Does Opening Adoption Records Have an Adverse Social Impact? Some Lessons from the U.S., Great Britain, and Australia, 1953–2007

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ABSTRACT. This study provides an international history of the adoption reform movement in the United States, Great Britain, and Australia from 1953 to 2007. It empirically tests how safe birth parents and adopted adults are in countries that have opened their adoption records, usually birth registration records, using contact preference forms and contact vetoes. The results of this investigation reveal that a vast gap exists between the *fear* by birth parents and adopted adults that their privacy will be invaded and their family disrupted and the *reality* that few or no offenses are committed. It follows that opening adoption records with contact preference forms or contact vetoes provides a balanced adoption disclosure system and is a viable alternative to the sealed adoption policies currently used in the vast majority of American states and Canadian provinces.

KEYWORDS. Adoption, adoption records, search, birth parents, birth mothers, adoptive parents, contact preference forms, contact vetoes

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INTRODUCTION

Over the past 4 decades, starting in the United States and spreading throughout the English-speaking world, a growing adoption reform movement made up of adopted adults, birth parents, and adoption professionals has been advocating for greater openness in adoption records. Legislators have responded to this movement with a series of legislative mechanisms—from voluntary mutual consent adoption registries to disclosure systems that employ contact preference forms, contact vetoes, and disclosure vetoes—devised to balance openness for some members of the adoption triad with the protection of privacy and confidentiality for other members. During these legislative proceedings, opponents have based their positions on the retroactive nature of the legislation, invasion of privacy, and destruction of the family, while advocates for opening adoption records have based their positions mainly on civil rights and psychological needs.

A perfect example of these dynamics occurred beginning on March 29, 2005, when Ontario Minister of Community and Social Services Sandra Pupatello introduced to the Legislative Assembly of Ontario, Canada, Bill 183, the Adoption Information Disclosure Act, 2005 (AIDA), which continued the general Canadian trend of opening adoption records in order to help both adopted adults and birth parents gain access to information about themselves and their original families. Under the new bill, adopted adults older than 18 years would be able to obtain copies of their original birth records and adoption orders. Birth parents would also be able to apply to gain information from their child's records and adoption orders once the adoptee had reached age 19. The legislation was retroactive, covering all birth and adoption records. The changes also included the right of both adopted adults and birth parents not to be contacted and to put a no-contact notice in their file. This would not prevent the person from receiving the information requested, but instead simply alert him or her not to contact the person. Any individual violating the no-contact notice could be fined up to $50,000. For persons who did not want to have their identifying information disclosed, the act provided that birth parents and adopted adults could apply to the Child and Family Services Review Board for a nondisclosure order. The board was required to grant a nondisclosure order if it was satisfied that exceptional circumstances existed making the order necessary to prevent sexual or significant physical or emotional harm to adopted adults or birth parents (Adoption Information Disclosure Act, 2005).

The AIDA ran into serious opposition. On May 18, the Information and Privacy Commissioner, Ann Cavoukian, spoke for 30 minutes before

the standing committee and passionately denounced Bill 183. Cavoukian repeatedly criticized the retroactive nature of the bill and the consequent harmful social consequences—careers ruined, family life destroyed, privacy invaded—that she warned would occur as a result of the enactment of the AIDA. Cavoukian proposed a disclosure veto, which would permit adopted adults and birth parents to prevent the release of their adoption records as a solution to the problem of retroactivity (Hansard, 2005, p. 1069–1074). Cavoukian also created a sensation when newspaper accounts repeated her claim before the standing committee of the AIDA that one birth mother had threatened suicide "if her file was open" (Livingston, 2005).

On the next day, May 19, the standing committee heard substantial support for AIDA from numerous witnesses. Wendy Rowney of the Toronto-based group Adoption Support Kinship spoke about the adopted adult's psychological need to know of their past (Hansard, 2005, p. 1094–1095). Michelle Quick, from the Defense for Children International-Canada, rejected the idea of a disclosure veto by claiming that opening adoption records was a human rights issue, a right to identity (Hansard, 2005, p. 1096–1098). Graig Stott, a psychotherapist, testified that in his own search and reunion with his birth mother, "secrecy, fear, and denial" were damaging and that it was "truth, information, and facing our fears and facing each other that freed us" (Hansard, 2005, p. 1100).

The Ontario legislature enacted the AIDA by a vote of 68–19 on November 1, and the bill became law on receiving royal assent on November 3. However, the AIDA actually went into effect on September 19, 2006, 22 months later; the Ontario government needed the delay to implement final details and publicize the changes (Hilborn, 2007). On October 6, 2006, four Ontario residents—three adopted adults and one birth father—filed a lawsuit challenging the constitutionality of the AIDA. Almost 9 months later, the case was heard in Ontario's Superior Court of Justice. Two days after the law went into effect, on September 21, Judge John Belobaba declared the law unconstitutional because it violated plaintiffs' privacy rights that inhere in section 7 of the Canadian Charter of Rights and Freedoms: the right to life, liberty, and security of person (*Cheskes v. Ontario*, 2007). Thus, Judge Belobaba declared invalid the sections of the AIDA relating to access to birth registration information. With 30 days to appeal Judge Belobaba's ruling, the Ontario government decided on November 14 not to appeal. Instead, Community and Social Services Minister Madeleine Meilleur stated that the government would introduce a new bill in December that contained a disclosure veto, permitting birth parents

and adopted adults to prevent the release of birth certificates (Campbell, 2007).

