

Between Sorrow and Happy Endings: A New Paradigm of Adoption

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Child, with a child pretending
Weary of lies you are sending home
So you sign all the papers in the family name
You're sad and you're sorry, but you're not ashamed.
Little green, have a happy ending.

Just a little green
Like the color when the spring is born
There'll be crocuses to bring to school tomorrow
Just a little green
Like the nights when the Northern lights perform
There'll be icicles and birthday clothes
And sometimes there'll be sorrow.¹

—Joni Mitchell

PROLOGUE

My interest in the subject of adoption and in the position of the birth mother who surrenders a child is a personal one: I am a birth mother. In the interest of explaining my perspective on these questions, and also in the belief that as a society we suffer from an enormous lack of insight into the position of the birth mother, I will begin with the story of my own experience of the adoption process. It was not a particularly bad experi-

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1. *Little Green*, from the album *Blue* (Sigoumb Music 1967).

ence; in fact my impression is that it was more positive than is the average. Nevertheless I will go into some detail because I believe it is important to articulate and understand the complexities of a birth mother's motivations and the pressures she may be facing. Only then will we be able to see clearly how the law can best respond to the needs of all the parties to an adoption proceeding.

I also believe that it is crucial for legal scholarship to take into account the experience of the individuals interacting with the legal system. Law is not a game of spinning out theories and arguments; it is arguably the principal means for allocating and sanctioning power in our society. It guides and constrains our actions, while greatly influencing the way that we think about ourselves and our world. For this reason, responsible legal scholarship must begin with some knowledge of the way in which the law interacts with people, particularly in an area such as family law, which involves some of the most personal, and the most formative, moments of a person's life.

When I was nineteen years old and a sophomore in college, I got pregnant and my world came crashing down around me. The future I had always imagined suddenly looked very different, and my dreams for myself seemed to have been snatched beyond my reach. Even my self-image, of one who was in control of her life, was shattered.

I had been dating the baby's father for about six months when I got pregnant. He was several years older than I and our relationship was one in which, for the most part, he led and I followed. Shortly after we began dating, he started pressuring me to have intercourse. I resisted, but not very well and not for long. As with most things in that relationship, I soon found myself seeing his side of things and losing my own frame of reference.

When I first discovered that I was pregnant, I wanted to get married. The baby's father preferred to deny that anything had happened; he certainly did not want to get married. After several months, I realized that he was not going to save me, and I began to look within myself for strength. Somewhat to my surprise, I began to find it. Through the course of my pregnancy, the terror I felt at my body's betrayal and my lack of control over it gave way to a sense of excitement and wonder at the power I possessed to nurture this new life. This sense of power in turn helped to give me the strength to make some very difficult decisions.

When I was about four months pregnant, a friend suggested that I

might want to place the baby with an agency for adoption. Until she brought it up, the idea had never occurred to me. For the next five months I struggled with the question of whether to keep my baby or to surrender him or her for adoption.

I worked all through those months with a social worker from the adoption agency who was genuinely concerned that I make the best decision for myself, whether that meant keeping the baby or surrendering him or her for adoption. By the time I was ready to give birth, I was fairly confident of my decision to surrender the baby. I had thought long and hard about the gift that I would give him (I had a boy), wanting to give him something of myself. In the end I made a baby quilt for him and wrote a short letter attempting to explain how much I loved him and why I was giving him up. His father also prepared a gift for the baby.

In this time of waiting and preparation, I was asked what sort of a family I wanted my child to have. Unconsciously, I asked the agency to replicate my own: a close extended family, active in some religious tradition, for whom education was important. I was assured that a family would be chosen that came as close as possible to this description. And so I waited to give birth, feeling ready to give my baby to this family I constantly tried to imagine.

To my surprise, however, by the time my son was born I was more than ready to keep him. The desire for me to take my son in my arms and keep him with me was tremendously strong. I saw him and touched him right after I'd given birth to him, but I didn't hold him then. For the first twenty-four hours in the hospital I was afraid to go down to the nursery and even look at him. I could feel him pulling me even from the other end of the hall, demanding with his little cries that I change my mind and continue to care for and nurture him as I had for the previous nine months. Eventually I did go down and see him. I went into the nursery and looked at him and touched his tiny hands. Then he started to cry and I reached out to hold him and quiet him. But then I pulled back my hands and quickly left the room, terrified that I would impulsively make a decision to keep him, a decision I was afraid would lead him, his father, and me into years of bitterness. My last morning in the hospital I did hold my son. I held him with tears streaming down my face.

The baby's father and I spent the weekend I was released from the hospital wrestling with the question of what we should do. We went back and forth; there was a moment when I had my hand on the phone to call a taxi to take us back to the hospital and pick up our son (who stayed there

until Monday when someone from the adoption agency would take him to a foster home). In the end we decided to go through with the adoption.

On Tuesday morning we gathered together the letter and gifts and went down to the agency. We were ushered into a room where we talked for a while with my social worker. She showed us pictures of the family they had chosen for our son and told us a little about his future parents.

Then she brought out the relinquishment papers. **THIS IS FINAL AND IRREVOCABLE** was emblazoned in big, bold letters three times on the one-page form. I don't remember anything else about the papers I signed, except for that ominous warning against later doubts. Illinois adoption law required that the father of a newborn, if known and identified, also relinquish his parental rights, and as we were about to sign the papers the baby's father wanted to change his mind. But after the struggle we had gone through, I was confident in the end that adoption would be best for our son. I was not going to change my mind at that point. Perhaps he realized that as the one who would have taken care of the baby, I was the one whose life would have been most radically affected by this decision. For whatever reason he went along with my insistence. Panic gave way to relief that he chose not to exercise the power he had at that moment to determine the direction of my life.

When I signed the papers relinquishing my parental rights to my son, I framed my principal reasons for the decision in terms of his best interests. Although I thought about financial issues, my main consideration was whether or not I could provide a stable family for him. After time and reflection, I believe that within that genuine desire for my son was also a desire for myself. I knew that if I kept him I would probably marry his father (who had in the weeks before the birth become the one pushing for marriage), and my instincts were clamoring that this would be a disastrous move for me. My sense of self had become lost in that relationship; in it, I had little control over my own direction. At the time of my son's birth I could not have articulated this understanding, but I believe now that I knew it subconsciously, and that it was one source of my feeling that I would not be able to provide the kind of family I wanted my son to have.

My son is now seven years old, and my love for him now is no less than it was when he was born. There are times when the pain of his absence is so intense that it is almost incapacitating. His birthday is always particularly difficult. And yet I am convinced that adoption was the best, most empowering option for him and for me, given the circumstances of

my life. It allowed me to follow my conscience and to honor the sanctity of human life by carrying through my pregnancy and giving birth, while at the same time allowing me to avoid being forced by circumstances into an oppressive situation. It gave my son a good chance at life in a stable, loving home. It is from the joy and pain and freedom of being a birth mother that I address the subject of adoption.

The surrender of babies for adoption has roots deep in our history. Nevertheless, the actual surrendering experience has received relatively little attention. Despite wide acceptance in our society of the practice of adoption as seen from the point of view of the adoptive family, there remains little acknowledgment of the birth mother's side of the process. This reluctance to think and speak of birth mothers perhaps stems from the stigma society has attached to the situation of most birthmothers—having an unexpected and unplanned baby outside of marriage. There is also discomfort with the idea that women give away their babies. However much this part of the process is necessary to enable adoption, we find it easier to simply avoid thinking too much about what we see as a voluntary repudiation of motherhood. Perhaps it challenges too deeply our concept of motherhood as something basically biological. Perhaps we recognize on some level the deep pain that it involves, and simply find it easier not to think about it. It is thus not entirely surprising that society has failed to focus much attention on birth mothers.

What is at first glance more surprising is the silence of the women's movement on the subject of adoption and on the concerns of birth mothers, women who tend to be in very vulnerable positions and who pose challenging questions on reproductive decisions, the nature of motherhood, and the ideal of the family. Yet feminist literature has been silent.

I believe that this is largely due to the intensity of the feminist battle for the legalization of abortion. Adoption has been proposed by opponents of abortion as an alternative to abortion, and has thus been seen as itself opposing abortion. I believe that the women's movement has too quickly accepted this dichotomy and has too firmly embraced abortion as the solution to unexpected pregnancies. Recognizing that the feminist position on abortion developed in response to very severe opposition, it is not surprising that this position is weighted heavily to one side, emphasizing exclusively the inalienable right of the mother to control her reproduction. Nevertheless, given the current deadlock in the societal dialogue on abortion, I believe that it is time that we in the women's movement attempt to articulate a more subtle and nuanced position on reproductive choice, a

position that acknowledges the terrible price that is paid in abortion, even where the choice to abort represents the lesser of evils in a woman's particular circumstances.

Women's lives unfold within a context of the injustice and oppression of sexism, a context that for many women also includes racism and economic injustice. Within this context, childbearing and childrearing often become opportunities for intensified oppression of women and, directly or indirectly, of their children. For many women, the birth of a child ensures the continuation of a cycle of poverty, because the responsibilities and financial burdens of child care cut off opportunities for employment, education and training. Women with children are often discriminated against and not taken seriously as workers because they are mothers, and many women stay in low-paying jobs because higher-paying jobs would not allow the flexibility necessary to the primary caretaker of a child.

In addition, a child can be a very effective source of power for a man over the child's mother. A child's father can use his rights to the child and the mother's desire to protect the child to control the mother. This control can be based on physical violence, on economic dependence, on the threat of taking the child away from the mother, or on a sense of moral obligation. In the same way, a woman's desire to provide for and protect her child, given her limited opportunities to do so by herself, makes her more vulnerable to becoming and staying economically or otherwise dependent on any man. This dynamic of power is of course even further accentuated when a pregnancy is the result of rape or incest, situations in which the act of intercourse itself is a clear act of domination. The birth of a child in such a situation can serve to solidify and extend that domination over a lifetime.

It is this culture of injustice and oppression of women, especially of poor women and women of color, that necessitates abortion in our world today. There are times when abortion is necessary literally to save the mother's life. In the same way, there are times when abortion is necessary to save the mother from a life of abuse and despair. Furthermore, given the imbeddedness of sexism and the failure of the dominant culture to recognize and acknowledge it, we must have the power to control our reproduction ourselves, and to recognize for ourselves the situations in which the difficult choice to abort is a matter of such pressing need as to override other considerations.

