

## **Adoption Chronicles**

### Athenaeum Society

I set about the process of choosing a topic for tonight's paper several months ago, hoping to entertain or enthrall you with something as gripping as my open meeting paper of 2017 about the dark web. You'll all be disappointed to learn I'm about to miss the mark. Welcome to 2019!

Amanda and I were married a little over nine years ago and eventually ran into a diagnosis, if you can call it that, of "unexplained infertility." We'd both been tested for all kinds of things and no explanation was found to establish why we hadn't managed to become pregnant on our own. Once you encounter infertility, explained or not, you have a couple options. IVF, or in vitro fertilization, and adoption are among the most popular on the list. Since I now have firsthand experience with modern adoptions I decided to learn what I could about, and subsequently offer the group tonight a short primer, its history.

Adoption has its beginnings just about as far back as the history of man goes. What's the first adoption you can think of in history? Moses was placed by his mother in a reed basket patched with pitch. He was floated to the arms of another woman to avoid the pharaoh's decree that all Hebrew male babies be killed. What would've meant death for young Moses instead led to his care for a time by his own mother posing as a Hebrew wet nurse and then growing up with Pharaoh's daughter. Esther was adopted and cared for by her uncle, Mordecai. Jesus was adopted by Joseph.

Each of those early Biblical examples demonstrate the best of early adoptions. Strangers and kinfolk alike showed care and concern for the children involved, indicating the earliest signs of the standard that would, appropriately, come to dominate the rationale behind present day adoptions: the best interests of the child.

Unfortunately, not all adoptions have been so benevolent and child welfare focused. Ancient adoptions didn't include the modern day concerns of due process, equal protection or other constitutional rights. The Roman empire saw adoption as a means to protect family power and allegiances when the *pater familias* could produce no male heir. Augustus, Tiberius, Caligula, Nero, Marcus Aurelius, among others all became Emperor through adoption. Adoptions were done strategically, and usually involved the males who looked like the safest strategic bets. Nerds and wimps need not apply.

Later adoptions were less about family power and more about economic wealth. Building a labor workforce drove adoptions during the 18<sup>th</sup> and 19<sup>th</sup> Centuries<sup>1</sup>. Families faced disease and extreme poverty, leaving many children orphaned. Some of these orphans were "adopted" for their labor. Though some were still adopted by family and friends. The common practice was to make adoptions secret, either to conceal the intention of using child laborers or to protect a child from being viewed and scorned by society as orphaned or illegitimate.

In fact, there was no formal process in place for any adoptions until the mid-19<sup>th</sup> Century. The need for some guiding policy was becoming apparent and our fellow Commonwealth, Massachusetts, passed the nation's first law on point: the Adoption of Children Act of 1851. This was the first time that a jurisdiction in the US would codify "adoption as a social and legal operation based on child welfare, rather than adult interests."<sup>2</sup> The ACA of 1851 is short, and gives interesting insights into the perspective of lawmakers of the time.

Section 2 requires consent, not unlike today. However, very much unlike today, the law allowed the next of kin to give consent, or even the judge on their own if there was no next of kin. Section 3 not only allowed, but *required*, children aged 14 years or older to give consent to

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<sup>1</sup> <https://www.americanadoptions.com/adoption/history-of-adoption>

<sup>2</sup> <https://www.americanadoptions.com/adoption/history-of-adoption>

adoption petition. That may be considered progressive by today's standards. Section 4, by contrast, requires a man who has a "lawful wife" to proceed only upon her consent, but no wife with "a lawful husband shall be competent to present and prosecute" a petition at all.<sup>3</sup>

Since that first law passed the process of adoption has seen a slow shift over the intervening century and a half. Early on, for the reasons stated above, many if not most adoptions were still kept secret and were handled without a formal court process.<sup>4</sup>

"Baby farming" was a term of art around the same time as the passage of the ACA. The name tells you everything you need to know about the practice that was, at its worst, an early form of human trafficking. "Baby farmers sometimes profited on both ends of the adoption transaction, first extracting fees from desperate birth mothers and then demanding large sums from adopters." Terrifyingly, this is not unlike some present day operators of adoption agencies and the attorneys that seem complicit in their work. There are attorneys today that have developed a niche practice in adoptions, specific even to certain third world regions, and birth mothers are paid through the attorneys, often producing and placing for adoption several babies. The mothers would be equivalent to a "baby factory" and the attorney is the baby broker. This is happening today.