At the heart of the opposition to Ontario's AIDA and to opening adoption records in general is a pessimistic prediction about the future, ranging from the possibility of suicide to the destruction of the family, the invasion of privacy, and ruined careers. This study sets out to use historical data from the adoption reform movements in the United States, England and Wales, and Australia to test whether the consequences of inaugurating adoption disclosure systems—specifically contact preference forms and contact vetoes—lead to harmful social results. It does this by tracing the historical evolution of the adoption reform movement in the above-mentioned three countries, emphasizing the changing legal and social attitudes toward secrecy and disclosure, the motives and causes that underlie these changes, and the balances that adoption disclosure systems have reached between competing interests. Openness in adoption records has been politically controversial and has represented a significant challenge for legislators. There appears to be no ideal solution that would fully satisfy the concerns expressed by persons seeking unconditional release of information and those asserting the absolute need for privacy. However, the historical experience, particularly in Great Britain, Oregon (United States), and New South Wales (Australia), has revealed that legislative innovations such as contact preference forms and contact vetoes have allowed for the retroactive release of adoption records without causing the adverse social impact predicted by some critics.

THE AMERICAN ADOPTION REFORM MOVEMENT, 1953–2007

Jean Paton

Between 1953 and 1971, in response to the sealing of adoption records, Jean M. Paton—a middle-aged, twice-adopted, ex–social worker—singlehandedly pioneered and led the adoptee search movement, which activists later dubbed the adoption reform movement. Paton was the first person to denounce the sealing of adoption records, call for the creation of a national mutual consent adoption registry (a mechanism providing for voluntarily reuniting adopted adults with their birth parents, which is in wide use today), and advocate for open adoption (the system in which birth parents and adoptive parents are in contact to varying degrees with each

other) (Carp, 1998). However, during the first 18 years of the movement, Paton's plea for rethinking adoptees' experience and for creating a national adoption registry was greeted by silence. Her one-woman crusade garnered no national media attention, caused no adoption agencies to liberalize their records disclosure policy, and impelled no state legislatures to repeal their sealed adoption records statutes (Carp, 1998).

Social Origins

By the early 1970s, all this had changed. In 1971, the movement's most vocal and visible leader emerged: Florence Ladden Fisher, a New York City homemaker. After a traumatic but successful 20-year search for her birth parents, Fisher founded the Adoptees' Liberty Movement Association (ALMA) (Carp, 1998). Along with aiding adult adoptees who were searching for their birth parents, ALMA's principal goals were "to abolish the existing practice of 'sealed records" and to secure the "opening of records to any adopted person over 18 who wants, for any reason, to see them" (Carp, 1998, p. 203; see also Nemy, 1972).

In the United States, the adoption search movement, led by Fisher's organization, ALMA, favored challenging the constitutionality of the sealed adoption law in the U.S. Supreme Court and having the justices declare all state laws sealing adoption records unconstitutional. In *ALMA Soc'y Inc. v. Mellon* (1979), the United States Court of Appeals for the Second Circuit considered for the first time the constitutional arguments of adopted adults, based on "rights," but dismissed the case on its merits (Allan, 1980; see also Levin, 1979; Poulin, 1987–1988). What is important to emphasize here is that Fisher's demand was for unconditional access to adoption records for adopted adults. ALMA also made no distinction between court, adoption agency, or birth records. ALMA wanted all adoption records opened.

From Rights to Psychological Need

The inability to gain access to adoption records by claiming constitutional rights led a "second generation" of adoption movement search leaders to abandon arguments based on rights and embraced one based on psychological needs: the idea that searching for one's biological family was of great therapeutic value and of little risk or harm to the participants. By the 1980s and 1990s, the psychological approach of the adoption search movement became central (Carp, 1998). The dominance of this psychological ideology culminated in the early 1990s in therapeutic advice and self-help adoption publications that were profoundly anti-adoption. Exemplary of

this trend was the popular work of Nancy Newton Verrier, *The Primal Wound: Understanding the Adopted Child* (1993), which made undocumented assertions that all adopted adults were psychologically damaged from birth from the failure to bond with their mothers.

Legal Challenges to the Adoption Laws

Armed with the adoption search movement's psychological need arguments, a number of adopted adults, on an individual basis, began to challenge laws that sealed adoption records in state courts. Almost without exception, access to these records could only be obtained by court order that required a showing of "good cause" or a "compelling reason." However, although what constituted "good cause" was nowhere defined by statute and thus was largely a matter of judicial discretion. Constitutional arguments have generally been rejected in state and federal courts and have persuaded few state courts to authorize access to birth or adoption records for good cause (Crane, 1986; Giddings, 1989; Gloor, 1980).

