# OPEN VS. CLOSED ADOPTION
## Social Work and Jewish Law Perspectives

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*Adoption involves a process of severing ties with a biological family and creating new ones with an adopting family. Closed adoption is designed to eradicate those ties completely and to allow a child to live as if he or she were the natural child of the adoptive parent. Open adoption prevents that suppression of the original ties. Adopted children are increasingly seeking access to their genealogical history. Jewish tradition does not sanction the suppression of parental identity. The result is a strong bias in favor of open adoption. Religious teaching governing conduct between men and women underscores the distinction between natural and adoptive families. For purposes of effective therapy, those cultural factors must be recognized in assessing problems and may also be harnessed in effecting a positive therapeutic outcome.*

### OPEN VERSUS CLOSED ADOPTION

The institution of adoption, of voluntarily raising a child of other parents as one's own, has existed since antiquity. In relatively modern times, in the late nineteenth and early twentieth centuries as adoption procedures were developed in the United States, it became common practice to seal adoption records. It is difficult to determine with exactitude how and why a policy of closed adoption was universally accepted. Ryburn (1990) has pointed out that all theories regarding this development "can at best be speculative" (p. 21). Yet, as the adoption process became a matter that was increasingly enshrined in secrecy, it was widely believed that secrecy helped secure the permanency of the adoption relationship (Dukette, 1975).

Several other factors that influenced this development have been discussed in the literature. Some writers have argued that legal considerations surrounding inheritance law influenced the trend toward closed adoption. Baran and colleagues (1974) note that in most traditional societies adopted children do not have rights equivalent to those of natural children and that inheritance is reserved for blood relatives alone. In contrast, in American society, adopted children usually attained legal rights equal to those of natural children. As a corollary, adoptive parents felt that they should exercise total control over the welfare of the adopted child and that the child's ties to his biological parents should be severed. This line of argument complements Ryburn's analysis (1990, p. 21) that adoption legislation was designed to achieve a legal fiction, an attempt to extinguish all ties to birth families in order to create an illusion that the child

> was a child of its adoptive family *as if by birth.* The development of the whole process, which was called "matching," where every effort was made to eliminate the differences of heredity, is probably also witness to a desire to treat adoptive kinship as if it were birth kinship instead.

The illusion that an adoptive child was to be considered as birth kin allowed the parent to insist that legal rights be vested in the adopted child as if the child were a blood relative.

Other writers have noted that the movement toward closed adoption was at times prompted by a genuine concern for the social and psychological welfare of the adopted child. Gonyo and Watson (1988) observe that a 1917 Minnesota law required sealing of

adoption records "to protect adopted children from the stigma of illegitimacy or 'bad blood' by removing such information from open court records" (p. 14). Although other states did not hasten to follow the Minnesota model, many social workers supported the policy of sealing adoption records, contending that it was beneficial for the child to be distanced from a negative background. During that era practitioners reasoned that adoptees would bond more effectively with adoptive parents if they would cease to have contact with their biological family. It was presumed that if adopted children would make a clean break from their biological family, both legally and emotionally, adopting parents would more readily accept the children as their own.

Adoption agencies promoted confidentiality for practical considerations as well. Historically, until the 1930s and 1940s adoption was facilitated by physicians, lawyers, and clergy. With the advent of independent adoption agencies, the agencies sought to obtain clients by claiming that they were offering a unique service by providing total confidentiality. Thus, these agencies promoted the virtue of confidentiality for self-serving reasons. That confidentiality was indeed a value was—at the time—the "politically correct" form of thinking about adoption and became an almost sacrosanct principle. As Fratter (1989) writes, "The belief that the welfare of a deprived child was best served by his being prevented from having contact with his family—that their interests were in conflict—remained largely unchallenged" (p. 4).

