Journal of Christian Legal Thought

The Mission of ICLS is:
To train and encourage Christian law students, law professors, pre-law advisors, and practicing lawyers to seek and study Biblical truth, including the natural law tradition, as it relates to law and legal institutions, and to encourage them in their spiritual formation and growth, their compassionate outreach to the poor and needy, and the integration of Christian faith and practice with their study, teaching, and practice of law.

Statement of Purpose
The mission of the Journal of Christian Legal Thought is to equip and encourage legal professionals to seek and study biblical truth as it relates to law, the practice of law, and legal institutions.

Theological reflection on the law, a lawyer's work, and legal institutions is central to a lawyer's calling; therefore, all Christian lawyers and law students have an obligation to consider the nature and purpose of human law, its sources and development, and its relationship to the revealed will of God, as well as the practical implications of the Christian faith for their daily work. The Journal exists to help practicing lawyers, law students, judges, and legal scholars engage in this theological and practical reflection, both as a professional community and as individuals.

The Journal seeks, first, to provide practitioners and students a vehicle through which to engage Christian legal scholarship that will enhance this reflection as it relates to their daily work, and, second, to provide legal scholars a peer-reviewed medium through which to explore the law in light of Scripture, under the broad influence of the doctrines and creeds of the Christian faith, and on the shoulders of the communion of saints across the ages.

Given the depth and sophistication of so much of the best Christian legal scholarship today, the Journal recognizes that sometimes these two purposes will be at odds. While the Journal of Christian Legal Thought will maintain a relatively consistent point of contact with the concerns of practitioners, it will also seek to engage intra-scholarly debates, welcome inter-disciplinary scholarship, and encourage innovative scholarly theological debate. The Journal seeks to be a forum where complex issues may be discussed and debated.

Editorial Policy
The Journal seeks original scholarly articles addressing the integration of the Christian faith and legal study or practice, broadly understood, including the influence of Christianity on law, the relationship between law and Christianity, and the role of faith in the lawyer's work. Articles should reflect a Christian perspective and consider Scripture an authoritative source of revealed truth. Protestant, Roman Catholic, and Orthodox perspectives are welcome as within the broad stream of Christianity.

However, articles and essays do not necessarily reflect the views of the Institute for Christian Legal Studies, the Christian Legal Society, Regent University School of Law, or other sponsoring institutions or individuals.

To submit articles or suggestions for the Journal, send a query or suggestion to Mike Schutt at michsch@regent.edu.

Dissenting Opinions

By Michael P. Schutt
Editor

I like to read dissenting opinions. I suppose that I've read more Supreme Court dissents than opinions of the Court. I'm not a Constitutional Law expert, but it seems to me that dissenting opinions are often the most helpful in getting to the heart of the issue.

Maybe it is my lack of expertise that makes a dissenting opinion so attractive. Experts can sort through the majority opinion and separate the substance from the smoke, easily recognizing when justices cut corners or cheat a bit on the precedent. Not me; I go straight to the dissent.

This issue of the *Journal* is a bit of a dissenting opinion, but I believe that it will be helpful and illuminating, regardless of which side one takes on the issues discussed. Our guest editor is Professor David Smolin, Harwell G. Davis Professor of Constitutional Law and Director of the Center for Biotechnology, Law and Ethics at Samford University's Cumberland School of Law. Professor Smolin, who invited the authors and developed the topic for this issue, also contributes the keystone essay. His purpose is to "demonstrate that the scriptural and theological analysis undergirding the evangelical adoption and orphan care movement is seriously erroneous." "These errors," he says, "produce practices that are sinful and exploitative." Put simply, this is not the majority view among evangelicals today.

The majority view in the Christian adoption and orphan care movement rests on a foundation that sees direct correlations between our adoption into God's family and the adoption of children into Christian families. For example, John Piper, preaching on Ephesians 1:1-6, makes the connections:

> I have three aims this morning: 1) that all of us would consider and embrace the wonder of our adoption into God's family through Jesus Christ, and 2) that all of us would support the ministry of adoption through the Micah and Lydia Funds financially, and 3) that many of you married couples would consider adopting children into your family as an overflow of the inheritance that you have in Christ from God, your Father. My assumption is that we need to understand and enjoy our own adoption by God before we can properly understand and enjoy what it should mean to adopt a child into our family.[1]

In addition to this correlation between divine and human adoption, today's majority view also sees the adoption movement as the heart and soul of the Christian call to care for orphans.

In the pages that follow, the discussion is intense, and it ranges broadly across adoption theory, law, and practice. Professor Smolin begins by laying out the dissenting opinion on theological and ethical grounds. Dan Cruver and Jedd Medefind, respected leaders in the Christian adoption and orphan care movement, then respond. To further enrich the discussion, others intimately involved in the adoption process—scholars, a theologian, a mother, adoptees—provide their insights and experiences to highlight the complex issues at the heart of the disagreements about the meaning of human adoption in the context of both current and historical theory and practice. Through these interwoven threads, we see the practical, legal, and ethical issues facing parents, adoptees, and the church as they seek to be faithful to God's calling.

One of the goals of the *Journal* is to encourage legal professionals to seek and study biblical truth as it relates to law, the practice of law, and legal institutions. While this issue may provide a bit of a dissenting picture, I pray that it drives us to the truth, even as we disagree about and debate these important issues.

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[1] June 20, 2004. Available at http://www.desiringgod.org/resource-library/sermons/predestined-for-adoption-to-the-praise-of-his-glory visited May 13, 2012.

Thinking About Adoption

By David M. Smolin
Guest Editor

Although the naïve may perceive adoption as a sentimental good that all embrace, those baptized into the practice and dialogue concerning adoption know well its bitter disagreements. Adoption, like the related topic of abortion, is one that cuts deeply both personally and politically, residing where beliefs and viewpoints are held as articles of faith and combat. Embedded within these disputes are fundamentally different conceptions of adoption.

This issue of the *Journal of Christian Legal Thought* attempts both to explore fundamental theological assessments of adoption, and also to assess historical and contemporary controversies, within articles reflecting diverse perspectives. The first three articles explore the theology of adoption, in the context of the contemporary adoption and orphan care movement. Following articles include perspectives on transracial and intercountry adoption; a personal story concerning the practice of infant relinquishment adoption from unwed mothers; an historical article on Jean Paton, a significant Christian adoptee and early critic of the closed records system; and a contemporary theological perspective on the right of adoptees to know their origins.

I will not try to summarize the articles, but instead will highlight issues related to the unwed mother, race, and intercountry adoption, which provide important contexts for developing Christian perspectives on adoption.

The Unwed Mother and her Child, Past and Present

Critics have noted an international phenomenon in Australia, Canada, the United Kingdom and the United States known as the "baby-scoop era," in which, between 1945 and around 1980, unwed mothers were to various degrees pressured, coerced, or forced to relinquish their children for adoption. Others may view this period as an historical high point of adoption when relatively large numbers of unwed mothers chose adoption. Recent developments including an official apology from Catholic Health Australia, an extensive investigation, report and possible forthcoming apology from the Australian government, and efforts in Canada and elsewhere to obtain official apologies from governments.

Many have noted the involvement of Christian institutions and persons who conveyed systematically to unwed mothers that they were automatically unfit and should place their children for adoption. However, within the United States, the large group of Christian maternity homes founded in the late nineteenth and early twentieth century originally followed a strongly anti-adoption practice based on the viewpoint that the unwed mother must be assisted in keeping, raising, and supporting her own child. The key figure in this story is Kate Waller Barrett, who applied the scripture "What God has joined together, let man not separate" to the mother and child unit. Barrett's views predominated from around 1896 until the transition to the baby-scoop era itself (around 1945). It appears that churches and Christian organizations did not initiate the change that produced a generalized hostility toward unwed mothers keeping their babies after World War II, but instead changed course with developments in secular professions and the broader society.

The common law of England had no general law of adoption. Thus, apart from some precursor practices, the history of adoption law in the United States begins around 1851, with the passage of the first adoption statutes. However, the current form of "as if" adoption law that predominates in the United States, involving the issuing of a new "birth" certificate, and the closing of the original birth certificate and court and agency records to all, including even the adult adoptee, was not fully established until the period of 1945 to 1980, with twenty states still permitting adult adoptees access to their original birth certificates as late as 1960. The development after 1945 of a closed-records system permanently severing all relationship between the adoptee and her original family created a conceptualization of "as if" adoption: it is "as if" the child was born

to the adoptive family, and was never a part of the original family. For unwed mothers, it is supposed to be "as if" they had never given birth.

While voluntary Infant relinquishment adoption within the United States now constitutes less than 20,000 of the estimated 130,000 annual domestic adoptions in the United States, the premise of secret "as if" adoption continues to dominate the law, despite its absurdity in many of the other kinds of adoption (such as step-parent adoption, relative adoption, older child adoption, transracial adoption, and adoption from the foster care system) that now predominate. Indeed, our current conception of adoption creates tragic choices. Thus, a step-parent can only become a full and permanent parent through adoption, and yet usually can only adopt if the living, original parent of the same gender is declared a legal stranger to their child. Similarly, many children in the foster care system have a bonded and in some ways loving relationship with a parent, who, through various issues related to substance abuse, mental health, disability, poverty, instability, criminal conviction, and domestic violence, is not capable of safely parenting them day to day. Our conception of "as if" full adoption makes it difficult to provide children with adoptive families without officially destroying their original family relationships.

Race and Adoption

There is an enormous literature on race and adoption, in the contexts of intercountry adoption, infant relinquishment adoption, and adoption from the foster care system. There is also federal legislation in the United States on transracial and Native American adoption. Embedded within these debates are numerous concerns: (1) historical and present abusive use of adoption to take away the children of vulnerable and less powerful groups, such as indigenous peoples, racial minorities, colonized or defeated people, and the poor; (2) identity issues experienced by adoptees when they are raised by adoptive families of a different race; (3) the racism problem, which includes the difficulties that adoptees of minority and discriminated against races may have in learning how to navigate racism and stereotyped expectations, particularly when they are raised by majority race (usually white) adoptive families; (4) differential "pricing" and "markets" for children offered for adoption depending on their race, as adoption agencies explicitly charge much different prices for adoption "services" depending on the race of the child.

A transracial adoption usually makes it quite apparent that there are missing biological parents; yet, adoptive parents shaped by the concepts and expectations of "as if" adoption may still presume that the original family and community of the child don't matter. This pretense that the adoptive family is the only relevant family and community for the child exacerbates the tensions and difficulties involved in transracial adoption.

Intercountry Adoption

Some view intercountry adoption as humanitarian rescue, while others perceive it as a neo-colonialist oppression in which rich, white adults use their wealth and power to obtain children from poor and vulnerable families in developing and transition nations. This author's position is that systemic abuses (such as child laundering, child trafficking, and falsification of documents and information) occur repeatedly in intercountry adoption systems, in large part because of the failure to control the money and hold receiving country agencies responsible for the acts of their partners and facilitators in sending nations. From this author's perspective, the governing international law of the Hague Convention on Intercountry Adoption and the Convention on the Rights of the Child (binding almost everywhere except the United States) thus far have not been able to stem the tide of such abusive practices. Points of contention include the extent of such abusive practices, the number and characteristics of children truly in need of intercountry adoption, the subsidiarity principle defining when intercountry adoption is an appropriate intervention, the appropriate kinds and level of regulation of intercountry adoption, the declining numbers of intercountry adoptions, and the question of whether intercountry adoption is an appropriate response to poverty.[1]

Conclusion

I hope this introduction has whetted your appetite for not only the articles to follow, but also further exploration and debate concerning adoption. Adoption is an issue where presuppositions and expectations strongly shape perceptions and practices; given that adoption forever changes the lives of all it touches in fundamental ways, there is an imperative to be open to having our perceptions and practices challenged.