U.S. Adoption Reform Legislation

Thwarted in both the federal and state courts in their effort to gain adoptee rights and blaming it partially on the multiplicity of search groups, second-generation search movement leaders in 1979 formed a national umbrella organization, the American Adoption Congress. These leaders began converting social workers to their therapeutic world view and lobbying state legislators to enact laws to unseal adoption records based on the idea that all adopted adults were psychologically damaged and needed to find their roots. On the one hand, adoption activist groups were more willing to modify their demand that records be unconditionally opened. On the other hand, adopted adults increasingly encountered sympathetic attitudes from social workers and lawmakers. Individual adoption agencies as well as the Child Welfare League of America established more liberal disclosure policies and standards (Child Welfare League of America, 2000). As a result, during the 1980s, a small revolution occurred among state lawmakers who began to pass statutes, which, though less radical than ALMA's proposals, facilitated searches for adopted adults and birth parents and preserved the privacy of triad members.

By far the most common legislative reform lawmakers embraced in order to balance the privacy rights of birth mothers and adopted adults was the voluntary mutual consent adoption registry, in which both parties voluntarily registered their names in a central file established by the state, consent

to a meeting, and are informed of a match. By 1998, 26 states had put into place some form of registry, a number that has not increased substantially in the following years. (Hollinger, 2000; U.S. House of Representatives, 2000).

Less common of a solution to balancing the privacy rights of birth mothers and adopted adults was the "search and consent" or "intermediary" procedure, in which a court-appointed intermediary acted as a neutral go-between for the adopted adult and the birth parents. This person was permitted to read the adoption file, locate the birth parents, and inquire whether they were interested in meeting the now-grown child they had relinquished for adoption. In 1998, 16 states had intermediary procedures in place (Hollinger, 2000).

In 1996, the "third generation" of the adoption reform movement was born, exemplified by the activism of the adoptee rights organization Bastard Nation. Behind Bastard Nation's creation lay decades of intense frustration with the lack of progress achieved by the movement in securing open records (Carp, 2004). Thus, although by the 1990s the vast majority of states had some mechanism—mutual consent registries or confidential intermediary systems—in place, complaints by adopted adults multiplied that they were cumbersome, expensive, and ineffective (Cahn & Singer, 1999; Kuhns, 1994). Bastard Nation's primary goal was "the opening of all adoption records, uncensored and unaltered, to an adoptee upon request, at age of majority" (Carp, 2004, p. 16). Disgusted with decades of the movement's legislative pragmatism, Bastard Nation's mission statement declared that it did not support "mandated mutual consent registries or intermediary systems in place of fully open records . . . without compromise, and without qualification" (Carp, 2004, p. 16). Ideologically, Bastard Nation was also at bitter odds with mainstream adoption activist organizations such as the American Adoption Congress, which viewed the opening of adoption records as a way to relieve what they viewed as the psychological damage caused by adoption and to facilitate reunions between adoptees and members of their birth families. Instead, Bastard Nation leaders emphatically denied the cogency of the ideology of adoptee psychopathology that underpinned the opening of adoption records. They pointed out that many adopted adults were happy to have been adopted; others did not desire to search. Access to birth records was a civil right, not a need (Carp, 2004).

Bastard Nation put its civil rights ideology into practice in the November 1998 Oregon election by putting to direct popular vote on Ballot Initiative 58 the question of whether to permit adopted adults at age 21 the right to

access their original birth certificates—with no exceptions. The initiative brooked no compromise with birth mothers who had been promised confidentiality. Although Ballot Initiative 58 advocates ran on a platform of "equal rights," the opposing campaign revolved around the right to privacy for birth mothers, who feared that opening adoption records retroactively would lead to breaking up their families. The ballot initiative was victorious, winning by a 57 to 43 percent margin. Within days of its passage, the opposition to this initiative challenged its constitutionality through a series of legal appeals. Finally, on May 31, 2000, Sandra Day O'Connor, acting for the U.S. Supreme Court, refused to hear the opposition's appeal from the Oregon's Supreme Court, and Ballot Initiative 58 became law in Oregon (Carp, 2004).

While the initiative was still being appealed through the courts, the Oregon legislature set out to placate the close to half a million citizens who voted against Ballot Initiative 58 by amending it. The result was House Bill 3104, a contact preference form (Carp, 2004). The contact preference form permitted a birth parent a choice of one of the three following options: "I would like to be contacted," "I would prefer to be contacted only through an intermediary," and "I prefer not to be contacted at this time (Carp, 2004, p. 127)." If a birth parent chose not to be contacted, the person was required to fill out an updated medical form. When an adopted adult requested a certified copy of his or her birth certificate, the contact preference form would then be handed over, along with the birth record. The Oregon legislature viewed the contact preference form as a solution to the complicated and emotional problem that had dominated the election campaign: how to balance the privacy rights of birth mothers against adopted adults' civil right to access their original birth records (Carp, 2004). Governor John Kitzhaber signed House Bill 3104 into law on July 12. Oregon was joined by Alabama (2000), New Hampshire (2005), and Maine (2007) in the use of a contact preference form (Carp, 2004; *Maine Revised Statute Amended, 2007*).

The Ballot Initiative 58 campaign had garnered national attention, and the law's passage had been a milestone in the history of the adoption reform movement (Carp, 2004). All eyes now turned to the implementation of Ballot Initiative 58 as Oregon became, in the famous dissenting words of former Supreme Court Justice Louis Brandeis, one of those "courageous state[s, which] may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country" (*New State Ice Co. v. Liebmann*, 1932).

