 305.
Russell v. Russell (1928) A.C. 687.
Re C (1937) 3 All E.R. 783.
Re Hollyman (1945) 1 All E.R. 290.
Harris v. Hawkins (1947) 1 All E.R. 312.
Re Adoption Application No. 52/1951 (1952) 2 All. E.R. 331.
Re F (1954) 118 J.P. 139.
Re M (an infant) (1955) 2 Q.B. 479.
Re D (1956) 1 All E.R. 427.