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[1] For a written debate between this author and Professor Elizabeth Bartholet of Harvard Law School addressing many of these issues, see http://works.bepress.com/david_smolin/11/ .

ABSTRACT

Of Orphans and Adoption, Parents and the Poor, Exploitation and Rescue:
A Scriptural Critique of the Evangelicial Christian Adoption and Orphan Care Movement

By David M. Smolin

The primary purpose of this essay is to demonstrate that the scriptural and theological analysis undergirding the evangelical adoption and orphan care movement is seriously erroneous. Further, these errors produce practices that are sinful and exploitative.

Proponents perceive adoption as the essential and primary way of understanding the Christian's relationship to God. Thus, even Biblical narratives such as the story of the prodigal son, which do not appear to reference adoption, are read as adoption narratives. This gospel of "vertical" adoption (God's adoption of his children) is best manifested in human relationships in the form of "horizontal" adoption (adults adopting orphan children). Thus, the movement views horizontal adoption as an essential proclamation of the gospel which is central to the life of the church, such that virtually all Christian families should either be adopting, or supporting others in adopting.

The movement also views the scriptural teachings on adoption and orphans as interdependent. A Biblical practice of adoption is a primary response to the Biblical call to assist orphans. The Biblical terms "orphan" and "fatherless" are understood as synonymous terms referring to infants or children without active parental care.

The movement understands Biblical adoption as a non-related person adopting an orphan child. The movement presumes that the Biblical model of adoption reflects the kind of adoption predominate in the United States: full, "as if," closed records adoption. This kind of adoption involves a legal transference of the child from the original family to the adoptive family, rendering the adoptee a legal stranger to their original family. In most states, birth and court records are closed and original identities hidden, even to adult adoptees. Legally, it is "as if" the child had been born to the original family.

The movement's Biblical exegesis is flawed. While the apostle Paul probably does employ an adoption metaphor in describing the Christian's relationship to God, its centrality is belied by the absence of any such references in the rest of the Bible. Instead, natural parenthood and marriage are the primary Biblical analogies for the relationship between God and His people. Indeed, there is no Old Testament or Jewish law authorizing adoption, and the word "adoption" does not appear in the gospels, making adoption a quite secondary metaphor. Further, Paul's limited references to "adoption" or "sonship" has nothing to do with the adoption of vulnerable orphan children. Instead, Paul is referring to adoption as practiced in ancient Rome, whereby emperors and nobles adopted promising young adult males in order to provide a suitable heir for a great family. The Pauline adoption metaphor assures Gentile Christians of the inestimable value of their inheritance in Christ, and declares the honor of being a Christian as greater than the honor of being the adopted son of an emperor.

The Biblical call to assist orphans is primarily in the context of assisting widows and orphans—better translated the "fatherless"—as a unit. The most important adoption narratives in the Bible either involve rejections of adoptive identity (Moses), or arrangements within extended families in which the original family identity is maintained (Esther). Despite the claim that the New Testament makes adoption central to the life of the church, there is not a single example of an adoption in the Biblical accounts of the early church. Instead, the New Testament concentrates on the care of widows, with the implication that vulnerable children will be provided for either through provision to their vulnerable mothers, or else through extended families. Indeed, the "horizontal" application of any Biblical doctrine of "vertical" adoption is that all Christians are of one "family," being "brothers and sisters" in Christ.

Adoption in the Old Testament

There is no law of adoption in the Law of Moses. Within Jewish law (outside of the Bible)

there is provision for a role known as caring for another's child, and such role is praised. However, the child's name, identity, and family history are not altered by this form of care, which is more akin to foster care.

The law of Moses is created for a tribal society in which biological lineage through the paternal line is paramount. It would be virtually unthinkable to legally remove a child from the father's lineage, as such act could remove the father and family from Israel. Biblical and Jewish law rejects the fundamental legal conception of adoption as a legal change in the child's identity and lineage.

Ironically, some include Moses as a Biblical precedent for adoption; yet, the narrative turns on a rejection of adoptive identity. Moses' adoption occurs in the context of a genocidal destruction of male Hebrew children by Pharaoh's order. When Pharaoh's daughter first encounters Moses, she turns him over (perhaps unknowingly) to be nursed by his natural mother and initially raised within his own household. When Moses became the son of Pharaoh's daughter, he was brought into the Egyptian family that had enslaved and slaughtered his own people. When Moses becomes a young man, he rejects his Egyptian identity, which from a New Testament perspective was his essential act of faith. See Hebrews 11:24-27.

Moses returns not only to his people, but ultimately to his specific family, as throughout his leadership of Israel his sister Miriam and brother Aaron are with him.

The book of Esther also concerns Jewish survival against genocidal threat. Esther is a Jewish woman who, married to the Persian King, intercedes for her people. The text indicates that Esther had been taken as a daughter by Mordecai, her cousin or uncle, after the death of her parents. It is unclear whether this is an informal extended family arrangement or a formal legal adoption under Persian law. The word "adoption" is not used in the Hebrew text. The Biblical text emphasizes the family relationship between Mordecai and Abihail, Esther's original father, calling Esther "the daughter of Abihail the uncle of Mordecai, who had taken her as a daughter…" Hence, while the relationship between Mordecai and Esther is certainly positive, it in no way denigrates or removes Esther's relationship to her original, deceased father. Indeed, at the pivotal moment when Esther must decide whether to intercede for her people, Mordecai warns her that unless she acts, she and her father's house shall be destroyed---an apparent reference to her original father. Esther describes extended family care for an orphan, while maintaining the child's original name and identity.

Adoption in the New Testament

The only direct references to the word or concept of adoption in the New Testament occur in five Pauline texts: Romans 8:15, 8:23, 9:4; Galatians 4:5; Ephesians 1:5. Thus, adoption is absent from all of the gospels and all of the other writings of the New Testament. Clearly, the gospel can be communicated without a reference to adoption.

Some strain to find adoption in gospel narratives, such as the relationship of Joseph and Jesus. However, Joseph is the legal father of Jesus through marrying Mary prior to Jesus' birth; there is no possibility or need of an adoption. Further, to view their relationship through the lens of the kind of American adoption urged by the movement would be absurd, as it would render God's relationship to Jesus as having been severed permanently by Joseph's adoption. Joseph's act supports the natural mother, Mary, in keeping her child. While step-parent adoption might be viewed as a rough analogy to Joseph's act, such forms of adoption are completely different from the kinds of adoption urged by the movement.

The Greek term in the Pauline adoption texts is *huiothesia*, consisting of two parts: *huios* meaning son and *thesia*, from the verb *tithemi*, which means "to set, put, or place." The word literally means to put in the place of a son, and some translate it as "sonship." Regardless of whether "adoption" is always the right translation, Paul is usually understood as using Roman adoption as a metaphor to help Gentile readers understand their relationship to God. Adoption in ancient Rome generally involved an emperor or noble father adopting a young adult son, as a means of obtaining a suitable heir to continue a great Roman family. The persons adopted were generally neither children nor poor nor even orphans. Adoption thus had nothing to do with providing for parentless minor children. Paul's primary message is that the inheritance and honor the Christian receives from being "adopted" by God, would be even greater than the inheritance and honor received by those who were adopted by Roman emperors.

Orphan in the Bible

The Hebrew word "yatom" can be translated as either "fatherless" or "orphan." "Fatherless" is a

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preferable translation because the term clearly refers to a child whose father is dead or absent even when the mother is present. The word is closely associated with "almanah," meaning widow. This concept of widow and orphan as a unit is neatly captured in James 1:27, referring to assisting "the fatherless and widows in their affliction." The proper Biblical response to encountering the widow and orphan, as exemplified in Elijah, Elisha, and Jesus narratives, is to intercede to keep the widow and orphan together. Thus, it is not surprising that there are no New Testament examples of Christians adopting orphan children, and very few Old Testament examples.

Conclusion

The harms produced by the errors of the movement are discussed in the full article. It is not merely a matter of doing the right thing for the wrong reason, but quite often that of doing the wrong thing for the wrong reason. Instead of looking for vulnerable adults and children to assist together within families and communities, the movement is looking for "orphans" to save apart from their parents, extended family, and community. In practice the movement uncritically participates in adoption systems riddled with child laundering, where children are illicitly obtained through fraud, kidnapping, or purchase. Similarly, the movement uncritically participates in adoption systems where it is accepted practice to accept relinquishments merely for poverty. The result is often tragically misdirected, and cruel, as the movement participates in the needless separation of children from their families. In addition, the theological and legal conceptions of adoption embraced by the movement denigrate the original family relationships of adoptees, and hence distort relationships among adoption triad members. Getting the Bible wrong in theory matters in practice.

The article abstracted here is available in full at www.clsnet.org/Journal/Spring2012/smolin, and in the Regent Journal of International Law, Vol. 8, No. 2

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I want to close my introduction by thanking the authors and, especially, Professor Smolin for his work in putting this issue together and for providing a broader human rights context for this very important discussion.

Thanks to Professor Smolin and to the men and women who have contributed so richly to this discussion.

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In Defense of the Christian Orphan Care Movement

By Jedd Medefind

David Smolin's article *Of Orphans and Adoption* strikes hard at both the theology and practice of what *Christianity Today* recently called "the burgeoning orphan care movement." Smolin's attack is theologically substantive and offers numerous criticisms that this growing movement would do well to apply with diligent self-scrutiny. Sadly, however, the article ultimately gets many details right while missing far larger and more important truths. In the end, it loses grip on both the Bible's grand narrative and the realities of today's global Christian orphan care movement.

Start by Listening

Any movement seeking to reflect God's heart for justice and mercy is highly vulnerable to excess and error. This is as true of today's Christian adoption and orphan care advocates as it was with those championing Abolition and Civil Rights. The justice of a cause can easily blind us to folly in our tactics. So it's always best to begin by listening to criticism, even if it carries major blind spots of its own. Here are a few especially important of Smolin's critiques.

Unethical Adoptions. Adoption advocates should be the *most* aggressive in rooting out even hints of corruption in adoption processes. Admittedly, those who've labored long in fields of complex human needs know that the standard for their work can't be perfection, or most such efforts would be shuttered tomorrow. (Recall the way food relief sent to Somalia was diverted to empower brutal warlords, or how U.N. soldiers imported tuberculosis to Haiti.) Yet Christian adoption advocates must lead in refining systems, applying regulations and prosecuting corruption to minimize potential for abuse.

Theology. Adoption is certainly not the only metaphor for God's relationship with His people. Rather, biblical images range from shepherd to potter to bridegroom. As Smolin points out, Scripture's use of the word "adoption" is sparse, as are its examples of earthly adoption. As with the Abolition and Civil Rights movements' sometimes-narrow focus on the Exodus, adoption advocates may miss other key biblical themes and metaphors if they emphasize only their favorites. So it's important to affirm that adoption is one among many compelling biblical metaphors.

Full Spectrum Response. Finally, a holistic vision of orphan care includes much more than adoption. Today's broad Christian orphan care movement began especially with families and leaders passionate for adoption. This reality highlights the positive way in which international adoption often becomes a catalyst for a long-term, multi-faceted concern for orphans. Yet the flip side is that the movement, especially in its early days, under-emphasized the wide spectrum of responses required to address the highly diverse situations facing orphans worldwide.