I would certainly not be the first to point out the difficulty with which

most women decide to abort a pregnancy. Despite a woman's recognition of other very important considerations and of her right to make her own decisions, it is almost always difficult for her to decide to end a pregnancy with abortion. This, I believe, is due to the recognition of the life potential of the fetus and of her connection with it. To deny that life goes contrary to the experience of anyone who has been pregnant and felt her child move within her, or even of anyone who has seen someone go through pregnancy and give birth.

We must not allow the anti-abortion movement to usurp our connection, our concern, our valuation of this life. If we oversimplify the abortion issue on a theoretical level and talk only of a woman's rights, we objectify and separate ourselves from a life to which we are in fact intimately connected. We deny our own pain in making the decision to abort, and we fall to our society's pressure to use things and people only in ways that serve our own needs, and then to discard them. Women have known historically, and continue to know, the degradation and the injustice of being used as objects to satisfy the needs and whims of the more powerful. We must not allow our own empowerment to simply move us into the more powerful position. We must strive for a new model of human interaction based on responsibility and respect for ourselves and for others.

As feminists, we should be willing and able to support the legal right to an abortion and at the same time deplore the loss of human life involved and work for the day when abortion will no longer be necessary. One way of doing this is to develop alternatives to abortion that empower women. These alternatives often will not be easy, and may in fact be very difficult and painful. Fighting to affirm and value all human life (including both women and children) will not be painless, but we must not compromise our vision by succumbing to the urge of an oppressive, consumerist society to acknowledge the value of only that life that we can accommodate without inconveniencing ourselves. Our ethic must encompass care and responsibility for one another, as well as a demand for justice for the individual. We must fight for a world where no life is disposable, and where a woman's decision about reproduction is not narrowed down to a choice between a decent life for herself and life for her fetus.

This paper looks at ways that we can develop adoption into an empowering option for pregnant women who feel that they cannot raise the child they are carrying. In it I seek to present a new vision of adoption—a vision that arises from within an ethic of care for and responsibility to all those whose lives are indelibly changed by the adoption experience.

I. INTRODUCTION

It should come as no surprise that the issue of adoption reform evokes great passion from many quarters. The members of the adoption triangle, those individuals whose lives are touched by adoption, are affected very deeply by their experience. An adoptee's self-identity is inextricably tied up with the fact of adoption in her life. Adoption is also central in the ongoing efforts of birth parents and adoptive parents alike to define and give content to their differing roles as parents.

The debate is also fueled by the pain experienced by many adoption participants as a result of the current scheme. Many adoptees are deeply dissatisfied with the secrecy shrouding adoption in most states, and many of the groups advocating change in adoption policies include adoptive parents and birth parents among their members. As a birth mother, I am deeply aware that the popular conception (and all too often the legal formulation) of the interests and the experience of birth mothers is fundamentally mistaken. This misperception leads to policies which, instead of protecting the real interests of birth mothers, are often painful and destructive for us. As members of the adoption triangle begin to speak out frankly about their experiences, it becomes clear that most current adoption policies fail to address their needs and interests. With so many of the participants in traditional² agency adoptions voicing dissatisfaction at the inadequacies and the injustice they have experienced within the adoption process, there can no longer be any excuse for refusing to reevaluate the system.

Many states have instituted some measure of reform, but state legislatures continue to debate heatedly what interests are at stake and what specific shape reform should take. Moreover, the lack of understanding among agencies and among both legislative and judicial decision-makers strictly limits the scope and effectiveness of many statutory reforms. Although the door has been opened in recent years to an adoption debate, misunderstanding still permeates the discussion.

Much of the debate over the goals of adoption reform and the

2. By "traditional" I refer to the conception of adoption that became prominent in the early part of the twentieth century. The characteristics of this image will be described in this paper. For an interesting historical survey of adoption practices in the United States since Massachusetts enacted the first state adoption statute in 1851, see Howe, *Adoption Practice, Issues, and Laws 1958-1983*, 17 FAM. L.Q. 173 (1983).

appropriateness of various judicial and legislative actions stems, I believe, from differing understandings, different paradigms of the social and legal experience of adoption: the traditional paradigm, embodied in the law and in traditional attitudes about adoption; and a new paradigm, emerging from the experience, reflection, and activism of members of the adoption triangle.

I will begin this discussion of adoption by highlighting the importance of the conceptualization of social phenomena in a discussion of the impact of a social-legal paradigm on thought and action in a particular field. Using the model first outlined by Thomas Kuhn in his study of revolutions in scientific thought,³ I will argue that we are currently confronted with the need for a paradigm shift in the field of adoption. That is, we need a new way of looking at and thinking about adoption. I will discuss the traditional, legal paradigm of infant agency adoption,⁴ and the ways that this portrayal of roles and interests has been challenged by adoptees, birth mothers, adoptive parents, and others. I will demonstrate how it fails to account for the experience of many adoption participants, and how it is unhelpful, and even harmful, as a paradigm for policy making. I will then propose a new paradigm for adoption. Finally, since new paradigms bring with them new questions, I will address several examples of the questions that arise from an adoption paradigm shift, suggesting ways in which statutory and agency reforms can move towards an understanding and a practice of adoption that is just and humane.

II. LAW, SOCIETY AND PARADIGM

Much of the thinking about adoption reform is grounded in one of two misconceptions about the relationship between the law and societal norms. Reformers begin either with the proposition that the law should change only to reflect clear and unequivocal changes in social norms, or with the converse proposition that it is the place of the law to mandate behavior that will in turn cause changes in social norms. Both of these stances characterize the relationship as the interaction of two separate forces, one of which

3. T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

4. There are many different circumstances in which adoptions occur, including the adoption of older children, adoption by relatives or people known to the child(ren) or birth parents, stepparent adoption, and private adoption of newborns. Much of the substance of this paper could be applied to any adoption situation. Nonetheless, this analysis addresses only adoptions by strangers of newborn infants, through an adoption agency accredited by the state.

will control the other. This oversimplification fails to reflect social reality, and is of little help in trying to understand the way law operates as a force in modern society.

Many scholars reject this polarization of law and society. Robert Gordon, for example, asserts that the legal world is "fundamentally constitutive" of social life.⁵ He acknowledges the subtlety of the influence of legal rules on social norms and thinking, and recognizes the ultimate power this subtlety permits:

The power exerted by a legal regime consists less in the force that it can bring to bear against violators of its rules than in its capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live.⁶

The images and categories created by a legal scheme will strongly influence, or even dictate, the frame of reference for thinking about social life. Even reformers, who may see the problems of the old paradigm and the need for change, are very often unable to break away from the formulation given the issue in prevalent policies.⁷

Martha Minow takes Gordon's analysis a step further and advances the view that "not only is law constitutive of social relations, but social relations are constitutive of law."⁸ She proposes a way of understanding and of studying the relationship between legal and social life by focusing on the social roles of individuals. These roles are "[l]egally defined and reinforced, . . . [but] also have sources in custom, religion, and in the

5. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 104 (1984), cited in Minow, "Forming Underneath Everything that Grows": Towards a History of Family Law, 1985 WIS. L. REV. 819, 823 n.10.

6. Gordon, *supra* note 5, at 109. Thomas Kuhn, in THE STRUCTURE OF SCIENTIFIC REVOLUTIONS, *supra* note 3, emphasizes how experiments have demonstrated that people will visually perceive only those images that they have been trained to expect. He proposes that "something like a paradigm is prerequisite to perception itself. What a man [sic] sees depends both upon what he looks at and also upon what his previous visual-conceptual experience has taught him to see". *Id.* at 113. How much more must this insight be true for the subjective perception of socio-legal (and often moral) norms.

7. Much of the writing about adoption suffers from this inability to escape the traditional paradigm. As a clear example, see Fergus Colm O'Donnell's otherwise very thoughtful treatment of the sealed records controversy, *The Four-Sided Triangle: A Comparative Study of the Confidentiality of Adoption Records*, 21 U.W. ONT. L. REV. 129 (1983).

8. Minow, *supra* note 5, at 823 n.10.

invention of individual personality.”⁹ They are complicated and ever changing, as individuals define their social roles partly in reference to established understandings and partly out of their own creativity. These roles provide a context within which both continuity and change can be achieved. Minow explores the ways in which women have used their understandings of their own social roles as mothers, wives, widows, and daughters, to justify activities in traditionally male spheres.¹⁰

These analyses point to the extremely complex and symbiotic relationship between legal rules and social life. Minow notes that an understanding of this relationship is especially vital in a field like family law which consists more of pseudo-normative pronouncements about “The Family” than it consists of sanctions for the violation of rules.¹¹ The interdependence of social and legal constructions in such an area is often very nearly complete.

The fundamental symbiosis of legal and social structures is quite evident in the field of adoption. We will see how legislators and judges “identify” the needs of adoption participants by analyzing the social construction of the roles of adopted children, adoptive parents, birth parents, and, recently, adult adoptees. In the same way, the social understandings of these roles, held both by the people who live them out and by others, are in part constituted by the images that are sanctioned in the legal paradigm of adoption. The behavior and the self-perception of participants in adoptions are molded to a large extent by the images projected by the law of their roles in the adoption triangle. It is for this reason, no less than for pragmatic reasons of adoption logistics, that reform of adoption laws is essential to the efforts of adoption reform advocates.

In the last twenty years, adult adoptees have begun to challenge the beneficence of the adoption system; in their adoptee role, using the language of the system itself, they have demanded change on the grounds that current policies are not in their “best interests.” In response, some decision-makers are beginning to expand their consideration of adoptees to include the interests and concerns of adult adoptees. The resulting (and ongoing) debate over adoption policies evidences the beginnings of a critical examination of traditional practices in the adoption field.

Change, however, has been slow in coming, and in many places has

9. *Id.* at 824.

10. *Id.* at 838.

