



**SOME ASPECTS OF ADOPTION
VIEWED FROM
AN INTERNATIONAL PERSPECTIVE**

BY

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THE SPENCE-CHAPIN ADOPTION SERVICE is proud to publish this paper, given at its Annual Meeting in January 1957, in which Dr. Martha Branscombe gives an account of the history of adoption, and its current status throughout the world. Her presentation describes various types of legislation and their motivation, and the variations and similarities in philosophy and practice of adoption, as developed in Europe, Asia and South America, as well as in the United States and Canada. This unique summary of the historical background of adoption will be invaluable to students specializing in this field of social work. It will broaden the outlook of anyone interested in adoption.

Dr. Branscombe believes that there is an increasingly universal recognition that all children need parents and homes. She calls attention to the importance of the need for studies of adoption practices which will guide countries as they plan new services, and stimulate other countries as they seek to improve existing services.

This paper is given general distribution in the hope that it will be of help to children of this and other countries in the challenge it presents that we "continue to push forward the frontiers of knowledge and pursue new avenues of thought and experimentation" . . . toward a more scientific and a more fruitful approach to the problems of adoption.

MRS. ERIC H. HAIGHT, *President*
THE SPENCE-CHAPIN ADOPTION SERVICE

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Some Aspects of Adoption Viewed from An International Perspective

MAY I first express my appreciation of the honour you have paid the United Nations by inviting me to speak at this Annual Meeting. The Spence-Chapin Adoption Service is justifiably held in respect throughout this country for maintaining a tradition of enlightened and responsible leadership in the field of child care and adoption practice. I congratulate you upon that tradition which is also a challenge to continue to push forward the frontiers of knowledge and to pursue new avenues of thought and experimentation aimed at validating scientifically the prevailing notions about adoption and assuring more effective services. In this respect, an agency such as this has a unique opportunity and responsibility that is vital to achievement of the basic purpose of adoption for every child needing or receiving parental care through such proceedings.

I should begin by saying that this paper reflects the views of the author in her personal capacity and not as a representative of the United Nations. The factual information is, however, drawn largely from official publications of the United Nations to which credit is given. (See foot-note, page 15.)

In the time available, I would like first to call attention to a few facts regarding adoption practices and proceedings in other parts of the world; secondly, to indicate some of the general trends that can be identified in spite of the wide range of differences; and finally, I would like to pose a few of the questions relevant to current practice that call for further study and which are frequently being raised in other countries, as they contemplate development of adoption services.

Such questions may also be suggestive of the important role that private adoption services should play in this country and elsewhere in promoting research and new approaches in this field, and in doing a more effective job of interpretation to the general public.

Although adoption as a concept of a legal relationship dates back to time immemorial, its purpose and the nature of the proceedings and practices have varied widely from time to time, country to country and place to place even within the same country. The clearest example of this is the United States. The practice of adopting children was never very widespread. Aside from those of the family type, adoptions are still few and far between in many and perhaps most countries, and in some places during the 19th century they were even prohibited by law.

Involving as it does a breaking of the ties which bind a child to his natural parents and substituting new ties with the adoptive parents, adoption has been deeply influenced in law and in practice wherever it has developed by the more or less sacred character that society attributes to family bonds.

Apart from civil law adoption, the aim of which is to create a substitute relation between the adopter and the person adopted, there have been what are called "public law adoptions," inspired by political and social reasons, such as the designation of the heir presumptive of the ancient Roman Empire; or Napoleon's adoption of the children of his generals, officers and soldiers killed in the great battles; or again, the adoption by France of the children orphaned in the First World War (called "State Wards").

In what is called "civil law," too, there have been different conceptions and developments. In ancient Rome and in several other societies, the aim was primarily to ensure the transmission of the family name and the perpetuity of the family, or even the continuity of ancestor worship. By adoption, individuals could be raised to a higher social class, or certain difficulties in civil law in regard to filiation could be overcome. Even today, in some countries it is far easier for a man to adopt his illegitimate child than to recognize him.

Adoption Practices in Other Parts of the World

In a number of countries adoption fell into disuse when its original purpose lapsed, or survived merely as an indirect means of acknowledging an illegitimate child or evading succession laws. While the more modern conception of adoption began to take shape in the United States in the last half of the 19th century, it was not until after

World War I that adoption took such a surprising bound forward both in this country and in Europe. This can be traced primarily to the desire to provide new homes for war orphans and homeless children. In fact, it was only after World War I that, under the pressure of public opinion and with a view to regularizing numerous de facto situations, a number of European countries for the first time passed adoption laws or revised old ones to make them compatible with modern ideas of adoption as a means of providing a permanent parental relationship for children deprived of their natural parents. And in some of the European and Latin American countries this came only after World War II. In the Netherlands, for example, the first adoption law was enacted only last year.

