

## The Cultural Policy Studies Project

May 6, 1996

# PROMOTING ADOPTION REFORM: CONGRESS CAN GIVE CHILDREN ANOTHER CHANCE<sup>1</sup>

## INTRODUCTION

When President Clinton vetoed welfare reform last year, he also vetoed significant adoption reforms included in the package. Congress will soon take up the adoption issue again in the Adoption and Stability Act of 1996 (H.R. 3286), sponsored by Representative Susan Molinari (R-NY).

The key component of this bill is a \$5,000 tax credit to encourage adoption. This tax relief is phased out gradually for families with annual incomes between \$75,000 and \$110,000. Beyond ending inequities in interracial and Indian adoptions, the bill also permits employees to deduct from their taxes up to \$5,000 in employer assistance for additional adoption expenses. These reforms are financed by changes in foreign trust law and in energy subsidies, both mechanisms also approved by the House and Senate last year.

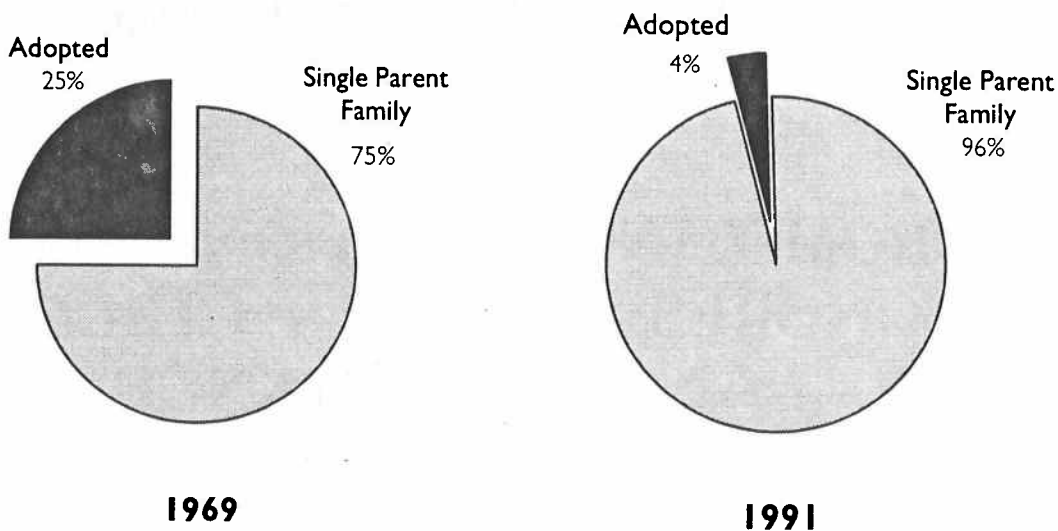
The \$5,000 tax credit, which may be spread out over five years, defrays a significant portion of the costs of adopting a child and is a bargain to taxpayers who now pay an average of \$13,000 per year to foster a child.<sup>2</sup> But the bill still does not allow the credit to apply to payroll taxes, and thus prevents families who adopt but pay less than \$1,000 in federal taxes each year<sup>3</sup> from benefiting from the adoption tax credit. These are precisely the families who need help the most.

<sup>1</sup> This *Backgrounder* is an update of *Backgrounder* No. 1045, "Why Serious Welfare Reform Must Include Serious Adoption Reform," July 27, 1995.

<sup>2</sup> According to the House Ways and Means Committee's *Green Book* on federal entitlement programs and DHHS/ACF data on federal payments to the states for foster care services, the total federal share of foster care payments for 1994 was \$1,971,273,000 for 244,473 children, and the average of the federal share of the individual state's foster care bill is 60.88 percent.

Chart 1

## Proportion of Unwed Births Adopted



Sources: *The Adoption Factbook*, National Committee for Adoption, June 1989; NCFMemos.

**Ending Discrimination.** H.R. 3286 removes obstacles to interracial adoption by penalizing, with a decrease in funding, any state that refuses to allow any person to adopt a child regardless of race or color. It also ends an unjust application of the Indian Child Welfare Act. Today, parents who are totally or partially Indian and have not maintained close contact with their tribe may have the adoption of their child by non-Indian parents blocked. This can be achieved by admitting the child or one of the parents to full membership in the tribe, even after the adoption has taken place. In the future, under H.R. 3286, unless one of the parents maintains a significant affiliation with the tribe, adoption by non-Indian parents may not be blocked.

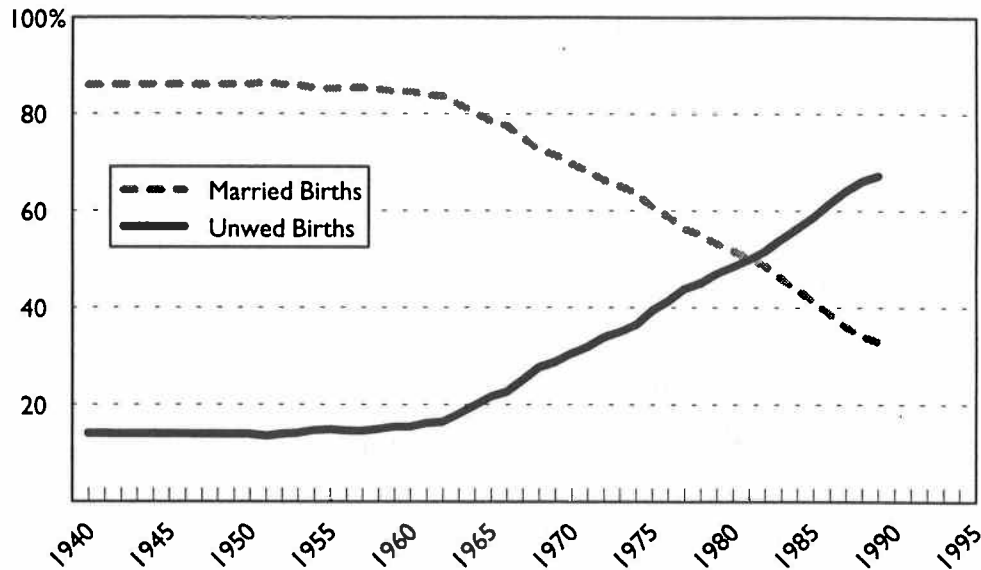
Other reforms are needed in the adoption and foster care system if the rate of adoptions is to increase. Removing the barriers to adoption in the social service bureaucracy is the most significant of these remaining reforms.

Adoption rates have declined in recent decades as adoption has fallen out of favor with state governments and the social services establishment. In 1969, 360,800 babies were born out of wedlock; almost one in four was adopted. In 1991, of the 1,225,000 born out of wedlock, only one in 25 was adopted (see Chart 1). Yet public interest has increased: close to two million couples would like to adopt these children. Clearly, the problem is far more basic than any financial burden that may be involved.

3 These can be poor families or large middle-income families.

Chart 2

## Unwed Births Are Increasing for Women Under 20



Source: U.S. Bureau of the Census, *Current Population Survey*, 1991.

Because of the vast need for adoption and the large pool of parents willing to adopt, Congress not only should encourage adoptions through generous tax relief for adopting parents, but also must change the public social service ethos by eliminating all barriers to speedy and permanent adoption.

The simplest and fastest way to bring about these improvements is to privatize all adoption services. Government agencies have institutional strengths in applying and enforcing the law, but private institutions can better harness the human qualities needed to nurture and develop children. To encourage adoption through private organizations, and to reduce barriers to adoption through government agencies, Congress, the Administration, and the states need to take several important actions.

What the federal government should do:

- ✓ **Enact** a means-tested, fully refundable, inflation-adjusted tax credit of up to \$5,000 for non-recurring adoption expenses.
- ✓ **Hold** hearings on the Clinton Administration's blocking of a very effective drug testing and treatment program for cocaine-addicted pregnant mothers. If necessary, pass legislation to reverse the Administration's action.
- ✓ **Issue** annual report cards on the rate of adoption in each state.
- ✓ **Require** federally funded family planning services to provide clear and accurate information on the benefits of adoption to all out-of-wedlock teenage mothers.

- ✓ **Make** it easy for all churches, particularly black churches that serve the poor, to affiliate with adoption agencies and become involved in the adoption process as outreach to prospective adopting parents.
- ✓ **Ensure** the civil rights of all children in foster care and modify the Multi-Ethnic Placement Act to prohibit any use of race or ethnicity to deny or delay the placement of a child for foster care or adoption.
- ✓ **Change** the Indian Child Welfare Act to curtail the reach of Indian Nation law over those who have emigrated from those communities and societies.
- ✓ **Reject** the language in the U.N. Charter on the Rights of the Child.

What the states should do:

- ✓ **Privatize** adoption services.
- ✓ **Change** the way public welfare agencies are financed so that they are obliged to contract for all public adoptions.
- ✓ **Establish** separate units at the county level to assist the courts in making speedy and appropriate judgments.
- ✓ **Maintain** special Medicaid coverage for all special-needs adopted children.
- ✓ **Remove** obstacles to transracial adoptions.
- ✓ **Use** leadership opportunities to encourage adoption.
- ✓ **Establish** separate units for termination of the parental rights of convicted abusing parents.
- ✓ **Enact** a strict 12-month timeline for adjudication of the long-term parental status of every child in foster care.
- ✓ **Centralize** the collection of state data on all formal adoptions and foster care actions.
- ✓ **Enact** legislation subjecting public social service agencies to the same licensing standards and requirements as those imposed on private adoption agencies.
- ✓ **Mandate** drug testing of pregnant mothers suspected of drug abuse, particularly cocaine abuse.
- ✓ **Prohibit** the removal of a child eligible for adoption from foster parents who are willing to adopt, except when the child is being returned to his legal parents. Enact legislation to permit foster parents to initiate adoption proceedings.
- ✓ **Enact** laws requiring child welfare agencies to initiate adoption proceedings for any child who has been abandoned by his parents for six months.

