

Lord Wilson gives the Denning Society Lecture at Lincoln's Inn

Adoption: Complexities Beyond the Law

13 November 2014

It's a bad start: for I doubt whether Lord Denning was much interested in adoption. But let me make one thing clear. My doubt has nothing to do with the facts that he hated his initial service as a judge of the Probate, Divorce and Admiralty Division of the High Court and that in 1945, after only 18 months, he moved, with relief, to the Queen's Bench Division. In those days the Probate, Divorce and Admiralty Division did what it said on the tin – it heard divorce cases. In 1944 it faced a crisis. Home-coming servicemen found that their wives had fallen in love with other men and so they wanted a divorce. Often the servicemen themselves had not managed lengthy celibacy. "For tomorrow we die" had probably been their process of reasoning. Up with the lark, to bed with a wren. Sometimes it was impossible for them to hide what had happened because prostitutes had infected them with venereal disease. At all events, many of their wives also wanted a divorce. The Division couldn't cope. So three additional judges were appointed to it, including Lord Denning. It was, as he rightly complained, sordid work. It bears no relation to the current work of the Family Division. Indeed the basis of entitlement to divorce is now seldom ventilated orally in any court. In 1944 applications for adoption orders were not even heard in the Probate, Divorce and Admiralty Division. If they were to proceed in the High Court, they were assigned to the Chancery Division¹ as were the then prevalent applications in wardship proceedings for other orders in relation to children.

After 1948, when he was elevated to the Court of Appeal, Lord Denning heard a few adoption cases. They do not disclose whether or not he favoured adoption in principle. They were mainly dry enquiries such as whether adopted children could inherit under dispositions made by their

*I thank Mohsin Zaidi and Rachel Barrett, my past and present Judicial Assistants, for a wealth of creative suggestions about material for this lecture.

¹ The Adoption of Children (High Court) Rules 1926, rule 1.

adoptive parents. He did of course hold forth on custody disputes between parents. In *Re L*² in 1962 the basis of his decision to give custody of the children to the father was that “if these children are to be given to the mother now, I can see no chance of reconciliation, whereas if they remain with their father, there may be some hope, even if it is only a faint hope, that she will return for the sake of the children ...”. And in *W v W and C* in 1968 he referred to a general principle that, other things being equal, the welfare of a boy aged eight would be better served by being placed with his father than with his mother. I remember that in 1968, as a young barrister starting to practise family law, I was shocked, even in that era, by those observations on the part of my great hero.

But, then, Lord Denning was a Victorian – born prior to the Queen’s death. What sort of things did he really like? An English summer’s day. Cricket on the village green. Honest toil. Gilbert and Sullivan. In 1980, on Desert Island Discs, Roy Plomley asked him to identify his one luxury to enjoy on the island. His response was “Hot tea with fresh milk; bread and butter; and rice pudding”.⁴ I suspect that Lord Denning considered that the good upbringing to which children were entitled would almost always best be provided by the two natural parents living together - so long as they were married; that, in the case of a woman who had given birth to a child outside marriage, he was compassionate for what he regarded as her plight yet doubted her suitability, both practical and moral, for bringing up a child properly on her own and so may have favoured the child’s adoption⁵; and that, in the case of parents who had seriously mistreated their child, he somewhat more firmly accepted resort to adoption.

Albeit with that only modest endorsement from above, let me try to convey to you some of my interest in this subject.

² *Re L (infants)* [1962] 3 All ER 1 at p.3.

³ *W v W and C* [1968] 1 WLR 1310 at p.1312.

⁴ “Lord Denning, A Life”, Iris Freeman, Hutchinson, 1993, p.385.

⁵ There is oblique support for this in *In re P.A (an Infant)* [1971] 1 WLR 1530.

Throughout history children have, for various reasons, been brought up by adults to whom they have not been biologically related. For example, the Pharaoh ordered all Hebrew baby sons to be thrown into the Nile. So a Hebrew woman hid her son in the bulrushes. The Pharaoh's daughter found him "and he became her son and she called his name Moses"⁶. English literature abounds with examples of the bringing up of children, often of unknown provenance, outside their genetic family. For the subject is a perfect vehicle for the writer's exploration of identity, as well, sometimes, as of class difference between the two families; and indeed also often for the drama inherent in an ultimate revelation of the children's genetic origin. So the shepherds find and bring up Perdita in *The Winter's Tale*; the Earnshaws bring up Heathcliff; Silas Marner brings up Eppie; and Miss Havisham brings up Estella. There is every reason to think that these fictional arrangements reflected analogous arrangements in the real lives of those who lived in Elizabethan to Victorian England.