11. *Id.* at 837.

not yet come at all. I believe that this is largely due to the deep silence surrounding birth mothers. On the one hand, commonly held assumptions about birth mothers' desire for privacy and anonymity have dissuaded legislators and researchers from contacting birth mothers for their views. They have assumed that any child surrendered in adoption must have been "illegitimate"; that any mother who gave up an "illegitimate" child to adoption is primarily interested in privacy;¹² and that she wants to be left alone to go on with her life, with no reminders of a past mistake she is trying to forget.¹³

On the other hand, birth mothers have not used their position to speak out about adoption reform in the way that adoptees have. This failure to speak out may be largely attributed to the double-edged stigma attached to being a birth mother, which marks us as women who both conceived a child outside of marriage and "gave away" that child. The birth mother status opens a woman up to a number of complex and ambivalent societal reactions to sex and mothering. The popular mythology tells her that she was wrong to get pregnant, that as a single woman she was not meant to be a mother, and at the same time that she failed as a mother (and as a woman) when she "gave away" her child. Court cases and statutes alike tell her that the reason she surrendered her child is that she was ashamed of having an "illegitimate" child, and that her overriding interest from that moment on has been to separate herself from that experience and to avoid its public discovery.

Birth mothers also may suffer from an intensified sense of the powerlessness felt by many women in and around childbirth. Emily Martin uses a Marxist analysis to compare the language and the accepted practices of childbirth with those of industrial production in our society,¹⁴ and her work highlights the powerlessness over and alienation from the birthing

12. Howe, *supra* note 2, at 190-91.

13. See, e.g., O'Donnell, *supra* note 7, at 146 ("The main interest of the birth parents is their desire to maintain their privacy and to be able to rebuild their lives after giving a child up for adoption."). However, several recent student-written notes have suggested the possibility that birth mothers may have some interest in continued or renewed contact with their children. See, e.g., Note, *The Best of Both "Open" and "Closed" Adoption Worlds: A Call for the Reform of State Statutes*, 13 J. LEGIS. 292, 300-01 (1986) [hereinafter Note, *Best of Both*]; Note, *Adoption: Sealed Adoption Record Laws—Constitutional Violation or a Need for Judicial Reform?*, 35 OKLA. L. REV. 575, 580 (1982) [hereinafter Note, *Violation or Need for Reform?*]; Comment, *Severed Roots: The Sealed Adoption Records Controversy*, 6 N. ILL. U.L. REV. 103, 112 (1986) [hereinafter Comment, *Severed Roots*].

14. E. MARTIN, *THE WOMAN IN THE BODY: A CULTURAL ANALYSIS OF REPRODUCTION* 54-67 (1987).

process felt by many women in an atmosphere where the woman's uterus is treated as a machine, the woman herself as a laborer, the obstetrician as a manager, the hospital as a factory, and the baby as the product.¹⁵

Although Martin does not direct her analysis specifically to the experience of birth mothers, this analogy is clearly applicable and provides a very powerful metaphor for that experience. Birth mothers are often seen as producing a baby and then giving it away. The adoption triangle even provides ready "consumers," the adoptive parents, for the birth mother's product. As in production, it has been in many instances these "consumers," the adoptive parents, who have most strongly influenced decisions affecting the policies and practices of the adoption system,¹⁶ with far less attention given to the needs of the "laborer," the birth mother. The very prevalent language of the "baby market" in discussions of adoption¹⁷ illustrates the power and the aptness of the production metaphor to the current adoption process.¹⁸

Martin warns of the dangers of a strong focus on the medical technology of reproduction, admonishing that we must not allow our technological capabilities to "divert[] our attention from the social relationships of power and domination that are involved whenever humans use machines to produce goods in our society."¹⁹ This warning is particularly poignant when applied to the experience of birth mothers, who are encouraged to alienate themselves, to become detached emotionally from the children to whom they give birth, and who are often thought of primarily as baby-makers.

Birth mothers internalize many of these images and judgments and accept to some degree the deficient and destructive self-image given to them by society and by the law. This socially and legally constructed role of birth mother, combined with the intensity of a birth mother's grief, makes it very difficult for a birth mother to speak out publicly.

Nevertheless, birth mothers and fathers are slowly beginning to emerge into the public debate. They are forming groups organized and devoted

15. *Id.* at 57, 146.

16. Note, *Best of Both*, *supra* note 13, at 292-93.

17. See, e.g., Ackerman, *Aggressive agencies seek part of "hot" market*, Boston Globe, Mar. 21, 1988, at 1, col. 1; Ackerman, *Long waits, high costs in "baby market"*, Boston Globe, Mar. 20, 1988, at 1, col. 1.

18. See Note, *Best of Both*, *supra* note 13, at 292 n.2, referring to Lynne McTaggart's analogy of the adoption process to production in *THE BABY BROKERS: THE MARKETING OF WHITE BABIES IN AMERICA* 339 (1980).

19. E. MARTIN, *supra* note 14, at 57.

specifically to support and advocacy for birth parents.²⁰ In addition, general adoption advocacy groups have begun in recent years to focus more attention on birth mothers and birth fathers in their analyses of adoption policies. The movement for open adoptions, where the parties are known to each other, also necessarily focuses attention on birth mothers in an unprecedented way. Finally, a few researchers have begun to investigate the experiences of birth mothers.

The slowly emerging voice of birth mothers deeply and painfully challenges prevalent thinking about adoption. However, the current social and legal role of birth mother, the traditional formulation of birth mothers' needs and interests in the adoption process, cannot allow for the depth of change that is required to meet this challenge. To respond to the depth and breadth of this challenge, we need nothing less than a revolution in our social and legal thinking about birth mothers and, more broadly, about adoption.

An apt analogy to the situation may be Thomas Kuhn's explanation of the conditions that bring about a revolution in scientific thought, a phenomenon he calls a paradigm shift. Kuhn describes the process that leads to such a revolution:

Sometimes a normal problem, one that ought to be solvable by known rules and procedures, resists the reiterated onslaught of the ablest members of the group within whose competence it falls. On other occasions a piece of equipment designed and constructed for the purpose of normal research fails to perform in the anticipated manner, revealing an anomaly that cannot, despite repeated effort, be aligned with professional expectation. In these and other ways besides, normal science repeatedly goes astray. And when it does—when, that is, the profession can no longer evade anomalies that subvert the existing tradition of scientific practice—then begin the extraordinary investigations that lead the profession at last to a new set of commitments, a new basis for the practice of science.²¹

20. The largest such organization is Concerned United Birthparents, which was founded in 1976 and is a nationwide network of birth parents and others concerned with birth parents' experiences in adoption. For information, contact Concerned United Birthparents, 2000 Walker Street, Des Moines, IA 50317, (319) 359-4068.

21. T. KUHN, *supra* note 3, at 5-6.

In short, the limits of the old paradigm are undeniably exposed in the fact that the anomalies, the phenomena that are unexplainable under the old paradigm, outnumber the phenomena accounted for by it. The profession then pushes its research beyond the limits of normal science within the bounds of the old paradigm to search creatively for a new paradigm, an entirely new way of looking at the questions of science.

Although a new paradigm explains many of the old anomalies, it will at the same time raise new questions, questions that were impossible to ask in the old framework. These questions will then be analyzed from within the intellectual framework of the new paradigm.

Kuhn's analysis of the process and the structure of a paradigm shift has been applied to many fields other than science.²² Let us now examine the traditional adoption paradigm and analyze the need for change there.

III. THE ADOPTION PARADIGM

A. *Process, Parties and "Protections": The Traditional Paradigm*

Great secrecy and rigidity characterize the legal structure of adoption as embodied in traditional state statutes.²³ The birth mother signs a document in which she irrevocably and indefinitely severs her rights and responsibilities to the child. The adoption agency takes custody of the child and proceeds to place her with adoptive parents. When the adoption becomes final in court, usually after a probationary period of six months to a year,²⁴ the court seals the original birth certificate and adoption records and enters into the public record a new birth certificate, which contains the names of the adoptive parents.

Thereafter the sealed records may be opened only by court order, which in the majority of jurisdictions requires the petitioner to show "good cause."²⁵ Interpretations of the requirements for establishing good cause

22. Kuhn himself acknowledges the parallels between his scientific revolutions and political ones. He points out that "the sense of malfunction that can lead to crisis is prerequisite to revolution" in both spheres. *Id.* at 92.

23. Examples of traditional statutes are the adoption provisions in Georgia's law, GA. CODE ANN. § 19-8 (1982), and New York's Domestic Relations Law, N.Y. DOM. REL. LAW, §§ 109-117 (Consol. 1979 & Supp. 1989).

24. *See, e.g.*, DEL. CODE ANN. tit. 13, § 913 (Supp. 1988) (requiring one year residency); N.Y. DOM. REL. LAW § 112.6 (Consol. 1979) (six month residency with adoptive family required).

25. *See, e.g.*, GA. CODE ANN. § 19-8-18 (1982) (court order required); N.Y. DOM. REL. LAW § 114 (Consol. 1979 & Supp. 1989).

vary from state to state. In some states cause is shown with a demonstration of medical necessity. In others it has been sufficient to demonstrate a profound psychological need,²⁶ or, more loosely, the need to find a personal identity.²⁷ Some states dismiss an adoptee's expressed need to know about her background as "mere curiosity," and therefore as insufficient to establish good cause.²⁸ Most of the case law about adoption issues involves an adoptee's right of access to information about her birth family and the proper standard for judging good cause.

This case law states explicitly many of the assumptions about the members of the adoption triangle that are implicit in the traditional statutory schemes. The cases paint a fairly detailed portrait of the parties as they are perceived by judges, who then proceed to base their decisions on the interests they presume these parties to have. As a synthesis of legal standards and presumed interests, the case law reflects the paradigm of adoption and the traditional perceptions of adoption that at once support and are supported by the legal structure.

