ADOPTION AND THE SINGLE PARENT

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HISTORY OF THE PRESENT LEGISLATION

The present legislation relating to the adoption of children in Australia was enacted in all the States and mainland Territories between 1964 and 1968.[1] Discussions between the Commonwealth and the States led to the drafting by the Commonwealth of a model bill which provided the basis for the State Acts[2] and which was designed to provide uniformity in adoption law in Australia.[3]

Section 8 of the Victorian Act[4] 'should be regarded as the key note of this legislation':[5]

> 8. In the administration of this Part the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Its effect is pointed out by Hambly,[6]

> A study of innovations in the uniform Acts is predominantly a study of the changes brought about by the introduction of this cardinal principle.

This represents the legislative expression of present day opinion of the adoption agencies. It is quite a reversal from previous adoption policy, when parental interests often received equal consideration. An example of this change of approach can be seen by comparing the reports of the Hurst Committee (1954)[7] and the Houghton Committee (1972)[8]. While

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1 The State Acts to which all citations in this paper refer are: *Vic.*, Adoption of Children Act 1964; *N.S.W.*, Adoption of Children Act 1965-66; *Qld.*, Adoption of Children Act 1964-67; *S.A.*, Adoption of Children Act 1966-67; *W.A.*, Adoption of Children Act 1896-1964; *Tas.*, Adoption of Children Act 1968; *A.C.T.*, Adoption of Children Ordinance 1965; *N.T.*, Adoption of Children Ordinance 1964-67.

2 With the exception of Western Australia, where parts of the model bill were incorporated by amendments to existing legislation.

3 As will be seen below, the Adoption of Children Act 1896-1964 (W.A.) is the only Australian legislation in which the sections relevant to this paper differ from those of the model bill. The remaining States and the mainland Territories have identical provisions in their Acts.

4 *N.S.W.* s 17, *Qld.* s 10, *S.A.* s 9, *Tas.* s 11; *A.C.T.* s 15, *N.T.* s 10. Citations in the text of this paper refer to the Victorian Act, unless it is stated otherwise.

5 The Hon. R. J. Hamer, Minister for Immigration, in his speech proposing the Bill to the Legislative Council: *Victoria, Parliamentary Debates* 271-274 Pt. IV, 3284.

6 Hambly, D., '*Adoption of Children*: *An Appraisal of the Uniform Acts*' (1968) 8 W.A.L.R. 281.

7 United Kingdom, *Report of the Departmental Committee on the Adoption of Children*, Cmd. 9248, (1954).

8 United Kingdom, *Report of the Departmental Committee on the Adoption of Children*, Cmnd. 5107, (1972).

the Hurst Committee considered that the paramountcy of the child's welfare was an inappropriate basis for adoption law, the Houghton Committee recommended 'that the long-term welfare of the child should be the first and paramount consideration'.

Section 10 of the Act reads:

> 10. (1) Except as provided by the next succeeding subsection, an adoption order shall not be made otherwise than in favour of a husband and wife jointly.
> (2) Subject to the next succeeding subsection, where the Court is satisfied that exceptional circumstances make it desirable so to do, the Court may make an adoption order in favour of one person.

This section makes it more difficult than under previous legislation for a single person to adopt a child. It was the result not only of the Commonwealth model bill, but also of pressure within Victoria. A committee had been appointed in 1962 by the Chief Secretary to look into aspects of Child Care in Victoria. In one of the committee's many 'alterations considered by those interviewed to be necessary or desirable', it advocated that:

> Single adopters should not be permitted without the approval of the statutory authority and only in special cases.[9]

COMPARISON

The previous legislation, the Adoption of Children Act 1958 (Vic.),[10] did not have the same *leit-motif* of the paramountcy of the child's welfare of the child was not considered paramount.[11]

> 6. The Court before making an adoption order shall be satisfied . . . that the order if made will be for the welfare of the infant.

Indeed there were several decisions of the Courts where it was clear that welfare of the child was not considered paramount.[11]

Comparison of the 1964 and 1958 Acts shows an important change in the method of description of the classes of people in whose favour an adoption order may be made. The 1964 Act (by s. 10) makes it clear that normally adoption is by a married couple, and that adoption by a single person only occurs under exceptional circumstances. The 1958 Act, on the other hand, referred throughout to 'the applicant' in the singular, as if this were the rule rather than the exception. Similar changes have

[9] *Survey of Child Care in Victoria* (1962-64), 45.

[10] Child Welfare Act 1939 (N.S.W.) Part XIX; Adoption of Children Act 1935-52 (Qld.); Adoption of Children Act 1925-34 (S.A.); Adoption of Children Act 1920 (Tas.); Adoption of Children Ordinance 1938-49 (A.C.T.); Adoption of Children Ordinance 1949-50 (N.T.).

