

# Barriers to Adoption in the United States

Although adoption meets the interests of the needy child better than any other option, Elizabeth Bartholet of Harvard Law School concludes that “our adoption system has failed to live up to even its own limited vision.... Laws and policies that are supposed to protect children have created barriers to adoption that function effectively to prevent these children from getting the kind of protection they most need 'a loving, nurturing and permanent home.'”<sup>1)</sup> Several barriers make it very difficult for many families to adopt children:

## 1. Anti-Adoption Bias in Pregnancy Counseling

Only 1 percent of women who experience an “unwanted pregnancy” choose adoption for their children.<sup>2)</sup> A University of Illinois study explains some of the causes:

- Some 40 percent of individuals in a variety of settings (health, family planning, social services, and adoption agencies) who identify themselves as “pregnancy counselors” do not even raise the issue of adoption with pregnant clients.
- An additional 40 percent provide inaccurate or incomplete information to clients.<sup>3)</sup>
- By contrast, 38 percent of the clients whose counselors offered adoption went on to choose adoption.<sup>4)</sup>

Congress's efforts to require adoption information and counseling in one federally funded program providing services to pregnant women have met with resistance from family planning professionals. For example, the Adolescent Family Life Act<sup>5)</sup> was passed in the early 1980s to provide a modest (\$7.8 million), more “pro-life,” adoption-friendly alternative to the pregnancy counseling provided by established Title X and Title XIX family planning services (typically over \$300 million per year). The bias among professionals against adoption can be seen in the evaluation of the program's effectiveness. Some 7 percent of the grantees violated the most basic terms of their grants by not providing any information on adoption to their clients. Most grantees failed to provide either adequate adoption information or counseling.<sup>6)</sup>

## 2. Misuse of the Foster Care System

In 1980, Congress enacted P.L. 96-272, the Adoption Assistance and Child Welfare Act. This legislation sought to provide permanent homes for children at risk of abuse and neglect by establishing a hierarchy of services for these children and for their families. In order of priority, these services were:

1. Family preservation;
2. Short-term foster care with a goal of family reunification; and
3. Long-term foster care or adoption.

This legislation requires that each child's situation be reviewed every six months. Within 18 months of opening every case, a permanent plan for the child's future must be in place. This placement plan embodies a decision by the child welfare agency as to whether the child will be returned to the family or placed for adoption. Such decisions and plans must be in place before the work of clearing the child for adoption can be undertaken. Only after both steps have been taken can the search for adoptive

parents begin.

During the 1980s, these permanency planning guidelines evolved into the operating principle of “family preservation” – keeping families intact through early, intense, comprehensive social services. The goal was to keep families united and thus avoid the high costs of foster care.

Because of their own high costs, however, family preservation services cannot be sustained for long periods; and because of high demand, caseworkers move quickly to take care of the next family in crisis. This approach did succeed in stopping the removal of children from the home, but not necessarily in preserving them from further abuse.<sup>7)</sup>

When possible, stabilizing families and leaving children with their biological parents is ideal. MIT researcher Joseph Doyle found that children who stay with parents who are accused (but not arrested or convicted) of [abuse](#) or neglect do better than the majority of children placed in foster care.<sup>8)</sup> However, the rise in substance abuse in child abuse and neglect cases has severely complicated efforts by child welfare systems to protect children and rehabilitate families.”<sup>9)</sup> In 2012, 686,000 children were reported as victims of child abuse. In over 80 percent of abuse cases the child’s parents were the perpetrators. Among these child victims, 18 percent were physically abused, 9 percent were sexually abused, and 8.5 percent were psychologically maltreated. The majority, 78.3 percent of victims, suffered “neglect” without physical, sexual, or psychological abuse. The level of harm from neglect can vary significantly.<sup>10)</sup>

Sadly, a number of children who die from [abuse](#) and neglect are already known to Child Protective Services agencies. In 30 reporting states, 8.5 percent of child deaths were to families who had received family preservation services in the past 5 years. In 35 reporting states, 2.2 percent of child fatalities involved children who had been in foster care and were reunited with their families in the past 5 years.<sup>11)</sup>

The Boys Town conference highlighted the central problems of family preservation services. The first logical step should be to assess whether the parents are likely to benefit from support service or whether the child should be removed immediately; instead, family preservation services are assumed to be the best first treatment. Though these services are activated because of abuse to the child – sometimes very severe abuse – they must fail before the child can be protected from the abusing family. It is imprudent for government agencies to fund family preservation programs *at the expense of* adoption services.