Finally, some scholars have pointed out that the closing of adoption records may also have been prompted more by a desire to meet the needs of the adopting parents than those of the adopted children. As Baran and colleagues (1976) have written, adoption serves a great variety of needs. Traditionally, adoption was a process advocated in order to enable orphaned or unwanted children to be nurtured in a caring environment. However, at a later time, adoption came to be promoted for the benefit of the adopting parents. Adoption was seen as an opportunity to fulfill a childless couple's lives and to conceal their infertility; accordingly, it was deemed necessary to deny the existence of another set of parents. As Baran and co-workers further emphasize, "What was originally seen as a great need for the child is now viewed, perhaps, as a greater need for the parents" (p. 97).

As competition for perfect babies grew among childless couples, the rewards for being perfect adoptive parents increased. Among these rewards were increased guarantees of anonymity and confidentiality. "The shift toward closed adoption," write Baran and colleagues "occurred in a gradual, continuing pattern without critical evaluation of the changes" (1976, p. 97). Thus, although for a variety of reasons a policy of closed adoption evolved in America, the validity of that policy was seldom subjected to crucial scrutiny.

In the latter part of the twentieth century an about-face has occurred, and a new trend has developed militating against sealing adoption records. The movement to open adoption records was pioneered by two adoptees, Jean M. Paton and Florence Ladden Fisher, who were both convinced that adoptees feel a great need to discover the truth about their biological parents. Paton believes that members of the adoptive population have the right to benefit from reunion and reconciliation with their biological parents. With much pathos, Paton states, "In the soul of every orphan is an eternal flame of hope for reunion and reconciliation with those he has lost through private or public disaster" (cited by Baran et al., 1974, p. 531).

In 1953 Paton established an organization known as Orphan Voyage designed to help adult adoptees secure information about their birth family and to assist them in locating their biological parents. A more activist adoptee organization called Adoptees Liberty Movement Association established by Fisher is dedicated to changing current laws about adoption. The latter organization also assists adoptees in searching for their natural parents and seeks to give parents information

about offspring whom they have relinquished for adoption. Based on personal experience, Fisher feels that, without knowledge of their roots, adoptees feel as if they are "anonymous persons" and can never attain a comfortable feeling of identity. Gonyo and Watson (1988) note that both Paton's and Fisher's organizations were established essentially for the benefit of adoptees; subsequently in 1974, adoptive parents who wished to effect changes in adoption laws united to form the North American Council on Adoptable Children. Finally, in 1976, birth parents who sought to lobby for a change in adoption laws established an organization called Concerned United Birthparents, the first group to gain national recognition.

In 1979 the three constituent groups of the triangle (adoptees, adoptive parents, and biological parents) united to form the American Adoptive Congress with the goal of acting in a concerted manner and creating a common forum. Gonyo and Watson chronicle the way in which various registries were assembled during the 1970s to facilitate contact among different members of the adoption triangle. In addition, search groups, both voluntary and professional, developed to assist those who wish to be reunited with their blood relatives. The search groups' functions have been enhanced by support groups that offer help and reinforcement to members of the triangle, giving them the courage to continue their search despite their fears and frustrations.

Small (1979), in a passionate article, argues that virtually all people, with the exception of adoptees alone, have access to their birth records. She points out that adoptees who are legally denied access to that type of information are suffering from discrimination in that they are prevented from attaining the same privileges as those enjoyed by the rest of society. Small cites an emphatic statement of Edward H. Madden in "Civil Disobedience": "There are certain rights which belong to a man independent of his position in a civil society. Since society does not bestow these rights, it cannot justifiably take them away...such rights are inalienable" (p. 38).

In recent years a wide array of choices and levels of open adoption have been negotiated. In the opinion of O'Neill (1993) the ideal situation is one in which the biological and adoptive families, with the assistance of the social worker, eventually learn to negotiate for themselves the degree of sharing they wish to establish. She compares the situation to that of a child of divorced parents in which the father and mother negotiate custody arrangements.