Within a day after the law went into effect, nearly 2,400 adoptees had applied to the Oregon Health Division's Center for Health Statistics for their original birth certificates; by the end of June this number climbed to 3,655 and by November to 4,962. Of those 4,962 birth records that had been issued, 325 contact preference forms had been received, of which 214 birth mothers wanted direct contact, 21 wanted contact through an intermediary, and 77 wanted no contact (Taylor, 2000a; Taylor 2000b; Graves, 2000). Media scrutiny was intense. During the first couple of months, *The Oregonian* ran successful reunion stories of Oregon and Washington State adopted adults on the paper's front page (Associated Press, 2000; Taylor 2000b; Taylor, 2000c; Taylor, 2000d). But were a handful of happy reunions representative of the hundreds, perhaps thousands that must have been taking place? What about the emotionally difficult ones? Or the ones that, as Ballot Initiative 58's opponents predicted, led to the break-up of families? Were the media deliberately avoiding these?

By the end of the June, Ballot Initiative 58 attorney and adoption activist Thomas McDermott suggested that most adopted adults and birth parents were reuniting quietly because, as Helen Hill, founder of the Ballot Initiative 58 campaign, put it (Taylor, 2000b), "it's a personal and private experience for most people." Significantly, Frank Hunsaker (Taylor, 2000b), who was the leader of the opposition to Ballot Initiative 58 and the chief counsel of the constitutional challenge to Ballot Initiative 58, admitted that, "I have not heard any so-called horror stories" (p. E1). Hunsaker, who was in contact with a network of birth mothers, including the Jane Does he had initially defended and dozens of distraught birth mothers who called him in the aftermath of Ballot Initiative 58's passage, was poised to publicize any social disturbance he came across. Hunsaker's statement that birth mothers' lives had not been destroyed nor their privacy invaded, as he had repeatedly predicted, seriously undermined the adverse social impact theory that had been used repeatedly to attack Ballot Initiative 58.

In the years that followed, there have been no reports that the privacy of birth mothers has been violated or families broken up as a result of the long-dreaded knock on the door either from adopted adults in possession of their birth certificates as a result of Ballot Initiative 58 or in violation of a contact preference form requesting no contact. The trust that has developed between birth parents and adopted adults can be seen in the small number of the "no contact" option circled by birth parents on the contact preference form. Five years after Ballot Initiative 58 went into effect, 8,190 adopted adults received a copy of their original birth certificates, during which time

only 503 birth parents filed contact preference forms. Of these, 391 wanted contact, 29 wanted it only through an intermediary, and only 83 wanted no contact (Oregon Department of Human Services, 2005). Most recently, while the number of birth certificates issued to adopted adults has increased to 9,129, the number of birth parents attaching requests for no contact to the birth certificates has remained steady at 83 (Graves, 2006). Even more significant, the number of birth parents who had requested no contact hit 80 as early as 2002 (Oregon Department of Human Services, 2002).

OPENING OF ADOPTION RECORDS IN ENGLAND AND WALES, 1969–2002

Houghton Committee, 1969–1972

In 1969, Parliament appointed the Houghton Committee to look into child care matters, including adoption, in response to rapidly changing British social attitudes toward the family, sexual attitudes, and births out of wedlock (Triseliotis, Feast, & Kyle, 2005). The Houghton Committee on Adoption, which began its work in July 1969, read research papers and heard testimony from experts, such as Dr. John Triseliotis, a psychiatric social worker and lecturer in social work at the University of Edinburgh, on the issue of adoptee identity and birth records. However, when the committee issued a working paper a year later, it proposed keeping the status quo, finding much merit in the established system in which adoption records were kept secret. The working paper (quoted in Haimes & Timms, 1985) concluded that "anonymity serves as a protection both for the child and the adoptive parents on the one hand and the natural parents on the other—for the adoptive home against interference from the natural parents or the fear of this; for the natural parents against any temptation to watch the child's progress or any way to feel the links still in existence" (p. 15). In late 1970, therefore, the Houghton Committee proposed that birth parents should be able to remain anonymous if they wished, and adopted adults in England and Wales should only gain access to birth records by permission of a court. Before finalizing its report, however, the committee commissioned Triseliotis to conduct a study in Scotland on the use that adopted persons made of Scottish birth records (Triseliotis et al., 2005). This was because under the Scottish Adoption Act, adopted persons aged 17 and older had, since 1930, the right to full access to their adoption records and access to their original birth records (Triseliotis, 1973).

Triseliotis's report to the Houghton Committee, later published as *In Search of Origins: The Experience of Adopted People* (1973), came before the committee issued its final report in 1972. Among other things, it emphasized the negative effects that secrecy and the failure to share family information had on the adopted person's identity, feelings of self-esteem, and overall mental health. According to Triseliotis, searching by many adoptees usually resulted from adoptive parents' failure to inform their children of their adoption; instead they found out accidentally or from outside sources. For those whose adoption was revealed at a later age, the discovery was often traumatic (Triseliotis et al., 2005).

Perhaps no work of adoption research has ever had such a profound effect. In due course, committee members systematically reconsidered the working paper's propositions and reversed course. Quoting liberally from Triseliotis's research, the Houghton Committee's final report (Great Britain, 1972) concluded that there was a direct link between secrecy and an adoptive person's negative mental health. The report recommended that "the weight of the evidence as a whole was in favor of freer access to background information, and this accords with our wish to encourage greater openness about adoption. We take the view that on reaching the age of majority an adopted person should not be denied access to his original records" (Great Britain, 1972, p. 85–86).