Only about 10% of children classified as orphans have actually lost both parents (an estimated 18.3 million worldwide.) And even many of these "double orphans" have extended family or community that might be willing to take them in. So Christians should always view care for orphans as encompassing a broad spectrum of responses—from emergency shelter to kinship care. (See more on this via the Core Principles of the Christian Alliance for Orphans.) This spectrum includes efforts to keep struggling families together, as so many Christian ministries do via micro-finance, community development and other initiatives.

Other Issues. Beyond these points, many other issues call for self-critique and self-correction within the movement. These include giving fuller consideration and honor to birthmothers; developing alternatives to institutional care for orphans worldwide; and bolstering local church support for families that foster or adopt children from difficult backgrounds.

What the Critics Miss

Even while embracing these critiques, it's vital to keep a grip on the deeper realities that

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echo throughout Scripture and the orphan care movement itself. These include:

Scripture's Grand Narrative. As Smolin's analysis hammers home, the word "adoption" is used rarely throughout the Bible. What the article misses, however, is that the story of adoption is written on virtually its every page. The heart of Scripture, the gospel, is the sweeping narrative of the God whose creatures rebelled and now live destitute and alone. Yet though we have no claim on Him save love, God seeks us and rescues us at infinite cost to Himself. He pays an unimaginable price so that we by rights can become His children (John 1:12). In this, He invites us to live as his true daughters and sons, and to call Him our *Abba* (for example, Romans 8; Galatians 4; Romans 9:8; Galatians 3:26; 1 John 3:1-2.)

All of this is foretold in God's selection of the Jews as uniquely His, and comes to full bloom in the New Testament church. As Paul poignantly describes (without using the word "adoption"), "In the very place where it was said to them, 'You are not my people,' there they will be called 'children of the living God'" (Romans 9:26, quoting Hosea).

Motivated by this breathtaking reality—and also obedient to Scripture's clear mandate to protect and care for the fatherless—Christians are rising to care for orphans in ways not seen in generations.

A Multi-Faceted Movement. This response certainly includes inter-country adoption. Despite rising restrictions by foreign governments, thousands upon thousands of children, who otherwise would have grown up in institutions or on the street, have found loving homes. It is worth noting, too, that many Christians are now adopting especially hard-to-place children, from special needs and sibling groups to older children. Critics typically ignore this often breathtaking story.

Critics also tend to miss the fact that, although international adoption tends to be particularly visible, it is just one element of the growing movement. Consider the remarkable data from the 2011 ECFA "State of Giving Report." Of 29 categories of Christian giving, an amazing three of the four categories that saw the greatest increase in giving were directly related to orphans and vulnerable children. Yes, this included support of adoption (15% increase in giving)—but also orphan care (21% increase) and child sponsorship (24% increase). The reality is that most of the member organizations of the Christian Alliance for Orphans, including many adoption agencies, are actively involved in diverse forms of on-the-ground orphan care, ranging from education programs to micro-finance to indigenous adoption efforts.

Likewise, the movement also encompasses foster care and foster-to-adopt as well. In Colorado, even nonreligious observers like the *Denver Post* affirm that Christian engagement has literally cut the number of "waiting children" in the foster system by half, from 800 to less than 400.

Other robust Christian foster care initiatives are thriving from Florida to Kentucky to Texas to Arkansas to Illinois to Oklahoma to California. A piece in the *Wall Street Journal* gave one glimpse of the result. "As more and more evangelical churches take up the cause of [foster-to-adopt] on a large scale, their congregations have begun to look like the multiracial sea of faces that Christian leaders often talk about wanting."

It is my deepest prayer that this vision will spring up in the local church worldwide—so that ultimately, Christians in every nation will rise as the primary answer to the needs of orphans in their midst. That's why the Christian Alliance for Orphans recently created a new senior position devoted 100% to encouraging and serving indigenous Christian orphan care movements worldwide. Many such movements are already stirring, and the support of U.S. Christians—if offered humbly and wisely—can play a pivotal role to nurture a truly global movement in which local churches across the globe take primary responsibility for orphans in each community.

The Priority of Family

Again, Christian adoption advocates have an obligation to affirm and learn from criticism without yielding to its excesses. We must prosecute unethical adoptions . . . but not demand impossible standards that relegate children to life without parents. We must seek to understand and comfort adult adoptees that carry wounds from early childhood or adoptive parents' mistakes . . . while not forgetting that most adopted children thrive in the long run.

Most importantly, while supporting a full spectrum of care options for orphans, we must never lose grip on a foundational truth: children need families. What adoption critics seem to forget, (but no orphan ever does) is that the need for the love and belonging of family is far deeper than skin color or ethnicity or place of birth.

The First Step in the Way Forward:
A Response to David M. Smolin's "Of Orphans and Adoption"

By Dan Cruver

I am glad to say that David Smolin and I share much in common. We both care passionately about orphaned and vulnerable children, are grieved by and oppose all forms of exploitive practice, and seek an understanding of the theology of adoption that comes *out of* Scripture (exegesis) rather than one that is read *into* Scripture (isogesis). Unfortunately, we do not share a common theology of adoption that takes into account the full scope of the biblical story of redemption; hence my response to Smolin's critique of the Christian adoption/orphan care movement's theological foundations.

Smolin misunderstands the motivations of the movement because the foundation of his understanding is an imbalanced and inadequate interpretation of the Apostle Paul's use of adoption. Because Smolin misunderstands the theological *heart* of the movement, he misrepresents the *hands* of the movement. My response will first demonstrate his misunderstanding of the redemptive-historical significance of adoption in Paul's epistles and then conclude with an assessment of how this flawed understanding causes Smolin to miss the *key* connection between the theology of adoption and the practice of adoption.

Smolin's Interpretation of Adoption in Paul

Smolin's work on the importance of inheritance for our understanding of adoption is well-researched, insightful and edifying. But the theology of adoption which Smolin has constructed is too sociologically and culturally determined because it neglects the redemptive-historical reading of Scripture in general and of adoption in particular. Given Smolin's familiarity with the Reformed tradition, it is surprising that his theological work on adoption did not reflect (or at least interact with) Reformed scholarship's redemptive-historical approach or its recognition that adoption held a central place in John Calvin's understanding of salvation.[1] Smolin's

essay would have been greatly helped had he not neglected the Reformed tradition's recovery of adoption.

Dutch New Testament scholar Herman Ridderbos (who along with Geerhardus Vos[2] is largely responsible for the recovery of redemptive-historical interpretation) has persuasively argued that the chief interpretive framework in all of Paul's writing (both of the whole and of all its subordinate parts, including the five occurrences of "adoption" in Paul[3]) is God's redemptive activity within human history.[4]

Redemptive-historical interpretation recognizes that the metanarrative (i.e., overarching story) of God's redemptive activity within history, culminating in the life, death, and resurrection of Jesus, must inform our interpretation of every part of Scripture.[5] Smolin's understanding of adoption, however, is overly reliant upon the research of Francis Lyall and Trevor Burke, who emphasize the sociological and legal strains of adoption with minimal, if any, recognition of Paul's redemptive-historical use of adoption.[6] After thoroughly evaluating Francis Lyall's interpretive approach, New Testament scholar David B. Garner concluded:

> Lyall's contributions are valuable in that he deciphers the Roman legal and cultural backdrop to [adoption], and unveils the

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[1] See Tim J. R. Trumper, *An Historical Study of Adoption in the Calvinistic Tradition* (Ph.D. diss., University of Edinburgh, 2001);

Howard Griffith, *'The First Title of the Spirit': Adoption in Calvin's Soteriology*, EVANGELICAL QUARTERLY 73 (2001); JULIE CANLIS, CALVIN'S LADDER: A SPIRITUAL THEOLOGY OF ASCENT AND ASCENSION 123-39 (2010); B. A. GERRISH, GRACE AND GRATITUDE: THE EUCHARISTIC THEOLOGY OF JOHN CALVIN 87-123 (1993). Gerrish argues that adoption is so central to Calvin's understanding of the Gospel that his presentation of the Gospel can be described as "the good news of adoption" (89).

[2] *See* GEERHARDUS VOS, BIBLICAL THEOLOGY: OLD AND NEW TESTAMENTS (1948); THE PAULINE ESCHATOLOGY (1979).

[3] Rom. 8:15, 23; 9:4; Gal. 4:4-5; Eph. 1:4-5.

[4] *See* HERMAN N. RIDDERBOS, PAUL: AN OUTLINE OF HIS THEOLOGY 39, 197-204 (trans. John Richard DeWitt; 1975),

[5] *See* MICHAEL SCOTT HORTON, COVENANT AND ESCHATOLOGY: THE DIVINE DRAMA 5-6 (2002),

[6] I am indebted to Tim J. R. Trumper for this observation.

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A Response to David M. Smolin's
"Of Orphans and Adoption"

bearing that such factors might have on investigating the Pauline soteriological motif. On the other hand, while his strict denial of Jewish adoptive procedure is historically and theologically exaggerated, it is his pervasive failure to recognize the biblico-theological [i.e. redemptive-historical] perspective of Pauline theology, which ultimately undermines his conclusions regarding Pauline [adoption].[7]

The problem with Smolin's interpretive approach is not so much in what he does, but in what he fails to do. When interpreting any section of Scripture, we must take into account not only the historical and cultural setting (which Smolin does quite well), but also Scripture's metanarrative of redemption (which Smolin, Lyall, and Burke do not do). Both the setting and the metanarrative must inform our understanding of any text. Smolin's failure to consider the redemptive-historical significance of adoption is *the* fatal flaw in his interpretation.

Systematic theologian Tim J. R. Trumper has compellingly argued that adoption cannot be rightly understood apart from a redemptive-historical reading. The ease by which adoption may be read redemptive-historically is striking. Trumper observes, "With Paul's five-fold use of [adoption] we have *a sketch of the entire history of redemption*"[8] (e.g., Eph. 1:4-5; Rom. 9:4; Gal. 4:4-5; Rom. 8:15-16, 22-23). Elsewhere Trumper argues:

> We may prepare the way for the exposition of the doctrine [of adoption] by arranging the apostle's five references to [adoption] *in their clear salvation-historical order* . . . Paul's usage of [adoption] strongly suggests he filled it with historical and theological content derived from the OT . . . All I can suggest here is that we first understand Paul's use of [adoption] in its biblical context. Only then may we begin to ascertain which, if any, aspects of the first-century practices of adoption coalesce with Paul's use of [adoption] and

are demanded by it . . . It is important to remember that for all Paul's awareness of the world he lived in, *closest to his thought, and most determinative of it, was the history and faith of God's people.*[9]

Trumper is not the only one to recognize the importance of understanding adoption redemptive-historically. In his classic book on Paul, Herman Ridderbos writes, "The term [adoption] stems from the Hellenistic world of law; its content, however, must not be inferred from various Roman and Greek legal systems, nor from the adoption ritual of the Hellenistic mystery cults, but must rather be considered against the Old Testament redemptive-historical background of the adoption of Israel as son of God."[10]

This redemptive-historical interpretation of adoption is not a modern development either. For example, so central a role did the second-century church father Irenaeus see adoption playing within redemptive-history that he understood it as essentially synonymous with redemption. Irenaeus' understanding of adoption was decidedly redemptive-historical.[11]

Smolin's neglect of Paul's redemptive-historical use of adoption predisposes him to surprisingly argue that the Gospel writers never employ "either the word [adoption] *or the concept*."[12] While it is true that the Gospels never use the term adoption, Paul very clearly and intentionally connects two of his adoption texts (Rom. 8:14-15; Gal. 4:4-6) with the climax of Jesus' redemptive work as recorded in Mark's Gospel (Mark 14:32-36), the first of the four Gospels to be written. Significantly, many scholars have found strong exegetical evidence to conclude that Mark's Gospel was influenced by Paul's theology.[13]

According to Mark, Jesus, in the Garden of Gethsemane on the eve of his crucifixion, cried, "Abba, Father."[14] Paul points us back to that climactic moment in the accomplishment of

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[7] *See* Garner, *Adoption in Christ* (Ph.D. diss., Westminster Theological Seminary, 2002), 35-36.