[11] See for instance, *In re B.*, [1939] V.L.R. 42, *In re M.F.S.*, [1964] N.S.W.R. 244. See also the article by Finlay, '"First" or "Paramount"; The Interest of the Child in Matrimonial Proceedings' (1968) 42 A.L.J. 96.

been made in the legislation of all the other States and Territories[12] except Western Australia. The relevant sections of the Adoption of Children Act 1896-1964 (W.A.)[13] do not follow the model bill. The Act allows the following to adopt (subject to some age limitations): a husband and wife jointly, a married person alone (but with the written consent of the other partner), an unmarried person, or a widow or widower.

Similarly, differences in approach are evident in the adoption legislation of other Commonwealth jurisdictions. England,[14], British Columbia[15] and Alberta[16] allow adoptions by an adult (unmarried) person, or an adult married couple, without any differentiation between the two classes. On the other hand, the New Zealand Act,[17] like the Victorian Act of 1964, makes it clear that adoption is normally by a couple.[18] In Ontario the wording of the relevant section[19] is such that it effectively *prohibits* all adoptions by unmarried, widowed or divorced persons, 'unless there are *special* circumstances that justify, as an *exceptional* measure, the making of the order.' (emphasis added).

VICTORIA AND ENGLAND

It is proposed to make a more detailed comparison of the legislation in Victoria and England and to see what effect the legislation has on adoption practice regarding single parents. In many ways the English legislation and practice provide valuable comparison. Both England and Victoria face similar problems of a surplus of adoptive parents, coupled with a marked decrease in the numbers of babies available each year. In England, however, there are about fifteen times as many adoptions each year as in Victoria, and there is correspondingly greater interest in the problems of adoption. More detailed statistics are kept, and it is easier to ascertain trends in adoption.[20] Above all, there is greater interest shown in reform of adoption practice and revision of adoption law.[21]

[12] *N.S.W.* — compare s 19 of the Adoption of Children Act 1965-66 with ss 162 and 163 of the Child Welfare Act 1939. *Qld.* — compare s 12 of the Adoption of Children Act 1964-67 with s 4 of the Adoption of Children Act 1935-52. *S.A.* — compare s 11 of the Adoption of Children Act 1966-67 with ss 3 and 9 of the Adoption of Children Act 1925-34. *Tas.* — compare s 13 of the Adoption of Children Act 1968 with ss 3, 4 and 6 of the Adoption of Children Act 1920. *A.C.T.* — compare s 17 of the Adoption of Children Ordinance 1965 with s 3 of the Adoption of Children Ordinance 1938-49. *N.T.* — compare s 12 of the Adoption of Children Ordinance 1964-67 with s 5 of the Adoption of Children Ordinance 1949-50.

[13] Adoption of Children Act 1896-1964 (W.A.), ss 3, 4, 6.

[14] Adoption Act 1968, ss 1, 3.

[15] Adoption Act 1957, s 4(1) (as amended by Adoption Act 1968, s 2).

[16] Child Welfare Act, R.S.A. 1970 c. 45 s 49. See also below.

[17] Adoption Act 1955.

[18] *Ibid.*, s 3(2).

[19] Child Welfare Act 1965 (Ontario) s 72(1)(c).

[20] See such studies as Seglow, Pringle and Wedge, *Growing Up Adopted* (1972) and Crellin, Pringle and West, *Born Illegitimate* (1971).

[21] See for instance the *Report of the Departmental Committee on the Adoption*

Section 1 of the Adoption Act (U.K.) 1968 states that,

> 1. . . . the Court may upon an application made in the prescribed manner by a qualified[22] person or qualified spouses make an order . . . authorising the applicant or applicants to adopt a qualified infant.

There is no distinction made between single persons and married couples, as is made by s. 10 of the Victorian Act.

Statistics show that in England, in 1970, approximately one adopted child in 99 was placed with a single adopter, and that over half of those single adopters were not the parent of the child (see Table 1).

TABLE 1
ADOPTIONS BY SINGLE PERSONS IN ENGLAND & WALES IN 1970[23]

Sole Male Adopter		Sole Female Adopter	
Parent of the child	Non-parent of the child	Parent of the child	Non-parent of the child
14	20	91	102

Total No. of adoptions: 22,373.
Total No. of adoptions by single persons: 227.
Total No. of adoptions by single Non-parent: 122.

Corresponding figures in Victoria show that adoption by single persons is almost non-existent. A Survey of Child Care in Victoria 1962-64 found that no adoption by a single person had been arranged by the year ending 30th June 1963. Since 1964 there has been no more than one a year,[24] with the special exception of the Vietnamese orphans.[25] In 1971/2 there were 1,529 children placed with a view to adoption and

of Children, Cmnd. 5107 (1972), (The Houghton Committee Report), and *A Guide to Adoption Practice,* Advisory Council on Child Care No. 2 (1970).

[22] 'Qualified' refers to the domicile of the applicants or infant and has no relevance to this topic.

[23] Taken from Appendix B to the *Houghton Committee Report* (1972). Note also the statistics for 1956: out of 7,555 adoptions, 88 children were adopted by single persons, a ratio of 1:86.

[24] Of those agencies interviewed, only the Presbyterian and Methodist Babies' Home had placed a child with a single adopter in 1972-73, and in that case the adoptive parent was the child's maternal grandmother.