The Houghton Committee's recommendations were highly controversial. In the 1973 parliamentary debate on the Houghton report, Philip Whitehead, Labour Member of Parliament (MP) from Derby North and adoptee, strongly advocated the adoptee's right of access to all available records, including court proceedings, coupled with a proposal that adopted people should be counseled. In his view, counseling was a right, as was access to birth records; it was not a requirement for a psychological deficiency. Other MPs viewed counseling differently: the Labour MP from Pontypool, Leo Abse, felt that counselling might slow down or divert adopted adults from continuing the search for their families of origin. Others, notably the Conservative MP from Sutton Coldfield, Norman Fowler, thought that counseling could provide useful information and prevent misunderstandings such as the belief that the adopted person was reverting to a parent/child relationship instead of a relationship between two adults (Haimes & Timms, 1985).

However, some MPs, as well as organizations such as the British Association of Social Workers, worried that opening adoption records in England and Wales violated long-standing promises made to birth mothers that the children they had placed for adoption would be unable to trace them.

These opponents of opening adoption records, like those in the United States and Canada, focused on the issue of retrospectivity. This became a serious stumbling block to the entire issue of opening the records. Newspaper headlines (Hall, 1980, quoted in) deftly summed up these worries by proclaiming: "MUMS IN FEAR OF KNOCK AT THE DOOR" (p. 4). The story went on to state, "Thousands of women are facing the fear that a secret shadow from the past may soon knock at their door and wreck their marriages. They are the wives who have never told their husbands and their families that they had an illegitimate baby whom they gave for adoption" (p. 4). Worst-case scenarios were drawn in the press of resentful adoptees who would arrive on birth mothers' doorsteps and "settle old scores" (Hall, 1980). An amendment was threatened to make the right of access applicable only to those adopted after August 1, 1975. It was rejected in favor, albeit reluctantly, of the novel solution of compulsory counseling for those adopted before 1975 (Haimes & Timms, 1985). For those adopted after August 1, counseling would be voluntary because birth mothers would never again be promised that their decision to place their children for adoption would be kept a secret.

The Children Act 1975 and the Adoption Act 1976

Ultimately, the Houghton Committee's recommendation for a change in the law in England and Wales became Section 26 of the Children Act 1975. Later, it became Section 51 of the Adoption Act 1976 (Adoption Act, 1976). The new law removed the guarantee of complete confidentiality given to birth mothers, permitted adopted persons older than 18 to obtain their original birth certificates, and made it the responsibility of the Registrar General, each local authority, and each adoption society to provide counseling for people adopted before November 12, 1975 (Bridge & Swindells, 2003). However, adopted persons already aware of their original name, which was not unusual, did not have to attend a counseling interview because they were already in possession of sufficient information to obtain a copy of their original certificate (Carp, in press; see also Haimes & Timms, 1983). A study completed in 1984 (Triseliotis) revealed that between 1976 and 1982 only a small minority of adopted adults (15 to 21 percent in England and Wales and 7 percent in Scotland), mostly female (66 vs. 34 percent), sought access to their birth records and that the social turmoil anticipated by the media, politicians, and some anti–open adoption records organizations never materialized.

The Children Act 1975 made no provision for birth mothers to access to their children's birth records. Consequently, birth mothers criticized the law for not recognizing their rights also and spoke of their desire to know the fate of their children. By the spring of 1975, they had formed the activist organization Jigsaw, with the goal of creating a voluntary mutual consent adoption registry where birth mothers could be matched with adopted persons. Little came of this, however. Although organizers had dealt with some 700 to 800 inquiries, Jigsaw closed in May 1976 due to financial difficulties (Day, 1980).

Pressure from other unofficial organizations did have an effect, however, resulting in the Department of Health issuing a circular providing guidance to the Adoption Agencies Regulations 1983. Although it did not help birth mothers whose children had already reached adulthood, the circular advised the agencies to provide them with information on the progress of their children who were still in the custody of adoptive parents, without giving them any identifying information, such as their new name or address (Triseliotis et al., 2005). Moreover, new studies cast birth mothers in a sympathetic light, portraying the relinquishment of the child as a traumatic event, involving loss, grief, anger, and guilt, leaving many haunted by the experience for years after. Some studies went so far to suggest that the stress of parting with the child led to physical and mental illness. The fact that the studies were poorly designed and composed of unrepresentative samples was ignored (Triseliotis et al., 2005).

The Children Act 1989

Responding to birth mothers' desire to search for their children, the Children Act 1989 established an adoption contact register for adopted adults and their birth relatives to voluntarily register and be put in touch with each other. Between 1991, when the adoption contact register was implemented, and December 2004, 38,525 registrations had been received; 71 percent (27,346) were from adopted adults and 29 percent (11,179) were from birth relatives. Like most mutual consent adoption registries, however, it was expensive, overly bureaucratic, and not very effective. The success rate was dismal. In England and Wales during this period, only 2.4 percent or 912 successful matches were recorded (Ball, 2005; Triseliotis et al., 2005). As a result, birth relatives, especially birth mothers, remained highly dissatisfied with the adoption contact register. Continued pressure from activist birth mother organizations combined with adoption workers' desire to act as intermediaries in the search process led in 2000 to new

instructions from the Department of Health encouraging agencies to be more proactive with birth relatives searching for their children (Triseliotis et al., 2005).