In addition to this motive — care of war orphans — the progress of scientific knowledge of psychology and child development has contributed to this upsurge of interest by revealing the importance for the growth of the child of stable emotional ties with parents, or substitute parents, from an early age. Whereas, originally, the aim of adoption was in most countries essentially to provide the adopters with direct heirs, it is now increasingly being considered as a unique means of providing a permanent parental relationship for children deprived of their natural parents. This is, however, an evolution which is still far from having run its course. Consequently, in some countries the law may lag behind practice; in others, public opinion is not yet ripe to make full use of progressive legislation even if on the books; or to accept whole-heartedly the methods and safeguards advocated by those who have studied adoption in the light of present day knowledge of child development. Although adoption was formerly resorted to chiefly in the interests of the adopters, today the accent is unmistakably laid on the interests of the child and most of the legislation enacted in the past ten years has either explicitly or implicitly stated that adoption can be authorized only when it is in the interests of the adoptee.

I should perhaps point out that while in this country adoption has only one meaning, in many countries more than one type of adoption is possible. Those most frequently found might be classified as "regular adoptions" and "adoptive legitimation" (France and Bolivia). Another type found, for instance in Peru, applies only to children under 15 years

of age and limits the adopter's obligation to supporting and providing occupational training until the child reaches the age of fifteen. What might be generally described as "gratitude adoption," based on the adoptee's risking his life to save the adopter, is still found in a number of countries.

In France an illustration of the changes in purpose and emphasis may be seen clearly, where the origins of adoption are to be found in Roman Law. It should be noted in this connection that distinctive differences in adoption laws continue to prevail under different legal systems and are decidedly influenced by differing social structures and cultural patterns. In France, the practice disappeared almost completely in the Middle Ages and, in spite of strong opposition, was reintroduced in the Civil Code drafted around 1800. It was Napoleon himself who secured its retention because at the time he was thinking of providing himself with an heir by this means. However, only adults could be adopted and the only provision for minors was the so-called "benevolent guardianship" which allowed adoption by will in the case of the guardian's death. It also allowed adoption as a reward for saving the adopter's life. But both of the latter were extremely rare. The purpose and nature of adoption were profoundly modified by the Act of 1923 and subsequent changes made it possible to adopt orphaned or deserted minors. Besides, regular adoption which in France does not completely sever the links of the child with his natural parents and can be revoked, the new ordinance of 1945 introduced what is called "adoptive legitimation" for children under 5 years of age who are total orphans, abandoned or of unknown parentage. This is really the same concept we have of the child becoming completely integrated into the adopter's family, though in France this type of adoption is irrevocable.

In Greece, however, adoption is governed by the Civil Code which came into effect in 1946. It shows traces of Roman Law as preserved in Byzantine Law and modified by European influences. However, adoption in Greece is still considered mainly as a means of satisfying the desire of childless persons and couples for children though it is also intended and aims at protecting the adoptee. (Once an orphan, always an orphan!)

Switzerland was one of the first European countries to pass adoption legislation at the beginning of this century. Prior to 1907, it

existed in only 8 cantons — and the 14 others regarded it with misgivings. At that time the laws were restrictive, but more recent changes have brought modern ideas of adoption into all parts of the country.

In England the first provision for legal adoption was introduced in 1926; in Ireland, in 1929 and in Scotland, in 1930. Prior to these dates there were, of course, de facto situations, but the adopter had no legal right over the child and on the other hand, a parent, though consenting to the informal adoption still remained by law liable for his maintenance. Nearly 3,000 adoption orders were passed in England during the first year of the Act in force, and 350 in Scotland. The legislation in all three is almost identical and was consolidated in a new act in 1950 which has been further amended since then. In the United Kingdom, the law clearly aims at securing the welfare of the child and only unmarried minors can be adopted today.

In Denmark, which in many respects is one of the most advanced countries in its social legislation, the first adoption law was passed only in 1923. It was based on a model bill drawn up in 1913 by a Commission on Family Law set up by the Nordic countries in an attempt to arrive at a unification of their statutory provisions in this field. The Danish Act was much influenced by previous development of adoption through administrative practices as regulated by Royal Resolution dating back to 1815. Today, an adoption order is granted only if it is in the interest of the adoptee and if there is a special reason for the adoption. Adoptions are comparatively frequent in Denmark and amount in recent years on an average of one for every group of 30 children born in that country.