[8] TIM J. R. TRUMPER, WHEN HISTORY TEACHES US NOTHING 85 (2008) (italics added).

[9] Trumper, *A Fresh Exposition of Adoption I: An Outline*, 22 SCOTTISH BULL. EVANG. THEOL. 1, 60-80 (Spring 2004) (italics added).

[10] RIDDERBOS, *supra* note 4, at 197-98.

[11] *See* MICHAEL REEVES, THE BREEZE OF THE CENTURIES 43-54 (2010); Garner, *supra* note 7, at 4, 272-81; DONALD FAIRBAIRN, LIFE IN THE TRINITY: AN INTRODUCTION TO THEOLOGY WITH THE HELP OF THE CHURCH FATHERS 33-36 (2009).

[12] Smolin, at 12, italics added.

[13] *See* D. A. CARSON, DOUGLAS J. MOO, AND LEON MORRIS, AN INTRODUCTION TO THE NEW TESTAMENT 175, 209 (2d ed, 2005).

[14] *See* Mark 14:32-36.

our redemption unto adoption by writing, "And because you are sons, God has sent the Spirit of his Son into our hearts, crying, 'Abba! Father!'"[15] Because of the work of Jesus on our behalf we find ourselves caught up by grace to participate in his personal relationship with the Father.[16] Clearly, both Mark and Paul firmly ground our experience of adoption within the very climax of redemptive-history. For whatever reason, Smolin entirely misses this significant connection between Paul and Mark's Gospel.

Connecting the Theology of Adoption with Practice

Smolin's neglect of this redemptive-historical reading of adoption and his overdependence upon its sociological and legal strains effectively strips adoption of both its profound theological significance and its far-reaching horizontal implications. Adoption is so important to redemptive history that David Garner persuasively argues that Paul's use of adoption gives us strong warrant to speak of "redemptive history as *adoptive* history, where in the unfolding of the Father's revelation he carries out his *adoptive*-historical plan for his fallen created sons."[17] God's work of adoption within human history, therefore, is a drama of cosmic proportions. From adoption's pre-temporal foundation in the love of the Father, Son, and Holy Spirit (Eph. 1:3-6) to its climactic consummation in the New Heavens and New Earth (Rom. 8:23), adoption is God's comprehensive redemptive activity to free the created order from its bondage to decay, once and for all time (see Rom. 8:18-23).

Smolin's understanding of Paul's use of adoption misses entirely the strong Exodus imagery that surrounds the three occurrences of adoption in Paul's letter to the Romans (Rom. 8:15, 23; 9:4). God's deliverance of Israel out of Egyptian bondage is *the* echoing story behind the cosmic story of adoption in Romans 8. We find Exodus imagery all throughout Romans 8: "set you free" (v. 2); "led by the Spirit of God" (v. 14; cf. Exo. 13:21); "the spirit of slavery" (v. 15); "subjected to futility" (v. 20); "will be set free" (v. 21); "bondage to corruption" (v. 21); "obtain the freedom" (v. 21); "groaning together" (v. 22; cf. Exo. 2:23); "redemption" (v. 23); and "firstborn" (v. 29; cf. Exo. 4:22). The evidence is overwhelmingly compelling: God intends for us to understand his work of adoption as his redemptive-activity to free us and all of creation from every effect of the Fall.

How should the climax of adoptive-history as told in Romans 8 inform our understanding of James 1:27 ("visit orphans and widows in their affliction")? The story of the Bible is the story of God visiting us in our affliction, like he once visited Israel (Exo. 4:31), in order to deliver us from it. So, how should this play out with James 1:27? To visit orphans and widows in their affliction means that we work for orphan prevention through family reunification and preservation, and when reunification is not possible, we actively support indigenous adoption efforts. For some children, though, adoption becomes the way we "visit" them.

Smolin misrepresents the *hands* of the Christian adoption/orphan care movement because he misrepresents the *heart* of its theology. This misrepresentation does not serve orphans well.

Dan Cruver and his wife, Melissa, are parents of a multi-ethnic family of three children. Dan is the director of Together for Adoption, *an organization that exists to provide gospel-centered resources that magnify the adopting grace of God the Father in Christ Jesus and mobilize the church for global orphan care. Dan is a frequent conference speaker and writer. He has a M.S. in Counseling and 90+ hours toward a Ph.D. in Theology. Prior to directing Together for Adoption, Dan was a college professor of Bible and Theology and a Pastor of Family Ministries. He is the editor of* Reclaiming Adoption: Missional Living Through the Rediscovery of Abba Father *(2010).*

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[15] *See* Gal. 4:4-6.
[16] *See* CANLIS, *supra* note 1, at 131-33.
[17] Garner, *supra* note 7, at 248 (italics added).

In Defense of the Christian Orphan Care Movement *(continued from page 10)*

To be clear, many adoption critics will acknowledge the importance of family, often sincerely. And yet tellingly, this most fundamental of needs often fades to the background of their arguments. They (rightly) warn of tragic scenarios of adoption fraud or gross wrongs inflicted by adoptive parents. Yet rarely do they detail the literal horrors that children so commonly experience on the streets or in orphanages. They spotlight ghastly-yet-rare examples of children being misclassified as orphans and then "trafficked" into families via adoption, yet they ignore the vast numbers of orphans trafficked into sexual exploitation every day precisely because they don't have parents to protect them. The critics are not mistaken in their concerns—but often miss the forest as they broadcast the flaws of certain trees.

God made families for children. Social science echoes Scripture in this regard. The futures awaiting young adults who "emancipate" from the U.S. foster system without being adopted are sheer tragedy. By their mid-20s, less than half are employed. More than 80 percent of males have been arrested, versus 17 percent overall. With women, 68 percent are on food stamps, compared to 7 percent overall. Similarly tragic consequences of growing up without a family are seen globally as well, from stunted size and intellect to emotional trauma. One startling yet representative study in Romania by Harvard professor Charles Nelson found that up to age 3, children's IQ decreased by nearly one point for every two months spent in an orphanage.

Certainly, care outside of families is sometimes necessitated by the world's great brokenness. And well-run residential programs, particularly small ones, produce vastly better outcomes than life on the streets. But ultimately, neither the attacks of critics nor the necessity of triage measures should obscure the ideal. Every child deserves a family.

Conclusion

Christians, of all people, know intuitively the reality argued for in this paper. When destitute and alone, *we* were pursued and rescued, adopted, given a permanent place in the family of God. He is not merely requiring obedience in calling us to "defend the fatherless" (Isaiah 1:17). He is calling us to reflect His character, for *He* is a "defender of the fatherless." (Dt. 10:18.) As Psalm 68 describes, "A father to the fatherless, a defender of widows, is God in his holy dwelling. God sets the lonely in families . . . ."

We're never more His children than when we seek to do the same. Christians, at their best, have reflected this character since the earliest days of the church. Thankfully, despite the ongoing need for self-critique, this commitment is as vibrant in the church today as it ever has been. In this, we make God's character and the gospel itself visible to a watching world.

As one non-religious magazine described Orphan Sunday last November, "Christian churches across the country have taken up, or in many cases, taken back orphan care as a tenet of their faith. Reconnecting with and answering the call to care for the widows and orphans in their midst…is the message of the day in churches all across America. It's time to celebrate and give thanks."

Jedd Medefind serves as President of the Christian Alliance for Orphans. The Alliance unites more than 100 respected Christian organizations and a national network of churches. Through its annual Summit, the Orphan Sunday campaign and other advocacy and training initiatives, the Alliance works together to ignite and equip Christians to "defend the cause of the fatherless" through adoption, foster care and global orphan ministry.

Prior to this role, Jedd served in the White House leading the Office of Faith-Based and Community Initiatives. In this post, he oversaw reform efforts across the government to make community- and faith-based groups central partners in all Federal efforts to aid the needy, from prisoner reentry to global AIDS. As described by the Harvard Political Review, these reforms "fundamentally changed the government's strategy for improving the lives of the downtrodden."

Jedd has also held a range of posts in the California State Legislature. He has worked, studied and served in more than thirty countries, with organizations ranging from Price-Waterhouse in Moscow to Christian Life Bangladesh. Jedd has written numerous articles and three books, most recently Upended: How Following Jesus Remakes Your Words and Your World. Jedd and his wife Rachel live in California and have five children, one by adoption.

ABSTRACT

Some Children See Him: A Transracial Adoptee's View of Color-blind Christianity

By JaeRan Kim

On a chilly February evening in 1970, I arrived at White Lily Orphanage. The Sisters of the St. Paul Chartres, a group of French apostolates, established White Lily in Korea in 1888 to take in orphaned children. In 1991, the orphanage shut down and a daycare center was established in its place. A few months later I was transferred to Ilsan, an orphanage run by Harry and Bertha Holt, the evangelical Christians who propelled Korean adoption to the U.S. While I was at Ilsan, my adoptive parents were reading the *Adoption Program Information Letter* from the Holt Adoption Program.

"Dear Friends," the letter begins, "We are happy to have received your inquiry about adopting a child . . . . From the beginning we have felt that this was God's work, and we enter into this correspondence with you trusting him to lead you and us to the best decisions. It is for this reason that we share with you at the outset, our desire that as many of these children as possible go into Christian homes." Theirs was a Christian home; I arrived in July 1971. I am one of an estimated 200,000 South Korean children placed in the arms of a family in North America, Europe, or Australia since the mid–1950s.

Modern adoption history in the U.S. has been fraught with criticism that adoption is tantamount to commercial baby buying. Social work and adoption professionals speak of "finding families for children, not children for families" to emphasize the focus of adoption on children. However, as much as adoption has and continues to be socially constructed as a service for children, adoption has always been more about the needs and desires, including religion, of the adoptive parents.

Growing the congregation

The concept of adoption in the United States as a means to grow the spiritual family is not new and has often been met with resistance or controversy when adoption changes the religion of the child from his or her biological family to that of the adoptive parents. Christianity played a major role in the advancement of fostering and adoption in the United States. The Native American boarding schools, Indian Adoption Project, orphan train movement, and maternity homes for unwed mothers have all been evangelical projects and all have been critiqued as projects to reform children and families that did not comply with the dominant, Anglo–Saxon Protestant, traditional, two–parent worldview. The current evangelical focus on "orphans" exemplified by Both Ends Burning, the Orphan Sunday movement and popular Christian authors and scholars such as Russell Moore is the twenty–first century's, high–tech, multi–media version of evangelical humanitarianism, popularized over fifty years ago by organizations such as World Vision. If Dan Cruver and Russell Moore have become contemporary spokespersons for the evangelical response for international adoption, Harry Holt was their prototype, capitalizing on the dual salvations Christian adoptive parents provide for children: material *and* spiritual rescue and salvation.

Harry and Bertha Holt became famous for adopting eight Korean children in 1955. In 1954, the Holts attended a World Vision presentation in their hometown of Creswell, Oregon. From the beginning, providing material and parental resources was only one of Holt's goals. To tap in to prospective evangelical adopters, Harry used a method still employed today.