The Adoption and Children Act 2002

A major change occurred with the Adoption and Children Act 2002 (England and Wales). For the first time, English law recognized the needs of birth relatives, especially the thousands of birth mothers who wanted to know the fate of the children they had relinquished. Section 98 of the act resulted from the ongoing campaign from birth mothers' activists groups and adoption agencies demanding access to the adoption records, combined with new research that showed popular support—a majority of adopted adults in one study—for the right of birth mothers to be informed of their children's desire for contact so they could make their own decisions on how to respond. Section 98, which went into effect in 2005, gave birth relatives the right to ask an adoption support agency (ASA), to provide intermediary services. The ASA, upon receiving an application from a birth relative, would establish the identity of the adopted person, search for him or her and, if he or she consented, disclose his or her identity to the birth relative and facilitate contact. However, without the informed consent of the adopted person, the ASA was prohibited from disclosing to the birth relative any information about the subject (Bridge & Swindells, 2003; Triseliotis et al., 2005).

On the whole, the Adoption and Children Act 2002 has complicated the steps necessary for adopted adults to obtain a certified copy of their birth certificates. Section 79 of the act draws a distinction between persons who were adopted before and those who were adopted after the commencement of the act. Pre-commencement adopted adults retain the right to apply directly to the court and to receive a copy of the certified birth record directly from the Register General without the intermediary of an adoption agency (Bridge & Swindells, 2003). This simplicity is lost for a person adopted after commencement of the act. For the post-commencement adoptee, there is no direct route to obtain a certified copy of the birth certificate. The applicant has to go through the intermediary of the appropriate adoption agency, which, in turn, must make application to the Registrar General for the birth record information (Bridge & Swindells, 2003).

A movement toward establishing more balance and safeguarding the rights of all members of the adoption triad was also written into Sections 80 and 81 of the Adoption and Children Act 2002. These sections gave

adopted adults and birth relatives, in practice meaning birth mothers, the opportunity to place a contact veto, that is, to register their desire that they do not wish to be contacted (Triseliotis et al., 2005).

In the 80 years since records have been open in Scotland and more than a quarter century in England and Wales, 55 percent of the 550,000 people adopted in Scotland, England, and Wales have sought genealogical information from their records and/or established contact with a birth relative, usually the mother. According to three prominent adoption researchers (Triseliotis et al., 2005), "No cases have been reported so far of either blackmail or vindictiveness being displayed on the part of adopted people. The possibility of an adopted person becoming a blackmailer [or] exploitative or vindictive cannot be excluded, but then there are many non-adopted persons who are like that and no one is calling for them to be deprived of access to their birth records" (p. 8–9).

In fact, studies have demonstrated that searches for birth family members by adopted adults have been highly successful. In a carefully designed representative study comparing 78 non-searching adopted adults with 394 adopted adults who decided to search for members of their birth family, Howe and Feast (2003) concluded that "most searchers and non-searchers said the reunion had been a positive experience" (p. 173). Building upon and extending the study of Howe and Feast (2003), Triseliotis, Feast, and Kyle (2005) concluded in their representative work that "almost all birth mothers said that they were pleased that their sons and daughters had established contact or that they had searched for them, and 94 percent added that the experience was positive. Only 8 percent reported that reported that their expectations of contact had not been met, mostly amongst seekers, but no birth mother said she wished that she had not met her son or daughter. Those who had reported experiencing intense feelings of loss between the adoption and contact appeared to benefit most from contact and reunion" (p. 356). The researchers (Triseliotis et al., 2005) were specific about what elements constituted a positive reunion experience for these birth mothers. The benefits they identified included no more guilt (79 percent), sadness or grief (79 percent), or confused feelings about their son or daughter (69 percent). Birth mothers claimed they had an improved emotional outlook (60 percent) and self-esteem (45 percent). They acknowledged they had an enhanced life (64 percent), which had changed for the better (70 percent). Moreover, they found that 97 percent of the searchers stated that meeting their birth relatives made no difference in their feelings for their adoptive parents (Triseliotis et al., 2005).

HISTORY OF OPENING ADOPTION RECORDS IN AUSTRALIA, 1976–2005

Background

In Australia, national conferences on adoption in 1976, 1978, and 1982, which brought together professionals and adoption activists and widened the public discussion on adoption services, stimulated agitation for adoptee rights to access their records. The keynote speaker at the 1978 conference in Melbourne was John Triseliotis, who in addition to stressing the harmful effects of secrecy and advocating for the rights of adopted adults to access their birth records also addressed the parliamentary legislative review committee on adoption (Marshall & McDonald, 2001; Triseliotis, 1979). In his talk at the conference, Triseliotis (1979) reported that since England's Children Act 1975 went into effect, "with one or two exceptions all adoptees were very careful to carry out their investigations in a way that would not cause pain or embarrassment to either a surviving adoptive parent or to a natural parent. There was no evidence of abuse of the facility afforded by the law and none of the Scottish newspapers over the years had reported any attempts of blackmail arising from this" (p. 37–38).

