

**Class and Discrimination in the Denial of Adoptees' Equal Rights:
Who's Protecting Whom and Why?
By Mirah Riben**

Social Class

Adoption is and has always been deeply imbued in classism, as it is adoption's intent and most often outcome to move a child from lower to higher-class status. This is truer today than ever, as adoption has become a business of finding children for clients, and less of a charitable act of finding homes for needy children. The clients being served by adoption are adopters who pay the adoption fees. In the adoption industry, as it is now called, the "merchandise" is the children. As with most merchandise, fees (prices) vary depending on desirability and demand, which in this case is based on age, health, and skin color. These distinctions thus create discrimination of handicapped, older and non-white children, while adopting couples are discriminated against based on their socio-economic abilities with couples having the "means" getting the more sought after commodity: healthy, white, newborns. All of these factors add to the classist and discriminatory nature of adoption. Class and discrimination remain a part of adoption when it comes to the issue of opening sealed adoption records. This essay makes the case that: 1) adoption is classist; it is easier for richer, more powerful, and better-educated (higher class) people to take children from poorer, weaker, and less-educated (lower class) people; 2) adoptees are a discriminated against minority denied the same rights as non-adoptees; 3) sealed adoption records serve this classist, discriminatory system by preventing any and all contamination from the adoptees' original birth status to his newly acquired status obliterated to "protect" cross contamination from one social class to the other.

A Discriminated Minority

Numerically, adoptees represent a small percentage of the total population of this country. At last count, 2% which has perhaps as much as doubled with the increase in international adoptions over the past decade. However, numbers alone do not identify a group as a minority. Women, for instance, though they are nearly half the world's population, are recognized worldwide as a minority in that they are treated unequally by the dominant group. Likewise, there is approximately the same percentage of left-handed people as there are homosexuals, yet one is discriminated against and the other not. Rather than being based on a numerical or percentage figure, a minority is defined as a group of people who are singled out for unequal treatment, and who regard themselves as objects of collective discrimination (an act of unfair treatment directed against a group or individual based on characteristics such as race, ethnicity, age, gender, income, marital status, sexual orientation, disability, religion, or politics) which excludes them from full participation in the life of their society (Wirth 1945). Membership in a minority is referred to as being an ascribed status; it is not voluntary, but comes through birth.

The shameful heritage of America includes the almost total annihilation of Native Americans with the remainder being placed in isolation on reservations and denied rights, slavery of African Americans, exploitation of Chinese Americans, internment of Japanese

Americans, just to name a few. Immigrants to this country were spared harsh treatment only by assimilating into the "melting pot" -- forgoing their heritages in order to be accepted and find employment and housing. We are currently becoming more respectful of each individual's unique heritage, and desire to re-establish ethnic pride. Multiculturalism and pluralism, where minorities maintain their separate identities and cultural practices, have thus become politically correct goals. The melting pot metaphor is rapidly being replaced by that of a "tossed salad."

Yet adoptive parents, particularly in the past, were encouraged to treat their adopted children "the same as if" they were born to them. Indeed one would expect parents to provide their adopted offspring with love and care equal to that of any child born to them. However, expectations of being "the same as" create a climate in which it is easy to ignore the adoptees' origins and genetic heritage. While minority status crept up on adoptees quite insidiously, developing so gradually as to be well established before becoming apparent, it is nonetheless a very harsh and severe form of assimilation that is forced upon them. Unlike racial minorities who have assimilated through marriage -- a consensual, voluntary act of two adults -- adoptees are assimilated as infants and young children with no choice in the matter. Some adoptees are removed from their country of origins, their native tongues and cultures, in addition to being taken from their original families. They are expected to accept and adopt the culture of their new family "as if" it were their own.

Strangely, however, though treating adopted children "the same as" non-adopted children has long been a recognized policy, they are not treated the same as their non-adopted counterparts when it comes to access to their own birth records. The inequality of treatment in regard to denying adoptees equal access to their own birth records, clearly makes them a discriminated against minority based on birth status. The fight to regain for adoptees the same rights as non-adoptees in regard to access of their birth records is therefore a civil rights issue and compromises of these rights such as mandatory registries or intermediary systems are unacceptable. How has this discrimination been allowed to go on? By being wrapped in a cozy blanket of protection.