My subject is very different, namely the placement of a child in circumstances in which the law intervenes so as to eliminate his relationship with his birth parent or parents and to substitute a parental relationship with the person or persons with whom he has been placed. The first thing to note is that England and Wales was curiously slow to introduce that mechanism into its law: it was introduced by the Adoption of Children Act 1926. Massachusetts had introduced it in 1851 and almost all other states of the Union had followed suit, as had states in Australia and provinces in Canada. So why were we so slow to do it? What finally led us to do so? And what was going on here between 1851 and 1926?

In Victorian times there was no facility for the state to remove children from an abusive and neglectful married couple against the husband's will – unless, of course, the couple were convicted and imprisoned, whereupon the children would be taken into the workhouse and, as soon as possible, would be boarded out with a family, with a view, in the case of a boy (like *Oliver Twist*

⁶ Book of Exodus, ch.2, v.10.

with the Sowerberrys), to learning a trade under a deed of indenture or, in the case of a girl, to going into domestic service. A father's ownership of his children was inviolable. The placement of children with others arose in an entirely different situation, a product of the cruel, unnatural and discriminatory approach to sexual relationships in Victorian England. For, if a woman gave birth to a child outside marriage, it was socially and economically impossible for her to bring him up herself. The presence of her child in her home was a constant advertisement of her degeneracy, which precluded marriage or other entry into respectable society. And how could she earn enough to support them both and care for him at the same time? Heart-broken, she had to look for a way of giving him away.

One way was for her to answer an advertisement like this, which appeared in a weekly newspaper in 1870: "Adoption: a good home, with a mother's love and care, is offered to any respectable person wishing her child to be entirely adopted. Premium £5, which sum includes everything."⁷ If the mother answered that advertisement, she discovered that it had been placed by Mrs Waters. She paid Mrs Waters £5, which may well have been all she had. Mrs Waters took the baby into her home in Brixton and put him with a lot of other babies. The baby, like many of the others, was then drugged, became emaciated and may well have died. Ultimately Mrs Waters was convicted of murder and executed. This was baby-farming and became a national scandal.

But there were many infertile married couples, usually middle-class, who had become desperate to bring up a child even if he or she was not their own. In order to meet their needs, unregulated agencies sprang up, like The Haven of Hope for Homeless Little Ones founded by Mrs Wallis in 1893⁸. So the mother went to her establishment to give birth and, after six weeks, she signed her baby away and left without him. Mrs Wallis, whose motives were entirely philanthropic, then placed her baby with a couple of whose circumstances she knew very little. Largely because of another undeserved stigma, namely the stigma of infertility, the couple typically went to enormous

⁷ "A Child for Keeps", Jenny Keating, Palgrave Macmillan, 2009, p.23.

⁸ "Family Secrets", Deborah Cohen, Viking, 2013, p.115.

lengths to present the child as their own biological child and never told anybody, not even the child, that they had got him from a place like The Haven of Hope. Sometimes a wife even obtained a child in that way without her husband's knowledge and somehow managed to persuade him that the child was their own.

Of course these were not adoptions recognised in law. In law the child's birth mother remained his parent. The couple who had taken him had no legal rights. But, curiously, this does not seem to have mattered much. The practical obstacles which confronted a single mother who wished to reclaim her child were large; few were minded to do so and even fewer actively sought to do so. Nor did society then require verification of the legal right of a child's ostensible parent to make decisions in relation to him.

After the First World War concerns grew about the absence of regulation of those who were awarding babies to unrelated couples; about the pressure placed upon mothers to surrender the babies; and about the absence of legal responsibility on the part of the couples for the babies. These concerns led to the 1926 Act. It required that every parent of the child (who, in the case of a child born outside marriage, meant only the mother) should consent to the adoption or that the court should dispense with consent. On the face of it the power to dispense was wide: it arose wherever "consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with".⁹ In practice, however, the power was very narrowly construed. So adoption orders under the 1926 Act were made almost entirely not only in relation to children born outside marriage but also with the consent, however reluctantly given, of the mother. But rules made under the Act reversed the previous informal practice of keeping the mother unaware of the identity of the couple who were taking the child. The form upon which she endorsed her consent had to identify them. This was unattractive to a number of proposed adopters. So was the Act's introduction of the Adopted Children Register¹⁰ because any certificate issued pursuant to it would

⁹ Section 2(3).