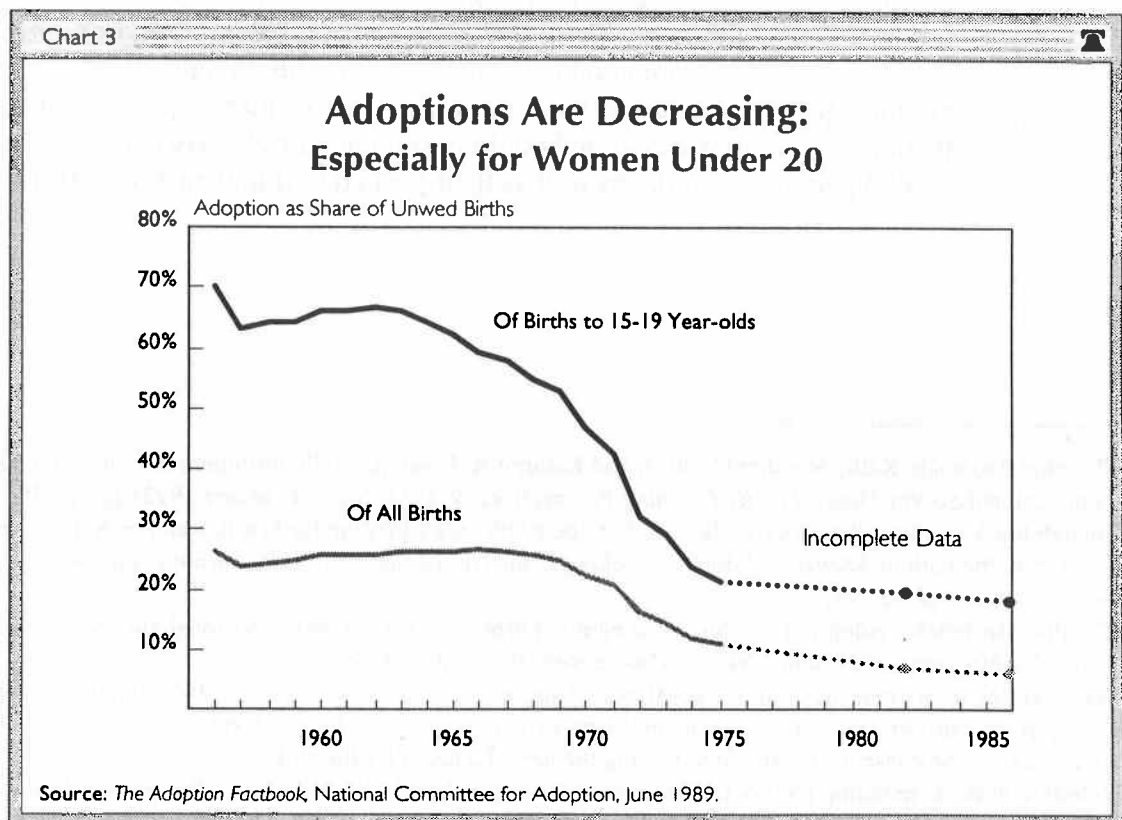
Adoption works. It increases the emotional, physical, and cognitive capacities of the children who are adopted. It improves the life chances of the biological mother. It saves vast amounts of money for the public. It brings much happiness, both to the adopting parents and to the adopted child. It is good for all involved.

The current welfare reform debate in Congress offers one of the best chances in decades to promote adoption. Sharply rising out-of-wedlock births add steadily to the long-range costs of welfare, because being born out of wedlock significantly increases the chances of ending up on welfare. At the same time, up to two million couples waiting to adopt frequently find themselves hamstrung by government agencies and government practices.

## THE NEED FOR ADOPTION

Over the past 25 years there has been a dramatic increase in the numbers of children born out of wedlock, children being raised by single parents, families on welfare, and children entering the foster care system because of abuse and neglect. Family disintegration is widespread. There also has been a sharp decrease in the number of children being adopted, with formal adoptions dropping by almost 50 percent: from 89,000 in 1970 to a fairly constant 50,000 annually throughout the 1980s and into the 1990s.<sup>4</sup>

According to Christine Bachrach, now Director of the Demographic and Behavioral Sciences Branch of the National Institute of Child Health and Human Development (NICHD), adoption has declined since the early 1970s primarily because of a drop in the proportion of white mothers who place their babies for adoption. Birth mothers who have



<sup>4</sup> This number does not include informal adoptions by relatives that frequently take place within families—something extended families have always done for other members in need.

continued to place their babies for adoption are more likely to have well educated mothers, are still at school, have never worked, and are older. Also, they are more likely to place daughters for adoption than sons. Levels of adoption have remained low for blacks and are virtually non-existent for Hispanic women.<sup>5</sup>

Women likely to adopt tend to be married, sterile,<sup>6</sup> and 30 years of age or older. Nearly half of all women with these characteristics have adopted.<sup>7</sup>

The National Council for Adoption estimates that of the 50,000 children adopted annually, 25,000 are healthy children under age two, 10,000 are healthy children over age two, and 15,000 are children with "special needs" (the social work term of art for children considered difficult to place because of their age, physical or mental condition, race or ethnicity, or need to be placed with siblings).<sup>8</sup> About one-third of these adoptions are arranged by government-funded and government-managed public agencies, some by contract with private agencies. Another one-third are arranged by private, mostly nonprofit agencies, and the rest are contracted outside of agency auspices, mostly through lawyers in private practice. International adoptions accounted for an additional 8,000 adoptions during 1994.

Adoption fell out of favor among social workers during the 1970s, even as single parenthood and abortion became more widespread. Advocates of government-sponsored social programs argued that increases in welfare would make it possible for unmarried mothers to rear children without the assistance of a father.<sup>9</sup> Yet, as is evident from the skyrocketing foster care numbers<sup>10</sup> and from the chronic problems associated with the absence of fathers, such as crime, poor school performance, poor health status, and low income,<sup>11</sup> that view has turned out to be a tragic mistake. By contrast, children adopted by two parents are doing as well as their peers raised in their own intact families.<sup>12</sup>

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5 Christine Bachrach, Kathy Shepherd Stolley, and Kathryn A. London, "Relinquishment of Premarital Births: Evidence from National Survey Data," *Family Planning Perspectives*, Vol. 24, No. 1 (February 1992), pp. 27-48.

6 Though black women who adopt are less likely to be sterile; see Christine Bachrach, Kathryn A. London, and Penelope L. Maza, "On the Path to Adoption, Adoption Seeking in the United States, 1988," *Journal of Marriage and Family*, Vol. 53 (August 1991), pp. 705-718.

7 Christine Bachrach, "Adoption as a Means of Family Formation: Data from the National Survey of Family Growth," *Journal of Marriage and Family*, Vol. 45 (November 1983), pp. 859-865.

8 However, the term often causes initial resistance or apprehension on the part of potential adopting parents, who may fear having enormous burdens placed upon them. Many experts complain of the unnecessary and inordinate use of the term by state workers, the consequence frequently being the loss of a home for the child.

9 Robert Rector, "Combating Family Disintegration, Crime, and Dependence: Welfare Reform and Beyond," Heritage Foundation *Backgrounders* No. 983, March 17, 1995.

10 These numbers rose from 262,000 in 1982 to 406,000 in 1990. American Public Welfare Association, *VCIS Research Notes*, November 1991. Further data from APWA show that the number rose to 444,000 in FY 1993.

11 Patrick F. Fagan, "Rising Illegitimacy: America's Social Catastrophe," Heritage Foundation *F.Y.I.* No. 19, June 29, 1994.

12 See section on "Benefits for Children," *infra*.

## PATTERNS OF PARENTAL NEGLECT

The rapid increase of illegitimacy and the staggering problems of children born out of wedlock and raised without fathers are well documented.<sup>13</sup>

☞ In 1991, 29.5 percent of all births and 68 percent of minority births were out of wedlock.<sup>14</sup> In 1970, 10.7 percent of all children and 37.6 percent of minority children were born to unmarried mothers.<sup>15</sup>

☞ In 1986, 66 percent of unintended pregnancies ended in abortion and 33 percent ended with a woman choosing to be a single parent. Only 1 percent ended in adoption.<sup>16</sup>

☞ In 1992, 659,000 children were in state-sponsored foster care and institutional care for all or part of the year. On any given day, half a million American children live in government-sponsored substitute care.<sup>17</sup>

☞ In 1982, 7,100 infants were in substitute care outside their homes; in 1988, there were over 17,000.

☞ In 1991, 2,000 children died from abuse or neglect. Some were murdered. Between 30-50 percent of children killed by their parents or caretakers were known to child protective services before their murders took place.<sup>18</sup>

There has been a sharp increase in the number of infants abandoned by their frequently drug-addicted mothers. According to the Department of Health and Human Services (HHS), 12,000 infants were abandoned in 1991.<sup>19</sup> In response to this crisis, there has been a proliferation of "boarder baby"<sup>20</sup> homes to care for these children until their parents can be located and rehabilitated. A 1993 General Accounting Office report showed that 10,000 infants were being boarded in hospitals for no medical reason. Less than 40 percent of the boarder babies—and none of the abandoned babies—were expected to leave in the care of their parents.