In 1987 Chapman and colleagues, in the concluding statement of a three-part article on this topic, wrote that "open adoption is no longer a trend, but a reality with benefits for all members of the adoption triangle" (p. 90). As further noted by Liptak (1993), "Today the trend is toward telling children about their adoption; the question is not if they will be told, but when and how to do so" (p. 110). Rompf (1993), in a cross-sectional sample of adults, found that society at large seems to approve of open adoption. Eighty-six percent of the respondents maintained that adoptees are justified in searching for biological parents. More important, over three-fourths of the respondents believed that adoptive parents should assist adoptees in their search for birth parents. Clearly, social attitudes have been transformed from those of the 1970s when closed adoption was still the norm. These changed attitudes are most recently reflected in a bill passed on December 5, 1994 by the New Jersey Assembly granting adoptees access to their birth certificates (Sullivan, 1994).

## ADOPTION IN JEWISH LAW (HALACHAH)

Although adoption as a social phenomenon was well known in talmudic times and halachic ramifications of that practice have been addressed frequently in rabbinic literature over a span of centuries, questions surrounding the issue of open versus closed adoption have been explored only in recent times. The Talmud expresses high esteem for individu-

als who adopt children. The Gemara, *Sanhedrin* 19b, declares that one who rears an orphan in his own home is considered as if he has given birth to that child. A classic seventeenth-century commentator, R. Samuel Edels, *Maharsha*, ad locum, observes that the talmudic accolade bestowed upon one who rears an orphan is not limited to the rearing of children bereft of their parents but also applies to children whose parents are alive but cannot care for them. In such circumstances as well, the person who rears the child is considered as if he had actually given birth to him or her. However, technically speaking, references to the "rearing" of a non-biological child that occur in halachic writings seem to connote the legal equivalent of foster care, rather than adoption. Indeed, adoption as a formal legal institution does not exist in Jewish law. Nevertheless, as a reality, adoption always existed in Jewish societies and was acclaimed.

According to statistics compiled in the 1990 National Jewish Population Survey (Kosmin, et al., 1991), about 60,000 children under age 18, representing 3 percent of all children in the population surveyed, are adopted. Although comprehensive data on adoption are unavailable, the incidence of adoption in Jewish families seems to be roughly twice that of Americans in general (Stolley, 1993; *The 1990 Census*, 1992).

Despite the Talmud's ringing endorsement of adoption, the statement recorded in *Sanhedrin* 19b cannot be understood as establishing adoption as the equivalent of parenthood in a literal sense or even in a narrow legal sense. According to Jewish law, males are obligated to sire children. That obligation is discharged upon the birth of two children, one of each sex (*Schulhan Aruch*, 1:5). Thus, if a man is physiologically capable of siring a child, he remains fully obligated to engage in procreation even if he has raised or adopted an orphan, despite the great merit attached to that deed (see Rabbi Schlomo Kluger, 1869 and sources cited by Rabbi Elyakim Deworkas, 1991).

**Historical Background**

Although halachic issues regarding the rights of adopted children have been discussed throughout the ages, the questions associated with the issue of open or closed adoption have been dealt with only in the post-medieval period. The earliest discussion of this topic appears in the work of the seventeenth-century authority, Rabbi Yair Chaim Bachrach, in his collected responsa, *Havot Ya'ir* (1896). In that responsum the discussion of closed adoption is presented in a somewhat tangential and incidental manner.

An anonymous interlocutor presented a question concerning apportionment of an estate to Rabbi Bachrach. The writer describes a pious gentleman who was also a *kohen* (priest). This gentleman had fathered two sons. The older son, preparing for his nuptials, requested that his father continue to support him after his marriage. The father, pleading that he did not have the means to continue to support a married son, refused to do so. Upon being rebuffed, the son engaged in a vicious physical attack upon his father. As a result of the altercation, the entire family became estranged from the elder son.

Some time later, the father approached the younger son and told him the following story. He stated that at the time that his wife gave birth to their first child a non-Jewish maid who lived with the family also gave birth to a baby boy. A week after the birth, on the night before the baby's circumcision, the mother found a dead baby. She claimed that it was not her child who had died, but the child of the maid, and that the maid had switched the children. The maid echoed the mother's version of the events. Nevertheless, the father insisted that he had never been convinced of the truth of the story and had always believed that his own son had died and that the child he had reared was, in reality, the child of the non-Jewish maid. Consequently, he believed that the young man's reprehensible behavior at the time of his marriage could be attributed to inherited genetic traits.