¹⁰ Section 11.

tell everyone, in particular the child himself, that he was adopted and also, in effect, that he had almost certainly been born outside marriage. Since the Act did not prohibit the placement of children with others on only an informal basis, the practice therefore continued, orchestrated by agencies which remained dangerously unregulated.

There is one other intriguing feature of the 1926 Act. For it stopped short of ascribing to an order made under it a complete substitution of the adopters for the birth mother for all legal purposes. It provided¹¹, first, that, the order should not deprive the child of his right to inherit on the birth mother's intestacy. This was bizarre: for would the child know the identity of his birth mother or that she had died or that she had an estate in relation to which he had rights? The Act also provided, somewhat analogously, that, if in for example their wills the adopters expressed provision to be for their "children" or their "issue", it was presumed not to extend to their adopted child. These exceptions to the concept of adoption, which reflected the sacrosanctity even in 1926 of traditional rights of succession down blood-lines, were swept away by the Adoption of Children Act 1949¹². But that Act introduced a much more significant change. For, from then onwards, the mother could give a valid consent without knowing the identity of the adopters;¹³ and so a rule provided that in the proceedings their names could be hidden from her behind a serial number¹⁴.

¹¹ Section 5(2).

¹² Section 9.

¹³ Section 3(2).

¹⁴ The Adoption of Children (High Court) Rules 1950, rule 3.

In 1968 25,000 adoption orders were made¹⁵. Nothing like that figure has ever since been attained. Last year, for example, only 5000 adoption orders were made¹⁶. What has happened? The answer is that the use made of adoption in our society has entirely changed.

The 25,000 orders made in 1968 related largely to the constituency of children to whom adoption, both legal and informal, had until then always related: to babies born outside marriage to single mothers, mostly young. But around 1968 four things happened. First, abortion had become legal in 1967 in specified circumstances, generously interpreted, which included lessening the risk of injury to the mother's mental health.¹⁷ Second, N.H.S family planning clinics abandoned their policy of prescribing the contraceptive pill only to women who demonstrated that they were married or engaged to be married. Third, the stigma attaching to a mother who had given birth to a child outside marriage suddenly began to dissipate. And, lastly, increased state benefits better enabled her to care for him. The availability, at any rate within England, of babies for adoption with the consent of their mothers, however reluctantly given, dried up. Change happened more slowly in Ireland. But the nuns who, equipped with passports provided by a collusive Irish government, packed about 2000 small children, like Philomena's Anthony¹⁸, off to American adopters – provided that they were Roman Catholic and able to make a donation to the institution and otherwise irrespective of their suitability¹⁹ – also discovered in the early 1970s that there were no more babies to pack off.

So what was the new use made of adoption? Very slowly, starting in 1899²⁰, Parliament had conferred limited powers upon Poor Law guardians, and instead, from 1929²¹, upon local

¹⁵ "Family Law in the Twentieth Century", Stephen Cretney, OUP, 2003, p.597.

¹⁶ The Times, 1 October 2014, p.15. Even that number may be about to reduce: The Daily Telegraph, 11 November 2014, p.1.

¹⁷ Abortion Act 1967, s.1 (1)(a).

¹⁸ "Philomena", directed by Stephen Frears, 2013, based upon "The Lost Child of Philomena Lee", Sixsmith, Macmillan, 2009.

¹⁹ Ireland's Lost Babies, BBC2, 17 September 2014.

²⁰ Poor Law Amendment Act 1899, s.1.

²¹ Local Government Act 1929, s.1.

authorities, to remove a child from his parents *even against their will* if they were unfit to care for him. By about 1950 large numbers of children were being taken into care, often against the will of their parents. What was to be done with them?