[25] In early 1972, one of the Vietnamese orphans, whose arrival in Australia caused much stir in the news media, was adopted by a single woman. In May of 1973, one Catholic Family Welfare Bureau was involved in a similar adoption (the child arrived in Australia at the end of June).

The agencies are apprehensive about dealing with these adoptions, possibly because of the political implications and the publicity that surrounds them. The adoptions are carried out in Vietnam by proxy (the parent does not see the child until it arrives in Australia), and although they are legal under Vietnamese law, they require ratification by the Australian Courts. The role of the agencies is to assess the prospective parent(s) as adopters. If they accept the applicant as suitable, then the Department of Immigration issues an entry visa for the child, and the adoption process is then completed. The agencies see themselves as presented with a *fait accompli* and only approve the applicants reluctantly. They remain sceptical of the success of these adoptions.

1,488 adoptions legally finalised. Only one of these placements was with a single parent, in contrast to the 15 that would take place in England from a similar number of adoptions (eight of them by non-parents).

The Victorian Adoption of Children Act 1964 gives no reasons for the restriction on adoptions by single parents, except, one must infer, that it is not in the interests of the child. The Act is no further help, since it does not explain why adoption by a sole parent is not in the interests of the child. Decisions of the Courts provide no further assistance. The cases are mainly concerned with contests between a natural parent and adoptive parents, where there are separate problems caused by the existence of a blood-tie.[26] In addition most of the cases were decided before the Adoption Act 1964 (or its equivalent in other jurisdictions) and must be viewed with some distrust. In *Re M.J.W.*,[27] Selby J. made an adoption order in favour of a spinster. Although there was a prospective lack of male influence on the child, he nevertheless allowed the adoption because 'it promoted the welfare of the child'. Unfortunately the decision, in 1964, was under the previous adoption legislation,[28] and it is unwise to take it as necessarily indicating the policy of the courts today.

In the only case since the inception of the relevant State Act,[29] Myers J., in the Supreme Court of New South Wales, made a distinction between persons who were fit to adopt a particular child and persons who were fit and proper to adopt children in a general sense. But he continued:

> I [do not] attempt to state what is meant by being fit and proper to adopt children, save that it is something more than fitness to adopt a particular child.[30]

As Margaret Wimpole points out,[31]

> [T]he crucial inquiry will always be 'what is for the welfare and interest of the child' in the given circumstances.

A Court, working with such a principle, has a wide discretion as to what

[26] See for example, *Mace* v. *Murray* (1955), 92 C.L.R. 370, 385, where the High Court (Dixon C.J., Webb, Fullagar, Kitto and Taylor JJ.) stated:

> It must be conceded at once that in the ordinary case the mother's moral right to insist that her child shall remain her child is too deeply grounded in human feeling to be set aside by reason only of an opinion formed by other people that a change of relationships is likely to turn out for the greater benefit of the child.

Note that in spite of this feeling the court found the mother to be *unfit* to care for her child and accordingly ordered that the child remain with the adopters.

See also *In re B.*, [1939] V.L.R. 42, *In re M.F.S.*, (1964) N.S.W.R. 244, and *Re C.*, [1966] 1 W.L.R. 646, where 'the principle that the best place for a child is with its parent' applied equally to the putative father.

[27] [1964] N.S.W.R. 1108.

[28] Child Welfare Act 1939 Part XIX.

[29] *Re an Infant T.L.R. and the Adoption of Children Act* (1967), 87 W.N. (Pt. 1) (N.S.W.) 40.

[30] *Ibid.*, 41, 42.

[31] Wimpole, M., 'Some Aspects of Adoption Legislation and Administration in Victoria' (1972) 8 M.U.L.R. 412.

constitutes the welfare and interest of the child according to the facts of the particular case. Because each case will be decided on its own facts, it is extremely unlikely that a court will feel itself bound by previous decisions.

AGENCIES AND THE FACTORS THAT INFLUENCE THEM

However, before the applicant can get to court (or even receive a child with a view to adoption), he or she must satisfy the assessing officer of an adoption agency that he or she is a suitable adoptive parent. Subject to a few statutory requirements relating to domicile, residence, marital status, and minimum age, decisions on the suitability of adopters are left to the judgment of the agencies.

The agencies then[32] are the effective policy makers and they decide what criteria of suitability will be laid down with regard to adoptive parents. What factors influence their decisions?

The overriding factor is the large surplus of applicants in relation to the numbers of babies available for adoption. In one agency,[33] where 221 adoptions were legally finalised in 1972/3, 105 couples were rejected for a variety of reasons. Many agencies have had to close their waiting lists to prevent adoptive parents from waiting in hope for long periods. The Social Welfare Department (S.W.D.) has closed its waiting list for at least three years, and many private agencies have waiting periods of up to two years.

Along with the increasing number of legal abortions, and greater use of contraception, the changing attitude to illegitimacy has resulted in a higher proportion of unmarried mothers keeping their babies. Despite the natural increase in the number of live births per year, all the agencies experienced marked falls in the numbers of babies offered for adoption, and further falls were expected with the introduction of the new allowances for single mothers in July 1973.