### **3. Overload and Confusion of Social Service Roles**

According to Douglas J. Besharov of the American Enterprise Institute, the rising incidence of reported child abuse keeps local child welfare agencies extremely busy on policing activities, diverting time and resources away from adoption.<sup>12)</sup> Often the same staff must investigate abuse reports, provide family preservation services, file for the termination of parental rights, and recruit and prepare adoptive families.

The child welfare system typically does not separate the responsibility for terminating parental rights of parents who continue to abuse and neglect their children from the responsibility to help those parents who can be helped. As a result, many children unnecessarily die. Professionals are trapped in the role confusion caused by simultaneous demands to reunite every family while also protecting the child. By contrast, states like Arizona and Oregon use separate professional units to make initial

determinations and to justify the necessary court proceedings.

If units like those in Arizona and Oregon were in general use, a number of benefits would result:

- Courts could separate those children more decisively and quickly from parents unlikely to reform or benefit from family preservation services.
- Children in danger of severe abuse would be separated more quickly and expertly from their families and made available for adoption.
- Social workers involved in helping the more tractable parents would be free to pursue that work with much less likelihood of endangering the child.
- Local government agencies could turn to the adoption services of nonprofit agencies much more quickly and frequently. Private agencies do not have the immense burden of child protective services and related policing requirements that public agencies have. Their mission is to recruit and prepare adoptive families, and they tend to have great expertise in this work.

## 4. Unsatisfactory Protection of Confidentiality

State adoption laws generally guarantee the confidentiality of the identity of the mother, the inviolability of the internal intimacy and harmony of the adoptive family, and the peaceful development of the adopted child.

In adoption law and philosophy, there has arisen a view which parallels the modern revisionist view of marriage and parenthood embodied in “no-fault” divorce. New relationships between parent and child are imagined, and a new type of contract is forged between parents. Open adoption is akin to no-fault divorce, and the “birth parents” take on the role of the visiting parent who has not yielded up all his rights to the child, particularly rights of visitation and vacations together. The adoptive parents are bound not just to their adopted child, but also to the birth parents and must facilitate the continuing relationship between the child and his birth parents.

Open adoption provides no seal of confidentiality regarding the identity of the birth parents, the adopting parents, and the child. It essentially blends birth families with adopting families, directly undermining the creation of a permanent new family for a child. The professional literature shows a frequent confusion of roles when the birth family continues a relationship with the child. This also interferes with parent and child bonding<sup>13)</sup> in the adoptive family and inhibits the birth parents' grieving process.<sup>14)</sup> There are parallel experiences and research findings with respect to divorce and the increased risks of being raised in blended families.<sup>15)</sup> Confidentiality, especially in infant adoptions, helps minimize these risks.

In some states, open adoption allows birth parents to take adoptive parents to court to uphold visitation agreements. This policy undermines the rights of adoptive parents to make parenting decisions. It also changes the nature and dynamics of a close, intact, inviolably intimate adoptive family, exposing it to the disruptions, conflicts, and anxieties characteristic of divorced and blended families. The professional literature on childhood emotional and behavioral development shows that children of blended families do less well than children of single parents and intact families.<sup>16)</sup> If successful, the growing push for open adoption<sup>17)</sup> could cause similar difficulties for adopted children, undermining the generally strong mental health reported by the Search Institute and Nicholas Zill.<sup>18)</sup>

Proponents of open adoption even recommend abolishing adoption in favor of “guardianship,” which does not offer the same permanence of family for the child.<sup>19)</sup> Like any other government policy which treats the adoptive families differently from intact families, this undermines the very essence of

adoption.

Understandably, many children become interested in knowing about their [birth parents](#) as they reach early adulthood. Their desire may be fulfilled if everyone involved is prepared to cooperate in lifting the veil of confidentiality. Most states try to maintain confidentiality if there is not full agreement among all concerned. Others do not. Two, Alaska and Kansas, will release the original birth certificate with the names of the biological parents to the adopted person after the age of eighteen, regardless of the birth mother's desires.<sup>20)</sup>

Proponents of opening adoption records seek legislation at the federal level. Senator Carl Levin (D-MI) has introduced various versions of a "national reunion registry" to help connect birth parents with persons who are adopted. The National Council for Adoption and many of its affiliated private adoption agencies have challenged the vagueness of the legislative proposals which do not assure confidentiality.