I put the question in that brutal way because one solution, adopted until 1970, was indeed brutal. It was to continue a programme, which had begun in the 19th century and been designed to consolidate the Empire by sending British children to the Dominions. Their despatch to Canada finally ceased in 1939 but, after the war, their despatch to Australia resumed and it continued until 1967. The message to the children was that there they would enjoy a wonderful new life – chasing kangaroos came into it - but for many the reality was of containment in grim institutions until they were ready for subjection to a life of hard physical work. Often the parents were not even told that their children had left the U.K.; indeed some of them were told instead that they had died. Correspondingly the children were sometimes falsely told that their parents had died and, if parents who believed that their children were still alive tried to write to them, the letters were often intercepted²². Of course the main beneficiaries of the programme were U.K. tax-payers, relieved of the burden of supporting them²³.

But a more constructive answer to the question also began to be formulated: that, if there was no realistic hope that a child in care could, within a reasonable time, be returned to his birth family, it might be better for him to be adopted than to remain throughout his childhood in foster care. Increasingly this idea took hold albeit subject, of course, to his age, to his wishes and to the extent to which the emotional (or physical) injury done to him in earlier life would disable him from settling into an adoptive home and in particular, from forming an attachment to his adopters.

²² “On their own: Britain’s child migrants”, <http://www.britainschildmigrants.com>

²³ While Australia was receiving stolen British children, it was itself stealing children from its Aborigines in the hope of achieving a white Australia: “Stolen Generations”, Wikipedia.

This, then, is the dramatic change. Adoptions are now rarely made in relation to babies taken from maternity hospitals or mother and baby homes. They are now usually made in relation to children previously placed in local authority care: these were the subject of only 9% of all adoption orders made in 1968 but of 77% of all those made in 2012.²⁴

This change has had profound effects for the institution of adoption. For children are now largely placed at an older age. They have suffered experiences which have justified their being taken into care, often under a care order. And, unlike the young mother tearfully appending her consent, many of the birth parents will have contested the children's removal from them tooth and nail. And they will have vociferously opposed the order for their placement with the adopters and have refused to give their consent to the ultimate adoption order.

In 1949 the main ground for dispensing with consent to an adoption order had been changed. The test, which was replicated in successive Adoption Acts until 2002, became whether the parents were unreasonably withholding their consent.²⁵ Again, at first, the courts were reluctant to hold that parents fell into that category. On any view the statutory test was not satisfied merely because the child would probably be better off in the proposed adoptive home; but in 1970 the House of Lords held that parents might withhold consent unreasonably if, in deciding to withhold it, they had failed to give proper weight to their child's interests.²⁶ Eventually, however, the child's welfare took centre stage: since 2002 the test has been whether the child's welfare requires the consent to be dispensed with.²⁷ In 2012 almost half of all adoption orders were made on the basis that the consent of the parent or parents should be dispensed with.²⁸ This comes as a great surprise, almost as an affront, to most family lawyers in other European states, where adoption, if imposed upon

²⁴ "Adoption in England and Wales – the twentieth century, Jenny Keating", <http://www.historyandpolicy.org/docs/dfe-jenny-keating.pdf>.

²⁵ Adoption of Children Act 1949, s.3(1).

²⁶ *In re W (An Infant)* 1971 AC 682.

²⁷ Adoption and Children Act 2002, s.52(1)(b).

²⁸ Adoption cases reviewed: an indicative study of process and practice, Lucock and Broadhurst, DfE, March 2013, p.13.

the birth parents against their will, scarcely exists because it locks the door against any future restoration of the child with them, however improbable.²⁹

This change has precipitated a real problem. Aggrieved parents, who unsuccessfully withheld their consent to the adoption, often on the basis, however unrealistic, that the child should be returned to live with them, may be motivated to do everything in their power to locate the adoptive home and then to disrupt it to such an extent that the placement fails and some other solution for the child, which they hope will be their preferred solution, has to be found. In such cases it is unfortunately essential for the location of the adoptive home to remain hidden from them. I well remember the case of *Re O* in 1995.³⁰ The birth parents of two girls had discovered the location of their adoptive home and for two days they had parked their camper van outside it, had ostentatiously photographed the home and rung the doorbell. This had precipitated an injunction, in breach of which they had (so I found) sent letters to the police and to judges, which they pretended had been written not by them but by social workers and in which they falsely alleged that the adoptive father had physically and sexually abused one of the girls. I committed them to prison for a year. Mr Justice Ewbank, one of my mentors, considered that my sentence had been too severe and told me to brace myself for criticism of it by the Court of Appeal. In the event, however, they did not reduce it.