Descriptions and photographs of the unsanitary and impoverished conditions of orphanages or congregate care facilities in which children are living equate adoption as the rescue of children from "hell on earth." In 1955 Harry Holt wrote,

> *"The little boy or girl that may be, by the grace of God, in your home by this time next year is right now lying on the floor in the cold Korean winter, huddled under whatever covers they happen to have. They are always cold and there is never enough to eat. Most of them are weak with malnutrition and sick with colds and dysentary, and many others with the beginnings of tuberculosis."*

Some Children See Him: A Transracial Adoptee's View of Color-blind Christianity

Russell Moore's first visit with his sons in his book, *Adopted for Life: The Priority of Adoption for Christian Families and Churches* (2009), describes his sons as "lying in excrement and vomit, covered in heat blisters and flies." In the forward to *Adopted for Life*, C.J. Mahaney of Sovereign Grace Ministries praises adoptive parents who "travel to distant (and sometimes dangerous) countries to adopt." The inclusion of "dangerous" is a necessary and important qualifier because it reinforces the narrative of rescuing a child from an earthly hell, both materially and spiritually, through the mechanism of adoption.

The 1955 "Dear Friends" newsletter from Holt states, "We would ask all of you who are Christians to pray to God that he will give us the wisdom and strength and the power to deliver his little children from the cold and misery and darkness of Korea." Fifty-five years later, Reverent Tom Benz echoes Holt by telling supporters raising funds to airlift children from Haiti following the earthquakes that they would "bring children out of darkness and suffering into faith and life in Jesus Christ."

Robert Ackerman, the Immigration and Naturalization Service officer in charge of adoptions at the U.S. embassy in Seoul during the 1980s, expressed concern to reporter Matthew Rothschild that the more extreme religious adoption agencies viewed adoptions as "a quick means of spreading the Gospel, a head start on proselytizing." Proselytizing is exactly what many evangelical adoption advocates hope for through adoption. "The younger the child is, the more opportunity you will have to bring up that child in Christian nurture and instruction, to form the character and eternal destiny of this son or daughter," writes Russell Moore in *Adopted for Life.* "An adopting Christian couple may decide they want to adopt an infant or young toddler so as to exercise a maximal amount of stewardship in that child's life. That's a legitimate decision." In *Reclaiming Adoption*: *Missional Living through the Rediscovery of Abba Father* (2010) Dan Cruver declares, "The ultimate purpose of human adoption by Christians, therefore, is not to give orphans parents, as important as that is. It is to place them in a Christian home that they might be positioned to receive the gospel."

God's law or man's law?

Adoption, a family-building activity, is considered an act of spiritual warfare. In *Adopted for Life*, Moore calls adoption "spiritual warfare in the heavenly places." By describing Christians who adopt as "spiritual warriors," Moore and others deflect those who might critique or delay their adoptions, in particular adoption social workers, as the enemy. Positioning social workers as spiritual enemies is part of a larger validation of Christian exceptionalism – a belief that God's law supersedes man's law and Christians are exempt from laws that conflict with their spiritual beliefs. Moore writes, "Christians can debate whether or not lying [to adoption social workers] is permissible in certain instances to save a life," comparing the act of lying for the purpose of adoption equal to protecting Jews from the Nazis or Hebrew babies from Pharaoh.

This was certainly the belief for Bertha Holt, who describes in her memoirs their interactions with American adoption agencies and social workers, particularly around the approval of adoptive parents for Korean children. When social workers from the American Social Agency were unsuccessful in their lobbying efforts to close the Holt adoption agency due to their reputation for accepting prospective adoptive couples that had been turned down by other agencies, Bertha Holt cheered, "The Lord managed to legally bypass [the American Social Agency's] roadblock."

Christians espousing disregard for measures designed to safeguard and protect children in adoption when these safeguards conflict with their beliefs appears hypocritical at best. Chuck Johnson, President of the National Council for Adoption, told reporter Kathryn Joyce for *The Nation*, "I think Christians are the worst at this sometimes, about the ends justifying the means...You'll hear people saying, I'm following God's law, not man's laws." In terms of the illegal and unethical adoption practices that have been linked to international adoption, Moore advises that prospective adoptive parents seek out Christian agencies, despite evidence that Christian agencies and organizations have been responsible for some of the most egregious unethical and illegal recruitment practices.

"Color-blind" Christianity

I was raised on the hymn *Some Children See Him*. The song describes Jesus as "bronzed and brown" or "dark as they," "with skin of yellow hue," presenting this idea that each Christian sees Jesus as they see themselves, not transcending race but embodying race. Except, I never saw Jesus portrayed as anything but a white man, with long wavy brown

hair, wearing a white robe and sandals. My Jesus did not have black hair and he certainly was not donning a white *hanbok*. Russell Moore and others describe adoption as an example of "color-blind humanity;" however, the church congregations that many transracial and transnational adoptees attend are not bastions of color-blindness. As Martin Luther King, Jr. often said, "11:00 on Sunday is the most segregated hour of the week in America." A church cannot boast of embracing multiculturalism if the only diversity in the church is represented by transracially and transnationally adopted children attending Sunday school.

As one of a few non-white persons in my church, I describe my experience as one of simultaneous visibility and invisibility. I was the visible reminder of the missionary success in faraway heathen countries, having been "saved" from the "cold and darkness" of Korea. My visibility as an "other" also subjected me to individual racism by members of the majority-white congregation. My experience is not singular; many transracially-adopted persons have shared similar experiences of racial prejudice within their own places of worship.

Despite my visible "otherness," my South Korean heritage was simultaneously ignored to facilitate my assimilation into a white church community. For some Christian adoptive parents, erasure of transracial and transnational adoptee racial and ethnic identity is a goal. Moore writes that during the home study process, he and his wife were advised to teach their children about their Russian cultural heritage. Moore writes, "[Russian] is not their heritage anymore...we teach them about their heritage, yes, but their heritage as Mississippians." Moore can be proud of *his* cultural heritage, teaching his sons about *his* parents and grandparents and red beans and rice and catfish – but borscht or Russian culture and history, because they are not part of *his* heritage, is irrelevant. Color-blindness, according to Moore, is not about erasing *his* culture.

I have often wondered why white Christian adoptive parents who espouse "color-blindness" do not seek Christian churches in communities of color as a site for cultural, social, and spiritual growth for themselves and their children. Apparently the "colorblind" approach is welcomed when used to erase racial and ethnic differences of non-white Americans, but not in the reverse direction. White adoptive parents who attend a Korean, Black or other racial or ethnic minority church are the racial minority in those settings, thus even when the doctrine and liturgy of the Korean or Black church is the same as a white church, most white adoptive parents prefer to worship within the comfort of their *own* racial and ethnic community. To live in communities without access to ethnic minority churches reinforces the assimilation of transracially and transnationally adopted children.

Fifty-two years later, American churches are still largely segregated and transracially and internationally adopted children continue to be the sole representations of diversity in their church congregations. Many transracial and transnational adoptees do not experience the church as a site of embraced or welcomed diversity, but as an institution that sees only the white Jesus, not the one "bronzed as they," with "skin of yellow hue."

The article abstracted here is available in full at www. clsnet.org/Journal/Spring2012/kim

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ABSTRACT

Human Nature and Truthfulness in Adoption and Donor Conception Practice

By Rev. Mark Diebel

I. Introduction

"What is truth?" (Jn. 18:38) is Pilate's rhetorical question to Jesus' assertion about coming to testify to the truth. The Johannine narrative implies that society in general, like Pilate, puzzles about truth and truthfulness. A question of truthfulness persists in the practice of adoption and donor conception and for the children affected because social practices have justified secrets and lies. In this paper I ask what right do persons have to know the truth about their conception and birth. A society that limits the information available in the pursuit of self-knowledge fails its duty to assure the possibility for self-knowledge.

II. Erasing History

Some of the children that have historically been available for adoption belonged to parents who were not married or whose marriage was found irregular. Children born out of wedlock or from an illegal marriage used to be called bastards. From ancient times, a bastard was thought to be morally stained by the circumstances of his or her conception and birth. In biblical times, the Deuteronomic code enjoined that they be excluded from "the assembly" to the tenth generation (Deut. 23:2).[1] In 1939 an authority wrote, "The bastard, like the prostitute, thief, and beggar, belongs to that motley crowd of disreputable social types which society has generally resented, always endured. He is a living symbol of social irregularity, and undeniable evidence of contramoral forces"[2] Bastards were unable to work in many occupations and faced impediments to marriage and inheritance. Laws carried circumstances of conception and birth into adult life. Standard legal practice wrote "bastard" on the birth certificate of such children.

As adoption practices were developing in the early- to mid-twentieth century, a notion came to be widely accepted that children are blank slates. This progressive notion came to be applied in adoption practice. The revised birth certificate erased the names of the birth parents, replaced them with the adoptive parents, and removed the word "bastard." The slate was clean. At the same time, history was sealed for those directly involved with the adoption and was in practice denied to the adoptee. The blank slate notion served to erase the history of adoptees because *that history was never really there to begin with*.

Donor-conceived children lost access to their history in another way.

> Addison Hard was a student of Dr. William Pancoast who, while teaching a class at Jefferson Medical College in 1884, discussed a situation in which the male in a couple was discovered to be azoospermic and the female was found to be perfectly capable of bearing children. The students in the class suggested that a 'hired man' be called in solve the problem. Dr. Pancoast then took a semen sample from the 'best looking member of the class' and inseminated the woman without her consent and while she was anaesthetized. The doctor later reluctantly told the husband and was relieved to find he approved of the doctor's actions but suggested that his wife not be told. In 1909 Addison Hard went to New York 'to shake the hand of the young man' who had resulted from this procedure. It is speculated that this latter action indicates that Addison Hard was perhaps the student from which the semen sample was collected in 1884, and consequently the genetic father of the world's first DI [donor inseminated] offspring.[3]

Secrecy was planted in the practice of donor

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[1] A bastard was not at the social bottom and may be highly regarded if learned in the law: "A priest precedes a levite, a levite an Israelite, an Israelite a bastard, a bastard a Nathin; a Nathin a proselyte, and a proselyte a freed slave. This applies when they all are [otherwise] equal; but if a bastard is learned in the Law and a High Priest is ignorant of the Law, the bastard that is learned in the Law precedes the High Priest that is ignorant of the Law." MARSHALL D. JOHNSON, THE PURPOSE OF THE BIBLICAL GENEALOGIES 93-94 (1969).

[2] John Witte, Jr, *Afterword: Ishmael's Bane: The Sin and Crime of Illegitimacy Reconsidered*, in TIMOTHY P. JACKSON, THE MORALITY OF ADOPTION: SOCIAL-PSYCHOLOGICAL, THEOLOGICAL, AND LEGAL PERSPECTIVES 296 (2005).

[3] Ken Daniels, *Donor Gametes: Anonymous or Identified?* 21 BEST PRACTICE & RESEARCH CLINICIAL OBSTETRICS AND GYNAECOLOOGY 111 (2007).

conception from the very start. Donor conception has been done for decades with no attention from regulatory agencies. A doctor inseminated the prospective mother, telling the parents about the insemination but not disclosing the identity of the donor. Parents were told never to think about the insemination and never to tell the child about it. Practitioners justified their decision for complete donor anonymity philosophically: "[D]onor semen should be regarded as 'material from an anonymous testis, the donor actually being a non-person . . . .' The myth of blood and flesh has to be uprooted and a state of consciousness has to be achieved in which the donor, from the psychological point of view, does not exist."[4]

Adopted and donor-conceived persons are placed in an untenable situation. If they know about being adopted or donor-conceived and want to know their history, they face barriers to that history, including social beliefs that it is insignificant. On the other hand, if they do not know about being adopted or donor-conceived, they are not allowed to form their own opinion about how these practices affected their life.