## 5. Unknown, Uninvolved, or Unmarried Fathers

Another major barrier for unmarried women considering adoption for their children is the need to obtain the consent of uninvolved fathers. Fortunately the Supreme Court, in a series of opinions,<sup>21)</sup> has clarified and restricted the rights of uninvolved, [unmarried fathers](#). According to current federal law, these rights correspond to the effort the father has made to establish a relationship with his child. The unmarried father who is unknown, is uninvolved, or has otherwise demonstrated no responsibility or interest in the child may not be entitled to the same consideration as an involved and responsible unmarried father. Federal courts have ruled consistently<sup>22)</sup> that ignorance of a pregnancy is no excuse for uninvolved, because the father was present at conception and could have followed through to assure adequate care for the child.

A growing trend in state legislatures, upheld by the Supreme Court in *Lehr v. Robertson*,<sup>23)</sup> is the establishment of father registries which make the father responsible for asserting his parental rights. The registry usually requires the father to file a paternity action within 30 days of the child's birth. This will result in his being notified of a pending adoption. He then will have an opportunity to demonstrate that he has tried to establish a relationship with the child and to take responsibility for the child's care. If he fails to meet any of these requirements, he forfeits his rights to contest the adoption of the child, and the adoption can proceed. While many conservatives think an absent unmarried father should never be an obstacle to adoption, this procedure at least frees the mothers to place children without registered fathers for adoption.

The House welfare bill requires paternity establishment at birth for all fathers. This is a major step in the right direction. Fears that efforts to locate unknown, unmarried fathers will slow down, and possibly stop, adoption are unfounded. If the mother is not seeking AFDC support (and she will not if she is placing her child for adoption), she will not need to identify the father. Simultaneously, the putative father registry protects the due process rights of all fathers. Those who do not register, however, cannot benefit from the protection it would have given them.

## 6. Race of the Child and Adoptive Parents

Two forms of racial discrimination take place within adoption: discrimination against adoptive parents

and discrimination against children waiting to be adopted. Potential black parents lose the chance to give their love to needy children of their own race. **Black children** in foster care are deprived of new parents and a stronger foundation in life, in addition to being exposed to the risks of retarded social and intellectual development. Both forms of discrimination must be eliminated. Fortunately, the means to accomplish this already exist within the private sector.

<sup>1)</sup> Elizabeth Bartholet, *Family Bonds: Adoption and the Politics of Parenting* (Boston: Houghton Mifflin, 1993); quoted in J.D. Vincent, "Reforming Adoption: Putting Children First," *Center of the American Experiment* (1995): 2.

<sup>2)</sup> National Committee for Adoption, *Unmarried Parents Today*, 66.

<sup>3)</sup> Janet W. Steverson, *Child vs. State: Children and the Law* (2012), 556.

<sup>4)</sup> Edmund V. Mech, "Orientations of Pregnancy Counselors Toward Adoption," (paper, University of Illinois, 1984.)

<sup>5)</sup> Part of the Omnibus Budget Reconciliation Act, August 13, (1981): 97-35,

<sup>6)</sup> National Council for Adoption, "Why Won't the Public Health Service Talk About Adoption?" *National Adoption Reports*, (1994).

<sup>7)</sup> P.H. Rossi, *Evaluating Family Preservation Programs* University of Massachusetts: Social and Demographic Research Institute, September 1990 (report to the Edna McConnell Clark Foundation); M.S. Wald, "Family Preservation: Are We Moving Too Fast?" *Public Welfare* (1988).

<sup>8)</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau *Child Maltreatment 2012* Children's Bureau, (Washington: Administration on Children, Youth and Families, 2013). Available at <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf>.

<sup>9)</sup> Center for Substance Abuse Services, "Substance Abuse Treatment for Persons with Child Abuse and Neglect Issues," *Treatment Improvement Protocol Series 36*, (2000).