Now, however, a new mechanism makes it dangerously easy for hostile birth parents to trace their children: it is the internet. In *Re J*³¹ in 2010 the Court of Appeal upheld a plea by adopters that the photograph of the child, which had been ordered to be supplied annually to the birth parents, should simply be shown to them briefly in hard copy rather than sent to them. For the court concluded that it had not been unreasonable for the adopters to fear that, if sent to them, the birth parents might post the photograph in one of the social media in aid of a campaign to locate her

²⁹ For the equivocal approach to adoption of the ECtHR in Strasbourg, see *Gnahoré v France* (2002) 34 EHRR 38 at [59].

³⁰ *Re O (Contempt: Committal)* [1995] 2 FLR 767.

³¹ *Re J (A Child) (Adopted Child: Contact)* [2011] Fam 31.

whereabouts. I have no doubt that this remains a widespread fear. Only last month I was told about adopters whose children were about to be bridesmaids. The adopters were terrified that someone would post a wedding photograph in one of the social media, from which the birth parents or their friends might recognise the girls and so be able to trace them.

But the recognition that an adoptive home is often the only viable solution for children in care has led to other problems. Most adopters are white so, while there was perceived to be a need for an ethnic match between them and their adopted child, children of other, including mixed, ethnicities, were often languishing in foster care even if otherwise adoptable. A perception designed to obviate discrimination had become discriminatory. In *Re C*³² a three-year-old girl was a quarter Jewish, a quarter Scottish, a quarter Irish and a quarter Turkish. The local authority proposed that C be placed for adoption with a couple with quite a strong Jewish identity. The child's guardian opposed the placement. She argued that C should be placed in a non-religious family in which exposure to her of the four elements of her ethnicity might evenly be developed. She said that the proposed couple were too Jewish. I rejected her view. I directed that C be placed with the couple and, a year later, I made the adoption order. Less than four weeks afterwards, out of the blue, the adoptive father died. I felt terrible: I had overruled the guardian's objection and had caused C to be adopted by a grieving single parent. In the event however the adoption has worked out beautifully. C is one of four children, adopted under orders made by me, with whom, even after all these years, I keep in touch. They tend to write to me just before their birthdays, as if subtly to remind me of their continued ability to make use of £25. Two years ago C and her mother invited me to attend her batmitzvah. The family pinned a kippa on to my head. C looked radiant. I applaud the recent statutory dilution, albeit not elimination, of the aim of seeking to place a child with adopters of similar ethnicity.³³

³² *Re C (Adoption: religious Observance)* [2002] 1 FLR 1119.

³³ Section 3(2) Children and Families Act 2014 has disapplied s1(5) Adoption and Children Act 2002 in England.

There is no doubt, however, that, irrespective of matched or unmatched ethnicity, the modern policy of taking children for adoption out of care, in other words older children often scarred by ill-treatment or neglect, engenders an increased risk that the adoptive placement will break down. An adoption order cannot be revoked (save, in effect, by making a further adoption order in favour of others) but an adopted child can, of course, be taken back into care. This must be tragic for the child and devastating for the adopters, who will have survived a protracted, and often frustrating, battle to achieve the adoption (that might be the subject of another lecture) and will no doubt have invested massive hope in it.³⁴ If the placement is to break down, it is surely less damaging for all concerned if it breaks down prior to the making of the adoption order. After that point it seems that between 2% and 9% of placements currently break down, usually when the child is a teenager and particularly if he was at least five years old when initially placed.³⁵ If the adoption agency has failed to inform them of material about the child's troubled background which would have led them not to proceed with his placement, the adopters have in limited circumstances a right to damages for negligence.³⁶ No doubt for most adopters an award of damages fails to meet the point; but it may lessen their sense of failure for a court to have declared that responsibility for it lies, at least partly, elsewhere.

The strain that a child with attachment disorder can place on an adoptive family, often lacking worthwhile professional support, has led some adoptive mothers to have a nervous breakdown.³⁷ In 2011 there was an interview in the Daily Telegraph with an adoptive mother of an 8-year-old boy who, unbeknown to her and her husband at the time of the placement, had arrived with acute psychological problems.³⁸ The father could not tolerate the boy's continual violence and abuse, particularly towards the mother, and, when she insisted on proceeding with the adoption, he

³⁴ For a typically protracted battle to achieve adoption (a) in England, read *An Adoption Diary*, Maria James, BAAF, 2006 and (b) in Guatemala, read "Our Son From Afar", Alex Bemrose, Book Guild Publishing, 2010.