III. Theological Discussion

Roger Ruston, in his book *Human Rights and the Image of God*, observes how human nature claims particular significance and dignity in creation because human beings are said to be made in God's image and likeness. Ruston points out how this dignity provided a basis for an argument used by Pope Leo XIII that society has a duty to provide the right to own private property.[5] The analogy for adoptees and donor-conceived persons is that humanity has the fundamental right to the potential knowledge of their parentage. Society has a duty to preserve and provide that information.

Humanity seeks self-knowledge and knowledge of other persons. Scripture is helpful in showing diverse ways that society knows and describes people. In scripture, people in general are always known by *where they come from*. For example, Jesus' self-knowledge is described in elegant simplicity, he is coming from God and returning to God (John 13:3); how he is known by those around him is expressed by *wherefrom* narratives. Matthew signifies Jesus' identity at the very start with a genealogy that descends from father Abraham forty-two generations, passes through Solomon, includes Magi, a flight to Egypt, and a dream to Joseph about the child. Luke also offers birth narratives; but in contrast to Matthew, begins with a story about a cousin named John, an angelic visitation to Mary, and two old people, Simeon and Anna, meeting baby

Jesus. Luke's genealogy ascends to the son of God through Adam and bypasses Solomon for his half-brother Nathan. Luke and Matthew selected these particular stories and lineages for their respective communities because they illuminated *where Jesus came from*.[6]

Mark's gospel ignores birth stories, and calls "mother and brother" those who do God's will (Mk. 3:31-35). Jesus' *wherefrom* is minimized by Mark, but not eliminated—at Jesus' baptism the voice from heaven announces for the benefit of anyone who hears, "You are my son, the beloved, with you I am well pleased" (Mk. 1:11, NRSV). God makes his paternity known and in that knowledge is a disclosure about who Jesus is.

John's gospel, like Mark's, is not concerned with genealogies. John uses the genitive expression "from God" of John the Baptizer and Jesus (e.g., Jn. 1:6, 3:2, 8:40-47). The origin or *wherefrom* that the evangelist emphasizes is being *from* God. For humanity what henceforth matters is not birth according to the flesh but birth "from above" (Jn. 3:3).

The four gospels use origins as *one* means to describe Jesus. Origins are an essential part of what constitutes social knowledge of Jesus, just as Jesus' self-knowledge indicated that he came from God and was returning to God. In general, self-knowledge and social knowledge are *always* comprised of knowledge that includes *wherefrom*. Social practices that restrict information about origins such as the identity of one's parentage prevent the potential for self-knowledge and the ability of society to know those persons in light of that knowledge.

IV. Application in the Resolution of the Episcopal Church

In response to policies and practices that have limited adopted and donor-conceived persons' potential for self-knowledge gained through parentage, the Episcopal Church is considering the following resolution.

A Right to Human Identity (part one)[7]

Resolved, the House of _____ concurring, that the 77th General Convention of the Episcopal Church urge all dioceses to adopt the following statement: Personal history is a fundamental human right and knowledge of one's entire parentage should be assumed as part

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[4] *Id.*

[5] ROGER RUSTON, HUMAN RIGHTS AND THE IMAGE OF GOD 269-76 (2004).

[6] For an example of modern scholars discussing the two birth narratives, see MARCUS J. BORG AND N. T. WRIGHT, THE MEANING OF JESUS: TWO VISIONS 171, 179 (1999).

[7] The full resolution is included in the full text version of this article.

ABSTRACT

Jean Paton, Christian Adoption, and the Reunification of Families

By E. Wayne Carp

Jean M. Paton is the mother of the adoption reform movement. Beginning in 1950, Paton, a twice-adopted, middle-aged, ex-social worker, dedicated herself to explaining the adoption experience to a wider public, providing a healthy self-image for adoptees, and facilitating meetings between adult adoptees and their families of origin. In pursuit of these goals, she founded the Life History Study Center in 1953 and Orphan Voyage in 1961. For the next thirty years, when thousands of adult adoptees and birth mothers had nowhere else to turn, Paton personally counseled them by mail, phone, newsletter, and in person on the best way to begin to search for their birth families and the children they had relinquished. Out of her fundamentalist Presbyterian upbringing in Ypsilanti, Michigan, a conversion experience in her forties, and the experiential knowledge leading up to meeting her birth mother, Paton formulated a theory about searching and reuniting with one's first family, which she called "Christian adoption," composed of the Biblical concepts of forgiveness and reconciliation; these religious concepts came to define her understanding of search and reunion and her empathy for the plight of single mothers and the problems of adult adoptees.

The America Jean Paton grew up in had never been kind to unwed mothers and their children. Like Hawthorne's Hester Prynne in *The Scarlet Letter*, unwed mothers were often stigmatized for violating the institution of the family and society's morality about the proper role of women's sexuality. At the beginning of the twentieth century the moral shame of single motherhood was reinvigorated by the "science" of eugenics, which stigmatized illegitimacy by labeling unwed mothers as feebleminded. By the late 1940s, the psychoanalytic theory that unwed mothers had serious personality disturbances and needed help with their emotional problems dominated social work casework treating the problem of illegitimacy. As postwar illegitimacy soared, social workers claimed to solve these "problems" by separating the unwed mother from her child, placing the child for adoption, and making sure that if the mother ever returned to the agency for information, she would be denied access to it.

It was the baby boom, beginning in the mid-1940s and reaching its peak in the late 1950s, that increased the demand for infants to adopt, resulting in both a profound change in the national culture that tied personal happiness to an ideology of domesticity and the nuclear family and a revolution in adoption practice. For childless couples, parenthood became a necessity; for adoption policy it meant the sealing of adoption records, a reversal from the first half of the twentieth century, when adult adoptees in the United States had little difficulty accessing their adoption court records, adoption agency records, and birth certificates if they sought them. For a multitude of reasons—changing demographics of birth mothers, prescriptive psychoanalytic theory, and the protection of adoptive parents' from possible interference by birth parents— between the 1950s and 1980s, access to adoption court records were closed down first to birth mothers, then to adult adoptees. Next came the denial of access to adoption agency records, followed at last by birth certificates.

The years 1957–1960 were the most intellectually fertile ones of Jean Paton's life as the revolution in adoption practice—particularly the stigma of illegitimacy and the sealing of adoption records— melded with her own experience as an adopted person, social worker, and Christian. Paton's understanding of Christianity revolved around a few basic concepts. Although unsure of God's ultimate purposes, she took from the Gospel of John that "his message [was] Love."[1] She believed Jesus was the adopted son of Joseph, and that he was a social orphan, which Paton defined as a person deprived of their original parents not by death but by social reasons. Paton reprinted with approval a statement from a British Broadcasting Company program, *The Listener*: "And what of Joseph? Where did Jesus get his feeling about fatherhood if not from him? Yet throughout the whole of Christianity he had been represented as a simple, bewildered man. Conventional Christianity, tied to the supernatural, neglects Joseph and Mary as the educators of Jesus."[2] Inspired by these words, Paton completed a piece of sculpture on the Holy Family, which "included

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[1] *See* 1 John 4:8; Jean Paton (hereafter "JP") to Geneva Ferrozzo, 2 Feb. 1982, folder: Ferrozzo, G, in Jean Paton Papers ("JPP"), in possession of author.

[2] JP, "Jottings," Feb. 1, 1961, folder: Reunion 1960–1962, JPP.

Joseph *and* the supernatural."[3] She thought that "only Jesus among all the founders of religions knew of and dealt with the ensnarement of official hostility toward outcasts and uncertain souls."[4] She especially liked to envision "the Messiah" as "'The Lamb of God—Despised and Rejected.'"[5] She believed strongly that the Christian Church belonged especially to orphans. Thus, Paton held that Christianity related to the needs of adopted people. She recognized that the church was flawed and that it did not always live up to its origins, but "at least the ministry had a history and an ethic if only they would apply it."[6] The church for Paton was a much better alternative to professions like social work or psychiatry, which had "little to offer except a pretense of skills."[7]

One of Paton's earliest references to the Christian aspects of adoption occurred in November 1957, when she wrote a review of Ralph Barton Perry's, *Puritanism and Democracy*, in which she specifically discussed "Christian adoptions."[8] These had little to do with the specific practices of a Christian denominationally-operated adoption agency. For Paton, at the heart of Christian adoptions was the doctrine of forgiveness, and at the heart of any adoption was illegitimacy. As she advised one correspondent, "illegitimacy colors all adoption practice." It was responsible for sealing adoption records in the first place and for adopted persons' sense of inferiority, making them hesitant, which ultimately delayed their development in life.[9] The only cure for illegitimacy, Paton maintained, was forgiveness." In a Christian adoption, birth parents were "no more evil than anyone else." To Paton, the "basic Christian message" was "Go and sin no more. There is forgiveness. If the practice and structure of adoption included forgiveness, the explanation to the child would be possible."[10] According to Paton, the problem of the stigma of illegitimacy could only be solved "in a society which has been formed by those related to God through the grace of forgiveness, and who express this in their social relations."

Paton was not only the first person to apply the idea of Christian forgiveness to an adoption reunion,

viewing the meeting as both a psychological process and a performance in which both parties were considered injured and had to utter words of forgiveness to each other, but she was also a pioneer in hypothesizing a positive relationship between theological and therapeutic forgiveness. Her initial understanding of forgiveness was grounded in the teachings of Paul Tillich, one of the most influential Protestant theologians of the twentieth century. On February 21, 1954, at the Unitarian Church of Germantown in Philadelphia, Paton had heard Tillich deliver a sermon on forgiveness.[11] As his text, he took Luke 7: 36-47, which tells the story of Jesus eating at the house of one of the Pharisees. Paton was much taken with a passage in Tillich's sermon, marking it with green pencil for emphasis: "And nothing greater can happen to a human being than he is forgiven. For forgiveness means reconciliation in spite of estrangement; it means reunion in spite of hostility; it means acceptance of those who are unacceptable, and it means reception of those who are rejected."[12] Forgiveness was unconditional. More immediately, Tillich's sermon on forgiveness had a profound personal effect on Paton. After avoiding the issue for twelve years, Paton finally got up the nerve to write to a couple who she believed (erroneously) were her first parents. This experience gave Paton a kind of understanding that matched Luke's message. As she later explained, after two tension-wracked days of waiting for an answer, she sobbed uncontrollably every several hours for the next three days, dissolving the hardness of her heart toward her birth mother, resulting in a great peacefulness. When this ordeal was over, Paton had the courage to search for her mother, to seek forgiveness, and to forgive. This transformative event in Paton's life was the source of her first insight into the concept of the need to be forgiven in reunions.

The concept of forgiveness also clarified for Paton many things she had earlier found puzzling. A lack of forgiveness helped explain "the resentments, sometimes hatreds, of many adopted people; the dreamlike existence in which the natural parents are forced to live; the hostility among many social workers toward the irregular [illegitimate] births."[13] Paton also pointed out that certain adoption

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[3] *Id*. (emphasis in original).

[4] JEAN PATON, ORPHAN VOYAGE 116-117 (1968). For scholarly support of Paton's view, see chapter 6 in A.G. VAN AARDE, FATHERLESS IN GALILEE (2001).

[5] JP to Bill Cody, 10 Sept. 1979, folder: Cody, William, JPP.

[6] JP to Sidney Green, 14 Sept. 1971, folder: Green, Sidney, JPP; JP to Bill Lumley, 5 Dec. 1975, folder: Lumley, Bill.

[7] JP to Sidney Greene, 14 Sept. 1971, folder: Green, Sidney.

[8] Except where noted, all quotation and information in this paragraph are from JP, *Jonathan Edwards Returns*, Life History Study Center, November 1957, News Release, folder: Life History Center for "Reunion" Program.