According to this paradigm, the birth parents are very young, and are unmarried (the baby, therefore, being "illegitimate").²⁹ The birth father is either not mentioned by the court or is assumed to be at least as unable or as unwilling as is the birth mother to provide for the child.³⁰ The teenage birth mother recognizes the limitations of her ability to raise this child, and the restrictions a child—particularly an illegitimate child—will place on her future. Longing to avoid the ignominy of having given birth to an "illegitimate" child, she signs away her rights, gives up her baby, and gets on with her life, free from the constant reminder and punishment of her indiscretion of having become pregnant outside of marriage. Sealed

26. See, e.g., *In re Hayden*, 106 Misc. 2d 849, 435 N.Y.S.2d 541 (Sup. Ct. 1981) (allegations of psychological harm and reasonable fear of being DES baby establish *prima facie* case that good cause exists); *In re Anonymous*, 92 Misc. 2d 224, 399 N.Y.S.2d 857 (Sup. Ct. 1977) (severe psychological disorder resulting from adoptee's lack of knowledge about his identity established good cause).

27. See, e.g., *Mills v. Atlantic City Dep't. of Vital Statistics*, 148 N.J. Super. 302, 319, 372 A.2d 646, 655 (Super. Ct. Ch. Div. 1977) (adult adoptee's need to know about heritage is more than "mere curiosity" and constitutes a showing of good cause).

28. See e.g., *Backes v. Catholic Family & Community Servs.*, 210 N.J. Super. 186, 205-06, 509 A.2d 283, 292-93 (Super. Ct. Ch. Div. 1985); *In re Linda F. M.*, 52 N.Y.2d 236, 240 (1978); *In re Assalone*, 512 A.2d 1383, 1388-89 (R.I. 1986); *Bradey v. Children's Bureau*, 275 S.C. 622, 628-29, 274 S.E.2d 418, 422 (1981).

29. *Mills*, 148 N.J. Super. at 307, 372 A.2d at 649.

30. *Id.* Statutes requiring the unmarried birth father's participation in the surrendering of parental rights are fairly recent, and most litigation has been under the old statutes.

records guarantee the privacy of her secret.³¹ In the language of a 1955 case:

[I]f [a birth mother] wishes to permit suitable, desirous and qualified persons to adopt the infant, her indiscretion will not be divulged. [The guarantee of sealed records] further assures her that the interests of the child will be protected in that no one will ever know by means of the adoption proceeding that the child is illegitimate.³²

The understanding is that the termination of the legal relationship between the birth mother and her child effectuates the end of any relationship between them. As one commentator explains it, "When the adoption is final, all relations between the biological parents and the child are severed forever."³³ Once these relations are severed, the birth mother is free to start a new life, in which she may or may not reveal the existence of her erstwhile child.³⁴ If the existence of this child is later disclosed to her family and friends, her new life may be destroyed.³⁵ Secrecy in adoption enables her to be free of the "apprehension that the past may come back to plague [her]."³⁶

In a recent New York case, a guardian ad litem was appointed to represent the interests of the birth parents in proceedings regarding an adoptee's petition for access to her records. The court then ordered, contrary to the recommendation of the guardian, that the guardian must necessarily oppose any petition to open the record, stating that "the continued anonymity of the natural parents is the underpinning of the statute and must be presumed to be the desire of the natural parents."³⁷ The court in *In re Assalone*³⁸ was presented with a request of an adoptee

31. *Id.*

32. *People v. Doe*, 138 N.Y.S.2d 307, 309 (Erie County Ct. 1955).

33. Note, *Violation or Need for Reform?*, *supra* note 13, at 575.

34. *Mills*, 148 N.J. Super. at 307, 320, 372 A.2d at 649, 655 (testimony of an adult adoptee whose birth mother had chosen not to tell her husband or her children from that marriage that she had surrendered a child for adoption).

35. See, e.g., *In re Maples*, 563 S.W.2d 760, 763 (Mo. 1978); *Mills*, 148 N.J. Super. at 320, 372 A.2d at 655-56 (testimony of Deputy Commissioner of Health regarding an adoptee who appeared on the doorstep of her birth mother who had never told her husband about the adoptee, and the resulting separation of the birth mother and her husband).

36. *In re Hayden*, 106 Misc. 2d 849, 850, 435 N.Y.S.2d 541, 542 (Sup. Ct. 1981).

37. *Hayden*, 106 Misc. 2d at 851-52, 435 N.Y.S.2d at 543.

38. 512 A.2d 1383 (R.I. 1986).

to open adoption records. It employed a four-part balancing test to weigh the interests of the parties. The only factor referring to the birth mother asserted that her interest was in avoiding being identified.³⁹ In short, within the traditional paradigm, the birth mother ends her relationship with her child when she signs the relinquishment papers, and from then on her interest is, in the words of Justice Brandeis, "to be let alone."⁴⁰

The secrecy of traditional adoption schemes also protects the integrity of the adoptive family from intrusion by a birth mother who may regret her decision to relinquish her child.⁴¹ The sealing of the adoption records and the issuance of the new birth certificate guarantee that the new adoptive family will look, as much as possible, like a family in which children and parents are biologically related. The adoptive parents' child is truly "theirs." There is no danger that the child's past life will intrude on her new one and disrupt the life of the adoptive family.

The adoptee's placement with the adoptive family and the sealing of the records free her forever from the stigma of illegitimacy that might attach to her if her origins should become known.⁴² She instead derives her identity from the parents named on her birth certificate, just as if she had actually been born to them. The birth certificate creates and maintains a fiction that the adoptive family is the only family she has ever had. The adopted child is thus made part of a "legitimate" family, i.e. a two-parent family, that can provide well for her and is free from the threat of intrusion.

39. *Id.* at 1386.

40. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), cited in *Mills* 148 N.J. Super. at 312, 372 A.2d at 651. Courts are beginning to refer to the possibility that some birth mothers may wish to renew contact with their adult children. In *In re Christine*, 121 R.I. 203, 397 A.2d 511 (1979), a petition by a birth mother for information about her eleven-year-old child, the court acknowledged the "tremendous compelling desire of any parent to know the whereabouts of his or her child," but nonetheless held that the adoption system is predicated on a guarantee of secrecy for all parties and that something more would have to be shown before the information would be released. 121 R.I. at 205, 397 A.2d at 514. See also *In re Assalone*, 512 A.2d at 1389-90 (court acknowledges that birth parents may want to renew contact, but concludes that statutory scheme guarantees their privacy and that absent legislative change, good cause must be shown before they will be contacted). These cases highlight the need for legislative reform in the adoption area, where judges feel constrained in proceeding counter to their understanding of the express and inferred intent of legislatures that passed traditional adoption statutes.

41. *Mills*, 148 N.J. Super. at 307, 372 A.2d at 649.

42. See, e.g., *Mills*, 148 N.J. Super. at 308, 372 A.2d at 649; *People v. Doe*, 138 N.Y.S.2d 307, 309 (Erie County Ct. 1955); *In re Christine*, 121 R.I. at 206, 397 A.2d at 513; *Bradey v. Children's Bureau*, 275 S.C. 622, 628, 274 S.E.2d 418, 422 (1981).

B. *Anomalies: Challenges to the Traditional Paradigm*

There is growing evidence that the traditional paradigm of the adoption triangle does not accurately portray the interests of the parties to adoption, and that laws reflecting that paradigm do not adequately protect the genuine interests of members of the adoption triangle. In the language of Kuhn, there is mounting evidence of anomalies, of instances where the traditional adoption paradigm would predict no problems in adjustment in the adoptive family situation, but the participants in the adoption are nonetheless speaking out about great pain and insecurity in their experience of adoption.

1. *Adoptees*

Because the ultimate objective in adoption has always been, at least explicitly, the best interests of the adopted child, it was perhaps necessary that the first serious challenge to adoption policies come from adoptees themselves. Since 1970 the adult adoptees' movement has challenged the judgments made on their behalf by legislators and judges.⁴³ Adoption advocacy groups have demonstrated the dilemma of the adult adoptee who is still treated as an adopted child, emphasizing that as adopted children grow up, their needs and abilities change.⁴⁴ While it is true that children may not know or be able to express what is in their best interests, the longstanding practice of adoption in this country has provided us with large numbers of former adopted children who are now mature, self-reflective adult adoptees. Surely these adult adoptees are in a better position than legislative and judicial decision-makers to identify the interests of adoptees, both as children and adults.

Adoptees claim, firstly, that there is little point to maintaining the fiction that adoptive families are identical to biological families. The experience of growing up in an adoptive family, while most often one that is very positive and full of love, is nonetheless different from the experience of someone growing up in her biological family; an adoptee's sense of identity is accordingly also different. Adoptees have repeatedly maintained that denial of the difference is futile and serves only to stifle

43. Howe, *supra* note 1, at 190.

44. Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, 21 CATH. LAW. 211, 217 n.38 (1975).

and frustrate a very natural desire to learn about one's physical, ethnic, and personal history.

There are many reasons that an adoptee may experience a need to know more about her biological family as she approaches adulthood. These may include medical needs, a religious identity crisis, fear of genetic diseases, search for a sense of identity, or a need to get beyond a block in emotional development.⁴⁵ Adoptees assert that they have the right to know their heritage, for these or many other reasons. Adoptee groups are unanimous in calling for the exchange of extensive background information, including complete medical histories, physical descriptions and social histories. Many also affirm the importance of access to a birth mother's own explanation of the reasons she surrendered the adoptee. Likewise, identifying information can be vital to an adult adoptee who experiences an intense desire or need to meet her birth mother or other members of her birth family.

There are now dozens of adoptee advocacy groups across the country.⁴⁶ Virtually all of them are working on a national or a local level for a legislative and judicial opening up of the adoption process. They are working for the relaxation or elimination of restrictions on information, both identifying and non-identifying, available to adoptees about their birth families, and for the demystification of the adoption process in general.

2. *Birth mothers*

The voices of birth mothers are beginning to make themselves heard in the debate over adoption law reform. Advocacy groups are becoming more interested, or at least more vocal in their interest in birth mothers. Researchers are also beginning to gather information about the experience of birth mothers.⁴⁷

The growing data concerning the experiences of birth mothers

45. O'Donnell, *supra* note 7, at 140, 143.

46. These groups include Origins, Alma Society (Adoptees' Liberty Movement Association), Operation Identity, Organized Adoption Search Information Services, Reunite, Inc., Right to Know, and the International Soundex Reunion Registry. 1 *ENCYCLOPEDIA OF ASSOCIATIONS*, 1101-05 (24th ed. 1990).