In Russia, the Code dealing with marriage, family and guardianship of 1918 prohibited adoption. In 1926, the Family Code reintroduced adoption with a view to protecting abandoned children. We have no exact information on the current situation beyond the fact that adoptions are provided for, and there appear to be no objections to the numerous and sincere applications from families wanting to adopt children.

In Poland until 1946, there was no uniform legislation, as this was a matter regulated by provincial legislation. A law of 1939 did not

exactly unify the laws, but decidedly reduced the diversities. In 1946, a Family Code was issued which regulated adoption for the country as a whole and a new one, issued in 1950, limits adoption to minors and stresses the interest of the child as the basic condition.

In Yugoslavia it was not until after the last war that adoption was introduced as a method of care for some 290,000 war orphans, of which about 30,000 were reported as having no near relatives.

In Canada, as in this country, adoptions are governed by provincial laws which were introduced for the first time in the 1920's; and as public opinion has permitted, they have been changed from time to time, as here, in the direction of assuring more adequate protection for the child and the adoptive and natural parents.

In most Latin American countries adoption in some form has been known for a considerable time. Many have amended their legislation in recent years in line with modern trends — though all are decidedly influenced by Roman Law. This is true in Argentina (1948), Guatemala (new law now pending) and Uruguay which introduced adoptive legitimation in 1945. On the other hand, adoption in Peru under the 1936 law is more restrictive and Bolivia (the oldest law, 1831) is even more so — and allow adoption of minors only *over* 14 years of age. Both laws retain the old provisions of adoption as a reward. Generally, in Latin American countries, adoption is rarely resorted to and is practically never thought of as a means of providing for children requiring care outside their own families — in fact, when it is used, it is mainly a matter of consummating a *de facto* situation where a child is living with relatives.

I have referred to the influence of legal systems upon adoption laws — and let me explain that where the legal system stems more or less from Roman Law or the Napoleonic Code, the adopted child's links with his own parents are not broken. He is not only entitled to inherit from them and their relatives, but may still be called upon to support them, and reciprocally they may have to support him if the adopter is unable or fails to do so. Some of these provisions can be easily explained when it is realized that the original pattern of adoption was a family one, that is, when the few children adopted were either illegitimate ones adopted by their own father, or orphans adopted

by relatives. This is still the prevailing pattern in a number of countries; and it is why in France and Uruguay, for instance, "adoptive legitimation," which completely integrates the child into the adopter's family, is restricted to full orphans and children of unknown parentage. It exists side by side with so-called regular adoption where the links are not completely severed.

This clearly is distinctive from the situation in countries where the legal system, as in the United States, stems from the Common Law, and where adoption has come to be recognized as creating a legal relationship as nearly as possible the same as exists between a child and his natural parents.

That I have drawn examples only from Europe and the Western Hemisphere is indicative of the fact that in other parts of the world the term "adoption," with few exceptions, if used at all, serves a different function. Due to the structure of the family, the patterns of family life and cultural differences which prevail in Eastern and Far Eastern countries and Africa, adoption, as other forms or methods of child care, has not followed the patterns that have evolved in the so-called western countries.

Australia and New Zealand would, of course, fall within the same grouping as the United Kingdom and, in fact, the new law passed in New Zealand in 1955 goes far beyond that of many of our states in giving greater protection to the child, including those unaccompanied children brought into New Zealand from other countries for resettlement.

In some of the Middle Eastern and Far Eastern countries there is evidence of informal adoptions, and there is growing interest particularly in those countries that are for the first time establishing comprehensive social welfare programs and where the impact of technological changes is bringing about changes in the whole fabric of family life and relationships. Traditionally in these countries, the strong sense of family obligation as well as the extended family system has resulted in precluding the need for society to organize more formal arrangements for the care of children deprived of their own parents. In countries like India, Indonesia and Egypt, for instance, a few private agencies are beginning to take an interest in modern methods of child care practices in this country and in Europe — particularly

at this stage there is growing interest in foster home placement. But even the latter has barely been introduced. Nor is it necessarily wise to encourage development of such specialized methods of care in the absence of trained personnel and resources which we know are essential for the protection of all concerned.

I have been speaking almost entirely of the legal provisions for adoption — or rather the legal bases for practice, though I recognize that many of you may be more particularly interested in the way adoption services are provided which in the end determines achievement of the objectives as expressed in law. But if the legal provisions are widely different, the practices are even more so! What I would like to emphasize is that, from the available information, we can say there is clear indication that there is increasing interest and usage of adoption as a method of child care, and that although the details of the laws differ, there are many common elements and they appear to be developing in the light of increasing understanding of the needs of children. But in few, if any, countries have adoption services and practices been organized and developed on the same basis as in this country and to some extent in Canada. This is in part due to legal differences, but it is also related to the differences in the stage of development of social work.