[9] JP to Selma Chesler, 20 Feb. 1966, folder: Chesler.

[10] JP to Katherine Gordon, 28 Sept. 1982, file: Gordon, Katherine.

[11] A copy of the sermon was in Paton's possession. Paul Tillich, "Forgiveness," 21 Feb. 1954 (SERMON SERIES, Series 1953–54, no. 12). It was later published as *To Whom Much Is Forgiven*, in TILLICH, NEW BEING, 2–14. The published version omits the first two-sentence paragraph of the original sermon, in which the only significant addition is that the Pharisee is identified as "Simon." Otherwise, the published version is identical to the original sermon. For the convenience of readers, references are to the published version.

[12] *Id*. at 7–8.

[13] JP to Dr. Eleanor Scott, 15 Oct. 1955, folder: 1950s Misc. See also JP to Johanna G. Schenk, Oct 28 1955, folder: MA.

Human Nature and Truthfulness in Adoption and Donor Conception Practice

of a person's natural property…

This resolution addresses personal history, using the language of natural property: "Parentage" is a kind of potential self-knowledge and is property that belongs to every person.

The resolution reserves judgment on the usage of "mother" and "father." The term "donor" is inappropriate for donor-conceived persons in that a "donor" refers to a relationship with their parentage and is more accurately considered a progenitor, a "father" or "mother" of the donor-conceived person. Adoptees sometimes refer to the birth mother or father as simply "mother" or "father." Children of surrogacy relations *may* choose to call the "gestational carrier" "mother." The main point for this resolution does not concern legal or common usage of terms like mother or father, nor does it intend to force certain usages, but provides the right of persons to identify who their mother and father are, because in that recognition and nomenclature, self-knowledge is discoverable. Additionally, identity is not only personally relevant but also socially, as described above. Thus, the term "parentage" in the resolution is meant to be understood in a dynamic way.

V. Conclusion

In the United States, adoptees and donor-conceived persons have been and continue to be denied the right to know their parentage by practices that justify keeping secrets and withholding information. The time has come for theology to add its voice to those against the continuance of these practices. Self-knowledge does not necessarily make a life easier but it provides the opportunity for a truer life.

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The Rev. Mark Diebel (M.Div. Episcopal Theological Seminary of the Southwest), is a doctoral student (D.Min) at Barry University Department of Theology and Philosophy in Miami Shores, Florida. He is focusing on anonymous donor conception practices in the United States and how these practices affect personal identity. He has been in parish ministry for twenty-four years and is rector of Christ Episcopal Church in Greenville, New York. He is active with adoption reform and open records for adoptees. He is married to Beth. He is a transracial adoptee.

Jean Paton, Christian Adoption, and the Reunification of Families

practices, especially the cutting off of kinship ties through legislation that sealed adoption records, induced adverse mental symptoms in triad members and discriminatory policies in social workers, "in which the only form of lasting relief [was] forgiveness."[14]

Paton's formulation of Christian adoption, with its morphology of search and reunion, reconciliation and forgiveness, led to her announcing a new program of the Life History Study Center, which she named "REUNION," designed to put members of the adoption triad in touch with each other. Paton emphasized the psychological damage among many in the adopted population caused by the lack of knowledge of their first families and the need to reconnect with their families. As a corollary to this statement, Paton asserted that searching for biological kin was essential because the process was therapeutic in its effects: It healed the inherent alienation resulting from the stigma of illegitimacy and the loss of kin due to adoption. Here was the gist of Paton's notion that only through Christian adoption, made possible through the Biblical concept of forgiveness, could adult adoptees become healthy through searching for and reconciling with their birth parents.

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E. Wayne Carp is the Benson Family Chair in History and Professor of History at Pacific Lutheran University. His major publications include Family Matters: Secrecy and Disclosure in the History of Adoption (Harvard University Press, 1998), and Adoption Politics: Bastard Nation and Ballot Initiative 58 (University of Kansas Press, 2004). He is also the editor of Adoption in America: Historical Perspectives (University of Michigan Press, 2002), and many articles on the history of adoption. An internationally recognized expert on legal issues, he has served as a consultant and expert witness throughout North America in cases that concern "wrongful adoption," secrecy in adoption records, and the history of adoption disclosure laws. In the Spring 2008, Professor Carp was appointed a Fulbright Distinguished Lecturer at Yonsei University in Seoul, South Korea. Recently, he completed a book manuscript entitled, "The Extraordinary Life of Jean Paton and the Struggle to Reform American Adoption."

[14] *Id.*

A Mother's Story

By Clara Daniels

From the Editor: The following narrative is a first mother story from our own time. As the voice of a mother recently traumatized by her experience with the adoption system, it is raw, unsettled, and unsettling. Yet it raises important questions.

Legally, A Mother's Story *implicates the length of revocation periods. In Alabama, where this case occurred, there is a five-day revocation period. If the mother has gone through a "pre-birth" consent hearing, the revocation period begins at birth, prior to physically relinquishing the baby. There is then an additional nine days in which the mother can attempt to revoke, but such an attempt triggers a "best interests of the child" litigation. The "best interests" standard invites efforts to destroy the first mother in court, to malign her character and life, and to enter into a comparative discourse on who would be a "better" parent of the child. Thus, a mere six days after birth, a legal stranger to the child stands on an equal (or superior) legal footing with the mother. Alabama's short revocation periods are typical, although Alabama's use of a pre-birth hearing is unusual. An additional legal issue raised by this case is the doctrine of undue inducement in the context of a vulnerable first mother.*

Ethically and religiously, this essay raises the question of how and why devoutly Christian adoptive parents would want to keep a baby knowing full well that the mother, thirteen days after birth, wants her baby back. It is a stark reminder that although adoption is portrayed as a humanitarian act, the desire for a baby to parent can be overwhelming for the millions of infertile couples in the United States. Indeed, Proverbs 30:15-16 poetically lists the "barren womb" as among the insatiable things of this world. The question is when and under what terms this intense longing to parent should be satisfied with someone else's child.

Some may consider it unfair to hear the mother's story without balancing it against those of the adoptive parents or others. However, we almost always hear the adoptive parents' story without hearing anyone else's—whether it be the first family, or the adoptee. In this instance, the mother has chosen to maintain the anonymity of the adoptive family and child, and others involved, through using pseudonyms---the names have all been changed. Some identifying details have also been altered. Although the author could identify herself, she has chosen not to do so at this time-- her name is a pseudonym. Any privacy concerns have been vitiated by a published judicial opinion, available on the internet, which provides far more identifying information about all concerned than anything herein. The State of Alabama has had its say in this case; now it is the mother's turn.

To meet "Clara" the mother, today, five years after the loss of her child, is to meet a young woman and mother moving forward in her life despite great trauma. She is successfully parenting her second child with the child's father; she is soon to graduate from college. Her life began to change for the better, seemingly, from the moment she discovered she was pregnant with her first child, this being the occasion to end her involvement in drugs. Yet her relationship to the church is hardly reconciled. Having experienced church leaders and devout Christian friends who strongly pressured her toward adoption and claimed to love her, but who turned on her once she wanted her baby back, she is deeply cynical about the church. They treated her desire for her own child as a betrayal, and answered her pleas with a legal barrage of accusation. It will be interesting to see what word the church has for her now. Do we justify the loss of her baby, or do we regret that this clearly competent and loving mother lost her child? Clara has gone through her trial, having endured twelve hours of examination on the stand and a published judicial opinion that chronicles her faults for all the world to see (albeit under the thin protection of initials rather than full name); perhaps now in God's eyes it is the rest of us who must bear the scrutiny of a greater Judge, as He contemplates our treatment of mothers. —David Smolin

When my daughter, Adeline, was born, I was overwhelmed with emotion. My tears of joy quickly transformed to tears of regret and sadness. Nothing could have prepared me for the love I had for Adeline when she was placed on my chest. Her face was absolutely perfect with apple red lips and deep, piercing, blue eyes. Her scent resembled cherries and her skin was calming to my shaky hands. I had nothing but love to give her. In the months before this moment, I was told daily that love was not enough. In two days I would surrender Adeline to her adoptive parents.

Adeline is five years old, but the trauma of surrendering her lingers. Everyone said I was doing a selfless act by giving Adeline a better life. I was made to believe that I was incapable of raising my

A Mother's Story

child. Adoption was the *only* option offered to me during this delicate time.

I was expected to relinquish my daughter and return to life as a college student, as if she had never happened. The emptiness felt from losing my child is still alive in me. I will not forget; I will not be silenced. I have analyzed each moment over and over. I am now aware of what happened to me. I was a victim of bad laws and God's followers.

In May of 2006 I found myself facing an unplanned pregnancy at 19. It was my first semester in college, and I was living a fast lifestyle with drugs and alcohol. My relationship with my parents was strained. I had moved out of their house, wanting to experience this big world for myself. Coming from a devout Christian home, I knew that being unwed and pregnant was going to disappoint them.

The news of my pregnancy was shocking and traumatic for my conservative, Christian family and friends. No one knew how to react, what to do or where to turn. My parents were getting a divorce. My mom and sister were moving to an apartment; my dad was unemployed and on the verge of losing his house.

Greg, a well-trusted family friend of forty years, became the catalyst for creating the turn of events that changed my life. Through a network of church and community friends, he found a couple that was looking for an infant to adopt. The prospective adoptive parents were young, white and affluent and lived twenty minutes away in a nice home in a quaint suburb. The husband had graduated from the Christian school that I had attended, and his parents were members at the church I had attended for years.

My living situation was uncertain. My father's financial status continued to decline since being let go from his job, and he was only months away from losing his house. My mom's apartment was not an option either. Because of my behavior and drug abuse over the past year, my mom was nervous about me living with her. After failed attempts to find housing for me, Greg offered to let me move in with his family.

Greg managed all correspondence with the adoptive parents and their attorney. The adoptive parents sent Greg a monthly check in an amount that had been approved by the court. He deposited the money into his personal account and gave it to me at his discretion. The adoptive parents sent other items such as gift baskets, candles and baked cookies. They hand wrote letters, signing them as "Your excited friends." We were not friends. They baited me with encouragement and love, only to destroy me when I asked for my child back.

Greg told me that I was going to attend a prebirth hearing to "get some paperwork out of the way." The presiding judge praised me for the selfless act I was doing by relinquishing Adeline. Later it was revealed that the judge and the adoptive parents' were in the same Sunday school class. I signed the consent without the benefit of anyone who could objectively counsel me, provide legal advice, or discuss other options.

Every day Greg would make sure I was "on board." He told me to sympathize with the adoptive parents, to put myself in their shoes. He would say there was no way I could support Adeline and that giving her up would allow me to move on. He barred family friends from discussing the adoption with me. He regularly told my sister that she had to be "on board" and told her he would not sleep until the adoption was final.

Adeline came into the world at 3:30PM. She was 20 inches, 7 lbs., with beautiful brown hair. As the nurse laid her on my chest, I took in each detail with bittersweet awareness. Adeline's bare, soft, newborn skin felt like velvet on my chest. Her wrinkled fingers cupped her rosy cheeks while she took in her big new world with alert, deep blue eyes. She did not cry and lay in my arms content and happy. Those quiet, sweet moments were short, but they were poignant.

Two days later the time came for me to surrender Adeline. I changed her tiny diaper one last time, placed her on my lap, and watched her breathe. I noted each detail-her smell, her tiny hands and feet, her glistening cherry lips. I embraced her, knowing this was the end and the beginning for me. It was a surreal end to a short time as a parent and the beginning of a painful journey. It was hard to gain composure as I kissed Adeline's forehead. I swaddled her like a packaged gift. The hand knitted sweater that I had worn as an infant lay beside her. When the couple arrived, I planned to put it on Adeline, a part of me for her journey to a new home.