47. *THE ADOPTION TRIANGLE* by Arthur D. Sorosky, Annette Baran and Reuben Pannor, originally published in 1978 and reissued in 1984, is the first exhaustive analysis of the controversy over the sealing of adoption records that includes factual evidence regarding the experience and the interests of birth mothers. Australian Robin Winkler has also conducted research focused on birth mothers. Cited in *CONCERNED UNITED BIRTHPARENTS, THE BIRTHPARENTS' PERSPECTIVE ON ADOPTION* 5-6 (1987).

fundamentally challenges the wisdom of the traditional adoption paradigm. In fact, the voices of birth mothers who have joined in the public debate over adoption have been virtually unanimous in identifying the misperceptions concerning and the abuses of birth mothers in traditional adoptions.⁴⁸ Their experiences directly challenge two of the underlying bases of the traditional paradigm: the emphasis placed on the shame of illegitimacy as motivation for the birth mother's decision, and the serious misperception and trivialization of the impact on the birth mother of "giving away" her child.

a. Illegitimacy as Motivation in a Birth Mother's Decision

Traditionally, the concept of illegitimacy has dominated the adoption debate in a way that is largely out of proportion to its actual, or proper, importance. Legal rules assume that the best interests of the child require completely burying any indication that she is "illegitimate," and that a birth mother who surrenders her child is principally motivated by the shame and fear of public exposure as the mother of an "illegitimate" child. In *In Re Adoption of Female Infant*,⁴⁹ for example, the judge explains the District of Columbia statute sealing adoption records as being designed primarily to protect the adoptee from the stigma of illegitimacy, and secondarily to protect the adoptive parents from this stigma and to insure the privacy of the birth parents (presumably to protect them from public knowledge of the birth of an "illegitimate" child). This single-minded analysis predictably leads to the conclusion that all the parties are primarily interested in privacy after the adoption.⁵⁰

As we have seen, adoptees have for some time been challenging this assessment of their interests. Now as birth mothers begin to speak out, on their own and in response to researchers' questions, their testimony reveals that the birth mother's decision is far more complex than this analysis implies and is in fact very often based on considerations other than illegitimacy. The reasons for choosing adoption include any number of

48. While there is some danger in presuming to speak for the thousands of birth mothers who have remained silent in the adoption debate, the overwhelming unanimity of experience among those birth mothers who have spoken up suggests that those birth mothers who have been silent, for whatever reason, would raise similar grievances with the adoption process.

49. 107 DAILY WASH. L. REP. 337 (1979); see also Greismann, *The Adoptee's Right To Know: In re Adoption of a Female Infant*, 1 ANTIOCH L.J. 107, 108 (1981).

50. See articles cited *supra* notes 12-13.

reasons why a woman might feel incapable of raising a child: economic hardship, the birth mother's self-acknowledged lack of maturity, family pressure, lack of an adequate emotional support system, the prospect of being trapped by a baby in the cycle of poverty, or fear of becoming more deeply entangled in a destructive relationship with the baby's father. The reasons are as varied as the lives of the women making the decision. The fear of losing a good reputation is only one factor, often a very minor one, in the birth mother's difficult decision.

It is also important to remember that the severe stigma that has been attached to motherhood outside of marriage is far from universally applicable in today's society. Large and increasing numbers of women, including many prominent and well-educated women, are having children without being married and are making no attempt to hide the fact. While the stigmatizing power of illegitimacy continues in mainstream American society, that power is undoubtedly weakening. In light of this fact, and especially in light of the testimony of birth mothers regarding the relative unimportance of illegitimacy in their decisions, the central place of this consideration in our adoption law must be reconsidered.

b. *A Birth Mother's Grief*

The other glaring discrepancy between public images of the adoption triangle and the reality is the lack of recognition of the loss and grief experienced by a birth mother upon surrendering her child. This grief is the theme most often and most eloquently expressed by birth mothers in speaking about adoption. The loss of a child through adoption has been likened to losing a child to death; and many birth mothers see this loss as the most traumatic experience of their lives, even years after the adoption.⁵¹ The grief of adoption may in some cases be deeper than the grief of death because the birth mother knows that it is less final. Knowing that the child is still alive, the birth mother may wonder where she is, what she is like, whether she is happy and healthy, or whether she will ever try to contact her birth mother.⁵² A birth mother must also struggle with the knowledge that she signed the papers that irrevocably separated her from

51. BIRTHPARENTS' PERSPECTIVE, *supra* note 45, at 5-6.

52. A. SOROSKY, A. BARAN & R. PANNOR, THE ADOPTION TRIANGLE 52 (1984).

her child and that her pain is in some sense self-inflicted.⁵³

Birth mothers are also anxious to disabuse society (especially lawmakers) of the notion that birth mothers forget about their children and start new lives in which they do not wish to be disturbed with past sins. In fact, the greatest concern of many birth mothers is that their children will never forgive them for having abandoned them.⁵⁴ We certainly do not forget about the children to whom we have given birth. Different people react differently in times of grief. Some work through their grief by talking about the person they have lost; some work through it by painting, singing, or writing poetry, whether privately or in public; some have to separate themselves from or deny their loss in an effort to go on with their lives. No one *forgets* the loss of a loved one. Birth mothers are no different in this respect from anyone else. Some will want to talk about their grief; others will want to separate themselves from it. We each mourn our loss in our own way, and we do go on with our lives. But we do not start "new" lives; our loss will always be a part of us.⁵⁵

The same research that has revealed the depth of a birth mother's pain has shown that this pain does not go away. For many the pain only intensifies over the years.⁵⁶ Birth mothers testify eloquently to loss remembered over many years.⁵⁷ An "overwhelming majority" of the birth mothers interviewed in one study wanted to know what kind of people their children turned out to be.⁵⁸ Eighty-two percent of those interviewed said they would be amenable to a reunion if the adoptee, having reached adulthood, desired it.⁵⁹

Assumptions that birth mothers wish only to forget their children, that they do forget them, and that they necessarily wish to separate themselves forever from them are profoundly mistaken. These assumptions, held by many people and incorporated into legislative and judicial practice, cause much pain and frustration for birth mothers, who consequently find very little understanding or help in dealing with the after effects of adoption. These same assumptions often contribute to uncertainty among adoptees,

53. See, e.g., *id.* at 56 ("As far as demanding [my daughter] back, I forfeited that right the morning I signed those papers."); *id.* at 66 ("My regrets and miseries are my own, and I have no right to interfere with my child's life. I gave him up forever . . .").

54. *Id.* at 49.

55. See CONCERNED UNITED BIRTHPARENTS, UNDERSTANDING BIRTHPARENTS.

56. CONCERNED UNITED BIRTHPARENTS, *supra* note 47, at 5-6.

57. A. SOROSKY, A. BARAN & R. PANNOR, *supra* note 52, at 55-72.

58. *Id.* at 53.

59. *Id.* at 52-53.

and encourage the fears that they were given away by their mothers because the latter simply did not love them enough to keep them. In this way, these invidious misconceptions are damaging both to birth mothers and to adoptees.

3. *Adoptive families*

It has been argued, persuasively I think, that traditional adoption schemes developed largely in response to the expressed needs and fears of adoptive parents.⁶⁰ The strict secrecy surrounding adoption proceedings protects the adoptive parents from any threat of intervention by a child's birth family. The issuance of an amended birth certificate when the adoption is final ensures that the adopted child will truly belong to the adoptive parents, and that their family will be just like a biologically related family. We have seen how this system promotes insecurity and pain in many adoptees and birth mothers. The same may be said for many adoptive parents.

Traditionally, many adoptive parents have felt anxious to deny any difference between adoptive and biological families and to maintain the strictest control over any access to information about the adoption. The lack of a widespread movement for change among adoptive parents, given the growing movements among the other members of the adoption triangle, could lead to the conclusion that the secrecy and the fiction created by the amended birth certificate at least serve a genuine interest of security among adoptive parents. Research and experience nonetheless reveal widespread insecurity among adoptive parents that is unexplained within the traditional adoption paradigm. Attempts to insure the integrity of the adoptive family by insisting that the adoptive family is just like a biological family, and attempts to hide any contrary evidence, have by and large failed.

Almost all adoptees eventually discover that they are adopted, either from their parents or from some other party. Interestingly, many of the adoptees who find out only in later years that they were adopted said that they had strongly suspected it for quite a while.⁶¹ People who know that

60. See Note, *Best of Both*, *supra* note 13, at 292-93. The argument is particularly persuasive in the context of independent, non-agency adoption. See Howe, *supra* note 2, at 179-81.

61. A. SOROSKY, A. BARAN & R. PANNOR, *supra* note 52, at 89 ("[When I discovered by accident that I was adopted I] at last understood some of my own unhappiness and feelings of not belonging."); *id.* at 90 ("I had always felt that I didn't belong, and knowing of the adoption justified these feelings";

they are adopted are well aware of the difference between themselves and those who know their birth parents. The biological connection between the adoptee and her birth parents cannot be broken by the reissuance of a birth certificate. Even if an adoptee never meets her birth parents, they are a part of who she is (as she is a part of who they are). They are a part of her history and her identity. Adoptees know this. Their difference from biologically related daughters and sons is the source of the struggle that many adoptees face in finding an identity, a sense of self.⁶²

Michael Bohman found that adoptive parents immediately reacted to a question about the difference between adoptive and non-adoptive families by insisting that there was "no difference" between themselves and "ordinary" parents. However, contrary feelings were subsequently expressed subconsciously throughout the interviews, leading Bohman to conclude that the initial reaction sprang, not from confidence about their response to the question, but from "general uncertainty about the role of parent."⁶³ Despite conscious insistence (and perhaps belief) that there is no difference, adoptive parents recognize on some level that their family is not like all others.

It is clear that simple insistence on the lack of difference between adoptive and biologically related families does not eradicate that difference in the subconscious (or conscious) minds of either adoptees or adoptive parents. Bohman concluded that the tendency among adoptive parents to be overprotective of their children, and to deny problems the children may have in their adjustment to school or their peers is a result of adoptive parents' insecurity about their parental position.⁶⁴ An adequate adoption system must address this insecurity.