Since, however, there are generally more people desirous of adopting a child than there are children for adoption, the procedures and practices here as elsewhere require a great deal of rethinking, and there is urgent need for improvement even where recognition is given to the principle that the primary purpose of adoption is the safeguarding of the interests of the child. In the main, adoptions may be arranged by the child's relatives; privately, by a third party; or they may be arranged by an adoption agency. The extent to which the satisfactoriness of the child's placement and adoption may be assured in these various circumstances is still, to some extent, a matter of opinion. The general view appears to be that adoptions by relatives and placement by recognized agencies are likely to prove more favourable for the child and his adoptive parents than are private placements by third parties. Yet the proportion of adoptions arranged by agencies varies greatly and in the main they are in the minority.

It is a well known fact that the largest number of adoptions are arranged by third parties. In view of this, it is inevitable that some failures may be observed and these will receive more publicity than the successful ones. It is also rather generally taken for granted that adoption by relatives is satisfactory, yet it may well be that in placements of this kind, skilled advice would also be of service. Furthermore, there are known failures in agency placements, although many are highly satisfactory. This simply means that there is constant need for review of our techniques and procedures so as to reduce the time needed for essential assessments to be made, to reduce the margin of error and to ensure the validity of whatever assessments may be made.

The urgency for further evaluation of the premises and methods become even greater as we contemplate the feasibility or desirability of this method of care for the vast numbers of children in the far-flung corners of the earth who are now, and in the next few years will in even greater numbers have to be, cared for outside their own homes — in congregate institutions or under circumstances that deny them adequate protection or the possibility of stable parental relationships.

General Trends in Adoption Practices

In spite of the differences in law, standards, practices, numbers of adoption from country to country, certain general tendencies can be observed in the opinions about adoption and the procedures of adoption agencies, and certain principles of practice are emerging from these which are gradually gaining international recognition.

It may seem very simple to you and I have already mentioned it before, but it represents significant advances when it can be said that in most countries where adoption is provided for at all there is growing recognition at least in principle that the primary purpose is the well-being of the child and the major goal is to establish for the child, permanently separated from his natural parents, adoptive parental relationships. Furthermore, where this objective is accepted, it is generally of secondary importance to satisfy the desire of childless people for children, though the importance of also protecting the rights and interests of the natural and adoptive parents is recognized. The application of these fundamental principles however gives rise to the widest differences. And it is here that in the final analysis we must

ultimately rely upon scientific knowledge and technical skills on the one hand and, on the other, the readiness of the general public to accept practices thus based. Certain principles of practice are emerging whether universally applied or not. Certain of these have been identified in a study on adoption published by the United Nations in 1954. They have also been enunciated in the conclusions of a group of international experts convened under the joint sponsorship of the United Nations and the World Health Organization in 1952, which were published under the title of *Mental Health Aspects of Adoption*. (See foot-note, page 15).

I do not have to tell you that to date this country has been in the forefront of the advances in this field. But what of the future? People in countries where the greatest proportion of the world's 900 million children live will not, in the foreseeable future, be in a position to undertake adoption on the basis recognized here even as adequate standards. Do we then say they should be discouraged from initiating adoption services? Should countries in the far corners of the earth have their children, who need permanent care in the immediate period ahead, languish in congregate institutions or be placed individually in situations that may expose them to exploitation or other equally damaging life experiences? Or do we know enough about adoption to tell others how it should be done or even that it is a sound method for them?

This I see as a challenge to adoption services in addition to their responsibility to the children in this country for whom adoption may be the most suitable plan for care.

In the past few years we have increasingly become aware that new knowledge in related scientific fields and the accumulation of a large body of experience in adoption provide the basis for validating the principles and assumptions on which we have thus far had to rely. We have gone forward on the basis of principles and assumptions generally accepted as essential for sound adoption such as — maternal deprivation in the early years has an adverse effect on the personality of the child; the parent-child relationship is of such vital importance that all efforts must be made to maintain it or provide a substitute that as nearly as possible approximates the natural one; if the child's own

parents cannot keep him, then in principle, relatives are preferable to complete strangers; natural and adoptive parents are to be understood as individuals with their own needs, but these needs cannot be permitted to affect the future of the child whose rights and interests take priority over those of his parents; adoption is the best method of care for the child requiring permanent placement away from his own family, etcetera. These principles obviously are the results of values, norms and institutional behavior of our society. But in light of the modern family and its meaning in our society, there is need for better understanding of the application of these principles and for testing them on some factual basis.