The average total cost of caring for these babies in hospital after their medical treatment is almost \$13,000.<sup>21</sup> Nonetheless, only 2.5 percent of the boarder babies and 6 percent of the abandoned infants were expected to go into adoptive placements.<sup>22</sup> The vast

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13 Fagan, "Rising Illegitimacy: America's Social Catastrophe."

14 *Ibid.*

15 U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States: 1994*, 114th Edition, 1994.

16 National Committee for Adoption, *Adoption Factbook*, June 1989.

17 Data from American Public Welfare Association series, *Voluntary Cooperative Information System (VCIS) Research Notes*.

18 *Ibid.*

19 Report to Congress, "National Estimate on the Number of Boarder Babies, the Cost of Their Care, and the Number of Abandoned Babies," DHHS/ASPE, August 1993, p. ii; hereinafter cited as DHHS/ASPE Report.

20 Boarder babies are babies left in the hospital by absconding mothers. Most frequently, these mothers are drug addicts with multiple serious problems.

21 HHS/ASPE Report, p. ii.

22 "Report to Congress: National Estimates on the Number of Boarder Babies, the Cost of Their Care, and the Number of Abandoned Infants," U.S. General Accounting Office, August 1993; hereinafter cited as GAO Report.

majority of these children will spend years in and out of the foster care system while the biological mother attempts to get her life together.<sup>23</sup>

Federal efforts to deal with this have been small and swamped by the size of the problem.<sup>24</sup> When Representative Harris Fawell (R-IL) introduced the At-Birth Abandoned Infants Act (H.R. 2936) in 1994 to help move abandoned babies out of the system and into permanent adoptive homes, the child welfare establishment lobbied against it, arguing that creating a two-tiered system—a fast track for new-born abandoned babies and a slower, less responsive one for older children—was unfair.<sup>25</sup> The bill was not enacted.

## WHY ADOPTION SHOULD BE ENCOURAGED

### Benefits for Children

Adopted children do as well as or better than their non-adopted counterparts, according to a 1994 study by the Search Institute, a Minneapolis-based public policy research organization specializing in questions of concern to states and cities.<sup>26</sup> This study, the largest examination of adopted adolescents yet undertaken, concludes that:

- ✓ Teens who were adopted at birth are more likely than children born into intact families to live with two parents in a middle-class family.<sup>27</sup>
- ✓ Adopted children score higher than their middle-class counterparts on indicators of school performance, social competency, optimism, and volunteerism.<sup>28</sup>
- ✓ Adopted adolescents generally are less depressed than children of single parents and less involved in alcohol abuse, vandalism, group fighting, police trouble, weapon use, and theft.<sup>29</sup>
- ✓ Adopted adolescents score higher than children of single parents on self-esteem, confidence in their own judgment, self-directedness, positive view of others, and feelings of security within their families.<sup>30</sup>

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23 Most boarder babies are cases of neglect of a severity which easily would justify termination of the parental rights of the mother. However, "family preservation" guidelines (as opposed to the best interests of the child) lead to prolonged and frequently futile efforts at maternal reform.

24 GAO Report, *op. cit.*

25 The opponents, the Child Welfare League of America and the American Public Welfare Association, also argued that the child's first right is to his biological family, not to care and nurturance, and that family preservation services must first be attempted with the mother—even if she had abandoned her baby.

26 Peter L. Benson, Anu R. Shorma, and Eugene C. Roehlkepartain, *Growing Up Adopted—A Portrait of Adolescents and Their Families* (Minneapolis: Search Institute, June 1994).

27 This finding illustrates the power of early adoption and the need to reform agency practices which keep children in prolonged foster care during their early infancy, when they are highly adoptable.

28 Benson *et al.*, *Growing Up Adopted*.

29 *Ibid.*

30 Kathleen S. Marquis and Richard A. Detweiler, "Does Adoption Mean Different? An Attributional Analysis," *Journal of Personality and Social Psychology*, Vol. 48, No. 4 (1985), pp. 1054-1066. An interesting anomaly has emerged from an analysis of adoption studies. Clinical studies traditionally have shown adopted adolescents to be overrepresented in psychiatric settings. The same occurred here, but these adolescents were found not to have emotional or psychological



- ✓ On health measures, adopted children and children of intact families share similarly high scores, and both those groups score significantly higher than children raised by single parents.<sup>31</sup>
- ✓ Adopted children do well at school. In 1981, only 7 percent of children adopted in infancy repeated a grade, while 12 percent of children living with both biological parents repeated a grade.<sup>32</sup>
- ✓ Compared with the general child population, children placed with adoptive couples are better off economically. Their parents are better educated and older than the parents of other children.<sup>33</sup>
- ✓ Adoptive parents are less likely to divorce.<sup>34</sup>

Virtually all of these findings have been replicated by Nicholas Zill, Vice President and Director of Child and Family Studies at Westat Research Corporation of Maryland, in his analysis of data from the federal government's 1988 National Health Interview Survey on Child Health.<sup>35</sup> Results from the survey were compared across four groups: adopted children, children of unmarried mothers being raised by the mother, children of intact families, and children being raised by their grandparents. The data indicated that adopted children:

- ✓ Enjoy a quality of home environment superior to all the other groups;<sup>36</sup>
- ✓ Have superior access to health care compared to all the other groups;<sup>37</sup>
- ✓ Enjoy health similar to that of children of intact families and superior to that of the other two groups; and
- ✓ Do better in educational attainment than single-parent children and children raised by grandparents.<sup>38</sup>

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problems at these rates. Adopted adults are less likely to receive treatment than the general population. This seeming contradiction occurs because adoptive parents are more likely to refer their adopted children for possible treatment. Of all adopted children referred by parents for clinical treatment, only 27 percent had a clinical diagnosis. The remainder—almost 75 percent—received counseling for normal adolescent issues.

- 31 Nicholas Zill, "Behavior and Learning Problems Among Adopted Children: Findings from a U.S. National Survey of Child Health," *Child Trends, Inc.*, Washington, D.C.; paper presented to the Society for Research in Child Development, April 27, 1985.
- 32 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.
- 33 Christine Bachrach, "Adoption Plans, Adopted Children and Adoptive Mothers," *Journal of Marriage and the Family*, Vol. 48 (May 1986), pp. 243-253; Christine Bachrach, "Children in Families: Characteristics of Biological, Step-, and Adopted Children," *Journal of Marriage and the Family*, Vol. 45 (February 1983), pp. 171-179.
- 34 National Committee for Adoption, *Unmarried Parents Today*, June 25, 1985.
- 35 See Nicholas Zill, Mary Jo Cairo, and Barbara Bloom, "Health of Our Nation's Children," *Vital and Health Statistics*, Series 10, No. 191, U.S. Public Health Service, 1994, and Zill, "Adopted Children in the United States."
- 36 As measured by regular bedtime, use of seatbelts, and absence of an adult smoker in the household.
- 37 As measured by insurance coverage, dental visits, and regular provider of sick care.
- 38 As measured by rank in class, repeating a grade, or being suspended.

When compared with those adopted later, born outside of marriage and raised by the single mother, or raised in an intact family, children who are adopted in infancy:

- ✓ Repeat grades less often than any other group;
- ✓ See mental health professionals less than all other groups, except children of intact families;
- ✓ Have better health status than all other groups;
- ✓ Have a better standing in their school classes than all other groups, except children raised in intact families; and
- ✓ Have fewer behavior problems than all other groups, except children raised in intact families.

### **Benefits for Mothers Who Give Up Children for Adoption**

Significantly, teenage mothers who choose adoption also do better than mothers who choose to be single parents.

- ✓ They have higher educational aspirations, are more likely to finish school, and less likely to live in poverty and receive public assistance than mothers who keep their children.<sup>39</sup>
- ✓ They delay marriage longer and are more likely to marry eventually.
- ✓ They are more likely to be employed 12 months after the birth and less likely to repeat out-of-wedlock pregnancy.
- ✓ They are no more likely to suffer negative psychological consequences, such as depression, than are mothers who rear children as single parents.<sup>40</sup>

All the goals of liberal government programs like job training, supplemental education, and family planning are attained with greater ease, and at lower cost, through adoption.<sup>41</sup>

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39 Bachrach, Stolley, and London, "Relinquishment of Premarital Births"; see also Bachrach, "Adoption Plans, Adopted Children and Adoptive Mothers."

40 Steven D. McLaughlin, Diane L. Manninen, and Linda D. Wings, "Do Adolescents Who Relinquish Their Children Fare Better or Worse Than Those Who Raise Them?" *Family Planning Perspectives*, Alan Guttmacher Institute, January-February 1988.

41 See Patrick F. Fagan, "Liberal Welfare Programs: What the Data Show on Programs for Teenage Mothers," Heritage Foundation *Background* No. 1031, March 31, 1995.

## HOW MANY POTENTIAL PARENTS ARE THERE?

Although growing numbers of children need adoption, there are more than enough families to meet the demand. The National Council for Adoption estimates that at least one million infertile couples and an additional one million fertile couples would like to adopt.<sup>42</sup>

Christine Bachrach of NICHD concluded from the National Survey of Family Growth that over 2,000,000 women have sought to adopt at one time or another, and about 200,000 were actively seeking to adopt in 1988.<sup>43</sup>

Couples who want to adopt are not looking just for healthy, Caucasian infants, despite assumptions to the contrary. The National Down's Syndrome Adoption Exchange reports a waiting list of over 100 couples who would like to adopt a child with Down's syndrome—more than enough to accommodate parents who want Down's children given up for adoption. Nor is it difficult to find families for children with spina bifida and children who are HIV positive. For example, the National Council for Adoption is identifying children who will be orphaned when their parents die of AIDS, so that appropriate plans can be made before the parents' death. The response by individuals and families willing to adopt such children has been overwhelming.