The changes in the numbers of children placed for adoption over the last five years can be seen from Table 2, Column (i). The falls are not great numerically. But, given that the numbers of extra-marital births in 1971/2 was the highest this century, and given the natural increase in the birth-rate, it is clear that the falls are large, when considered as a percentage of all births and extra-marital births in those years.

[32] The term 'agencies' includes the Social Welfare Department unless otherwise indicated.

[33] The Catholic Family Welfare Bureau.

TABLE 2
TOTAL BIRTHS, EX-NUPTIAL BIRTHS AND ADOPTIONS*
IN VICTORIA, 1967-71.

YEAR	(*i*) Agency Adoptions* Legally Finalised	(*ii*) Total Births	(*iii*) Total Ex-Nuptial Births	(i) as a percentage of (ii)	(i) as a percentage of (iii)
1967	1,822	65,485	3,699	2.7	49.3
1968	1,736	70,228	4,166	2.4	41.4
1969	1,954	71,035	4,098	2.8	47.7
1970	1,685	73,019	4,420	2.2	38.1
1971	1,488	75,498	5,010	1.9	29.6

* The Adoption figures are very confusing. The figures shown in Table 2 relate to the adoptions, processed by the agencies (and S.W.D.), which were then legally finalised. The agencies, themselves do not use these figures, but prefer to rely on the figures relating to 'children placed with a view to adoption' in order to discover trends in adoption. Finally the *Victorian Year Book* publishes a third set of figures (see, e.g., *Victorian Year Book*, (1973), 817). These relate to *all* the adoptions legalised by the Courts and include such adoptions as those by relatives and those by husbands (who are not the putative fathers) of the children of their wives.

The figures relating to finalised adoptions, which have been processed by the agencies, have the most relevance to this paper, and hence it is these figures that have been used.

Adoption policies are determined in large measure by the laws of supply and demand. Where, as in Victoria, there is a great shortage of children for adoption, and an excess of adoptive applicants, the agencies can be highly selective. They can impose a number of criteria which the applicants must fulfil: financial stability, good physical and mental health and so on. One of their principal requirements is that an adoptive family has a mother and a father.

THE CASE AGAINST THE SINGLE ADOPTER

Is this restriction on single parents 'in the interests of the child'? All the adoption agencies interviewed agreed that it is and advanced a variety of reasons. The dominant reason given was that a child needs both a father and a mother. Expression of this belief in a nuclear family unit ranged from 'a child has a *right* to two parents' to 'a couple is a safer bet'. The Hurst Committee, in 1954,[34] gave as one of the advantages of the nuclear family that it 'enables a child to develop relationships with people of both sexes and to become accustomed to both the masculine and feminine points of view'. Carol Prentice, author of *An Adopted Child looks at Adoption*,[35] was adopted herself by two spinsters. In her

[34] *Report of the Departmental Committee on the Adoption of Children*, Cmd. 9248 (1954).

[35] Prentice, C. S., *'An Adopted Child looks at Adoption'* (1940).

book she studies the case for a father and relates how she longed for a 'human being to check against my fantasy'. All the agencies felt that the nuclear family environment is necessary for the best psychological development of the child. Furthermore, it was pointed out that the unmarried mother, who gives up her child usually does so in the expectation that it will have both a father and a mother.

Other reasons varied according to the agencies. It was felt that the motives of one person are often selfish or otherwise suspect. It may be that a child is wanted to fill a gap in a widow's life after her husband's death, or to support her as she becomes older. There is the risk that a single parent may become over-devoted, and that the child, as a result, may have difficulty in developing an independent attitude to life.

It is more difficult for a single parent than for one partner of a married couple to stay home during the initial years of a child's life. All the agencies insisted, as a prerequisite to placement, that one of the parents (usually the mother) stays home. Where the child is older when adopted, the need for a parent to stay home was felt to be all the greater. These children have usually had a confused and unsettled start to life, whether with a single mother, who was not able to cope, or with a series of foster homes (or sometimes unsuccessful adoptions). They need the extra attention and love that will ensure a settled, secure life.

Carol Prentice points out that there may be problems of an age gap between the parent and child. A single person may not adopt until he or she is fairly certain that he or she will not marry and have a family of his or her own. All the agencies have an upper age limit (which ranged from 38 to 45), so as to give the adoptive child parents who will be fairly close to the age of its natural parent.

One further argument against adoption by single parents is raised by the Advisory Councils on Child Care for England, Wales and Scotland. In *A Guide to Adoption Practice*[36] the Councils state:

> Children adopted by single or already widowed adoptive mothers are more obviously adopted children to their peers and they tend to suffer from all the disadvantages of this, as well as the usual disadvantages of being brought up by one parent.[37]

MARITAL STATUS

Before discussing the validity of these arguments it is proposed to look briefly at a related problem: the importance of marital status.