IV. A PARADIGM SHIFT AND NEW QUESTIONS

The growing protest among members of the adoption triangle, when combined with research results, constitutes mounting evidence of anomalies in the traditional adoption system, of instances where the system has failed to serve the needs of those whom it purports to benefit. Adoptees repeatedly assert that they have deep needs which are unaddressed by

"Francine always felt she must be adopted . . .").

62. This contention is perhaps the mainstay of the adoptees' movement and is now widely accepted as true. See, e.g., *id.* at 110, 113.

63. M. BOHMAN, *ADOPTED CHILDREN AND THEIR FAMILIES* 208 (1970).

64. *Id.* at 206, 208.

traditional adoption schemes. Emerging awareness of the experiences of birth mothers challenges virtually every assumption of the traditional paradigm about birth mothers' experiences and wishes. Research also backs up claims that traditional systems and attitudes breed uncertainty and insecurity among adoptive parents. The limits of the traditional paradigm of adoption are becoming increasingly evident as members of the adoption triangle become more vocal and researchers continue to study the effects of adoption. The legal system, established and justified within the old paradigm, is now being revealed not only as unhelpful, but also as actively damaging in many ways to adoption participants. We need a completely new way of looking at the realities of adoption.

Fortunately, we are not without guidance as to the content of a new paradigm. In fact, many adoption advocacy groups have been working for years to educate judges, legislators, and the public at large about the way adoption is actually experienced, and how that differs from the traditional conception. Researchers have studied and warned us about some of the adverse effects of traditional adoption. Most recently, the voice of birth mothers, growing in strength and in number, has begun to add to the discussion a description of their experience of adoption as well as their visions for its future. All of these voices and, fortunately, recent adoption laws in some states (and some other countries), reflect a paradigm very different from the one that has held sway in the United States throughout this century.

This new paradigm of adoption will recognize adoption as a positive solution to a difficult situation for the birth mother, the child and the adoptive parents. The choice to surrender a child for adoption will be seen as an appropriate option for those birth mothers who are unable, for whatever reasons, to raise their children. The depth of the birth mother's relationship with her child will be recognized, as well as her pain and grief at the surrender of the child. Adoptees will have some idea of the struggle involved in such a course of action for a birth mother, and will presumably suffer less from fears that their birth mothers gave them away because they did not love them enough to keep them. They will know that there must have been a very good reason for their adoption. The ongoing post-adoption interest and concern of birth mothers for their children will be acknowledged. The differences between an adoptive and a biological family will be recognized openly, in a way that both acknowledges the importance of an adoptee's tie to her biological family and allows adoptive parents to

feel secure in their position as parents.

In short, the shroud of secrecy will be lifted from the adoption process. The interests of the members of the adoption triangle will be more properly understood, and the system will respond to those interests. Adoption will be seen as a positive, empowering choice for a woman who cannot raise her own child, and as an accepted means of building a family for adoptive parents.

A new paradigm, however, does not simply answer all of our questions about adoption. Rather, by revolutionizing the way we conceptualize a problem, it allows us to formulate new and different questions (sometimes very central ones) that would have been nonsensical or impossible under the old paradigm. Fleshing out the new paradigm requires the posing and answering of these questions. Some of them are not new; however, under the new paradigm, it is possible to address them in a meaningful way for the first time. Legislators, judges, and agency personnel must take on these issues and must define both the practical implications and the outer limits of the new paradigm.

Such new questions include the proper role of considerations of illegitimacy in policy decisions; the practicalities and implications of acknowledging difference between adoptive and biologically related families; the debate over the sealing of adoption records; the extent of appropriate involvement of birth mothers in the selection of and contact with an adoptive family (before and/or after the adoptee's age of majority); and the counselling, support groups, and other services (e.g., financial assistance) that should be mandated for the birth mother and the adoptive parents before, during, and after the decision for adoption and the adoption itself. There are surely many other questions which will only arise as the new adoption develops in the context of our society. I will briefly address a few of these questions here, by way of suggesting some of the implications of the new paradigm on our adoption systems.

A. Illegitimacy and the adoption process

As we have seen, the issue of illegitimacy currently dominates the adoption debate far more than is explained by the stated concerns of adoptees, adoptive parents or birth mothers. In reassessing the primacy given to illegitimacy in traditional thinking about adoption, it is essential to ask ourselves how it has come to dominate adoption policy, what the effects of its domination are, and whether we wish to reinforce it with legal

supports in our statutes and case law.

The roots of the stigma of illegitimacy are found in the age-old attempt to control the sexual and reproductive power of women. Male-dominated societies have set strict limits within which it is proper for women to be sexually active and to reproduce, thus allowing men effectively to control and maintain power over women and children. One such control has been the social and legal requirement that a child be connected with a man, through the legal marriage of the child's mother to the man, in order to be "legitimate." On the determination of legitimacy has hung such direct economic consequences as the child's right to support and inheritance from the father. The severity of the social stigma associated with birth outside of marriage is in rough proportion to the horrified reaction of the gendered power structure to women reproducing in a way that does not serve its own purposes.

The focus on a birth mother's shame as the principal factor in her decision-making about and experience of adoption is more a product of this patriarchal horror at women's sexual freedom than it is a reflection of the experience of either birth mothers or adoptees. Discussions about policies for the adoption triangle must dismantle the dominance given to considerations of illegitimacy, both because its relative importance in birth mothers' decision-making has never warranted that dominance, and because the very notion of illegitimacy is rooted in sexism.

An important part of this dismantling must be a change in the language, the terminology of "illegitimacy" that surrounds adoption. Changing the language of our statutes and judicial opinions may seem a small thing, but not if we keep in mind that language affects not only the way that we express our ideas, but our very ideas and understandings themselves. Labeling a child "illegitimate" implies that the child's very existence is somehow both illicit and inconsequential. This language also denies the reality of the rich relationship between a mother and her child, and implies that such a relationship cannot constitute a true family.

Changing popular use of a word or expression is of course not something that can simply be legislated. However, courts, legislatures and agencies (the principal structural actors in the adoption scheme) can begin to move toward positive language. Given the symbiotic relationship between law and societal attitudes, such positive language will eventually affect the very way that we think about these families.

Some states already forbid the use of the terminology of illegitimacy

in any adoption records.⁶⁵ The stated reason for this is to maintain confidentiality (i.e., to avoid tainting the adoptee with illegitimacy's stigma). While this justification is a product of the same attitudes that we seek to eradicate, banning the terminology of illegitimacy in adoption may force us to focus on other factors in the adoption experience that appropriately demand our attention.

The language of illegitimacy in adoption must also be avoided because it can serve to create a strong moral presumption that the right thing for an unmarried mother to do is to surrender her child to a married couple who can thereby "legitimate" the child and give the child's life full meaning and potential. The pressure put on unmarried women to surrender their babies is one of the main themes of Concerned United Birthparents, an advocacy group for women and men who have surrendered children for adoption.⁶⁶ A model of adoption that magnifies the specter of illegitimacy in the lives of the child and her mother places undue pressure on a birth mother, who is already in a very vulnerable position. In addition, by exaggerating a birth mother's desire to protect her reputation and retain anonymity, such a model trivializes both the close relationship of the mother with her newborn child, and the complex nature of the birth mother's difficult moral decision.

B. *The Sealed Records Controversy*

The debate over whether to open sealed adoption records to adult adoptees upon request has become the focal point for most discussions of adoption policy. The issue provides a perfect example of the positive implications of a shift in adoption paradigms. It represents an ideal opportunity for lawmakers, judges and agencies to begin to listen and respond to the emerging voices of adoptees and birth mothers.

States that have addressed the records question commonly require or encourage the collection and release of extensive non-identifying information about the birth parents.⁶⁷ This information can cover such areas as cultural heritage, religion, education, and a detailed medical history of the birth parents. It can be gathered at the time of the adoption, and many

65. See, e.g., ILL. ANN. STAT. ch. 40, para. 1522 (Smith-Hurd 1936).

66. See, e.g., Anderson, Campbell & Cohen, *Adoption Abuse*, WOMENWISE, Fall 1982, at 6.

67. Howe, *supra* note 2, at 191. See, e.g., CONN. GEN. STAT. § 45-68e (1985), which provides a detailed list of non-identifying information about the birth parents to be recorded.

states permit the birth parents to update or augment it at any time.⁶⁸ Thus the adoptee has access to important information, without infringing upon the privacy of the birth mother. Access to this information often satisfies an adoptee's need to know about her biological roots.⁶⁹

An understanding of the birth mother's experience in the adoption process makes it clear that she may also want information about her child as time passes. A similar file of non-identifying information about the adoptee should be made available to her. Like the birth mother's file, the adoptee's file should be updated and augmented at the discretion of the adoptee and/or the adoptive parents, depending on the adoptee's age.

Some adoption agencies have begun to keep such files for birth mothers and adoptees. Such record-keeping should be mandated by statute. The information gathered prior to and as part of the filing of adoption proceedings is crucial, and provides an opportunity for the state to standardize the kind and amount of information to be gathered from birth parents. Many states now require that rather extensive medical histories be filled out for each of the birth parents.⁷⁰ They should have comparable forms eliciting other information that is also of interest to many adoptees (physical appearance, interests, religion, family situation, and reasons for the adoption).⁷¹ The agency may also wish to send the birth parents and the adoptive parents a form or a request for updated information every five years or so.

Of course there is no guarantee that the forms will be carefully filled out. Of necessity there must be a "Not known" response available for many of the questions, and the thoroughness of the information will depend largely on the importance attributed to it by the agency representative who explains and presents the forms to the birth parent and the adoptive

68. See, e.g., CONN. GEN. STAT. § 45-68e (1985).

69. O'Donnell, *supra* note 7, at 143-44 (citing TRISELIOTIS, IN SEARCH OF ORIGINS: THE EXPERIENCE OF ADOPTED PEOPLE (1973)).

70. Connecticut's form CYS-338 is an example of such a medical history form. It is four pages long and asks detailed questions for any family history of 34 specific medical conditions, from a club foot to allergies to alcoholism or drug abuse. It also has several more general questions to elicit information on any conditions that are not specifically mentioned on the form. In addition, one section addresses the birth mother's menstrual and pregnancy history, and a more detailed section asks for information about the pregnancy and birth of the child being surrendered for adoption. For older children, there are questions about the child's medical history, including immunizations and the age at which she started walking.