The adoptive parents entered my room and stood like children on Christmas morning. The adoptive mother held a yellow knitted sweater. It would take the place of the sweater I had so carefully dressed her in. My arms felt foreign as I placed Adeline in their arms. They held their swaddled package and turned to leave. My mom and sister held me as we mourned for my daughter being carried out of the hospital by someone else.

At home the days drudged on. Searching for answers, I called a family friend. He was the founder and president of a ministry that my family had attended numerous times. I immediately regretted calling on him. His words were the same as Greg's. He told me to make a list of pros and cons of why I should parent Adeline. "Do you want to farm out

your child?" he said. "Do you want her to have the same situation you have had?" I felt so betrayed; I trusted him. He was a Christian leader with a successful and trusted ministry. Yet he gave me reasons to not parent my child.

The next four days I didn't sleep or eat. I knew I wanted my daughter back, but I was scared. *Do I change my mind or suffer in silence?* The documents surrounding the adoption were in Greg's possession and he had worked so hard to see this adoption go through. Twelve days after giving birth, I visited an adoption attorney to draft the revocation documents.

I went the following morning to the courthouse and gave the clerk the revocation. The clerk immediately called the adoptive couple's attorney. She then handed back the petition, signed by two witnesses, and only stamped the withdrawal of consent. I assumed the clerk knew what was needed.

A few days later I received a letter from the Probate Judge saying my petition was "defective" and "flawed" – not valid. The document that the clerk deemed "unnecessary" *was* necessary. I *had* to tell the court that a clerk, a person who was supposed to be committed to justice, sabotaged my paperwork.

I hired an attorney and filed a Motion for Leave to Amend the Petition to Withdraw Consent with the Probate Court. At the hearing, Greg attended with the adoptive parents. For months Greg had praised my transformation, and now he was ready to stand against me.

My petition was denied, but I appealed the court's denial. Nervous and intimidated, I told the court that an attorney had drafted my documents, all of which were signed and notarized as required. The clerk had refused one of the documents, accepted the other, and told me to leave. The clerk lied under oath without hesitating, claiming that I had filed the wrong documents. This time the court ruled in my favor; my fight for Adeline would continue.

Twice I filed a motion requesting visitation privileges with my daughter. Twice the court denied my requests. The case was then ordered to mediation. I pleaded with the couple to return Adeline or, at least, allow visitation. I offered to relinquish all rights if I could just be a part of Adeline's life. It was difficult to fathom how these deeply religious people could be so cold.

The case proceeded to trial more than a year after Adeline's birth. The long delay put me at a severe disadvantage, allowing the adoptive family to claim that returning the child to me would be disruptive for Adeline. There was a new judge, different from the one who had overseen the pre-birth. Records were subpoenaed from every doctor, psychiatrist, family counselor and pharmacy I had been to. They would uncover every incident in my past to paint me as an unfit mother. I knew from growing up in church that God forgives without judgment and offers mercy to those who ask. I was hoping the adoptive parents would extend mercy to me, but this was not their plan.

I testified for twelve hours. I answered very difficult questions with all the confidence I could conjure. My past was tainted with behavioral problems and even visits to an adolescent unit of a psychiatric hospital, but I had not needed treatment for three years. Despite my requests for a complete and current evaluation, past records alone were used.

I was made to read aloud my psychiatric records and repeat the private statements contained in those documents. The adoptive parent's attorney focused on my perceived instability and my family's dysfunction. He rehashed the volatile relationship I had with my parents in my minority. He asked about my sexual history and the drugs and alcohol I had used, all of which had occurred before finding out I was pregnant. I had taken drug tests at every doctor visit during my pregnancy and passed each time.

The adoptive couple and Greg were presented quite differently. The couple had graduated from college. The adoptive mother was now a stay at home wife; the adoptive father an honorably discharged officer with a graduate degree. Greg was a successful businessman who volunteered with a prison ministry. They were asked questions about their church, their charitable contributions and their community involvement.

I alleged improper conduct, undue influence and coercion by the adoptive parents and Greg, as an agent for the adoptive parents. Despite extensive contact between Greg and the adoptive parents, and Greg's extensive influence over me, the Probate Court found that he was not an agent of the adoptive parents, nor was he a source of undue influence. The Court also found that the adoption was in Adeline's best interest. By then Adeline was almost two years old. I appealed, but lost.

The words I heard throughout my pregnancy, "You will move on. You have your whole life ahead of you," turned out to be an insensitive lie. Although I have learned to cope with my grief, nothing can take away my feelings of loss and injustice. I have another daughter who is beautiful and healthy. I will be graduating soon from college. But moving on in the sense that was meant, "to get on with it," has not happened. I am forever a changed person. My faith, perspective and perceived purpose in this world have been transformed, but I have not forgotten the unfair laws and the way I was demeaned, manipulated, and discarded by God's followers.

Speaking of Religious Freedom
What's in a Name?

By Kimberlee Wood Colby
Senior Counsel, Center for Law and Religious Freedom

Academics particularly appreciate that the name given to an idea, theory, or right matters. This is especially true in the current religious liberty puzzle that tries to piece together religious liberty protections and nondiscrimination principles. Two big pieces of the puzzle illustrate the importance of the choice of names for an action. Is a religious group's right to choose its leaders according to its religious beliefs protected by the freedom of "association" or "assembly"? Is the choice of leaders according to religious beliefs "religious liberty" or "discrimination"? Two scholars recently began to explore the importance of getting these terms right, but further work is required.

Freedom of assembly or freedom of association?

That the name given to a right matters is the insight at the core of a new book, *Liberty's Refuge: The Forgotten Freedom of Assembly.* Professor John Inazu argues that the right of assembly has been greatly, albeit gradually over the past five decades, diminished as a result of the Supreme Court's substitution of the label "association" for "assembly." The book is both a description of how the change occurred and preliminary thoughts regarding how the broader scope of freedom of assembly might be recovered.

Briefly, Professor Inazu's thesis posits that:
> [T]he loss of assembly and the uncritical embrace of the constitutional right of association have weakened group autonomy by suppressing dissent, depoliticizing action, and constraining expression. These changes . . . open the door for the state to impose meaning, purpose, and value on groups and their activities.

John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* 10–11 (2012).

Professor Inazu traces the contours of freedom of assembly from the Founding through the antislavery, women's, and early civil rights movements, ending in the 1950s when the Court began its reliance on freedom of association in *NAACP v. Alabama,* 357 U.S. 449 (1958). This weaker protection of "association" culminated in the Supreme Court's

approval of a public law school's policy that obliterated all student groups' right to require their leaders and members to agree with the groups' core beliefs in *Christian Legal Society v. Martinez,* 130 S. Ct. 2971 (2012). Professor Inazu characterizes that decision as "lamentable, but . . . unsurprising" in light of "the unprincipled development of the Court's approach to questions of group autonomy over the past fifty years." (6)

Professor Inazu argues that a reinvigorated freedom of assembly would, among other things, "extend[ ] beyond political groups to religious and social groups of all kinds," including dissident groups whose aims are outside "the common good." By "guard[ing] against restrictions imposed prior to an act of assembling," freedom of assembly would "protect[ ] a group's autonomy, composition, and existence." It would recognize that "the existence of a group and its selection of members and leaders are themselves forms of expression" (152–153).

At first blush, it might seem unlikely that the difference between "association" and "assembly" could account for the Court's recent roughshod disregard of groups' foundational right to select leaders and members who share the groups' common viewpoints. Professor Inazu, however, provides solid support for his thesis as well as preliminary thoughts for recovering a robust freedom of assembly.

Religious liberty or discrimination?

The health of religious liberty depends on the choice between two other words. Increasingly, religious groups must explain why it is religious liberty (and common sense), not discrimination, for a religious group to insist that its leaders share its religious beliefs and standards of conduct. Those unfriendly to religious liberty are quick to slap the label of discrimination on a religious group's efforts to maintain its religious identity. In light of our country's history, it is a positive thing that most Americans' immediate reaction when something is labeled discrimination is to deem that thing "bad".

Nondiscrimination policies certainly serve vital purposes. But to use nondiscrimination policies that are supposed to *protect* religious citizens to *penalize* them in reality undermines the essential good such

policies serve. Religious groups' ability to ensure that their leaders share their religious beliefs is basic to religious liberty.

For example, religious organizations must be able to explain why it is religious liberty, not wrongful discrimination, for a church that rents public facilities to reserve communion to those who are baptized into its faith. One Second Circuit judge has opined that this "discrimination" might be an adequate reason for New York City to deny a church (Bronx Household of Faith) permission to rent space in a public school. In another example, for the past three years, a large coalition of groups (inaptly named "Coalition Against Religious Discrimination") has pressured the Obama Administration to deny faith-based organizations the ability to hire based on their core religious beliefs if they provide social services using any federal funding. Thus far, the Administration has resisted this pressure.

Somewhat surprisingly, the Administration recently argued in the Supreme Court that some "discrimination" by religious groups – specifically, the Catholic Church restricting the priesthood to men – was permissible. Most interestingly, and ultimately most damagingly, the Administration located the permissibility for this "discrimination" in the freedom of association, rather than the free exercise or establishment clauses. Forcefully rejecting the Administration's failure to center the ministerial exception in the Religion Clauses, the Court explained:

> The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us.

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S. Ct. 694, 710 (2012).

While the Court's opinion in *Hosanna-Tabor* is masterful, it did not provide much guidance as to when religious groups' practices are not wrongful discrimination but basic religious liberty. This basic delineation between discrimination and religious liberty is vital and needs to be made not only in legal terminology but in everyday conversations. If the "average" citizen fails to comprehend when the label of "discrimination" is wrongfully applied to religious groups' efforts to define themselves, religious liberty is at grave risk.

Professor Rick Garnett recently tackled this problem in his piece "Confusion about Discrimination," http://www.thepublicdiscourse.

com (April 5, 2012), in which he observed that "the goings-on at Vanderbilt reveal a troubling confusion about 'discrimination,' a confusion that, as it spreads, will undermine religious freedom, institutional pluralism, and civil society." He observes that "[t]he rhetorical, moral, and legal power of the antidiscrimination norm can sometimes distort or distract our thinking about how we do and should protect religious freedom through law."

Embracing our government's foundational truth that all persons are created equal, Professor Garnett nevertheless observes the "obvious point" that "[i]t is not 'discrimination' that is wrong; instead, it is *wrongful* discrimination that is wrong." Despite its obviousness, the point needs to be made repeatedly in a society that reacts in kneejerk fashion to application of the "discrimination" label.

Professor Garnett then proceeds to the task of distinguishing wrongful discrimination from innocuous or permissible discrimination. It is a useful beginning that merits further development. He would consider the full context of the act that has been labeled as discrimination to determine whether it is wrong and, if wrong, whether the government should act to ban or penalize the particular discrimination. Suggesting several factors for consideration, he would ask whether "the social meaning of the particular decision in question [is] such that it 'belies the principle that people are of equal ultimate worth'" and whether "the decision [is] one that a 'limited state in a free society' has the authority to supervise?"

Too many judges, legislators, and educational administrators have been too quick to forget, in Professor Garnett's concluding words, that:

> [O]ne dimension of the freedom of religion is, sometimes, precisely the freedom to 'discriminate,' and that this freedom should be protected not simply because such discrimination is an all-things-considered tolerable wrong – sometimes it is, sometimes it isn't – but because it is inextricably tied to something good – a human right – and is, sometimes, beyond political authorities' legitimate reach.

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