A Chicago-based baby farmer used the slogan, "It's cheaper and easier to buy a baby for \$100.00 than to have one of your own." Unfortunately, what motivates us humans to change our ways hasn't changed much. Just like today's reluctance to install traffic lights until enough people die at an intersection, it wasn't until the tragedies of these early kinds of adoption that people began advocating for child welfare policy. But even then we didn't immediately get it right.

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<sup>3</sup> Massachusetts Adoption of Children Act, Acts and Resolves passed by the General Court of Massachusetts, Chap. 324, (1851)

<sup>4</sup> <https://adoption.org/when-did-adoption-start>

Not long after the passage of the ACA a man by the name of Charles Loring Brace set out to save poverty stricken orphaned children and at the same time conveniently remove them from the streets of the major cities of the time in the East, like Boston and New York. Brace, founder of the Children's Aid Society, had the benevolent goal of shipping orphans by the train load to families out West. "Brace believed that a strong family life could help these victimized and neglected children, knew that the American pioneers who were settling the West could use help and felt that an arrangement that would place children with these families would be mutually beneficial."<sup>5</sup> He said "The best asylum for the outcast child is the farmer's home. The great duty is to get these children of unhappy fortune utterly out of their surroundings and to send them away to kind Christian homes in the country."<sup>6</sup> Between 1854 and 1929 approximately a quarter million children were made riders on what became known as the Orphan Train. Interestingly, according to at least one author, the records of the Children's Aid Society reportedly show that most of the Orphan Train riders were only "temporarily transferred or shared," rather than adopted permanently.

One of the goals of early "official" adoptions was race matching, believing a child best belongs with adoptive parents and siblings that look like them. Adoptions of youth of color, whether African American, Asian or otherwise, by white adults was viewed more often than not as an error. The first transracial adoption on record in the US happened in Minnesota in 1948. In 1944 a family in the state of Washington took in an African American six year old girl who they would eventually adopt as their own nine years later. In a lengthy piece in the May 1960 issue of Ebony magazine, titled "Our Negro Daughter," the white adoptive mother named Ann Johnston would say, "Our family believes it should be possible for an individual to live as a

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<sup>5</sup> Brown, A. (2011). Orphan trains (1854-1929). Social Welfare History Project. Retrieved from <http://socialwelfare.library.vcu.edu/people/mott-lucretia-coffin/>

<sup>6</sup> Brown, A. (2011). Orphan trains (1854-1929). Social Welfare History Project. Retrieved from <http://socialwelfare.library.vcu.edu/people/mott-lucretia-coffin/>

person among people, rather than a Negro among whites.”<sup>7</sup> There seems to be a consensus, at least in US history, that adoptions hit their peak in 1970, however even then transracial adoptions made up only the small share.<sup>8</sup>

Special needs youth had their own set of problems in the early adoption days, which continue to this day. The ancient Romans wanted only the best and brightest males to gain or maintain power and influence. Early “official” adoptions here in the US, and even in today’s adoptions, children with special needs are overlooked or outright ignored. They were known then as “feeble-minded.” A facility in New Jersey, once known as the Training School for Backward and Feeble-Minded Children, had an administrator that believed institutionalization was preferable to adoption for these feeble-minded youth. This man, Dr. Henry Goddard, apart from being what seems to be a terrible person to special needs youth, apparently can be credited with adding the word “moron” to the lexicon.<sup>9</sup> Goddard made popular the use of IQ tests to check for whether a child was suitable for adoption. The testing was also used for another kind of the “matching” practice that I mentioned earlier, attempting to place children who tested higher with adults who were intellectually similar. Another leader in this developing school of thought, W.H. Slingerland, said in his 1919 piece on child placement, “To put a low grade mental defective in a family home where a normal child was expected is a social crime, once to be condoned because of ignorance, but now inexcusable in a well-ordered and progressive child-placing agency.”<sup>10</sup> Slingerland went on to state in the same work, “You must