Origins of Open Records: South Australia and Victoria, 1978–1984

As a result of these conferences and the wide publicity they received in the press, strong campaigns were fought throughout Australia to repeal the 1960s adoption secrecy laws and to enact statutes that would facilitate access to adoption records (Turner, 1993). In 1976, the newly elected Labor government established the Adopted Persons Contact Register, in which adopted adults and birth parents could seek contact with each other by registering and having a match. In 1978, South Australia also established a mutual consent adoption registry (Marshall & McDonald, 2001). In 1978, the Victoria legislature appointed the Adoption Legislation Review Committee, which after exhaustive private and public hearings over a period of 5 years recommended that adopted people older than 18 be granted the right to identifying information subject to mandatory counseling. In addition, the review committee recommended that birth parents be granted the right for an approach to be made on their behalf to their adult child. Finally, under the Adoption Act 1984, Victoria became the first Australian state to grant adopted adults older than 18 unqualified access retroactively to their

original birth record. Birth parents had the right to ask that the Adoption Information Service (AIS) approach adult adopted persons to sound out their feelings about contact (Marshall & McDonald, 2001).

In the first year of operation, 97 percent of the adopted adults who received identifying information from the AIS used it for search and intermediary services. One of the prime reasons that adopted adults relied on the AIS, according to adoption officials-turned-researchers Gerald McPhee and Marilyn Webster (1993), was that they "were alert to the acute sensitivity of the issue to the natural family, especially where the birth mother had kept her pregnancy and relinquishment a deep secret, and therefore opted for the intermediary approach" (p. 148). As it became clear that the right to identifying information was not leading to "wrecked lives" or "breaking up families" as those who opposed the legislation predicted, AIS officials loosened the rules and changed over to a self-help model. Starting in 1988, individual mandatory counseling, which at times could take up to 30 hours, became available by telephone or group sessions. The AIS even encouraged adopted adults seeking information to search on their own or seek help from adoption self-help organizations, which were producing search kits, funded by AIS. Thus, Victoria professionals' oversight slackened as fears faded that adopted adults would infringe on the rights of birth parents (Marshall & McDonald, 2001; see also Swain, 1992).

Origins of Open Records: New South Wales, Australia, 1984–2005

In New South Wales, Australia, the period between the 1970s and the 1990s witnessed an intense and emotional debate on the issues raised by the demand for access to adoption records. It was fuelled by the enactment of Victoria's Adoption Act 1984 and by the ineffectiveness of New South Wales's Adopted Persons Contact Register. By 1989, there were over 8,000 names on the register and the rate of reunions was only 14 percent (New South Wales Law Reform Commission, 1992). In 1984, the New South Wales Australia Review Committee recommended giving adopted persons older than 18 the right to access their original birth certificate, and though this proposal for reform was rejected, pressure mounted for increased openness (Marshall & McDonald, 2001). These trends caused apprehension, especially in some adoptive parents, who feared that they might lose the love of their children or who had concealed the adoption in the first place. These developments also alarmed some birth parents who, having not told their loved ones of having a child out of wedlock, feared for

the stability of their families (New South Wales Law Reform Commission, 1992).

The New South Wales legislature's attempt to balance the conflicting concerns of the adoption triad—the right to information and the right to privacy—was embodied in the Adoption Information Act 1990, which received royal assent in October 1990 and came fully into operation on April 2, 1991 (New South Wales Law Reform Commission, 1992). It provided that adopted adults had the right to receive copies of their original birth certificates and information that allowed them to identify their original birth parents. It also gave birth parents the right to a copy of the certificate of adoption and information enabling them to identify the child whom they relinquished for adoption (New South Wales Law Reform Commission, 1992).

Where the New South Wales legislation broke new ground was in the establishment of a Contact Veto Register, which enabled both adopted adults and birth parents to register a statement insisting that the recipient of the information not contact them. Neither the adopted adult nor the birth parent could legally prevent the other party from obtaining either the amended or original birth certificates. If a party violated a contact veto, it was a criminal offense with a maximum penalty of 6 months' imprisonment, a fine of $2,500, or both. Contact veto provisions did not apply to adoptions made after October 26, 1990 (Klauer, 1993; New South Wales Law Reform Commission, 1992).

During the Parliament Debates on the Adoption Information Bill, the government resolved that the New South Wales Law Reform Commission should monitor and evaluate the legislation because some members of the public had expressed opposition to the bill. Objections included the invasion of privacy, the extent of the information available, and the effectiveness of the contact veto system (New South Wales Law Reform Commission, 1992). Less than 15 months after coming into existence, in May 1992, the law reform commission extensively reviewed the Adoption Information Act 1990. Among its several conclusions was that, "the vast majority of birth parents, like the vast majority of adoptees, seek information or contact in a way that is sensitive and responsible" (New South Wales Law Reform Commission, 1992, p. 49). Contrary to the expectations of many, triad members complied with provisions of the contact veto to an extraordinary degree. The New South Wales Law Reform Commission (1992) remarked that, "It is not easy to think of other laws which have such a high level of compliance" (p. 49; see also p. 50). Evidence of only one case of an arguable breach surfaced.