By section 10 of the Victorian Act[38] no order can be made in favour

[36] Advisory Council on Child Care No. 2, *A Guide to Adoption Practice* (1971).
[37] Ch. III, Para. II.
[38] *N.S.W.* s 19, *Qld.* s 12, *S.A.* s 11, *Tas.* s 13, *A.C.T.* s 17, *N.T.* s 12. In W.A. a married person adopting alone must have the written consent of his or her spouse: see ss 3(2), 4(2) and 6

of a couple unless they are husband and wife. Because of this none of the agencies interviewed consider adoption by an unmarried couple,[39] and very few are even approached by such couples.[40] In 1940, Carol Prentice felt that there was an important distinction between marital and extra-marital relations:

> A woman who would successfully steer a young person through adolescence and prepare him or her for marriage should preferably have had the emotional and sexual experience of it herself.

While none of the agencies saw that reason as cogent today, most of them felt that marriage is desirable, since this has given the couple time to create a stable relationship. Also the time it has taken for the parties to discover that they cannot have children and to adjust to the prospect of adopting will help to ensure a stable relationship.

Some of the agencies saw lack of marital status as a potential source of insecurity for one (or both) of the partners, perhaps caused by a fear that the other partner will leave the home. This fear might be conveyed to the child, producing for it an unhappy environment in which to grow up. The fact of marriage will mean that, to end the relationship, there must be a final positive step which many parents will not take. They may stay together in an attempt to provide the child with a happy home. (This may, of course, have exactly the opposite effect to that desired. It will be necessary for the parents to balance the effect of divorce on the child, against the effect of a home atmosphere which is strained by relations between the parents.)

One of the agencies[41] felt that there was little difference in terms of effect on a child's development between parents living in a *de facto* relationship and being legally married. They believed that what is being sought is not a piece of paper in the form of a marriage certificate, but a stable commitment between two people which will provide the suitable environment into which to place an adopted child.

This latter view appears the more logical, but because the marriage ceremony is still seen as providing the intangible benefits of security and happy home environment, and because of the involvement of the Churches in adoption it is difficult to foresee changes in the sections relating to marital status. Indeed, in the Houghton Committee Report,[42]

[39] Contrary to the findings of the *Survey of Child Care in Victoria* (1962-64), 42, marriage certificates (or a copy thereof) were required by all the agencies interviewed. Most of the agencies require the applicants to have been married for at least two years.

[40] Some of the agencies sponsored by the Church (for example the Catholic Family Welfare Bureau) feel that the public attitude of their Church towards marriage, and its wish to promote that estate, mean that unmarried people would rarely come to them.

[41] The Presbyterian and Methodist Babies Home (Mr Graham Gregory).

[42] *Report of the Departmental Committee on the Adoption of Children*, Cmnd. 5107 (1972).

the recommendation was that there be no change in the law relating to marital status of adopters.

THE VALIDITY OF THE CASE AGAINST THE SINGLE ADOPTER

How well grounded are the arguments against adoption by single parents? Research in the subject is highly complicated and expensive, and as a result inadequate. There is a need for a follow-up of a large number of children over a period of 15 to 20 years, in order to trace the development of those children.

The only research[43] on single parent families has been devoted to the problems of single mothers with their illegitimate children. Two of these books, one American[44] and the other English[45] (the latter based on the single mothers of the children in the same 1958 sample (n. 43 above) who kept their children) agree in substance on most of their findings.

It was found that, in adopted homes, housing conditions, social class composition, family size and parental interest in the children's educational progress were all optimal, with corresponding successful physical and mental development. In contrast, children of single mothers were not as advanced mentally or physically, educationally or socially. Although, at the time of conception, there was little or no difference in the social class background between single mothers-to-be and other prospective parents, considerable downward mobility occurred after birth among the mothers who had decided to keep their children.

The value of this research to a study of adoption by single parents is limited. While it shows all the dangers which attend the single parent situation, it is based on a class of single parents, who lack some of the other criteria, such as financial security, necessary for successful bringing up of a child.[46] (Of the single mothers surveyed in *Born Illegitimate,* 61 per cent were working (43 per cent full time), compared with 12 per cent of the wives of the adoptive couples studied (3 per cent full time).[47]

[43] In 1972, *Growing Up Adopted* [Seglow, Pringle and Wedge, National Foundation for Educational Research], was published as part of the survey of the National Foundation for Educational Research in England and Wales on some 17,000 children born in England and Wales between 3rd and 9th March, 1958. However, the adoptive parents involved were married couples, and so the book affords little help to a study of single adopters.

[44] Sauber and Corrigan, *The Six Year Experience of Unwed Mothers as Parents* [Research Dept., Community Council of Greater New York] (1970).

[45] Crellin, Pringle and West, *Born Illegitimate,* [National Foundation for Educational Research (London)] (1972).

[46] It was estimated in England that four times as many adopted children were living in middle class homes compared with illegitimate children, who remained with their mothers.