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<sup>7</sup> “Our Negro Daughter” *Ebony*, May 1960

<sup>8</sup> “Even at their peak around 1970, perhaps 2,500 such adoptions were finalized each year, and no more than 12,000 African-American children in all were placed in white homes before 1975.” <https://pages.uoregon.edu/adoption/topics/transracialadoption.htm>

<sup>9</sup> Herman, E. (2012). The Adoption History Project, University of Oregon, NSF Grant No. 0094318, available at <https://pages.uoregon.edu/adoption/topics/feblemindedchildren.htm>

<sup>10</sup> Slingerland, *Child-Placing in Families*, 1919

bear in mind that there are first-class, second-class, and third-class children, and there are first-class, second-class, and third-class homes.”<sup>11</sup>

A standard step in every modern adoption is the home study; an examination by the state into the home of the prospective adoptive parents. The idea of investigating the adoptive home was not immediately required with the passage of the Massachusetts ACA, though there was evidence that placement authorities at least attempted to make some cursory review of the prospective caregivers’ ability to provide for the child. The state of Michigan required judges to make a finding of suitability as early as 1891, a full 40 years after the ACA. The first state to codify this requirement, however, was Minnesota. The Minnesota Adoption Law of 1917 required an “appropriate inquiry to determine whether the proposed foster home is a suitable home for the child.”<sup>12</sup> Regrettably, prior to the Minnesota law and others like it, home studies were “either not done well or not done at all.”<sup>13</sup>

When home studies were done they consisted of simple observations related to the mother’s home economic skills, and whether the home was close enough to church and to school. Church attendance was a factor for foster parents seeking to provide care for children or adopt them, along with some of the same kind of facts that are considered in present-day adoptions such as employment, reputation, and the status of other children in the home.

In time the process of home studies became less about quantitative facts and more about the qualitative relationships of the prospective parents between themselves and other children, their neighbors, and the reasons they sought to adopt in the first place.

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<sup>11</sup> Slingerland, *Child-Placing in Families*, 1919

<sup>12</sup> “An act to amend Chapter 73, General Statutes, 1913, relating to adoption...”, Chapter 222 – 11. F. No. 1186, 1917

<sup>13</sup> Herman, E. (2012). The Adoption History Project, University of Oregon, NSF Grant No. 0094318, available at <https://pages.uoregon.edu/adoption/topics/homestudies.htm>

The home study process today is, in many ways, just as broken as it ever was. The quality and thoroughness of a study may depend on the personality of the social worker or child-placing agency staffer that is tasked with the investigation, or whether that person is just having a bad day. Some investigators give prospective adoptive parents tips on what not to say on the state's paperwork, and still others are on a mission to save children that no one else understands as much as they do.

The process is interesting because it illustrates the enormous challenge with which the state is tasked to find homes where children can safely flourish and thrive, growing to become relatively well-adjusted, functioning adults. The evolution in the kinds of information sought shows our progress in social sciences about the development of children, and in the abandonment of retrograde views on the children the ancient Romans wouldn't have considered worthy.

Infertility was and remains closely tied to adoption, for obvious reasons. But the connection hasn't always been as healthy or positive. Early home studies used to examine the physiological and psychological causes of infertility, because there was a belief that infertility was a "sensitive barometer for marital adjustment, a predictor of parental success..."<sup>14</sup> Thankfully this is no longer a widely held belief. In the past, many believed adoption was a cure for "psychogenic infertility," that "adoption could dissolve unconscious barriers to conception and pregnancy." I can attest from personal experience that, despite the absence of empirical proof, this particular belief *is* still widely held. I've lost count of the people who are certain Amanda and I are going to become pregnant now that we've adopted, citing examples of their own families or friends who've experienced the phenomenon.