71. Connecticut has a brief form, CYS-337, for such information. It is much less thorough than CYS-338, the medical history, see *supra* note 70, and should be expanded to encourage the exchange of extensive social and personal information.

parents. Nonetheless, the existence of such forms and the comprehensiveness of their questions will encourage the exchange of vital information. Recognizing how important the biological tie is to adoptees and birth mothers, and how helpful information can be, the provision of extensive non-identifying information is a logical, non-threatening step toward providing for the needs of these two groups. There is little justification for withholding or failing to collect this information.

Many adoptees, however, want access to information that will identify their birth parents. Traditionally such information was unavailable to adoptees, except upon a showing of good cause why it should be made available. Some states, however, have begun to reconsider this policy. Idaho, Alabama and Kansas have made the information available upon the simple request of the adult adoptee, with no consent of the birth parent required.⁷² A New Jersey case, *Mills v. Atlantic City Department of Vital Statistics*,⁷³ suggests that the burden to show good cause should shift from the adoptee to the state when the adoptee attains majority, the state thus being required to show good cause why an adoptee should not be granted access to her files. This would apply both prospectively and retrospectively.

Viewed within a new paradigm of adoption, such solutions are clearly appropriate where the birth parents know at the time of the adoption that the information will be available to the adult adoptee upon request, and where they have an opportunity to affirmatively request that the information not be released. Adoption advocacy groups have long been pressing for this kind of information exchange, and research indicates that openness about adoption will create an atmosphere that will benefit those involved, whether or not adoptees return to search for their birth parents.⁷⁴ Moreover, I believe there would be little decrease in the number of babies relinquished for adoption because of the availability of this information. The states that have such policies have seen no greater decrease in the number of adoptions than have other states.⁷⁵

There are difficulties, however, in opening records where the birth

72. Comment, *Severed Roots*, *supra* note 13, at 104 n.10.

73. 148 N.J. Super. 302, 372 A.2d 646, 654 (Super. Ct. Ch. Div. 1977).

74. See, e.g., O'Donnell, *supra* note 7, at 144 (citing evidence that adoptee's search for birth parents often improves her relationship with adoptive parents); Bohman, *supra* note 63, at 206, 209 (openness about special circumstances of adoptive families can lead to greater ease within relationships and fewer problems due to maladjustment).

75. Note, *Violation or Need for Reform?*, *supra* note 13, at 580.

mother at the time of the adoption decision expected the records to be sealed. Simply opening the records years later does nothing to protect the interest of those birth mothers who expect and genuinely wish to avoid further contact with their children. In such cases, the resulting reunions can prove disastrous for both the birth mother and the adoptee.⁷⁶ Clearly, some provision must be made for those birth mothers who wish to be left alone.

Some state legislatures have followed the lead of many adoptee advocacy groups and have established mutual consent registries, where adoptees and birth parents can register their consent to the release of identifying information about themselves to the other party. This process does not recognize an unconditional right of the adoptee to identifying information, but seeks a balance between what may be conflicting desires of the adoptee and the birth mother. It facilitates contact between two willing parties, and at the same time does not invade the privacy of those parties who are opposed to a reunion. In this sense the mutual consent registry may be the most satisfactory compromise in the debate over an adoptee's right of access to information surrounding her birth.

The major flaw of such a scheme, of course, is that it cannot function unless it is convenient and financially accessible, and unless birth parents and adoptees alike know of its existence. Massive initial publicity campaigns are required to make it effective in the case of adoptions that have already occurred. Once a mutual consent registry is implemented, birth parents and adoptive parents can be notified of it at the time of the adoption proceedings.

Legislatures should establish state-sponsored mutual consent registries to give out identifying information. For adoptions that occurred prior to the establishment of the registry, the presumption should be that the birth parents do not wish to be contacted unless they file their consent with the registry. Prospectively from the establishment of the registry, however, the presumption should be reversed. At the time of the adoption, agency officials should explain to the birth mother, and the birth father if he participates, that if they wish to have their identifying information withheld, they must file a statement to that effect with the registry. This presumption in favor of releasing information would be a response to the understanding that in general, unless a participant requests otherwise, the

76. See *supra* note 35.

members of the adoption triangle are better served by the open exchange of information than by its withholding.

When a request for identifying information is made by either party, the agency should immediately notify the non-requesting party of the request and ensure that that party's earlier consent is still valid. If the agency is unable to locate the non-requesting party, the consent should be presumed to continue.⁷⁷

Finally, a significant campaign must be mounted to educate the public about the existence of the registry. If its existence is not common public knowledge, the program will have little effect on adoptions that occurred prior to its establishment. Extensive publicity must be an integral part of the foundation of a mutual consent registry.

The registry, if properly publicized and accessible, should eventually become the predominant vehicle for information sharing between adoptees and birth parents. Because the presumption is that access to identifying information should be granted, this information will only be withheld in those cases where the birth parents specifically request it. In those cases the good cause standard (requiring a showing of medical or other necessity) will be appropriate in determining whether the adoptee's need for the information is important enough to override the birth parents' expressed interest in retaining anonymity.

In the meantime, given the lack of awareness about registries and the prevailing negative attitude in agencies and courts toward granting adoptees access to identifying information, the good cause standard is too restrictive to serve the interests of participants in adoptions. Agencies and courts have frustrated access to adoption information for so long that many members of adoption triangles now believe that they have no way of obtaining such information or of allowing it to be released. Something more than the mere establishment of a registry is now required to facilitate the passage of information between willing parties.

Connecticut's response has been a comprehensive law detailing a procedure in which adoption agencies, when asked for identifying information, are required to spend at least six hours searching for the birth

77. It is possible that in some cases one birth parent may consent to the release and the other may refuse. In such cases it seems that the agency should inform both the adoptee and the consenting birth parent of the other's refusal and should release information only about the consenting birth parent. Although this procedure provides no absolute guarantees for the refusing birth parent (because the consenting birth parent could give the adoptee the information), it seems that the warning to both the adoptee and the consenting birth parent would counterbalance the danger that identifying information about the non-consenting birth parent would be revealed to the adoptee.

parents in order to obtain their written consent to divulge the information.⁷⁸ Contact with the birth parent is initially made by an employee of the agency, which gives the birth parent an opportunity to refuse the release of the information if she wishes. It can be argued that this contact is in itself an invasion of the birth parent's life, but agency workers involved in the reunion process see the Connecticut statute, in place since 1977, as an effective solution to a difficult problem.⁷⁹

C. Conceptions of Family

As we have seen, the current statutory model of adoption is misguided in its attempt to portray the adoptive relationship as the identical equivalent of the biological family. In fact the experience of being raised in an adoptive family is different from that of being raised in a biological family, despite any attempts that may be made to deny or hide that difference. The manner in which parents are able to handle this difference has tremendous implications for the dynamic of the adoptive family and, ultimately, for the well-being of the adoptee as a child and as an adult.⁸⁰ A new paradigm of adoption allows us to examine the dissimilarity honestly and see what implications for policy flow from it.

Adoptive and biological families differ in that in the former there is no biological tie between parents and child(ren). As we have seen, a biological tie provides a connection for an adoptee to a past, to a personal and family history, to a context for her physical characteristics, and to an ethnic culture. Lacking the opportunity to recognize aspects of herself in her genetic family and culture, an adoptee often suffers from difficulty in forming a secure sense of identity. The adoptive parents, for their part, often feel a certain insecurity in their role as parents, because they lack this biological link with their children.

At the same time, adoptive parents are very much "real" parents to their children. They are the ones who stay up nights with their children when they are sick, who share the triumphs and the tragedies and the

78. CONN. GEN. STAT. §§ 45-68i to -68l (1985).

79. Interview with Marie Varrone, A.C.S.W., Coordinator of Adoption Services at Catholic Charities/Catholic Family Services, New Haven, CT (Mar. 25, 1988).

80. See M. BOHMAN, *supra* note 63, at 202, 206. Bohman finds it a "reasonable assumption" that much of the maladjustment he found among the adopted children could be explained by the difficulty experienced by the adoptive parents in accepting the adoptive relationship.

thousands of uneventful days. It is they who shape their children's world with their love, their discipline, and their way of life. Adoptees know this. They recognize the fact that they have dual families, both of which are important in different ways. Even those adult adoptees who search for their birth families know that their desire to know their biological roots does not in any way challenge the integrity of their adoptive families or imply that their adoptive parents are not their "real" parents. In fact, an adoptee's search for her birth parents often improves her relationship with her adoptive parents⁸¹ by replacing the vague, mythical presence of "other" parents with the reality of the flesh-and-blood birth parents. This serves to clarify the role of the adoptive parents and to emphasize the tremendous importance they have had in the adoptee's life.

In the same way, societal and structural acknowledgement of the fact that adoptive families differ from biologically related families will not undermine the position of adoptive parents. It will ground their position, not in a fiction based on a birth certificate, but in the reality of their relationship as primary care providers and psychological parents⁸² to their children. Emphasizing the true basis of the parental relationship will actually ease the anxiety of many adoptive parents, who can be confident in their role as parents without trying to live up to biologically related parents.⁸³ A deeper sense of security in the adoptive family is surely in the best interests of the child, as well as of the parents.

The new paradigm of adoption must recognize and value both of the adoptee's families, and must balance the importance of the respective roles of biology and of nurturing in her life.⁸⁴ The structures of adoption must find a more adequate way to accommodate the complementarity of adoptive

81. O'Donnell, *supra* note 7, at 144-45.

82. J. GOLDSTEIN, A. FREUD & A. SOLNITZ, in *BEYOND THE BEST INTERESTS OF THE CHILD* 17-20 (1979), use the term "psychological parent" to refer to that person or those people with whom the child has formed a parent-child relationship. This person is truly a parent to the child, and a biological connection is irrelevant to becoming a psychological parent.