The father further related that, at the time of the original incident, he had asked a "pious

rabbi" for guidance regarding the perplexing situation. That rabbi counseled him to circumcise the child and raise him as his own. He was advised that if, in reality, the child was not his, but was indeed the child of the non-Jewish maid, the circumcision would serve to effect conversion of the child and the child would be a Jew. The father concluded the account by stating that, in light of the son's subsequent behavior, he was convinced that the child was not his biological son. Therefore, he wished his younger son, whose paternity was not in doubt, to be declared his sole heir. According to Jewish law, adoptive children do not automatically enjoy rights of inheritance with regard to the estate of their adoptive parents.

The interlocutor solicited Rabbi Bachrach's advice with regard to the halachic status of the older son and the validity of his claim to a share of the estate of the deceased. Applying accepted principles of Jewish family law, Rabbi Bachrach responded that paternal-filial comportment between the two individuals over a period of time and the fact that they held themselves out as father and son and were accepted as such by the community at large served to establish presumptive evidence of the existence of such a relationship. The alleged subsequent statement of the father, he asserted, was not sufficient to rebut that presumption, particularly since it was not based upon an assertion of personal knowledge but merely reflected a conjecture based on circumstantial evidence. Accordingly, Rabbi Bachrach ruled that the older son was entitled to the privileges and prerogatives of a biological heir.

Many years later, a pre-eminent nineteenth-century authority, Rabbi Moses Sofer (1859), *Teshuvot Hatam Sofer, Even ha-Ezer,* questioned the cogency of the advice of the "pious rabbi" who suggested that the (substituted) child be circumcised and raised as the husband's own child. Rabbi Moses Sofer enumerates several problems inherent in such a procedure. In the first place, if, in reality, the child is not the child of the father and people assume that the child is indeed a biological child, the child will share in his adopted father's estate. Since, from the perspective of Jewish law he is not entitled to do so, the putative father has, in effect, contributed (albeit unwittingly) to the perpetration of a fraud upon the rightful heirs.

Second, he notes, if the father were to die and leave no other living issue, a complication would arise with regard to his wife's eligibility to contract a second marriage freely. Biblical law stipulates that the widow of a childless husband must either enter into marriage with a brother of her deceased husband, an institution known as levirate marriage or *yibbum,* or undergo a ceremony of release known as *halitzah* (see Deuteronomy 25:5–10). No such requirement exists if the deceased husband is survived by a living child. Hence, if the adopted child is erroneously regarded as a biological child of the deceased husband, the wife would improperly be permitted to remarry without either levirate marriage or *halitzah.* Rabbi Sofer remarks that this issue, as related to adoptive relationships, had already been noted, albeit briefly, at an earlier time. A fourteenth-century authority, Rabbenu Jerucham, had earlier remarked upon the propriety of adoption procedures in general lest the adopted child and the community at large be led to believe that he or she is a biological child and lest, in the course of time, the wife, lacking expertise in this arcane area of Jewish law, assume that she is exempt from levirate marriage and *halitzah* in the event that her husband dies without natural issue.

Third, *Hatam Sofer* notes that, in the case discussed by *Havot Ya'ir,* the father was a *kohen.* The sanctity, privileges, and duties that devolve upon a *kohen* are transferred only to genealogical descendants; an adopted child does not share in priestly status. Since the "pious rabbi" advised the husband to rear the child as if the child were his own, it would inevitably follow that the child would improperly aspire to the privileges, rights, and obligations of priesthood. In light of these considerations, *Hatam Sofer* concludes that the advice of the "pious rabbi" was entirely inappropriate.

Although *Hatam Sofer* does not expressly say so, it is clear from his comments that, had the father not raised the child as his own biological child (closed adoption), but had he instead informed him that he was, in truth, not his son and publicized that fact, the problems identified by *Hatam Sofer* would have been totally obviated. Accordingly, open adoption of the child would have been unobjectionable.