<sup>10)</sup> Conor Friedersdorf, "In a Year, Child Protective Services Checked up on 3.2 Million Children," *The Atlantic* July 22, (2014)

<http://www.theatlantic.com/national/archive/2014/07/in-a-year-child-protective-services-conducted-32-million-investigations/374809/>. Based on data reported U.S. Department of Health and Human Services, Children's Bureau, *Child Maltreatment 2012*, (2013) <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf>.

<sup>11)</sup> Conor Friedersdorf, "In a Year, Child Protective Services Checked up on 3.2 Million Children," *The Atlantic* Jul. 22, 2014

<http://www.theatlantic.com/national/archive/2014/07/in-a-year-child-protective-services-conducted-32-million-investigations/374809/>. Based on data reported U.S. Department of Health and Human Services, Children's Bureau, //Child Maltreatment 2012, // (2013) [\[\[http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf](http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf).

<sup>12)</sup> Douglas J. Besharov with Lisa A. Laumann, "Don't Call It Child Abuse If It's Really Poverty," *American Enterprise Institute*, Washington, D.C.; paper prepared for conference on Social Policies for Children, Woodrow Wilson School of Public and International Affairs, Princeton, New Jersey, May 1994. Sarah Torre and Ryan T. Anderson, "Adoption, Foster Care, and Conscience Protection", January 15, 2014.

<sup>13)</sup> Kathleen Silber and Patricia M. Dorner, *Children of Open Adoption* (San Antonio, Tex.: Corona Publishing Company, 1989); Marianne Berry, "The Effects of Open Adoption on Biological and Adoptive Parents and the Children: The Arguments and the Evidence," *Child Welfare* 70, no. 6 (1990).

<sup>14)</sup> Mary E. Seader and William L. Pierce, "Should Parents Who Give Up Their Children for Adoption Continue to Have Access to Their Children?" in Mary Ann Mason and Eileen Gambrill, eds., Mary A. Mason and Eileen Gambrill *Debating Children's Lives: Current Controversies on Children and Adolescents* (Thousand Oaks, Cal: Sage Publications, 1994).

<sup>15)</sup> Blended families are composed of children of two former marriages or unions. The rate of family conflict is higher, and the children have higher rates of emotional and behavioral problems, in

blended families than in original intact families.

<sup>16)</sup> Nicholas Zill and Charlotte A. Schoenborn, "Developmental, Learning, and Emotional Problems: Health of Our Nation's Children, United States 1988," *Advanced Data from Vital and Health Statistics of the National Center for Health Statistics* no. 190, (1990).

<sup>17)</sup> The major proponents of open adoption are the American Adoption Congress and Concerned United Birthparents.

<sup>18)</sup> Peter L. Benson, Anu R. Sharma, and Eugene C. Roehlkepartain, *Growing Up Adopted-A Portrait of Adolescents and Their Families* (Minneapolis: Search Institute, 1994); Nicholas Zill, "Adopted Children in the United States: A Profile Based on a National Survey of Child Health," testimony before the House Ways and Means Subcommittee on Human Resources, May 1995.

Kathryn Patricelli, "Long-Term Issues For The Adopted Child," January 22, 2007.

<sup>19)</sup> R. Pannor and A. Baran, "It's Time for a Sweeping Change," *American Adoption Congress Newsletter*, 1990; Carole Anderson, "Response to 'It's Time for a Sweeping Change'," *CUB Communicator*, (1990).

<sup>20)</sup> National Council for Adoption, *On the Confidentiality of Adoption Records* 1992. As cited by Patrick F. Fagan, "Promoting Adoption Reform: Congress Can Give Children Another Chance," *Heritage Backgrounder* no. 1080 (1996). Available at

<http://www.heritage.org/research/reports/1996/05/bg1080nbsp-promoting-adoption-reform#68>.

<sup>21)</sup> *Stanley v. State of Illinois*, 405 U.S. 645 (1972); *Caban v. Mohammed*, 447 U.S. 380 (1979); and *Lehr v. Robertson*, 463 U.S. 248 (1983).

<sup>22)</sup> National Council for Adoption, "Putative Fathers' Rights," *Catholic University Law Review* (1992): 1

<sup>23)</sup> *Lehr v. Robertson*, 463 U.S. 248 (1983).

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