83. A. SOROSKY, A. BARAN & R. PANNOR, *supra* note 52, at 77.

84. The social construction of parenthood is a question that also has profound implications in the face of reproductive technologies such as artificial insemination and "surrogacy." The struggle to make analogies between these new forms of parenthood and traditional ones has served mainly to emphasize the differences and to stir up confusion in arguments about the rights of the parties in countless situations. As a society, we clearly need a new paradigm of parenthood that balances biological and social relationships in a variety of reproductive configurations. In the process of balancing, it is essential to remember that by the time a baby is born, her mother has already established not only a biological, but also an intense physical and emotional relationship with her. The "surrogacy" industry is able to operate only by denying the reality, the intensity, and the value of that relationship. It is only thus that brokers are able to call the baby's biological and birth mother a "surrogate."

and birth families. As discussed in the previous section, the state can move toward this goal by being sensitive and open to adult adoptees' requests for information about their birth families.

Another step could be a move away from the reissuance of birth certificates that list the adoptive parents as the adoptee's only parents. While the adoptee must have some form of identification while she is a minor, given the history of the legal system's attitudes towards birth families, the reissuance of birth certificates reeks of an attempt to deny the existence of the birth parents. Perhaps instead the state could issue a certificate of adoption which would serve the purposes of a birth certificate, but would reflect the reality of the adoption instead of a fiction about the adoptee's birth.

There are, in addition to a different basis for parent-child relationships, also important differences in the processes that bring parenthood to adoptive and biological parents. Adoptive parents have most often experienced a protracted process of discovering and confirming their inability to conceive a child. The process is usually long and very painful for the couple, who often find it extremely difficult to come to grips emotionally with their infertility. Bohman found that years after the adoption, many adoptive parents were not yet reconciled to their biological childlessness and were still "highly concerned" with the issue of infertility.⁸⁵ In addition, adoptive parents do not have the predictable nine months of pregnancy to prepare physically and psychologically for the arrival of their baby, and often miss out on the first few weeks of contact with her. The story of her arrival into their family is very different from that of a simple birth into a family. The unusualness of adoptive parenthood leaves adoptive parents with what Bohman calls a "role handicap," with which they must learn to cope.⁸⁶

In addition to dealing with their own attitudes, adoptive families also must cope with societal attitudes towards adoption, infertility and illegitimacy. This is a burden that is not shared by families whose children are born to them. The adjustment of the family can be either greatly aided or greatly hindered by the reactions of family, friends, and neighbors.

The characteristics that make the adoptive family unique are the same factors that place added stress on the family. Part of a response to the

85. M. BOHMAN, *supra* note 63, at 207.

86. *Id.* at 28.

uniqueness of the adoptive situation must be the establishment and maintenance of a comprehensive network of training and support for the families before and after the adoption. Pre-adoption training should include thorough discussion of issues of infertility and of the experience of becoming adoptive parents. It should provide a forum for exploration of the implications of the lack of a biological relationship between parents and children, of the experiences of birth mothers and fathers, of the need for frankness about adoption, of many adoptive parents' fear that someone will come and take their child from them, as well as practical advice in adjusting to life with a new baby. The training should address all the gaps left by our society's lack of role models for adoptive parents, and should be run by teams of (or at least include the active participation of) experienced adoptive parents, birth parents, and adult adoptees. It could be funded and run through a combination of state and agency money and efforts.

Support groups for adoptive parents are also needed once the adoption is final and they are no longer in active contact with the adoption agency. Parents can begin to shape their roles and their identity as adoptive parents by drawing on the shared wisdom and support of other people who have been through or who are going through the difficult and the joyous times of life in an adoptive family. Some agency adoption workers believe that the promotion of these support groups is one of the greatest needs of adoptive families. States should not only urge adoptive families to participate in such groups, but should organize and fund them wherever possible. At the very least they should provide a list of all adoption support groups in the family's area, as well as any other support services available to the family.

D. Protections and Services for Birth Mothers

The new adoption paradigm highlights specific and important needs of birth mothers that must be addressed by adoption laws and agency policies. The clearest need is for extensive counseling and support services before, during and after the adoption. Statutes should mandate that these services be provided at the expense of the adoption agency or the state department of child services, and that they be provided in both private and agency

adoptions.⁸⁷ In initial counseling, the pregnant woman or the mother of a child already born must be encouraged to explore her motivations in considering adoption and the other options that are available to her. If the agency worker providing the counseling has doubts about the expectant mother's ability to comprehend or cope emotionally with the ramifications of relinquishing her child, she should be willing to refer her to a professional counselor at agency or state expense.

If financial worries or the lack of a place to live are the primary motivations for adoption, then all attempts should be made to provide assistance in finding a job, or a place to live, or whatever will meet the mother's specific need. Good pre-adoption counseling will weed out many of the women who first seek information about adoption. The coordinator of adoptive services at one agency estimated that about one-third of the birth mothers that come to them actually go through with adoption plans.⁸⁸ Good counseling will help to insure that the birth mothers who do choose adoption will do so as freely as possible, and only when it clearly appears to be the best course of action.

Another safeguard against coercion for the birth mother is a required waiting period before a mother can surrender her rights to a newborn. Most states require a minimum of two or three days after the birth of a child before the mother may sign relinquishment papers.⁸⁹ Some agencies, however, believe that even a few days is not enough time for birth mothers to be ready to make such a final decision, and they therefore routinely give them two to three weeks, and will give them up to three months if necessary.⁹⁰ In addition, a birth parent usually has a legal right to revoke her decision within thirty days after the papers are signed.⁹¹ These time requirements, which are vital to the protection of birth mothers, nevertheless directly conflict with the desire of all the parties that the baby be

87. Private adoptions raise a series of important questions in the new paradigm that I cannot adequately address here. Suffice it to say that I believe that the protection of birth mothers from coercion and exploitation, and of children from grossly inappropriate homes, demands that established adoption agencies and the state supervise certain aspects of private adoptions, and that services such as counseling be provided. Connecticut's Identified Adoption Act outlines one such scheme of basic state regulation of private adoptions.

88. Interview with Marie Varrone, *supra* note 79.

89. See, e.g., CONN. GEN. STAT. § 45-61c(d) (1985) (prohibits a mother's signing termination papers within 48 hours of the birth of her child).

90. Interview with Marie Varrone, *supra* note 79.

91. See, e.g., N.Y. DOM. REL. LAW § 112.3(4) (Consol. 1979 & Supp. 1989) (relinquishing parent has thirty days to revoke decision).

placed with the adoptive family as quickly as possible to allow early and secure bonding between parents and child. Agencies must work to balance these opposing considerations without compromising the protections due the birth mother. Many do this by seeking adoptive parents who will accept the risk involved in taking a baby during the first month, when the birth mother's relinquishment is not yet legally final.⁹²

It is also important for birth mothers to be able to participate in the choice of adoptive parents and in the child's transition to the new family. Although agencies retain the ultimate decision-making authority, many ask for the guidance of birth mothers in choosing adoptive families. Birth mothers can specify their preference for a particular ethnic or religious background, a two-parent home, a couple that has been married a long time, a family with other children, or any other family characteristics that may be important to them. They are then shown a profile of the prospective adoptive family, and can approve or disapprove the match.⁹³ This participation is particularly important because most birth mothers choose adoption believing that the adoptive family will be able to provide the child with those things that they wish they could provide, but cannot.

Many agencies also now encourage birth mothers to send a gift and/or a letter with the child to her adoptive home. Some also encourage the adoptive parents to write to the birth mother. This exchange helps to bring understanding and to provide closure for both adoptive parents and birth mothers to the child's transition.⁹⁴ It also provides a connection with the past for the adoptee as she grows. For the same reason, birth parents and adoptive parents should have a place (e.g., a file at the adoption agency) to send later letters or photographs should they wish to share more information. For a returning adult adoptee, such a file can provide a chronicle of the birth parent's feelings and desires for her.

There are countless ways that traditional adoption schemes have failed to answer the needs of birth mothers. A new adoption paradigm that includes their concerns opens the door to a host of ways that these needs can be met without jeopardizing the integrity of the adoption system.

V. CONCLUSION

92. Interview with Marie Varrone, *supra* note 79.

93. *Id.*

94. *Id.*

The currently prevailing paradigm of adoption in the United States, reflected both in adoption laws and in social attitudes and role expectations, fails to account adequately for the actual experiences and concerns of any of the members of the adoption triangle. This failure engenders confusion and frustration in adoption participants when their experiences do not mirror the expectations of the paradigm, and misunderstanding and low self-esteem when they accept the representations of the paradigm as to the other participants' feelings about them. The images perpetuated by the traditional adoption paradigm are in fact actively harmful to the self-images of adoptees, birth parents, and adoptive parents.

The legal system is inextricably entwined in the paradigm and the system of adoption that has been the source of great personal pain for many adoption participants. The moment has arrived for legislatures and judges to acknowledge the paradigm shift that adoption advocates have been both seeking and heralding for some years now, and to change the way that the law frames and analyzes questions of adoption. The new paradigm brings into focus the human experience of adoptees, birth parents and adoptive parents, and seeks to create a system that responds to that experience. Far from providing specific answers to policy questions, this new focus simply and profoundly questions the basis of all previous policies: do they accurately reflect the experiences of members of the adoption triangle, and do they promote among these members a healthy image of themselves as people and as participants in the adoption process?

The specific questions that arise are many and complex. In addition to the issues discussed here, the new paradigm requires a reevaluation of the role of birth fathers in the adoption of newborns and any obligation a court or agency may have to involve them in the adoption process;⁹⁵ the acceptability of private (non-agency) adoptions and the state's role, if any, in their regulation; and the process and the criteria used in the selection of adoptive parents. These questions must be addressed from the vantage point of a new adoption paradigm, with all the energy and the good will of those who work for the good of families formed by adoption. Only then

95. The Supreme Court has given considerable attention to the interests of fathers in adoption proceedings that involve older children, *see* *Lehr v. Robertson*, 463 U.S. 248 (1983); *Stanley v. Illinois*, 405 U.S. 645 (1971), but has not specifically addressed procedural requirements or rights in the context of the adoption of newborn infants. Such an analysis will have to be extremely nuanced and must take into account the disproportionate responsibility placed on women for childrearing in our society, and the tremendous socialization that goes along with it.

will adoption emerge as it should: as a positive, humane option for women who cannot raise the children to whom they give birth, and for adoptive parents who cannot give birth to the children they long to raise.