[47] Note, however, the comments of Stolz:

> whether this (mother going out to work) is necessarily detrimental to the child's well-being is a controversial issue on which opinions are more plentiful than

Unmarried mothers, however, are not the same as eligible single adopters, and it is unfair to use the statistics concerning the former in arguments against the latter. It is assumed that the prospective adopter would fulfil the criteria as to financial security, age and so on. Assessment by the agencies would prevent adoptions for selfish motives (at least as successfully as they prevent adoptions for the wrong motives by couples), and similar requirements could be made as to staying home with the child. Possibly a section similar to s. 6 of the Adoption of Children Ordinance (A.C.T.) 1965,[48] could be incorporated to give the court power to ensure that conditions of the adoption are obeyed by the adopter.

There remain, however, two arguments for which no assumptions can be made. The first is that put forward by the Advisory Council on Child Care,[49] that children adopted by single persons suffer from being more obviously adopted. This argument presumes that it is a disadvantage to be noticeably adopted. With the changing attitudes of today towards illegitimacy and unmarried mothers, one may question whether the problems envisaged by the Advisory Council on Child Care in fact exist. It is difficult to see any serious threat in the knowledge of the child's peers that he is adopted.

The second argument is based on the belief in the Nuclear Family. It is conceded that the best psychological development of the child demands both a male and a female example for the child to copy, but it is hard to understand why the role required should not be played by a close friend or relative (or *de facto* spouse). When pressed, the agencies agreed that this might overcome the problems raised by a lack of one parent. The Council for the Single Mother and her Child pointed out the benefits of a single parent's ability to devote himself or herself to the child, without the dangers of competition for a mother's or father's affection between the child and the other partner. Although there is a danger of a single parent becoming over-devoted and 'smothering' the child, the Council felt that often the single parent, who is guilty of this is the type of person who would treat her child in a similar fashion, if he or she were married. If a single parent did not feel able to fulfil both parental roles (several single mothers blanched at the thought of playing football with their young son!) then, the Council agreed, the other role could be filled by a close friend or relative.

facts. Even research findings are so contradictory that almost any point of view finds support.
Stolz, 'Effects of Maternal Employment on Children' (1960) *Child Development* 31, 749-82.

[48] s 6 Adoption of Children Ordinance A.C.T. (1965) provides that:
The court in an adoption order may impose such terms and conditions as it thinks fit, and may require the adopter by bond or otherwise to make for the adopted child such provisions as it thinks expedient and just.
[49] See *A Guide to Adoption Practice, supra.*

SINGLE PARENTS AND PROBLEM CHILDREN

Even if the disadvantages, as seen by the agencies, are not as serious as they believe, there will have to be shown some positive advantages in opening the lists of applicants to single adopters, before the agencies will consider them as desirable as married couples. The great advantage of single parents is that they swell the numbers of prospective adoptive parents. At first sight this seems of no value at all. With the large surplus of applicants over available babies, the last thing that seems wanted is more applicants.

However, the single parent has great potential in one particular area of adoption: the adoption of 'problem children'.

'Problem children' include physically or mentally handicapped children, coloured children and older children. Although in Victoria there is not the same difficulty in placing these children as is experienced in the United States (and to some extent in England), there remains in most of the babies' homes a small nucleus of 'unplaceables'.[50] As a result of medical advances, more physically handicapped children now survive, and it is anticipated that the number available for adoption will continue to increase.[51] The great majority of placements of physically handicapped appear to work out well, as was shown in a study in California on 169 such placements.[52] Children with mental handicaps, however, may be almost impossible to place, and the Advisory Council on Child Care[53] in England felt that adoption is not a realistic possibility for children who are severely handicapped mentally.

It was generally agreed by the agencies that it is undesirable to keep these problem children in the babies' homes. It is feared that their presence will adversely affect their unhandicapped companions, who are awaiting placement. The agencies have not the facilities to deal with handicapped children and the State Mental Authority is refusing more and more to accept them. As a result, they are lumped together with normal children, to the detriment of both.

It was further agreed that these problem children will be better off, if they are seriously handicapped, in an institution with full medical and other facilities. If their handicaps are of such a nature that they can benefit by adoption, then they should be placed in a family environment where they can receive the love and emotional satisfaction that cannot be provided by congregate care.

[50] One agency (The Royal Women's Hospital) refuses to take children older than 15 months because of the difficulty of placing them.
[51] See the *Houghton Committee Report*, Para. 22.
[52] Massarik and Franklin, *Adoption of Children with Medical Conditions* [Children's Home Society of California] (1967).
[53] See *A Guide to Adoption Practice, supra.*

It was felt that a single parent would provide this environment more successfully than an institution could. It would be more difficult in most cases for a single person to bear the added stress of coping with a problem that could otherwise be borne by two parents. However, if there were suitable applicants, who, though single, could bear the stresses, and bring the child up successfully, then they were worth encouraging, and should be allowed to adopt.

In the United States the use of single persons to adopt problem children is widely practised. Recently however the practice has been the object of heavy criticism, and inherent flaws in this seemingly ideal solution have been noted.