Americans are also willing to help with children from overseas, especially because of the anti-adoption bias in the United States. When the communist regime in Romania fell, ABC-TV's "20/20" reported that thousands of children were warehoused in government orphanages. Pictures showed many children with health and developmental problems. ABC received over 25,000 self-addressed, stamped envelopes from people who wanted more information, and within six months 2,000 Romanian children were adopted by Americans,<sup>44</sup> many of whom had not considered adoption until this need became known. This suggests that the pool of parents willing to adopt could be expanded significantly.

In 1993, over 56 percent of the 7,348 children from other countries adopted by American parents were over the age of one. Of these, 9 percent were between the ages of five and nine, and 5 percent were over the age of ten.<sup>45</sup> In addition, many of these foreign-born children have physical and emotional problems at the time of their adoption.<sup>46</sup>

Despite the evident readiness and desire to adopt, many families report a lack of support or encouragement from the social services establishment. They report such things as unanswered phone calls, inadequate networking with other agencies which may have children ready for adoption, a disinclination to identify children with needs that corre-

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42 National Committee for Adoption, *Unmarried Parents Today*.

43 Bachrach, London, and Maza, "On the Path to Adoption."

44 U.S. Immigration and Naturalization Service data from National Council for Adoption, 1994.

45 *Ibid.*

46 There is strong evidence in U.S.-foreign adoption patterns that Americans do not seek Caucasian children only. Of all the foreign adoptions in 1987 (total: 10,097) 122 were from Europe; 7,614 were from Asia; 22 were from Africa; and 1,363 were from South America. The rest were from Canada, Mexico, and the Caribbean. Non-white couples in the United States have a pattern of adopting at a higher rate than do white couples. See section on "Black Families and Adoption," *infra*.

spond to the gifts of the family, and a general lack of support to bring couples successfully through the adoption process.<sup>47</sup>

## THE BARRIERS TO ADOPTION

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>48</sup>

The legal system often resolves cases in ways that trouble many Americans. In two widely publicized recent cases, for example, children were wrested from their adoptive parents on the basis of biological ties. Baby Jessica was given to her biological father, who had failed to support two previous children, and Baby Richard was given to his biological father, with whom he had never lived, instead of being allowed to remain with the adoptive family which had nurtured him from birth for three years. In both cases, the overriding “biological ties” of the fathers prevailed over the needs of their children.

Several barriers make it very difficult for many families to adopt children.

### **BARRIER #1: Anti-Adoption Bias in Pregnancy Counseling**

Only 1 percent of women who experience an “unwanted pregnancy” choose adoption for their children.<sup>49</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.
- ✗ By contrast, 38 percent<sup>50</sup> of the clients whose counselors offered adoption went on to choose adoption.<sup>50</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 instance, the Adolescent Family Life Act<sup>51</sup> was

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47 Personal communication from Mary Beth Styles, Vice President for Professional Practice, National Council for Adoption, summing up the complaints of parents to NCFA.

48 Elizabeth Bartholet, *Family Bonds: Adoption and the Politics of Parenting* (Boston: Houghton Mifflin, 1993); quoted in Judith D. Vincent, “Reforming Adoption: Putting Children First,” Center of the American Experiment, Minneapolis, March 1995, p. 2.

49 National Committee for Adoption, *Unmarried Parents Today*, p. 66.

50 Edmund V. Mech, paper on “Orientations of Pregnancy Counselors Toward Adoption,” University of Illinois, 1984.

51 Part of the Omnibus Budget Reconciliation Act, P.L. 97-35, August 13, 1981.

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>52</sup>

## **BARRIER #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>53</sup> In fact, there is evidence that children fare worse under these new practices. In New York City alone, during the 12 months of 1992, 21 children were killed by a parent or mother’s boyfriend after the Child Welfare Administration had intervened.<sup>54</sup>

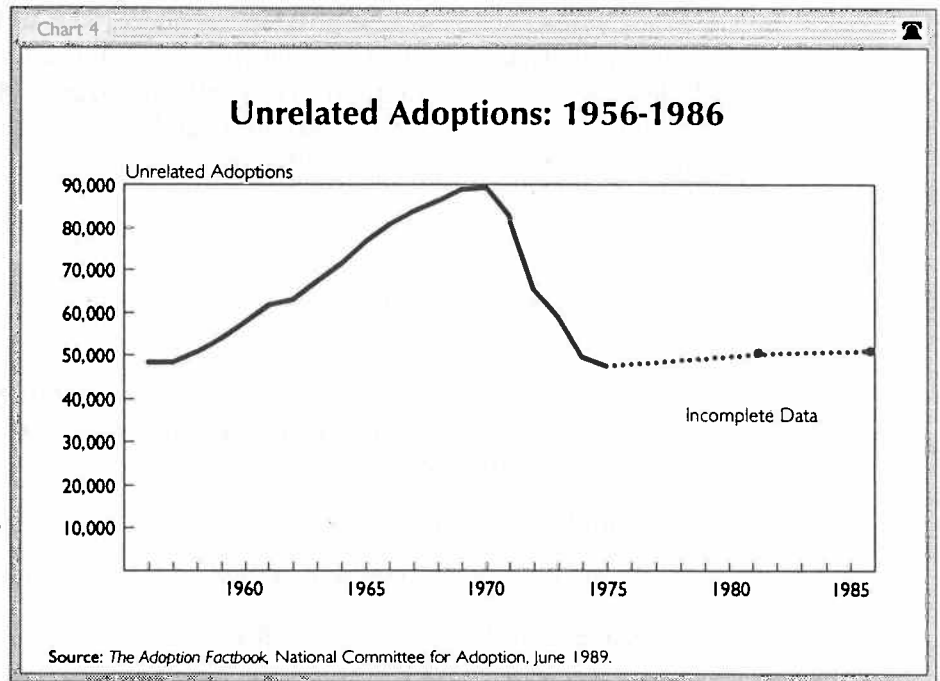
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52 “Why Won’t the Public Health Service Talk About Adoption?” *National Adoption Reports*, National Council for Adoption, October 1994.

53 Peter H. Rossi, *Evaluating Family Preservation Programs*, report to the Edna McConnell Clark Foundation, Social and Demographic Research Institute, University of Massachusetts, September 1990; Michael S. Wald, “Family Preservation: Are We Moving Too Fast?” in *Public Welfare* (Washington, D.C.: American Public Welfare Association, Summer 1988).

54 Rita Kramer, “In Foster Care, Children Come Last,” *City Journal*, Autumn 1994, pp. 63-70.

A study by John Schuerman and his colleagues at the University of Chicago found that the "Family First" program did not realize even its central goal: preventing the removal of children.<sup>55</sup> Neither did it protect children from further abuse. There is evi-



dence that some families continue to abuse their children even during the period of intensive state intervention.<sup>56</sup> By contrast, there is strong evidence that children do better when left in foster care than when they are returned to abusive families.<sup>57</sup> This evidence leads to a simple and commonsense conclusion: children need a permanent home to which they can belong. For children at serious risk, an adoptive home is their best chance for real permanence.

Some child advocates challenge the principle of applying the "family preservation" approach in all cases. At a 1994 conference sponsored by the National Council for Adoption at Boys Town, Nebraska, Dr. Richard Gelles of the University of Rhode Island, a pre-eminent child abuse researcher and an early and optimistic supporter of family preservation programs, presented the following paraphrased views on these practices in light of recent evaluation data:

There are now a number of studies of children who were returned home only to be abused again or even killed. These studies show dramatically that some abusive parents cannot be rehabilitated.<sup>58</sup> In these cases the appropriate care of such a child is to terminate the parents' rights as quickly as possible and place the child with a permanent caring adoptive family.

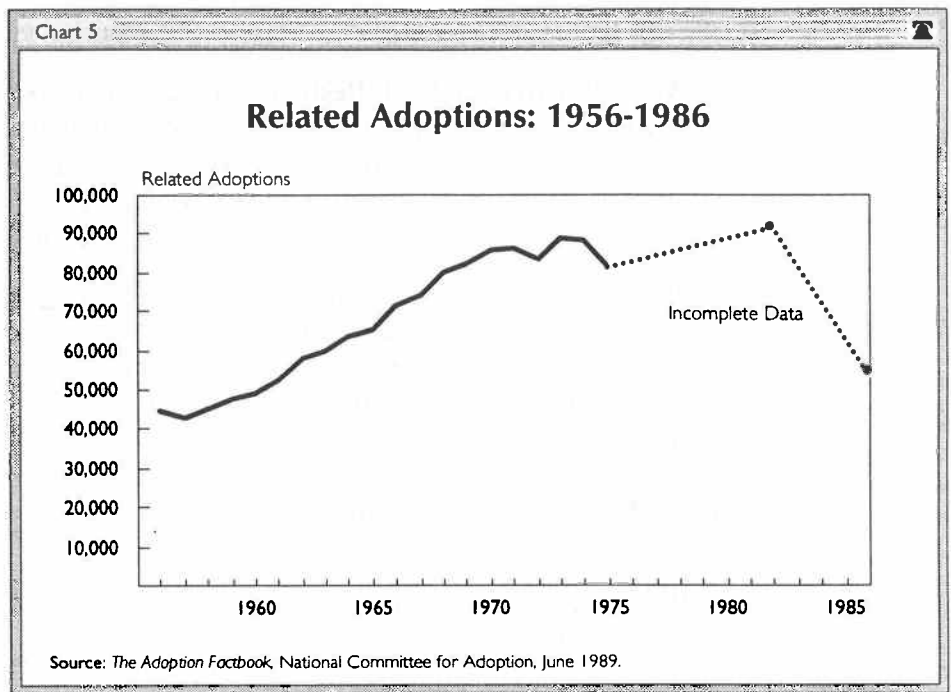
<sup>55</sup> John Schuerman, Tina Rzepnicki, and Julia Little, *Putting Families First* (New York: Aldine DeGruyter, 1994).