In light of the fact that, in Jewish law, adopted children do not have the halachic status of biological children, Rabbi ben-Zion Uziel (1991), a former Sephardi Chief Rabbi of Israel, has noted that the Hebrew term for adoption, *imutz*, is a misnomer. Rabbi Uziel points out that the word *imutz* connotes the attachment of a branch to a tree (see Psalms 80:16). Applied to adoption, the term signifies that the adopted child has become part of the family tree. Since, halachically, that is clearly not the case, use of the word *imutz* is inappropriate. Rather, suggests Rabbi Uziel, adopted children should be known as *benei amunim* (see Esther 2:7 and Lamentations 4:5); literally, "the children of people who rear them." The point is instructive, but entirely academic, since Rabbi Uziel, bowing to widespread contemporary usage, himself employs the term *imutz* for the sake of clarity.

### Contemporary Opinions

One of the most prominent halachic decisors of our generation, Rabbi Moses Feinstein, also addressed the issue of open versus closed adoption. In a responsum dated 1957 and published in his *Iggerot Mosheh, Yoreh De'ah* (1959), Rabbi Feinstein discusses the issue without citing any of the earlier noted sources. Rabbi Feinstein declares that if the adopted child is of Jewish parentage it is imperative that the identity of the natural parents not be suppressed. Rabbi Feinstein notes that, according to Jewish law, the issue of an adulterous or incestuous liaison is a *mamzer* (bastard). In order to permit marriage to a person of legitimate birth it is necessary to determine the child's lineage. Knowledge of the identity of non-Jewish natural parents is not necessary in order to avoid problems of *mamzerut* or consanguinity.

More significantly, Rabbi Feinstein contends that, even if it is known that the mother was unmarried and that the child was not born of an incestuous relationship and hence is entirely legitimate, it is nevertheless necessary to determine the identity of the father. Basing himself on the comments of the Talmud, *Yevamot* 37b, and on *Shulhan Arukh, Even ha-Ezer* 2:11, Rabbi Feinstein asserts that it is necessary for a child to know the identity of his natural parents in order to ensure that the child will not inadvertently enter into an incestuous union with a sibling at some future time.

A child who does not know the identity of his or her father may, quite innocently, marry a paternal half-brother or half-sister. For that reason, the Talmud, *Yevamot* 37b, declares that it is forbidden for a man to maintain wives in different cities lest their children grow to maturity without being aware of the existence of their half-siblings. Ignorant of their biological relationship, they may enter into an incestuous relationship. Exactly the same concern exists, observes Rabbi Feinstein, in situations in which a child does not know the identity of his or her mother. In such instances there is a distinct possibility that the child may marry a maternal half-brother or half-sister. To be sure, the chance that such a marriage will actually take place is extremely remote. Yet the Talmud regards conduct that may lead to such an eventuality as a violation of a biblical prohibition. Rabbi Feinstein regards any act having the effect of suppressing parental identity as constituting a violation of that stricture. Accordingly, Rabbi Feinstein advocates open adoption in which the child knows the identity of the natural parents.

Nevertheless, despite the halachic cogency of the concern expressed by Rabbi Feinstein, the adopted child need not have actual knowledge of the identity of his or her natural parents. As Rabbi Feinstein himself observed, the basic requirements of Jewish law may be fulfilled by having a responsible indi-

vidual maintain a record of the identity of the birth parents of the adopted child. This would enable the adopted child to consult the person privy to that information before entering into a marriage. With such an arrangement in place, the identity of the biological parents need never be revealed to the child. In order to satisfy the requirements of Jewish law, it is sufficient for the child to know that there is no barrier to the marriage on grounds of incest.

The late Rabbi Meir Steinberg, a member of the London *Bet Din* (rabbinical court) authored a monograph entitled *Likkutei Me'ir* devoted to a discussion of the laws of adoption. Rabbi Steinberg notes that, at the time of the publication of his book in 1970, it was the practice of adoption agencies in England to insist that there be no contact whatsoever between the birth mother and her child and that no information concerning either party be conveyed to the other.