Who's Protecting Whom?

Protecting individuals almost always involves denying them certain rights and privileges. In some instances laws are made to protect all people equally, such as automobile seat belt laws. Other protective restrictions apply only to certain "classes" or groups of individuals, such as protecting children by not allowing them to drink or drive, work, or go to war. Adults deemed mentally incompetent, likewise are awarded certain "protections" and denied certain freedoms. Society also protects itself from criminals by restricting their freedom and rights through incarceration.

There is a need to be cautious, however, not to "protect" capable people who do not need or want protecting. Such was the case when it was alleged that women needed to be protected from the strains of higher education, believed to be too much of a "burden on [their] frail capacities" (Henslin 1999). Women were considered the "weaker" sex and

therefore were kept subordinate and infantilized by not allowing them to own property in their own name, sign contracts, serve on juries or vote. Today it is seemingly unacceptable to treat one group of American citizens differently based on their biological differences, and yet this is precisely what we do to adoptees. We infantilize them and treat them either as needing protection, or as people others need to be protected from.

Protecting adoptees from "the stigma of illegitimacy" has long been the stated and popularly acceptable reason to keep adoption records sealed. Researchers who have studied the history of the sealed record in this country, however, have determined that the protection of the adoptee never quite held up as the real reason. More often, sealed records were intended, and remain, to protect adoptive parents from the intrusion of birthparents. Be that as it may, the stigma of illegitimacy is no longer viable for continuing to withhold this information from those who are in large numbers pressuring to have it.

Interestingly, organized efforts in opposition of sealed records therefore changed the purported benefactor of their efforts from the "protection" of adoptees to that of the "protection" of birth parents: the non-client, non-best interest party to the adoption, whose rights they are clear to point out have been relinquished. Adoptees have thus become a discriminated minority, trapped by antiquated so-called "protective" measures, even if they are no longer (or ever were) the ones being protected. Whatever the original reason for sealing the records, it is no longer clear if they remain sealed to protect adoptees from birth mothers, or vice versa, or to protect adoptive parents from birth parents.

Birth Parents

Because sexual mores differ for men and women in our culture, birth fathers are spared much of the experience of birth mothers. Birth mothers, like other deviants of social norms, are often demonized, stigmatized, feared, disliked, mistrusted, misunderstood. As a result of their marginalization, it is easy to believe birth mothers either don't want or are incapable of raising their children, acts that engender disbelief and disgust. Many such birth mothers (domestic and foreign) are part of the invisible underclass who are dehumanized, thus making it easier to self-righteously exploit, disregard, and hope to never have to deal with them again after "saving" (or stealing) their children for those who want (and can afford) them.

Birth mothers can be, and are however, alternately pitied and praised. Some are kept anonymous and invisible, not out of disgust, but out of concern and an assumed need for "protection." Ricki Solinger's groundbreaking work, *Wake Up Little Susie* (Solinger 1992) points out the racial differences, in regard to the different expectations, treatments, and the adoptive placements of the children of minority unmarried mothers compared to their white counterparts (particularly before legalized abortions). In addition to the black and white racial divide, there is an equally clear distinction between white underclass women and the daughters of the middle and upper-middle class who "make a mistake" and find themselves in a "situation." Unmarried pregnant daughters of the elite have choices and receive treatment not available to lower class women. These privileges

include concern to protect them, their families of origins, as well as the reputations of the husbands that were kind enough, or unknowing enough, to have married them. Perhaps away at college and too late for an abortion, young socialites in past generations were sheltered by their family under the guise of traveling abroad for a semester, or the like, and secretly disposed of the evidence of their sin in order to go on with their life "as if" nothing had happened. The purpose of their surrender is to hide the source of their shame in order to protect and reclaim their family's, and thus their own, good name ("What will the neighbors think?"). Many were told that unless they cooperated with a secretly arranged birth and surrender, no man would ever want them. Thus, middle and upper-middle class birth mothers "pay" for violating societies norms. The price they are asked to pay to maintain their social status is their child and their silence.