The areas for research that are most pressing have been identified in recent years in a number of conferences and meetings of experts from all the fields involved. They are too numerous to elaborate in detail, but it may be useful to mention some of the more obvious areas that need rethinking and study and some of the questions most frequently asked by people in other countries who observe our practices in anticipation of developing comparable ones.

Among these are the following:

What are the criteria needed to determine what is an adequate or good adoptive home? How can we evaluate the capacity for parenthood of couples who have had no experience with closely comparable relationships?

Consider the policy of many agencies which, because of the shortage of children compared to the number of applicants, place only one child with a family. Would it be desirable to put more resources into helping approved applicants with their adopted children and less into the selection of new parents? Is a second placement in the same home less of a gamble than finding a new couple for each child? And are the risks of the possible effects of sibling rivalry more critical than the advantages of brothers and sisters for play and other social experiences?

Within flexible limits, the practice commonly referred to as matching is accepted as advisable to assure reasonable similarities and to help the child to identify with the adoptive family. But we lack the essential tools for scientific diagnosis and prediction required to go

beyond opinion on this. Furthermore, other countries may inquire whether the importance attached to matching is a cultural expression, or does it have universal significance?

We have also accepted the assumption that early placements are more likely to be successful, yet we have scarcely studied the special problems in the placement of children after infancy who may have been damaged by the experiences preceding placement, and clinicians differ in their views as regards the capacity of the individual for readjustment and repair of the damages of early deprivation.

On the other side of the coin, we know very little about what applicants or adoptive parents expect of agencies or their initial attitudes toward them. What do unmarried mothers or adoptive parents expect of an agency and what do they think it will demand of them? How do these expectancies serve to discourage clients from getting in touch with the agency or from following through once contact has been established? What are the relationships between such expectancies and public relations? How do these relationships influence the use of agency services by potential adoptive parents or those seeking to place their children for adoption?

The need for more scientific methods and criteria to supplement case work judgments in the selection of adoptive parents and in matching the child have already been mentioned, but what about those who are rejected for various reasons and still obtain children through independent arrangements? Is there bona fide evidence that they are less successful? And, for that matter, what is a "successful adoption"? The latter question focuses squarely upon another area requiring study, which is that of developing sound methods of evaluation of the outcome of adoption.

These are only a partial listing and each in itself poses a whole range of questions calling for study. What I am suggesting is that although we have done the best possible job to date in the light of the knowledge at our disposal, we can no longer accept without question the assumptions on which we have based agency policies and practices and we can no longer be satisfied to step up our efforts to gain public acceptance merely through clever interpretation. We cannot hope to achieve public support without getting into a position

where we can say with confidence, based upon scientific fact rather than personal conviction or untested opinion, that the standards and the methods of practice we advocate are the best guarantees that the accepted objectives of adoption will be achieved.

Questions such as these are indeed a great challenge to the private agencies in this country for among the most distinctive characteristics of the private agency in our society is its freedom to determine what it shall do; to encourage and support research, experimentation and demonstration of new methods; and to give leadership in advancing standards of care for all children. The private agencies not only have a unique position that enables them to move ahead in this respect, but in this country, it seems to me, they have a distinctive obligation to do so. While many may fear the expansion of public services as a threat to their existence, on the contrary this is the only way that private agencies can be freed to use their resources to move ahead and blaze new trails. To the extent that our private agencies maintain a dynamic sense of purpose, their future possibilities are infinite and exciting. Only when the purpose becomes static and bound to the way of the past or outmoded ideas and methods is there the danger that its resources will dry up and there will be no more fruitful jobs to do. It takes courage, imagination and energy to capitalize upon the unique characteristics that endow private agencies. If we fail to make the most of these features, then I raise the question as to whether we are keeping faith with the stewardship with which we have been entrusted. In this country and in the world today, private agencies have a vital role to play but unless they do so, and do so dynamically, they will cease to be vested with those enriching potentialities. This will not stop human advancement, but both the ways and the means may be different and the ends themselves will become stereotyped.

NOTE: Among sources drawn on were: Study on Adoption of Children, Sales No. 1953. IV. 19; Comparative Analysis of Adoption Laws, Sales No. 1956, IV. 5 (Based upon the laws of the fifteen countries covered in the above mentioned study); Joint UN/WHO Meeting of the Experts on the Mental Health Aspects of Adoption, World Health Organization Technical Report Series No. 70, September 1953.