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<sup>14</sup> Herman, E. (2012). *The Adoption History Project*, University of Oregon, NSF Grant No. 0094318, available at <https://pages.uoregon.edu/adoption/topics/infertility.htm>

There are other topics of interest in this area that I haven't hit on. International adoptions, with their high costs and varying requirements are sometimes more of a shakedown than a thoughtful placement made in the best interests of a child. Each country has different requirements, some sounding unfortunately similar to the old fashioned public policies I've just covered.

An entire paper could be presented on the unique dichotomy that exists between traditional adoptions and the protections of the Indian Child Welfare Act (1978). I've made reference to the practice of "matching" here regarding race and even intellect, but that practice has faded with transracial and special needs adoptions, as well as adoptions by same sex couples. The matching concept isn't completely gone, at least not from our own viewpoints, as I suspect we know people who are discomforted by adoptions that fall into any of those three categories I just named. By contrast, the Indian Child Welfare Act specifically protects and prefers matching, "because of a long history of displacement of Native American children, significant and systematic enough to be considered a genocidal policy by many tribes."<sup>15</sup> The Indian Adoption Project, lasting between 1959-1967 forced the adoption of as many as a third of Native American children with mostly white families.<sup>16</sup> Congress eventually declared that matching was worthy of federal legislation to protect the makeup of Native American tribes. This policy is directly at odds with modern day adoption policy.

The rise of adoption agencies beginning in the US as early as 1910, and their dominance due in large part to states passing laws requiring agency involvement, is yet another stand alone research topic. Closed adoptions versus open, and the impact of that decision on the adoptee. IVF began in 1977 and has allowed child bearing to take place with an assist from

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<sup>15</sup> Herman, E. (2012). The Adoption History Project, University of Oregon, NSF Grant No. 0094318, available at <https://pages.uoregon.edu/adoption/topics/infertility.htm>

<sup>16</sup> Palmiste, C. (2011). "From the Indian Adoption Project to the Indian Child Welfare Act: the resistance of Native American communities," *Indigenous Policy Journal* Vol. XXII, No. 1.



medical science, and a new form of adoption has followed in its wake. Embryo adoption has been around since the first “snowflake baby” (as those children are sometimes called) was born in 1998. At present these adoptions are handled as mere matters of contract for the transfer of ownership of the embryos. Our son Hayes, born in November of 2017, was frozen as an embryo by his biological mother and father roughly 18 months before finding a home in Amanda’s womb. We have friends who have a son that had been frozen for 10 years before being transferred and carried to term. The legal parts of the process are done up front and made final with a single agreement. Neither the courts nor the state are involved at all. These kinds of adoptions will no doubt continue to evolve over time.

Adoption, as we’ve seen, follows the arc of nearly all public policy: a painfully slow course correction over many decades after an initial sea change shift. Just in the last few years states have removed bureaucratic barriers for family adoptions of relatives, eliminating the requirement for lengthy home studies for adoptions by family members. Kentucky has joined a handful of other states that have created in statute the idea of “fictive kin” for the purposes of placing children. An example of fictive kin would be the next-door neighbor who is known to always provide help or care for a child, but is not related to them. Courts will imagine a kinship in such cases if doing so is in the best interests of the child. Grandparents are gaining more rights than they once had.

Moving forward, Kentucky is following the lead set by a small handful of other states in further changes. The practice of maintaining adoption records and the confidentiality of those records has transformed over time, and continues to slowly shift. Illinois and other states have made possible adoptee access to adoption records once the adoptees become adults. This is helpful not only for adoptees to find their biological families and learn their own stories, but also provides sometimes vitally important medical help.

Kentucky and other states are also considering granting legal standing to foster parents, which could signal a shift in how foster parents are recruited or trained and approved. Some foster parents only ever desire to foster parent, while many others foster to adopt.

I have no idea if any of the distinguished members of this society are or have adopted. But as an adoptive parent in a transracial household, I found the history of adoption as disconcerting as I did fascinating and enlightening. I appreciate your attentiveness and welcome your comments and questions.

Submitted by:  
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