³⁵ "Beyond the Adoption Order: challenges, interventions and adoption disruption", Julie Selwyn and others, DfE, April 2014, pp.275 and 272.

³⁶ *A v Essex CC* [2004] 1 WLR 1881.

³⁷ "Adoption: why the system is ruining lives", *The Guardian*, 31 October 2012.

³⁸ "When adoptions go wrong", 31 January 2011.

reluctantly left her. Three years later she was still trying to cope. Apparently the boy would declare: “I need to kill you because I want to go back to care”. She would reply “You will go somewhere really not nice if you kill me and you will not get apple crumble there”. It was an answer which brilliantly defused the boy’s terrible declaration; yet it is tragic that she needed to give it.

But – and now, at last, I reach the heart of this lecture– what are the emotions, the passions, sometimes the obsessions, generated by the adoption which assail the adopted child, the birth parents and indeed the adopters?

Take, first, the child; and here I exclude the child removed from his birth family so late that he retains memories of them. Jeanette Winterson has written a memoir of her life as an adopted child. It takes its title from the response of her formidable adoptive mother when, aged 16, the author told her that she was having a sexual relationship with a girl and that it was making her very happy. The mother’s response was almost unbelievable: “Why Be Happy When You Could Be Normal?” Ms Winterson writes:

“Adopted children are self-invented because we have to be; there is an absence, a void, a question mark at the very beginning of our lives. A crucial part of our story is gone...adoption drops you into the story after it has started. It’s like reading a book with the first few pages missing. It’s like arriving after curtain up. The feeling that something is missing never, ever leaves you – and it can’t and it shouldn’t because something *is* missing.”³⁹

When they become adults, adopted children now have extensive rights to seek information about their birth parents. The rights of those who were adopted after 30 December 2005 have been streamlined under the Adoption and Children Act 2002; but of course there are, as yet, very few adults who were adopted after that date. Most adopted adults today have three different rights in this respect. The first is for them to require *the Registrar General* to provide them with a copy of his original birth certificate.⁴⁰ The second is to apply to *the agency* which arranged their adoption for

³⁹ “Why Be Happy When You Could Be Normal?”, Vintage, 2011, p.5.

⁴⁰ Adoption and Children Act 2002 s.79(6) and sch.2, para.1.

disclosure of information on its files.⁴¹ The third is to apply to *the court* which made the adoption order for disclosure of documents on its files.⁴² Armed with information obtained in that way, the adopted adult may well be able to trace, for example, his birth mother and he will usually then proceed to try to make contact with her. But another way of expressing his wish to make contact with her is for him to require the Registrar General to enter his name in the Adoption Contact Register.⁴³ The mother can also in that way register a wish to make contact with him; and, once there is a match, the Registrar General must put the two of them in touch with each other. Sixtyseven links were made last year.⁴⁴

It may be that a few children, once told that they are adopted, never think much more about it and, when they became adults, show no interest in exercising these rights. Others reach a considered decision not to do so. Michael Gove, for example, has said that he will not exercise these rights because he does not want his excellent adoptive parents to feel that he senses something incomplete about their upbringing of him.⁴⁵ But, for many other children, ignorance will engender a curiosity which may develop into a searing obsession. When aged six, Steve Jobs told a little girl that he was adopted. “So does that mean your real parents didn’t want you?” asked the girl. “Lightning bolts went off in my head”, said Jobs later.⁴⁶ I’m sure that I would have been in his category. I would have ruminated along these lines. My mother rejected me. Why did she reject me? Was there something wrong with me? *What* was wrong with me? I must try to find out. Then, however, I would have asked myself: but will she reject me again?

Sometimes, later in life, it is the adopted child’s own children who persuade him to try to discover his identity – because it is also theirs. Sometimes, by contrast, the adopted child’s family will seek

⁴¹ Adoption Agencies Regulations 1983, reg.15(2)(a), and Adoption and Children Act 2002 (Commencement No.10...) Order, art.13(a).

⁴² Family Procedure Rules 2010, r.14.24.

⁴³ Adoption and Children Act 2002, s.80.