SECOND RATE PARENTS FOR SECOND RATE CHILDREN — THE AMERICAN FALLACY

In the United States there is a large group of children, who are difficult to place. This group is composed mainly of children of Mexican, Puerto Rican and Negro heritage, and those who are medically unfit. Because couples do not wish to adopt these children, the agencies try to place them with single parents. The result, as was discussed by the Third Conference on Adoptable Children, which took place in St. Louis in 1972, has been to attach to adoption by single parents a stigma that is highly undesirable for the child's psychological development. This has given rise to the expression 'Second rate parents for second rate children', which is used to show how many children feel: they have been rejected by all the normal married couples, and given to this single parent, who in turn has been rejected as a parent for an 'easy-to-place child'. It is not only the children who feel inferior. As Kadushin pointed out in his book, *Adopting Older Children*,[54] some parents also feel that they will only be allowed to adopt a problem child. One of the couples interviewed by Kadushin gave as their reason for adopting an older child: 'We did feel we didn't have too much chance of getting one much younger'. Hardly an auspicious start to a relationship.

Why should single parents be used in this fashion? If a single person is deemed suitable to bring up a problem child, with all the extra problems it entails and the extra warmth and attention that the parent must show, how much more suitable is that person to adopt a normal child? Conversely, if a single person is not deemed suitable to care for a normal child, there should surely be no consideration of him or her as a potential parent of a problem child.

The only answer given is that when the child cannot be placed with a couple, the choice for its placement lies between a single parent and

[54] Kadushin A., *Adopting Older Children* (1970).

an institution. Since it is recognised that family life is, in most cases, better for the child than life in congregate care, the single parent is at least a preferable alternative to a babies' home.

It is submitted that this just does not answer the question. A single parent is not simply an alternative to an institution. He or she either is or is not suitable as an adoptive parent in the same way that a couple is or is not suitable. If a single person can convince the adoption agency that he or she is a suitable person, despite his or her marital status, to adopt a child, then that person should be permitted to adopt any child that is selected for him or her to adopt. It is unfair to both applicants and children offered for adoption to exclude arbitrarily all single persons, and thus possibly deprive children of a parent who, though single, would more than have made up for it by his or her other attributes.

ANALYSIS

In this paper an attempt has been made to show the state of the legislation and the policies of the agencies. It is not suggested that s. 10(2) of the Adoption Act 1964 is the dominant factor affecting the agencies' policies concerning single parents, nor even that it has more than a minimal effect. It is submitted however that s. 10(2) of the Act is an unwarranted presumption on the part of the Legislature. Assessment of particular individuals as potential adoptive parents should not be hampered by the rigidity of legislative criteria (other than general guidelines), nor should the legislature be permitted to prejudge the suitability of a particular individual to adopt a particular child. It is suggested that the legislation be amended so that it shows that an adoption order can be made in favour of both couples and single persons. Reliance could then be placed on the ability of the agencies to permit adoptions only by those qualified as parents.

Single parents, however, do have problems that are different from those of married couples. It was suggested, therefore, by the Third Conference on Adoptable Children that a single parent would need to satisfy extra criteria, as follows:—

(1) A minimum age of 30 years was suggested as an age at which most people would be financially capable of supporting a child, and mature enough to cope with the problems of bringing up a child alone.

(2) The applicant should have come to terms with his or her lack of desire to marry.

(3) The applicant should be able to cope with his or her own sex drives.

(4) There should be healthy ties with a relative or friend of the opposite sex, thus providing the adopted child with a male or female figure to copy or learn from.

(5) There should be good caretaking planning, if the applicant has to go out to work.

(6) The applicant's financial situation should be carefully assessed. All these criteria (except that concerning minimum age) should be considered by the agencies in their assessment of single parents. The suggestion of 30 years as the minimum age causes the same problems of inflexibility that specific legislative criteria cause. The age at which each person is capable of taking on the burdens of parenthood by himself or herself will vary, and since an arbitrary minimum age might hamper adoption agencies, it is suggested that such criteria be avoided.

If all the agencies were equipped with social workers, trained in adoption agencies, it is suggested that such criteria be avoided.
adopters, then all the decisions could be left to them. There would be no need for detailed legislative criteria, and the courts need only be used for cases where disputes arose. Uncontested adoptions could be ratified and legally finalised by the Social Welfare Department, as a rubber-adoption agencies, it is suggested that such criteria be avoided.

ALBERTA — A SUCCESSFUL EXPERIENCE[56]

In Victoria, the major problem confronting the single adoption applicant is the large surplus of married couples who also wish to adopt, and the resulting reluctance on the part of the agencies to experiment.

In Alberta, Canada, on the other hand, there has been until recently a large surplus of available babies over prospective parents.

In 1965, the Government of Alberta set up a three-member committee to study the whole field of adoption law in the Province. The report that this committee submitted led to the enactment of the *Child Welfare Act* of 1966, which continues with only minor amendments to the present.

[55] Several of the smaller adoption agencies in Melbourne have no social worker assessing prospective parents. The principal officer of the agency is required to be either a qualified social worker or a 'person of approved experience'. It is, however, not clear what 'experience' entails, and it seems that a one-week course run by the Social Welfare Department is sufficient.