Rabbi Steinberg reports that it is the policy of the London *Bet Din* to ascertain the following information about each adopted child:

1. whether the natural mother is Jewish and whether the mother is herself not a *mamzeret* (a bastard)
2. whether the mother is single or married
3. the identity of the biological father
4. whether the child's status is that of a *mamzer*
5. whether the child is a *Kohen*, Levite, or Israelite
6. whether the mother has placed other siblings for adoption (this information is significant since, under such circumstances, the possibility of sibling marriage is enhanced)
7. whether the mother is non-Jewish
8. in the case of a female child, whether she is permitted to marry a *kohen* (there are additional genealogical circumstances that restrict a *kohen's* freedom to marry)

The *Bet Din* does not endeavor to inform the child of his or her status as an adoptee, but does preserve the information regarding the lineage and status of adopted children in a special record known as the *Pinkas Meyuhad*. In England, before the marriage of any person celebrated under the aegis of the United Synagogue (an association of Orthodox synagogues in England), this record is checked to determine whether the child is adopted and, if so, to ascertain that the person is not about to enter into marriage with a sibling.[1]

In this fashion, although the adoption remains a closed one and the adopted child is not informed of the identity of his or her parents, essential information is available and halachic pitfalls are avoided. While the adoption remains closed insofar as the child is concerned, the record maintained by the London *Bet Din* ensures that responsible individuals are in possession of the necessary genealogical information and that halachic disasters are averted. By the same token, maintenance of these records serves to thwart the goal that, according to the analysis of Ryburn (1990), adoption legislation was designed to achieve; namely, establishment of a form of legal fiction designed to foster the illusion that an adopted child is identical in all respects to a biological child. The existence of official communal records reinforces the concept that, from the point of view of Jewish law, the relationship established with adopted children does not at any time become identical to the relationship with biological children.

Rabbi Steinberg concedes that keeping a child's status as an adoptee concealed from the child is somewhat problematic. If the adoptive father of a male child is a *kohen* or a Levite and the child is not, the child is bound to become aware of his status when he is not also called to the reading of the Torah

[1]The concept of a communal ledger for genealogical purposes is not at all novel. Rabbi Gedaliah Felder (1959), *Nahalat Tzvi*, cites a responsum of the eighteenth-century authority, R. Pinhas Horowitz, who reports that the communal ledgers were frequently maintained in order to record the status of individuals purported to have been born of a union that would have prohibited them to marry freely. Where such ledgers are maintained, failure of an individual's name to be recorded in the communal ledger may be taken as evidence as legitimate birth.

as a *kohen* or Levite. Moreover, in the drafting of legal documents such as a marriage contract or *ketubah*, Jewish law requires use of the patronym. Use of the adopting father's name for that purpose without clarification would render the instrument invalid for reason of misidentification. Rabbi Steinberg advises that such documents may use the name of the adoptive parent provided that the name is accompanied by the explanatory term *ha-megadlo*—who has reared him.

It is noteworthy that in many jurisdictions adopted siblings who engage in sexual intercourse are deemed to be guilty of incest.[2] According to biblical law, it is clear that a marriage between adopted siblings is permissible since these individuals are not blood relatives. However, there is some disagreement with regard to whether or not there exists a rabbinic prohibition forbidding adopted siblings to marry. Some authorities have argued that since outside observers may be unaware of the fact that there is no biological relationship, it may appear as if these individuals are committing an act of incest. Accordingly, they raise the issue of the possibility of a rabbinic prohibition based on *marit ayin*, the perception of wrongdoing in the eyes of a beholder. Interestingly, Rabbi Weiss, originally a rabbinic judge (*dayan*) in Manchester, England and later Presiding Justice (*Av Bet Din*) of the *Bet Din* of the *Eidah ha-Haredit* in Jerusalem, reaches the tentative conclusion that, in the case of an open adoption in which members of the community are aware that the individuals are not siblings, a marriage between adopted children is permitted since there is no reason for people to presume that a transgression is taking place. However, Rabbi Weiss argues that, in instances of closed adoption, the marriage of adopted siblings should not be countenanced since it may appear to members of the general public that it is an incestuous one.