⁴⁴ Letter HM Passport Office, 1 November 2014, in response to F.O.I.A. request.

⁴⁵ Mail Online, 23 April 2010.

⁴⁶ “Steve Jobs”, Walter Isaacson, Little Brown, 2011, p.4.

to dissuade him. Wives, and indeed husbands, of adopted people have been known to say to them, only half-jokingly, “Please not *two* mothers-in-law!”

It seems that occasionally the adopted adult’s search for the birth parent precipitates a close and enduring relationship between them. Even that happy situation can generate complications. The adopted adult may grieve for the loss of an upbringing with the birth parent. One writer tells of finding his birth mother so attractive that, for a moment, he wanted to make love to her.⁴⁷ When I read his story, I assumed that it was a complete one-off. Not a bit of it! Two nights ago I had a conversation with a middle-aged woman who had been adopted and who has recently found her birth father. She said that she finds him ravishingly attractive and struggles to control herself. She believes that, when birth parents bring up their child, a control mechanism against incestuous love somehow develops but that of course it was absent in her case – as, for that matter, in that of Oedipus himself.⁴⁸

Sometimes, by contrast, the reunion proves difficult. Only about half of them lead to any enduring relationship⁴⁹ and, if the relationship does continue, it often does so with a degree of distance. The reality of the birth mother can be far removed from the increasingly elaborate fantasies about her which may have developed in the mind of the adopted child over the years. Do you remember the wonderful film, “Secrets and Lies”?⁵⁰ [Yes, that was also directed by Mike Leigh!] The first meeting in the café in Holborn between the adopted child, who was by then a self-assured professional woman, and her Cockney birth mother was excruciating to watch. Then there was the family barbecue, at which, because the birth mother had not told her truculent younger daughter of the birth and adoption of her older one, she introduced the adopted daughter to everyone there as simply a friend from work. After a few drinks, everything unravelled horribly. At the end of

⁴⁷ “Oedipus Descending”, Jonathan Rendall, in *Family Wanted, Adoption Stories*, ed. Holloway, Granta, 2005, p.48.

⁴⁸ See “Genetic Sexual Attraction”, *The Guardian*, 17 May 2003.

⁴⁹ *Adoption, Search and Reunion*, Howe and Feast, The Children’s Society 2000, p.20.

⁵⁰ “Secrets and Lies”, directed by Mike Leigh, 1996.

the film, however, there was an implied suggestion that the adopted woman's initiative in locating the birth mother had proved valuable, in particular for the birth mother herself, who at last had someone in her life of whom she could feel proud.

Sometimes, the results of the search are unexpected in a different way. For example Jeanette Winterson discovered from the files that her adoptive parents had really wanted to adopt a boy.⁵¹ But what about Dave Sharp?⁵² He was born in 1942 and was swiftly adopted. When he was a teenager, his adoptive parents told him that he was adopted and, as his adoptive father explained to him, that they had got him out of the Reading Mercury. Dave unearthed the advertisement referable to him. It read: "Wanted: Home for baby boy. Age 1 month; complete surrender". It transpired that his birth mother had indeed surrendered him to his adoptive parents at Reading railway station. Much later he discovered that, following his adoption, his birth parents had got married and had given birth to another son whom they had brought up themselves; in other words that he had a full biological brother. This brother turned out to be the illustrious Ian McEwan. But by then, sadly, Dave's birth mother was suffering dementia and, when he met her, she greeted him as her uncle and could not register that he was her son.

Research demonstrates that adopted women are twice as likely to search for their birth mothers than adopted men.⁵³ So it is appropriate for me here to refer to "her" rather than to "him". However wonderful or disappointing or extraordinary may have been the result of her search for her birth mother, what the adopted woman will have found is the truth. The jigsaw will have become complete. She will have ceased to be haunted by the ghost of her birth mother in her various, perhaps increasingly extravagant, apparitions. Irrespective of whether their contact

⁵¹ "Why Be Happy When You Could Be Normal?", above, pp.201-2.

⁵² London Evening Standard, 27 June 2008.

⁵³ Adoption, Search and Reunion, noted above, p.36.

continues, this usually has intrinsic value for her.⁵⁴ Nor should one discount a purely practical benefit: it will have alerted her to hereditary diseases of which she is at risk.