In making its recommendations, the commission repeatedly stated that the Adoption Information Act 1990 represented "the result of a considered balancing of interests of those affected by the act, and in particular, the interests of some people in information and of others in privacy" (New South Wales Law Reform Commission, 1992, p. 17). The New South Wales Law Reform Commission dealt extensively with the argument of retrospectivity but declared that "there was no single absolute principle" that could lead to a correct result (1992, p. 17). While retrospectivity was certainly an important matter to be considered, "it cannot be elevated to an absolute claim, overriding other considerations" (New South Wales Law Reform Commission, 1992, p. 18). Indeed, other matters, such as the right to information, could outweigh it. Similarly, the commission held that when considering the right of privacy, the fact that privacy was considered a basic human right did not mean that it must necessarily prevail over other basic human rights (New South Wales Law Reform Commission, 1992, p. 18). Balance was the key.

At the same time, the law reform commission was willing to go as far as possible to protect the people critical of the Adoption Information Act 1990 from unnecessary distress, which resulted in three major recommendations to protect the privacy of persons: an adoption information exchange; an advance notice system; and increased discretionary power for the Director General to refuse a birth certificate or release of information. The adoption information exchange would permit any person involved in the adoption process to leave information or a message for any other message, with the goal of reducing anxiety. Through the advance notice system, the release of identifying information could be delayed. Again, this was a means to ease anxiety in appropriate cases. Finally, the commission recommended vesting a discretionary power in the Director General to refuse to issue a certificate of information, though it also recommended that this discretion should be exercised only in exceptional circumstances and should be subject to appeal (New South Wales Law Reform Commission, 1992, chap. 7; see also Turner, 1993). In 1995, Parliament enacted all three of the committee's recommendations into law (Adoption Information Amendment Act, 1995).

Five years later, Parliament enacted the Adoption Act 2000. In preparing the Adoption Act 2000, Parliament had the advantage of the extensively researched New South Wales Standing Committee on Social Issues' Final Report (New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues, 2000). On the subject of contact vetoes, the report discovered that there existed a widespread belief that the contact veto was too restrictive and failed to take into consideration that those who lodged

one might want to change their minds after a period of time. The final report (New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues, 2000) noted that other jurisdictions had provisions for such a possibility. Thus, New Zealand's contact veto was renewable every 10 years, and history had demonstrated that "very few people who had placed a contact veto renewed that veto" (p. 167). Closer to home, the South Australian contact veto had to be renewed every 5 years or it would lapse. In contrast, the final report noted that the New South Wales Adoption of Children Act 2000 provided for contact vetoes with no period of renewal; hence, all vetoes remained in place indefinitely. However, the Adoption Act 2000 did permit the Director General to approach the person who lodged the veto and inquire whether he or she wished to revoke or retain the veto (New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues, 2000).

The final report (New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues, 2000) concluded that the New South Wales contact veto system was "inflexible by comparison to other countries' arrangements," its rigidity was "highly distressing for some people," and that others "do not wish to renew their contact veto" (p. 167). Consequently, it officially recommended that New South Wales move to a system of periodic review of contact vetoes and to consider whether it was appropriate to establish procedures for renewal and/or cancellation of contact vetoes. The final report noted that this would "substantially change the existing contact veto system and would require amendment to the Adoption Act 2000" (p. 167).

By the year 2000, it had became clear that the Adoption Information Act 1990 was working well. None of the dangers that people had feared—that their privacy would be invaded and their families destroyed—had materialized. Another positive sign of the public's faith in the contact veto system, in addition to the desire not to renew a contact veto, was the decrease in the number of contact vetoes lodged. Over the decade, the number of vetoes lodged each year significantly decreased from 426 in 1995–1996 to a record low of 56 vetoes lodged in 2004–2005. Of these 56 vetoes in Australia in 2004–2005, New South Wales had a total of 11 vetoes lodged; the vast majority, 8, were from adopted adults (Australian Institute of Health and Welfare, 2005). The decreasing number of vetoes being lodged reflects public awareness of the large majority of triad members who are scrupulously obeying both the spirit and letter of the contact veto law.

CONCLUSIONS

Since 1984, the trend toward openness in adoption records in English-speaking countries has continued, with a second and even third generation of adoption information disclosure legislation. Designed to balance the interests of all triad members, it has been characterized by a variety of innovations—contact preference forms and contact vetoes. As we have seen in the United States, the states of Oregon, Alabama, New Hampshire, and Maine have provided adopted adults with access to certified copies of their original birth certificates retroactively and granted birth mothers the right to place contact preference forms along with them. In Victoria, Australia, the state granted adopted adults unconditional access to their original birth certificate retroactively with mandatory counseling. In New South Wales, Australia, the legislature granted adopted adults and birth parents the right to access identifying information retroactively, but also the right to a contact veto. In England, Parliament established a contact veto in 2002, although adopted adults had access to their original birth certificates since 1975. What is clear from this survey of international adoption disclosure systems is that there exists a vast gap, especially between the articulated *fear* by birth parents and adopted adults that their privacy would be invaded and their families disrupted if adopted adults were given the right to access their birth records and the *reality* that few or no offenses were committed. It seems safe to conclude that contact preference forms and contact vetoes are viable adoption disclosure systems to the alternative of sealed adoption records currently in use in the vast majority of American states and Canadian provinces.

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