In a responsum written to Rabbi Steinberg in 1965, Rabbi Weiss disagrees sharply with one aspect of the procedure adopted by the London rabbinic court. He emphatically maintains that failure to disclose to a child the fact of his or her adoption is forbidden. Rabbi Weiss cites the previously noted view of *Hatam Sofer* who enumerates a series of halachic problems that may arise if the adopted child is not informed of the fact of his or her adoption.

Rabbi Weiss further cites the position of the late Rabbi Menachem Mendel Schneerson (1969), the Lubavitcher Rebbe, who notes that Jewish law prohibits men and women, other than spouses and mothers or sons and fathers and daughters, to hug or kiss one another. Similarly, there is a prohibition in Jewish law with regard to *yihud*, i.e., members of the opposite sexes, other than close biological relatives, may not seclude themselves with one another unless others have access to the area to which they are confined. Rabbi Schneerson declares that the father-daughter and mother-son exceptions with regard to these prohibitions apply only to biological children but not to adopted children. He expresses astonishment that many individuals who are meticulous with regard to observance of other commandments are lax with regard to these prohibitions as they apply to adopted children. Similarly, Rabbi Menasheh Klein (1970), a contemporary authority and author of the responsa *Mishneh halakhot*, lists fourteen reasons why it is imperative that the adopted child be informed of the fact of adoption. Most compelling of these reasons is the possibility that an adopted child who is not informed of his or her adoptive status will violate prohibitions against intimate physical contact and seclusion with members of the opposite sex (see Rabbi M. Feinstein, 1985; Rabbi Aaron

[2]See Uniform Marriage Act §207(1979). Some states prohibit marriage only between adoptive parents and their adopted children, but not between adopted siblings or with relatives of the adoptive parents. In some states no relationships involving adopted children are considered incestuous (Wadlington, 1963). For a discussion of the psychological and social grounds for regarding such relationships as incestuous, see Margaret Mead (1970). For a critique of a decision of a Colorado court declaring restrictions against adopted sibling marriages to be unconstitutional, see Katz (1979).

Jacobowitz, 1969; Rabbi Eliezer Yehuda Waldenberg, 1961).

Rabbi Weiss cites the comments of Nahmanides in his *Commentary on the Bible*, Leviticus 18:20, who explains that the Bible prohibits adultery because, if adulterous unions were to be permitted, paternity would always be in doubt and it would not be possible to preserve the integrity of the biological family. A similar view is expressed in the *Sefer ha-Hinnukh, mitzvah* 35:

> At the root of this precept lies the purpose that the world should be settled as the Eternal Lord desired; and the Lord blessed is He wished that everything in His world should produce its fruit (offspring), each according to its species, and no one species should become intermingled with another. And so did He wish that about a human child it should always be known whose it is, and they should not become intermingled with one another.

Accordingly, Rabbi Weiss underscores the very strong emphasis placed in Jewish teaching on the integrity of the biological family and the need to know one's biological roots. Even when it is not possible for the adopted child to know the identity of his or her biological parents, Rabbi Weiss maintains that the adoptee must nevertheless be informed of his or her adoptive status since society is obligated not to compromise the integrity of biological families by allowing false perceptions to arise.

Rabbi Feinstein adopts a position contrary to that of these authorities in asserting that, in cases in which it is not possible to determine the identity of the adoptee's biological parents, but it is known that they are of the Jewish faith, one is not obligated to inform the adoptee of the fact that he or she is adopted.

### Adoption of a Non-Jewish Child

Non-Jewish youngsters who are adopted by Jewish parents retain their status as non-Jews unless they undergo conversion to Judaism. As discussed by the Talmud, *Ketubot* 11a, and accompanying commentaries, minor children may be converted if they are presented to the *Bet Din* by the biological parents for that purpose. Alternatively, when the biological parents are deceased or they have abandoned the child, the *Bet Din* may carry out the conversion on its own initiative. In each of those circumstances, the child retains the right to renounce the conversion upon reaching the age of legal majority (twelve years of age for a girl and thirteen years of age for a boy). Upon renunciation of the conversion, the child returns to his or her original status as a non-Jew. However, if the child does not renounce the conversion immediately upon reaching the age of legal capacity, the conversion is regarded as having been confirmed and cannot subsequently be rescinded. Failure to renounce the conversion in a timely manner is considered to be tantamount to acceptance of the conversion. Accordingly, the religious status of a minor child cannot be fully clarified until the child reaches the age of legal majority.