<sup>56</sup> Mary Elizabeth Seader, "Do Services to Preserve the Family Place Children at Unnecessary Risk?" in Eileen Gambrill and Theodore J. Stein, eds., *Controversial Issues in Child Welfare* (New York: Allyn and Bacon, 1994).

<sup>57</sup> Carol Statuto Bevan, "In Search of a New Child Welfare Paradigm"; unpublished paper presented at Boys Town conference on Child Protection: Old Problem, New Paradigm, May 20-22, 1994.

<sup>58</sup> Richard J. Gelles, "The Doctrine of Family Reunification: Child Protection or Risk?"; paper presented at Boys Town conference on Child Protection: Old Problem, New Paradigm, May 20-22, 1994.

The Boys Town conference highlighted the central problem of family preservation services. The first logical step should be to assess whether the child should be removed immediately and whether the parents are likely to benefit from



support services. 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.

The foster care system is the aggregate network of parents who work for state and local social service agencies by taking abandoned, abused, or neglected children into their homes. They receive a set amount each month with which to feed, clothe, and nurture these children. Foster parents try to function as substitute parents. Prudently, they are admonished not to expect that placement will be permanent. However, from among the couples who take on this work come many who would like to adopt, particularly as they get to know these children and their lack of prospects for a happy and safe life in their families of origin.

Government funding reinforces an anti-adoption bias by supporting “family preservation” programs with free technical assistance and generous grants while providing only restricted support for adoption. The National Council for Adoption and the Institute for Justice report that numerous families, including foster families, have had their attempts to adopt waiting children rebuffed by the social service agencies for whom they work.<sup>59</sup> Conna Craig of the Institute for Children in Boston reports receiving hundreds of letters from foster parents who are willing and able to adopt their foster children, some of whom have been eligible for years.

<sup>59</sup> Donna G. Matias, “Separate But Not Equal: Striking Down State-Sanctioned Barriers to Interracial Adoption,” Institute for Justice, Washington, D.C., April 1995.

### **BARRIER #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 from adoption.<sup>60</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. Deaths of children result, as in the cases of the 21 who died in New York in 1992. By contrast, in Arizona and Oregon, separate professional units are used to make initial determinations and to justify the necessary court proceedings. Professionals are not trapped in the role confusion caused by simultaneous demands to reunite every family while also protecting the child.

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.

### **BARRIER #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"

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<sup>60</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.



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. This form of open adoption exists in Oregon from birth and in Indiana for children over two years of age.

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>61</sup> in the adoptive family and inhibits the birth parents' grieving process.<sup>62</sup> There are parallel experiences and research findings with respect to divorce and the increased risks of being raised in blended families.<sup>63</sup> Confidentiality, especially in infant adoptions, helps minimize these risks.

Oregon is an example of a state in which 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>64</sup> If successful, the growing push for open adoption<sup>65</sup> could cause similar difficulties for adopted children, undermining the generally strong mental health reported by the Search Institute and Nicholas Zill.<sup>66</sup>

Proponents of open adoption even recommend abolishing adoption in favor of "guardianship," which does not offer the same permanency of family for the child.<sup>67</sup> Like any other government policy which treats the adoptive families differently from intact families, this undermines the very essence of adoption.

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- 61 Kathleen Silber and Patricia Martinez Dorer, *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*, Vol. 70, No. 6 (November-December 1990).
  - 62 Mary Elizabeth 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., *Debating Children's Lives: Controversies on Children and Adolescents* (Thousand Oaks, Cal: Sage Publications, 1994).
  - 63 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.
  - 64 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, November 1990.
  - 65 The major proponents of open adoption are the American Adoption Congress and Concerned United Birthparents.
  - 66 Benson *et al.*, *Growing Up Adopted*, and Zill, "Adopted Children in the United States."
  - 67 Reuben Pannor and Annette Baran, "It's Time for a Sweeping Change," *American Adoption Congress Newsletter*, Summer 1990; Carole Anderson, "Response to 'It's Time for a Sweeping Change'," *CUB Communicator*, Concerned United Birthparents, Des Moines, Iowa, September 1990.

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>68</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. They also have questioned the need to federalize a state issue.

### **BARRIER #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>69</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>70</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>71</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

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68 National Council for Adoption, *On the Confidentiality of Adoption Records*, 1992.

69 *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).

70 National Council for Adoption, "Putative Fathers' Rights," 1992.

71 *Lehr v. Robertson*, 463 U.S. 248 (1983).

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.

#### **BARRIER #6: Race of the Child and Adoptive Parents**

Two forms of racial discrimination take place within adoption: against adoptive parents and 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. There is no need for coercive race-matching legislation.

### **THE SPECIAL PLIGHT OF BLACK CHILDREN**

Interracial adoptions account for about 8 percent of adoptions and consist primarily of adoptions of black children by white parents.<sup>72</sup> There are more black children waiting in foster care than there are prescreened black families ready to adopt them. With the need for permanent adoptive homes growing more acute and the exit rate from foster care slowing continually, the likelihood of multiple placements for black children increases.<sup>73</sup> Indeed, some 24 percent of the children in foster care today have been in three or four different homes.<sup>74</sup> According to Ira Schwartz of the University of Michigan, 53 percent of all children in Michigan who entered the foster care system as newborns are still in foster care at age four.<sup>75</sup> A number of regional studies confirm this trend and demonstrate that black children typically wait two to three years longer than white children for adoptive homes.<sup>76</sup>

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- 72 Christine Bachrach, Patricia F. Adams, Soledad Sambrano, and Kathryn A. London, "Adoptions in the 1980's," *Advanced Data from Vital and Health Statistics of the National Center for Health Statistics*, No. 181 (January 5, 1990).
- 73 "Actual numbers and percentages of substitute care exits among minority children did rise significantly during the 1980s, but any gains in the numbers of exits among black and Hispanic children were totally nullified by continued increases in the total numbers of these minority children in the substitute care population during the same period....The fact that the exit numbers of minority children are smaller than those of white children will result in additional increases in the proportion of minority children in care. If current trends continue, minority children will become the clear majority in the nation's substitute care population in the next few years. There already are more minority children than white children in the substitute care systems of several large urban states today. Social policy implications of minority children becoming the numerical majority in the U.S. substitute care population are profound and complex and should be seriously examined." From Toshio Tatara, "A Comparison of Child Substitute Care Exit Rates Among Three Different Racial/Ethnic Groups in 12 States, FY 84 To FY 90," *VCIS Research Notes* No. 10, American Public Welfare Association, Washington, D.C., June 1994.
- 74 Data supplied by the David Thomas Foundation for Adoption, P.O. Box 7164, Dublin, Ohio 43017.
- 75 Ira Schwartz, Robert M. Ortega, and Gideon Fishman, "Michigan Infants in the Child Welfare System," report from the University of Michigan Center for the Study of Youth Policy; data from Department of Social Services CSMIS Data Event History File 12 89.
- 76 Richard P. Barth, Mark Courtney, and Barbara Needel, "The Odds of Adoption vs. Remaining in Long-Term Foster Care"; paper presented at the Second Annual Child Welfare Conference, Washington, D.C., March 17, 1994. See also S. Kossoudji, "Race and Adoption in Michigan," in D. Mont and R. Avery, eds., *Public Agenda Adoption Policy* (Westport, Conn.: Greenwood Press, 1994), and D. Mont, "Race and Gender Differences in the Adoption of Special Needs Children,"

The length of stay in foster care is very important. The longer the newborn stays in foster care, the more at risk he is of approaching the "difficult to adopt" age and the greater the problems associated with long-term foster care become. If half the children who arrive in foster care at birth are still in it at age four, the system is not serving their needs.

This statistic highlights the need for termination units—specialized units of social workers who work with the courts to determine whether the parental rights of an abusing or neglectful parent should be withdrawn so that the child may be placed for adoption. If the "best interest of the child" principle is used, this decision will be made quickly. If the "family preservation" principle is used, the decision will be delayed again and again, often until repeated neglect convinces the authorities that parental rights must be removed. At this point, in addition to having suffered even more, the child is older and more difficult to place.

Given these figures, public welfare agencies are a major source of neglect of young black children. The bias against adopting early, when the child is most adoptable, feeds the foster care system and ensures a larger clientele for public agencies. The present system of financing foster care and not financing adoptions perversely rewards this form of government neglect.

### **Black Families and Adoption**

There is some evidence that blacks adopt at a much higher rate than whites if one controls for family structure, income, and age of parents.<sup>77</sup> A 1983 Department of Health and Human Services study<sup>78</sup> put these comparable rates at:

- ◆ 7 adoptions per 10,000 black families for all black families;
- ◆ 2 adoptions per 10,000 white families for all white families; and
- ◆ 2 adoptions per 10,000 Hispanic families for all Hispanic families.