Take next the birth parent and, in particular, the mother. Her searing shame in having given birth to a child outside marriage (if such the birth was) is, I am happy to say, largely historical. But often there surely remains within her a mixture of raw emotion: of a sense of amputation; of guilt that she failed to bring up her child; of anger about perceived pressure to give her consent to his adoption or about the court order which dispensed with it; of anxiety about whether the adopters are properly caring for him; of an inability to do anything whatever to help him; of regret, particularly if her circumstances have improved and have led her to consider, in retrospect, that she could have cared for the him perfectly well; and, overarchingly, of loss. The mother has to cope permanently with all this and it may affect her health. The father, if he is around, and the wider family will also share it. In the summer there was a television programme in which a birth mother explained that even when, following the adoption to which, as a teenager, she had reluctantly agreed, she had become happily married, she could not bring herself to have another child: for she considered that it would compound her disloyalty to her first child in having abandoned him if she were to bear, and keep, a second.⁵⁵ Her reaction is surprisingly common: the surrender of a child proves quite often to be the surrender of all future motherhood.⁵⁶ Nowadays the birth mother, too, has limited rights not only to put her name on the Adopted Contact Register but to seek to locate the adopted child through the adoption agency.⁵⁷ She may not wish to exercise them: they might lead to the exposure of part of her history which she has striven to hide from those who are now around her. It must take great courage for her to tell them the truth after hiding it for so long but it is dangerous for her not to do so for she will never be safe from a knock at the door. If she does exercise her rights, what will she discover? Philomena eventually discovered that

⁵⁴ Ditto, p.173.

⁵⁵ “Long Lost Family”, ITV, 11 August 2014.

⁵⁶ “The Primal Wound”, Verrier, BAAF, 2009, p.75.

⁵⁷ Adoption and Children Act 2002, s.61.

her son had had a brilliant career in American politics; had been gay; and had died of AIDS.⁵⁸ Even were the child alive, would he want to respond? His rebuff would compound the mother's sense of bereavement.

And so, finally, to those at the third point of the triangle, the adoptive parents. In a case in which the court has sought to hide the location of the adoptive home from the birth parents in a closed adoption, there is the deep fear of their discovery of it, to which I have already referred. But the adoption is likely to generate in them many other emotions. From their adoption of a child many will infer their infertility; and, in the past although more rarely nowadays, actual or perceived infertility will, however inaptly, be a source of humiliation and embarrassment for them. But other questions will assail them. When we tell her that she is adopted, will she love us less? If she asks us to tell her all we know about her birth parents, should we tell her the whole unvarnished truth? Why is she now saying that she wants to find her birth mother? Does she feel that our parenting of her is inadequate in some way? Will she develop a relationship with her which diminishes her relationship with us? Is our seeming inability to manage her challenging behaviour attributable to the lack of a genetic relationship? Or is her behaviour a manifestation of the consequences of her removal from her birth parents, unsatisfactory though they were? And if, in her adolescent rages, she ever again shouts "and you're not even my fucking parents", how should we best respond... and how can we come to forgive the hurt of it?

Ladies and gentlemen, I apologise: for I have scratched only the surface of this fascinating topic. But I am indebted to you. I must have made over 50 adoption orders during my years in the Division. Afterwards, in my room, I laid on the celebration with the child and the new family, which is one of the unique highlights of the family judge's job. Once they had gone, I would write him a letter, so that at some stage he could perhaps stick it into his life-story book, in which I said how much I had enjoyed meeting him and his parents and in which I forecast how happy they

⁵⁸ See footnote 17 above.

would all be. I am a passionate believer in the value of adoption in appropriate circumstances. Nevertheless I fear that, in making those orders, I never gave much attention to the emotional repercussions of them. In particular I fear that I failed fully to appreciate that an adoption order is not just a necessary arrangement for a child's upbringing. Sir James Munby, the President of the Division, said only weeks ago that adoption has the most profound personal, emotional, psychological, social and perhaps also cultural and religious consequences.⁵⁹ I totally agree. The order is an act of surgery which cuts deep into the hearts and minds of at least four people and which will affect them, to a greater or lesser extent, every day of their lives. As a result of the society's invitation to me to speak to it this evening, I have belatedly been led to reflect on these complexities beyond the law.

⁵⁹ *In the matter of D (A Child) [2014] EWFC 39.*