Rabbi Moses Feinstein (*Iggerot Mosheh, Yoreh De'ah*, 1985), takes note of the face that the right to renounce the conversion is lost if it is not exercised immediately only because failure to renounce the conversion constitutes tacit acceptance of its effect. Accordingly, argues Rabbi Feinstein, acceptance can be imputed only if the child is aware of the fact that a conversion has taken place; failure to renounce a conversion of which one is in ignorance can hardly be construed as acceptance. Therefore, argues Rabbi Feinstein, in instances of closed adoption, the child who was adopted and converted as a minor retains the right to protest and renounce the conversion upon becoming aware of the fact, even if those events take place at a much later age. Although not noted by Rabbi Feinstein, this position was enunciated at a much earlier time by the sixteenth-century authority, R. Solomon Luria (1615), *Yam shel Shlomoh*. Accordingly, the religious status of such an individual might remain in a state of doubt for a considerable period of time. Hence, since such an individual, when informed of his or her status as

a convert, may decide to renounce Judaism, that person may not be permitted to enter into a marital relationship lest he or she renounce the conversion at a later time and the marriage retroactively become a union between a non-Jew and a Jew. Consequently, Rabbi Feinstein forcefully asserts that not only is it imperative that non-Jewish children be informed that they are adopted and have undergone conversion but also that this information be shared with them before they reach the age of legal majority. In that manner, their religious status can be determined with finality upon reaching the age of legal capacity. Rabbi Feinstein's position is endorsed by Rabbi Weiss (1962) and by Rabbi Klein (1970; see Rabbi Azariah Berzon, 1987 and Rabbi Sternbuch, 1994).

A further problem arises in the adoption of non-Jewish females by virtue of the halachic regulation prohibiting a female convert from marrying a *kohen*. Accordingly, Rabbi Feinstein regards that factor as constituting yet another reason mandating that a non-Jewish girl who is adopted and converted to Judaism be informed of her status, since only in that manner can it be assumed that she will not subsequently enter into a marriage with a *kohen*.

## CONCLUSION: IMPLICATIONS FOR SOCIAL WORK

The growing trend in social work is indeed to share at least some information about his or her birth with an adopted child. Nevertheless, in at least some states, the hermetically sealed confidentiality associated with closed adoption remains enshrined in law, which reflects the mores of a society that is loathe to abandon a heretofore accepted value—that adopting parents should be regarded as indistinguishable from natural parents in all respects.

Jewish law and tradition reflect a diametrically opposed value. The family is defined as a biological unit, and family values focus upon preservation of that unit. The biological unit cannot be severed, nor can an artificial unit be created as a legal fiction. That value structure is not merely reflected in purely legal matters that are not the focus of ongoing attention and concern, such as inheritance and consanguinity, but is reinforced for some individuals virtually on a daily basis in such elemental aspects of familial behavior as restrictions on demonstrative physical contact and seclusion within the home.

The value system within which adoption takes place in the Jewish community has a significant bearing upon assessment and treatment of problems that may arise in a family that has adopted a child. A sensitive therapist should be aware that, for an Orthodox-observant adopting parent, feelings of inadequacy or of not being a "true parent" are reinforced by provisions of Jewish law governing daily conduct. As Tartanella (1982) has noted in a different context, courts must recognize that they "cannot 'break the ties that bind'" (p. 490). Both ties and breaches that are reinforced by cultural traditions must be respected, and ensuing feelings of hurt and rejection must be seen and dealt with in perspective. By the same token, values treasured by that same tradition can be of great aid in effective therapy. Emphasis upon the great merit Judaism associates with the concern and love lavished upon adopted children and the esteem with which it holds adopting parents can do much to dispel feelings of inadequacy and guilt.

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