Controlling for age of parents (below 55), family income (above poverty level), and family structure (intact families), the rates change to:

- ◆ 18 adoptions per 10,000 black families within the range;
- ◆ 4 adoptions per 10,000 white families within the range; and
- ◆ 3 adoptions per 10,000 Hispanic families within the range.

These figures convey the reality of much higher adoption rates among blacks than among whites or Hispanics for children in public welfare agencies who are available for adoption.<sup>79</sup> There is, however, conflicting evidence that white women were more likely to make adoption plans than black women.<sup>80</sup>

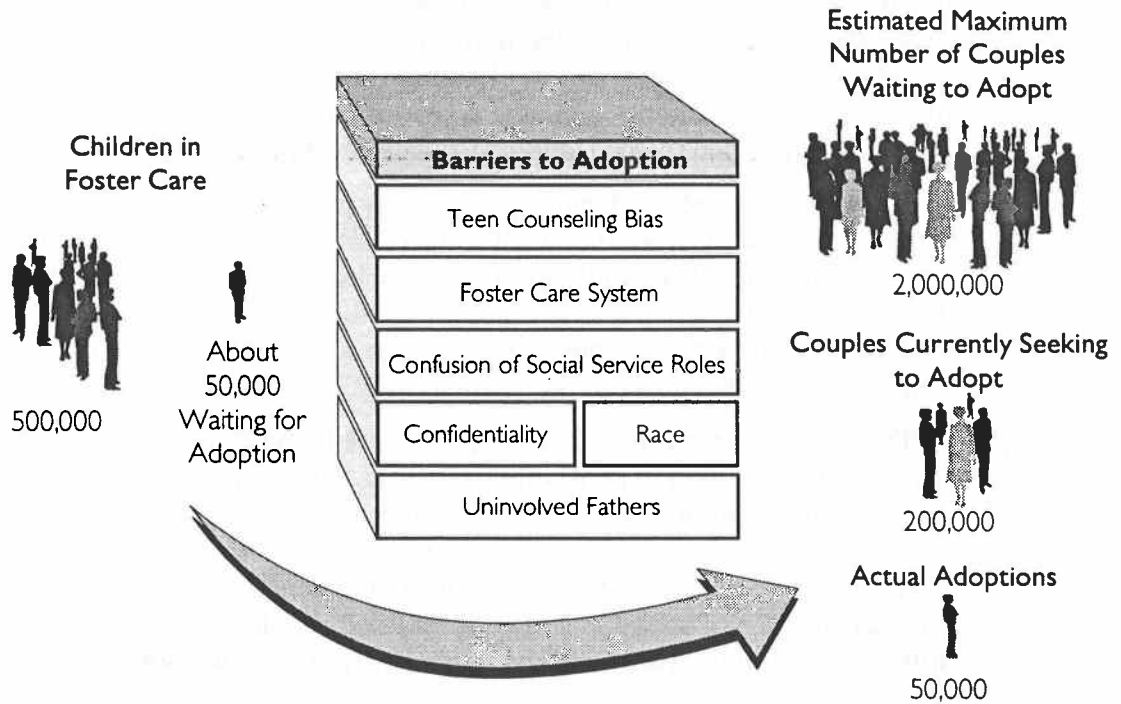
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unpublished manuscript (Ithaca, N.Y.: Department of Consumer Economics and Housing, Cornell University, April 1993), both quoted in Barth *et al.*, "The Odds of Adoption vs. Remaining in Long-Term Foster Care."

77 There are no ongoing survey data which sample for adoption rates. This makes the estimation of incidence and rates spotty over time and more difficult to estimate accurately.

78 Charles P. Gershenson, "Community Response to Children Free for Adoption," *Child Welfare Research Notes* No. 3, Children's Bureau, Administration for Children, Youth and Families, March 1984.

## Barriers to Adoption: Both Children and Couples Must Wait



Sources: *The Adoption Factbook*, National Committee for Adoption, June 1989; NCFMemos.

To meet the needs of all children within their own racial communities by placing them in couple-headed families above poverty, the same study suggests that the response rate among black families would have to be far higher than it is. It would need to approach 44 per 10,000 families for blacks, compared with 6 per 10,000 families for whites and 6 per 10,000 families for Hispanics. This would require an enormous increase in the rates of adoption by blacks and Hispanics. Richard Barth of the School of Social Welfare at the University of California at Berkeley sums up the conclusions to which these data lead:

The growth of African-American adoptions have increased by 92% in the last 5 years and Hispanic adoptions by 80%. The growth of African American adoptions would have to grow four times faster than that during the next five years in order to give African American children parity of access to adoption. For Hispanic children, the growth rate would have to double for their opportunity to be adopted to reach parity with Caucasian children.<sup>81</sup>

79 However, if blacks are serving at a rate much higher than their presence in the nation, then the issue of bias against blacks either does not hold up or, at a minimum, is more complex.

80 Bachrach, "Adoption Plans, Adopted Children and Adoptive Mothers."

81 Barth *et al.*, "The Odds of Adoption vs. Remaining in Long-Term Foster Care."

To achieve these levels of adoption will require a great community effort by black and Hispanic people.

As well-run private agencies demonstrate, large pools of adoptive parents can be developed over time. Even pools of parents for "harder to place children" can be developed when the effort is made by a committed organization. For instance, Down's syndrome children are adopted quite quickly because there is a network of screened parents in place and ready to adopt. Similarly, a pool of parents ready to adopt HIV-positive babies has been developed by the National Council for Adoption.

In a 1980 study of black parents, sociology professor Robert Hill of the Institute for Urban Research at Morgan State University estimated that three million black households are interested in adopting children. This translates into one hundred black families for every black child in foster care waiting for adoption.<sup>82</sup> Given this potential, a pool of pre-screened adoptive parents big enough to take care of the needs of black children represents an achievable goal.

The private sector can best develop this pool because private organizations are motivated to do so. Building pools of parents is not the strong suit of public agencies.<sup>83</sup> Some private organizations in the black community have achieved remarkable results. Recently, for instance, in just one year, Detroit's Homes for Black Children placed 132 children in black homes—more than all the other 13 child welfare agencies in the city.<sup>84</sup> To increase the rate of adoption within black families, the leadership of the black community should commit itself strongly to using private organizations.

Although the emphasis should be on making it easier for black families to adopt, blocking transracial adoptions just because the children are black and the parents are white discriminates against many needy black children because of race. Moreover, it does not increase the rate of in-race adoption. California, despite a law requiring a 90-day search for a same-race family before a child can be adopted across racial lines, still has twice as many black children as white children waiting for adoption, often for long periods.<sup>85</sup>

The Institute for Justice last year filed suit on behalf of a white foster couple who had cared for a black child since birth. When the child became eligible, they sought to adopt him but were blocked by the public welfare agency because they were not black. Even when black parents were not found, the agency persisted in blocking this adoption. No one can argue that this was in the best interest of the child.<sup>86</sup> Similar racial discrimination prevented the adoption of a white child by a black couple who had fostered the child since birth.

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82 Robert B. Hill, *Research on the African-American Family* (Westport, Conn.: Auburn House, 1993).

83 According to Tony Oliver of Roots in College Park, Georgia, the state of Georgia has 127 counties and child welfare agencies, but only seven counties have adoption units.

84 See William Raspberry, "Why Won't Adoption Agencies Place Black Children?" *The Washington Post*, December 22, 1990, p. A15.

85 Richard Barth reported his findings at a meeting on transracial adoption sponsored by the Kellogg Foundation in Washington, D.C., in February 1994.

86 Press release, "Institute for Justice Challenges Barriers to Interracial Adoption," April 13, 1995.

In 1984, liberal black columnist Carl T. Rowan argued against the "abominable notion that race must be the dominant factor in deciding who can deliver loving care and protection to a child." Rowan equated the position of black social workers who support only in-race adoption with a 1954 statement by a segregationist Mississippi editor that "every child has the right to be educated among children and by teachers of the same racial background."<sup>87</sup> Furthermore, according to professor Rita Simon, sociologist at the American University and expert in transracial adoption, "The data in our studies and indeed in all the studies that have been done show that transracial adoptions serve the children's best interests."<sup>88</sup>

Still, opposition to transracial adoption is strong. When former Senator Howard Metzenbaum (D-OH) steered S. 1224 through Congress in 1993, he did so to outlaw obstacles similar to the above restrictions that exist in most states. But the Clinton Administration, which supports race matching, succeeded in changing the legislation so that lack of race matching could be used to deny or delay a placement.<sup>89</sup> Instead of encouraging solutions, such as private adoption agencies that specialize in placing black children, the Administration's policy aggravates the problem.

The Bunning Amendment, incorporated into the House-passed welfare bill, repeals the Clinton policy. Senator John McCain (R-AZ) had a similar amendment (S. 637) to the Senate version of the welfare reform bill. The Children's Defense Fund supported the Clinton Administration's approach,<sup>90</sup> despite the evidence of researchers such as Rita Simon, who shows that transracial adoption does not damage the child emotionally or developmentally and that transracially adopted children do just as well as those adopted by parents of their own race.<sup>91</sup>

Race matching can be achieved easily if there are enough prescreened adoptive parents. The difficulty lies not in the lack of parents but in the poor track record of public agencies in building a pool of black adoptive parents.