[56] I am greatly indebted to her Honour, Judge Marjorie M. Bowker of the Juvenile and Family Courts of Alberta for her very full reply to my enquiries, which enable me to complete this section of the paper. Judge Bowker was a member of the three-person committee, whose Report formed the basis of the adoption provisions of the new Child Welfare Act. In addition to this Report, Judge Bowker filed a 200-page Supplementary Report covering the broader related problems of child welfare and based on her own additional research and travels throughout the Province. Her Supplementary Report was similarly followed in the new Act.

Section 49 of the Act provides:

> 49. An application to adopt a child may be made in accordance with this Part
>
> (a) by an unmarried person eighteen years of age or over, or
>
> (b) by a husband and wife together, if at least one of them is eighteen years of age or over, or
>
> (c) by a husband and wife together, if the child is the child of either of them, whether legitimate or illegitimate.

The former Act had not forbidden adoption by single persons; it had readily been interpreted as including both married and single persons. The Act of 1966 merely included a specific subsection to this effect and covering this specific situation. The amendment was not strictly necessary, but it did serve to emphasise to the public that such adoptions were acceptable at a time of extreme shortage of adoptive homes in relation to children needing adoption.

Even before the 1966 revision, there were single parent adoptions in Alberta; they increased following 1966. Between 1967 and 1971, when there was a surplus of children of all ages for adoption, over 50 adoptions were completed to single persons. These were mostly single women in their thirties (and a few men[57]), mainly school teachers and university staff; that is, persons in the educational field. There were some nurses, and at least one female doctor. With the urgent need for adoptive homes during that period, the Government Welfare Department, which handles all adoptions in Alberta, began revising its earlier policy by placing babies in adoptive homes with working mothers (married). This represented quite a departure from the past, when the working mother was required to give up her job and stay home if adopting a baby. With this more liberalised policy, the situation of the single adoptive applicant was not much different from the working mother, and each category was treated alike so far as adoptive placements were concerned.

In 1969, through amendments to the Criminal Code, contraception and abortion first became legalised in Canada. There followed a marked decline in the number of babies available for adoption, and this has continued to the present, along with the growing trend of unmarried mothers to keep their children. Both these factors seriously curtailed the numbers of infants (which means children under 2 years of age)

[57] One factor concerning adoption by single males is worthy of note. Care has to be taken to ensure that the applicant does not have an unacceptable motive. Adoption agencies in Alberta are hesitant about placing a girl or a boy in the exclusive care of a single male, for the risk of sexual or homosexual exposure. In such cases, the approach of the agencies is to insure that a grandmother or sister is in the home, though the male would be the adoptive parent.

available for adoption, and at present there is a surplus of some 350 approved couples who are waiting to adopt an infant. As a result, where infants are concerned, preference is now given to couples (where the mother remains at home).

At first glance, the practice today in Alberta is the same as that in Victoria. However, the years in which the Department was forced to use single parents taught a valuable lesson. Single parents are being used now, not for infants, but for school-age children, mixed race or hard-to-place children. They are considered for the whole range of 'problem children', rather than only the worst cases.

This is not to suggest that in Alberta single parents now only receive the 'left-overs'. When it comes to the school-age children, the single parent has just as good a chance for adoption as a married couple. Each placement is considered on an individual 'matching' basis. In fact, the Department has found that at a particular stage some children respond better to the one-to-one relationship with a single parent, where they are not competing for attention with a marital partner; and some children need this undivided attention.

When the idea of single parent adoptions first arose in Alberta, the Department workers had considerable misgivings, as it was an area in which they were not happy to experiment. Yet the sheer volume of numbers of unadopted children forced them into this field. The record of single parent adoptions has in fact been very good. Though fewer in number, they have apparently been proportionately more successful, indicating the extreme care used in making such placements. Because the first such single parent adoptions were so successful, as far back as the early 1960s, the Department soon realised that flexibility in this area was sound adoptive policy. Single parent adoptions were definitely in the interests of the child.

CONCLUSION

Adoption arouses very strong feelings and prejudices in all concerned. People believe what they feel rather than what can be empirically proved. Margaret Kornitzer's book *Child Adoption in the Modern World*[58] provides a good illustration of this emotional approach:

> It is a right and natural thing to think of adopters in the plural because nature knows what she is about when she gives every child two parents. There is nothing wrong with single adopters, and many spinsters conduct what appear to be model adoptions. And yet while the supply of adopters is so great is it not better to see the available children going to married couples?

Irrational emotion has no place in adoption practice. What is required is skilled, unprejudiced assessment of each situation as it arises. This can

[58] Kornitzer M., *Child Adoption in the Modern World* (1952).

be achieved if the agencies treat each application on its own merits, without the influence of any predetermined arbitrary criteria.

Amendment of s. 10 would not constitute major reform of adoption law. It might only have a minor effect on adoption practice. Many prospective single parents still might not satisfy the standards set by the agencies. Experience in Alberta, however, has shown the benefits which this flexibility in policy brings. It is submitted that Victorian adoption policy could only benefit from a similar flexibility.