## THE NEED FOR FEDERAL LEADERSHIP

A child's needs are best served, and his potential fostered most effectively, by the love and sense of belonging provided by a stable family environment. As in other areas of social concern, however, the government's ability to increase love and dedication is limited. This competence resides primarily with the family, the church, and the school. However, through their power to enact wiser laws and provide leadership, lawmakers at the federal level can affect the rate of adoption. They can expound upon its benefits for the child, for the mother who gave birth, and for the parents who adopt.

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87 Carl T. Rowan, "Should Whites Adopt Blacks?" *The Washington Post*, July 13, 1984, p. A19; quoted in Rita J. Simon and Howard Alstein, *Transracial Adoptees and Their Families* (New York: Praeger, 1994), p. 7.

88 Rita Simon, "Serving the Children's Best Interest," *Interrace Magazine*, August/September 1994, pp. 40-42.

89 Rita Kramer, "Adoption in Minority and White," *The Wall Street Journal*, October 24, 1994.

90 Marian Wright Edelman, letter to the editor, "We Want Adoption for All the Children," *The Wall Street Journal*, November 22, 1994, p. A-25.

91 Simon, "Serving the Children's Best Interest."

Adoption is one of those rare good solutions to many thorny problems. Political leaders should help the country realize that it is one of the most effective ways to alleviate the problems arising from illegitimacy, child abuse, and neglect.

Lawmakers also must challenge the leaders of other major institutions, especially church leaders, to talk about the goodness of adoption. Educational leaders, particularly in social studies areas, ought to be challenged to develop good materials on adoption. Health insurance leaders ought to be challenged as well, for adoption is a less costly solution to infertility than is fertility treatment, which averages about \$35,000 per course of treatment. Media leaders ought to harness their expertise in communications to promote adoption to the nation at large, instead of attacking it.<sup>92</sup>

The more this is done, the more attractive adoption will be to growing numbers of families. America also needs to celebrate parents who adopt and parents who care for foster children—especially those who both foster *and* adopt. They show a double generosity.

Adoption is a national resource that should be encouraged and expanded by government where possible. The federal government should undertake a public relations campaign, targeted to girls under the age of 18 who have conceived out of wedlock, on the benefits of adoption. In addition, Congress should:

**1) Enact a means-tested, fully refundable, inflation-adjusted tax credit of up to \$5,000 for non-recurring adoption expenses.**

Congress permits a tax deduction for the medical costs of fertility treatment (typically between \$35,000 and \$50,000 for testing, test tube conception, and deep freeze, development, and discard). The average revenue loss for such treatment is about \$8,000. Some corporate health plans, the costs of which are fully excludable from employees' taxable income, also cover fertility treatment. By contrast, the Treasury would gain financially from a one-time \$5,000 tax credit that encouraged parents to assume the total cost of caring for foster children—each of whom now costs taxpayers over \$13,000 each year.<sup>93</sup>

This tax credit should be fully refundable (including against Social Security taxes) so that poorer parents who adopt a child receive the same level of support as those who earn more and have larger tax liabilities. The object is to encourage and support those who want to adopt. Being less generous with poorer parents (and more black parents are poor compared to white parents) is unwise because it reduces the incentive to adopt.

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<sup>92</sup> See Marvin Olasky, "The War on Adoption," *National Review*, June 7, 1993, pp. 38-44.

<sup>93</sup> According to the House Ways and Means Committee's *1994 Green Book* on federal entitlement programs and DHHS/ACF data on federal payments to the states for foster care services, the total federal share of foster care payments for 1994 was \$1,971,273,000 for 244,473 children, and the average of the federal share of the individual state's foster care bills is 60.88 percent.



**2) Hold hearings on the Clinton Administration's blocking of an effective drug testing and treatment program for cocaine-addicted pregnant mothers. If necessary, pass legislation to reverse the Administration's action.**

The high incidence of serious child abuse among drug-addicted mothers inflicts pain and damage on cocaine-addicted babies. With some 350,000 children affected each year, there is an obvious need for a change in federal law to permit the testing of mothers suspected of cocaine addiction. These babies are at high risk for foster care and for severe damage to their health and development.

South Carolina Attorney General Charles Molony Condon ran a successful program of testing, mandated treatment, or a jail sentence if the mother refused treatment. The result was dramatic: the incidence of cocaine-addicted mothers fell from 24 per month in Charleston to five or six per month.<sup>94</sup> The Clinton Administration, however, called the program punitive and racially discriminatory and threatened to cut off all federal reimbursements to the hospital involved, effectively threatening to shut down the program and discouraging other states interested in replicating the Charleston model.

Congress should take steps to reverse this Administration policy. The use of cocaine by pregnant women is a major factor in the death or severe damaging of many thousands of cocaine-affected newborns.

**3) Issue annual report cards on the rate of adoption in each state.**

To redress the poor quality of national data on adoption and foster care, Congress should instruct the Department of Health and Human Services to issue comparative report cards on the performance of each state in a number of areas concerning the family condition of children, including:

- ◆ The number and rate of out-of-wedlock births,
- ◆ The rate of adoption,
- ◆ The length of stay in foster care, including information on the longest stays,
- ◆ The typical period between the availability of a child for adoption and the child's adoption, and
- ◆ The typical period between the beginning of foster care and the agency's finalization of a placement plan (decision regarding the future of the child).

Dissemination of such information will keep state residents better informed and help encourage agencies to find children good, permanent homes.

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**94** Charles Molony Condon, "Clinton's Cocaine Babies," *Policy Review*, Spring 1995, pp. 12-15.

- 4) **Require hospitals and clinics receiving federal funds for family planning services to provide clear and accurate information on the benefits of adoption to all out-of-wedlock teenage mothers.**

Congress should require HHS to contract with pro-adoption experts for the writing and distribution of an appropriate brochure on the benefits of adoption for both mother and child. Congress then should require that this brochure be distributed in all hospitals which receive federal funding, either directly or indirectly, and in all federally funded family planning clinics, and that the staff of such hospitals and clinics draw attention to this material.

- 5) **Make it easy for all churches, particularly black churches that serve the poor, to affiliate with adoption agencies and become involved in the adoption process as outreach to prospective adopting parents.**

One of the best ways the federal government can help these churches is by providing an incentive for members to adopt more children waiting in foster care. The full refundability of the \$5,000 tax credit will do much to effect this. Unless their members are able to pay most of the normal costs of adoption, there is little likelihood that black churches in poor neighborhoods will be involved. With the tax credit and with church involvement, however, the probability of an increase in adoption is significantly greater.

- 6) **Ensure the civil rights of all children in foster care and modify the Multi-Ethnic Placement Act to prohibit clearly the use or consideration of race or ethnicity in denying or delaying the placement of a child for foster care or adoption.**

The fundamental principle behind all civil rights is equality of rights and equal treatment under law. A young child without a family cries out for as quick a placing as possible within a caring family, so that his long-term human potential may not be thwarted at critical early stages of development. The "personness" of that child is infinitely more important than his or her "blackness," "Indianness," "Hispanicness," or "Asianness." In cases where parents of similar ethnic background are unavailable within, say, a 90-day period, then those who are available and willing to adopt should be united with the child, both for the child's benefit and for the good of society.

Those who are anxious to have the children of a community adopted within that community must ensure a sufficient supply of parents wanting to adopt. The onus is on the community and ought not to be placed on the waiting child. To help assure a pool of parents, Congress should work with states to streamline and simplify adoption procedures in minority communities.

Many opportunities for developing a pool of waiting parents are available. The network of minority churches is extensive. By linking with private adoption agencies, these churches can help respond to the needs of minority children awaiting adoption. Many other ethnic organizations can be harnessed to bring the pool of minority adopting parents up to the level needed. The press could carry public service announcements in minority communities. Minority fraternities and sororities also could play an important role. These and similar community efforts would raise public consciousness about adoption.

**7) Change the Indian Child Welfare Act to curtail the reach of Indian Nation law over those who have emigrated from those communities and societies.**

While fully respecting the right of Indian nations to regulate adoptions within their territories, and while fully respecting the rights of all Indian parents giving up their children for adoption to request that the Indian nations take these children for adoption, Congress ought to change civil rights law so that the rights of Indian or part-Indian parents living outside the nations' territories are upheld.

Under current law, a child with as little as one sixty-fourth Indian ancestry may be under the control of that Indian tribe for adoption, no matter where the child lives. While the number may be modest, the principle of "personness" again is paramount. Just as a foreign-born American citizen is not subject to the adoption laws of his country of origin, an Indian who has chosen freely to leave the Indian nation and to marry someone outside it should no longer be subject to its laws. H.R. 3286 addresses this issue well.

**8) Reject the language in the U.N. Charter on the Rights of the Child.**

This charter could preclude adoptions for millions of children over time and deny U.S. couples the option of adopting foreign children. The unsigned U.N. Charter on the Rights of the Child may come before Congress in the near future for ratification. In the current draft, international adoption is declared to be a last option, after the home country has exhausted its search.

As in cases of transracial and race-matching adoption, each nation has a responsibility to assemble a pool of prescreened adoptive parents if it has children waiting to be adopted. If a nation does not have such a pool, and yet blocks couples from abroad from adopting, that nation is neglecting its children. The United States should be on the side of the child rather than on the side of governments that seek international acceptance of some specious "right" to neglect their nation's children.

If the language of the U.N. Charter on the Rights of the Child is accepted by Congress, it could mean an end to most international adoptions. The Hague Convention, to which the United States is a signatory, and which guides present policies, is superior though far from sufficient. Its guiding principle is that care in a family is better for a child than care in an institution.

## **WHAT THE STATES SHOULD DO**

Because regulating adoption is a state function, most of the practical reforms must be enacted by state legislatures. And because of the particular need to address the transracial adoption issue in a just and caring fashion, the states must take special care to eliminate discrimination against black adoptive parents and black children.

To increase the pool of available parents to fill the needs of all children, states should encourage the privatization of adoption. Specialized agencies can work constructively with those sections of the community that are willing to serve the many different needs of children: black children, older children, children with special medical problems, and children with other emotional or developmental difficulties. As different groups already

have demonstrated, it is possible to line up a pool of screened and qualified parents more than willing to adopt children with even the most difficult needs.

One effort, started by Fr. George Clements in Chicago in the mid-1980s, had each church set about achieving the adoption of one child within the congregation.<sup>95</sup> Though initially the program received wide publicity and had some impact, it has not become a sustained and organized national effort. However, in Florida, One Church, One Child of Florida has developed a successful partnership between church and state. Between March 1988 and September 1990, this organization placed 805 black children in adoption.<sup>96</sup>

Phoebe Dawson, a social worker who heads New Beginnings, a licensed nonprofit adoption agency in Columbus, Georgia, has been very successful in this work. For instance, an agency in Cleveland, Ohio, was not able to find minority parents for a young minority child, leaving the child at serious risk of a protracted wait for adoption. One worker at the agency contacted New Beginnings, which was able to resolve the problem quickly because of its close ties to black Baptist churches across the country.

To encourage adoption, states should:

**1) Privatize adoption services.**

Private adoption services are more efficient and more effective than state agencies where adoption is concerned, as illustrated by the track record of Detroit's Homes for Black Children. They are accountable to a board of directors, while state agencies are not. Private organizations may be sued, which increases their accountability to the children and parents they serve. By contrast, state agencies often cannot be sued. Furthermore, people are more inclined to donate money, time, services, and goods to a private adoption agency than to pay taxes for government agencies.

**2) Change the way public welfare agencies are financed.**

Public welfare agencies dealing with children receive more money to keep children in foster care than they do to clear them for adoption. States should make the allocation of Title IV-E monies to these agencies contingent on their record in making final determinations on the future status of children within 12 months of entering foster care. Those not returning to their families must be adopted within three months or handed over to a private agency for adoption.

**3) Establish separate units at the county level to assist the courts in making speedy and appropriate judgments.**

These units should make the initial decision whether to terminate the rights of the parent and bring the process to court or return the child to his family. All babies under 12 months of age coming into the protective custody of a public welfare agency should be processed through the termination unit as a matter of course. A great many such children should be placed for adoption quickly. This in turn would prevent the

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<sup>95</sup> Christine Adamec and William L. Pierce, *The Encyclopedia of Adoption* (New York: Facts on File, 1991), p. 68.

<sup>96</sup> *Ibid.*, pp. 68-69.

buildup of a large number of children in foster care — children who grow more and more difficult to place with each passing year, as the significant drop in the percentage of older children who get adopted clearly indicates.

**4) Maintain special Medicaid coverage for all special-needs adopted children.**

This makes it possible for many middle and low-income families to adopt a sick child they would not be able to care for without Medicaid support. It makes sense for government to provide this support, for the special-needs child in foster care will cost the government even more.

**5) Remove obstacles to transracial adoptions.**

While working to increase the pool of minority parents and to enhance the flow of prequalified and ready-to-adopt minority parents, states should continue the practice of transracial adoption when no same-race parents are available. When the child becomes ready for adoption, his need is immediate and acute. Minority community groups can monitor the pool of prescreened, qualified minority parents for all the relevant categories of children: older children, older male children, sibling groups of children, medically needy children.

In addition to the issues involved in ending discrimination against black children waiting to be adopted and against black couples waiting to adopt, there is much else to be done by the states.

**6) Use leadership opportunities to encourage adoption.**

Governors and state legislatures should consider mounting campaigns to increase interest in adoption. With the prompting and advocacy of the Institute for Children in Cambridge Massachusetts, the State of Massachusetts, under Governor William Weld's direction, embarked upon Assignment Adoption, a series of government reforms to reduce the number of children in foster care and to increase the practice of adoption.

**7) Establish separate units for termination of the parental rights of convicted abusing parents.**

When the difficult duty of assessing the appropriateness of terminating parental rights is commingled with the mandate to preserve the family at all costs, the good of the abused child suffers. The long-term good of the child is helped by establishing separate units of social workers who help the court reach clear and speedy decisions regarding the parents' right to continue as parents. These workers can help the courts without the conflict of interest that is present when they also try therapeutically to help the family come together or stay together. It is best that such work be carried on by a different set of professionals. The best interests of the child remain paramount while the effort to help the parent is vigorously pursued.

**8) Enact a strict 12-month timeline for adjudication of the long-term parental status of every child in foster care.**

A University of Chicago study finds that children who enter foster care as infants remain in the system 22 percent longer than other young children.<sup>97</sup> Within a 12-month period, the court and the termination unit should decide whether a child

should be returned to his parents or placed for adoption. Continuance in foster care beyond that time must be regarded by all as a failure to provide properly for the needs of the child. To be lax or negligent in this matter is to be guilty of serious child neglect.

**9) Centralize the collection of state data on all formal adoptions and foster care actions.**

In order to facilitate the practice of adoption and the reduction of foster care lengths of stay to the minimum time needed, the collection of accurate data is critical. At present it is poor and varies greatly in quality between states. National leaders, national and state campaigns to encourage adoptions, and the stimulation of executive action to initiate and maintain reforms all require an accurate picture of what is happening to children in adoption and foster care. The state Office of Vital Statistics or its equivalent ought to be the repository of all adoption information, and the state Office of Human Services or its equivalent ought to be the repository of all foster care data.

**10) Enact legislation requiring of public social service agencies the same licensing standards and requirements as those now imposed on private adoption agencies.**

Just as Congress has passed a law (H.R. 1 and S. 2) to subject itself to the same regulations it imposes on the rest of the country, all state agencies involved in adoptions ought to be subject to the same reporting and regulatory oversight as adoption agencies are. This reform will likely have the speedy effect of reducing these regulations to the bare minimum needed for the good of the child.

**11) Mandate drug testing of pregnant mothers suspected of drug abuse, particularly cocaine abuse.**

Because of the high incidence of serious child abuse among drug-addicted mothers, because of the pain and damage done to cocaine-addicted babies, and because this condition now affects 350,000 children a year, states should push for a federal law permitting the drug testing of mothers suspected of cocaine addiction so that hospitals may participate in such programs without being threatened with a cutoff of federal funds as happened in the South Carolina case discussed above.

Children born to drug-addicted mothers are at risk for a host of difficulties and abuses: lower birth weight, physical abuse, and not getting the affectionate nurturing critical for early attachment formation and its concomitant long-range benefits, among them the formation of a solid conscience and the ability to relate well with others. Given these risks to the child, the requirement of drug testing when cocaine or crack cocaine ingestion is suspected is an appropriate protection.

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97 See Craig, "What I Need Is a Mom."

**12) Prohibit the removal of a child who is eligible for adoption from foster parents who are willing to adopt the child, except when the child is being returned to the legal parents. Enact legislation to permit foster parents to initiate adoption proceedings.**

If the parents are deemed by the agency as suitable for fostering the child, they should qualify automatically as suitable for adopting the child. Today, many foster parents are willing to adopt the children they have fostered once they become available for adoption. However, mainly because of the effective prohibition of transracial adoptions, these parents frequently are denied the chance to adopt the children who have become attached to them. These couples should have the right to adopt the child once the courts have decided he may be adopted. If child welfare agencies have not made this possible within six months of the court decision, foster parents ought to be granted the standing in law to sue the adoption agency and initiate adoption proceedings.

**13) Enact laws requiring child welfare agencies to initiate adoption proceedings for any child who has been abandoned by his parents for six months.**

This rule should apply for any child in out-of-home care for six months whose parent has not engaged in meaningful interaction with the child during that period. Due process in the courts will protect the rights of parents barred from contact with their children due to very unusual circumstances. However, a child left alone for six months is a child without a dedicated parent.

## CONCLUSION

More and more of the nation's children are at risk of child abuse and neglect as rates of illegitimacy rise. Their plight merits the generous response of dedicated people. Few responses can match the depth and devotion entailed in adopting a child. This dedication reduces a host of problems for the nation: the costs of extended foster care, the poorer health and slower development of children in foster care or in the home of neglectful and abusing parents, and the higher incidence of addiction, crime, and dependency.

Adoption increases the emotional, physical, and cognitive capacities of the children who are adopted. It improves the life chances of the biological mother. It saves vast amounts of money for the taxpayer. It brings much happiness to the adopting parents. It is good for all involved.

Adoption works.

By vetoing the adoption legislation passed last year, President Clinton defeated the most significant reform in the practice of adoption to be seen in decades. Sharply rising out-of-wedlock births add to the long-range costs of welfare, because being born out of wedlock significantly increases the chances of ending up on welfare. As this pool of needy children grows, all too often, up to two million couples waiting to adopt are frustrated in their efforts.

The need is great and the solution is obvious: adoption. Yet government agencies and practices actively discourage this solution which, unlike present policies, could help solve a major national problem while also reducing both welfare dependency and long-range costs. The situation cries out for reform. The suffering of the children cries out for reform.

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