Thus, social class has everything to do with adoption practices and perceptions, not just for the adoptee and adoptive parents, but also for the birth parents. In addition to, or instead of, protecting adoptees from their illicit pasts, upper class birth mothers (and middle class ones who have repented) are now alleged to be worthy of the privileges of their social class including "protection" from their bastard children's return into their born-again life, whether they want protecting or not. Adoption is thus intended to be a one-way, impenetrable door separating the classes, with no cross contamination.

Adoption records are sealed to protect class status; to protect adoptive parents from an invading birth mother (which might be a painful reminder of the adopters inability to procreate, their lack of a blood-bond with their child, and the fact that the birth mother has both of these and they don't). It is also a seal that protects reputations precariously built on lies on secrets from being shattered by intruding bastard children. It is this newly constructed need for protection that an organized opposition to opening sealed records has seized upon to create public sympathy.

The Opposition

The only opposition to the logic of adoptees having the same rights as non-adoptees -- a logic that has been recognized by the majority of voters in Oregon -- comes from the National Committee For Adoption (NCFA). Claiming to "speak for" anonymous birth mothers the NCFA in fact represents, is financially supported by, and responsible to, not birthmothers, but a small number of adoption agencies, all of which are Christian agencies, mostly Mormon. Adoption is big business and the NCFA maintains paid lobbyists to protect the interests of these member agencies. Their concerns are equally as altruistic as are those of any entrepreneurial venture; their claims as desperate and as lacking in truth. In an effort to gain support from Right-to-Lifers, NCFA made false claims in a desperate attempt to link open records to increased abortions. When the facts proved just the opposite, they then switched strategies toward an opposition based on the false claim of the "constitutional right of privacy" of the birth parent -- a right that no one in this country is guaranteed. In a similar case brought by the NCFA in Tennessee, the Supreme Court in Tennessee ruled that it was not a constitutional issue.

The NCFA fights to deny adoptees' equal rights on the grounds of "protecting" these seemingly defenseless, helpless birth parents who allegedly fear having their lives shattered by their adult children's need to know the truth. While there may be some concern for protecting some reputations, birth parents' "rights" is a convenient, sympathetic smoke screen to divert attention from their real concern.

Opening the records will reveal not just individual truths but also unethical and in some cases illegal agency practices carried out under the protection of secrecy. It is not so much the birth parents who were allegedly guaranteed or assumed privacy -- it was the agencies who assumed they would always be protected by the cloak of secrecy the sealed records provided. Additionally, by lobbying for legislation to maintain fee-based registries and intermediaries, the NCFA agencies seek maintain a source of income for the industry they represent. The opposition to open records has nothing to do with the lives of those it uses to tug on the public's heart strings, and everything to do with business and bottom lines.

Conclusion

Adoption is driven by, money and a need to maintain, social class divides. Denying a group of people the same rights as others based not on their behavior (as with criminals) or mental incapacitates, but because of their birth status, is clearly a case of discrimination. There is nothing altruistic about protecting healthy, non-criminal, able-bodied adults of full mental capacity from one another and therefore no logical explanation for making rules of access to birth records different for one group based solely on their birth status.

There is no guarantee - constitutionally or otherwise - of privacy to any citizen. Therefore, as the Supreme Court has already ruled, the alleged rights of birthparents do not override the rights of the adoptee. The only opposition to rescinding sealed records and allowing adoptees equal rights is from those who profit from keeping the records sealed, just as those who profited from slave labor opposed abolishing slavery.

Human rights have been defined as benefits to which people are entitled simply by virtue of being human (Gitlin). Social theorist Steven Lukes has argued: "To defend human rights is not merely to protect individuals... the right to a fair trial protects a well-functioning legal system; the right to free association protects democratic trade unions, social movements and political demonstrations and so on." The ideal of equality cannot be used to trump the ideal of liberty. Nor can the ideal of liberty be used to trump the ideal of equality. The Universal Declaration, celebrating its 50th year, in Article 29, wisely acknowledges that: "Everyone has duties to the community in which alone the free and full development of his personality is possible." That is, people cannot exist on their own. But, equally wisely, the Declaration goes on to caution: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of security, due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

In other words, the burden of proof is on those who would restrain rights - on the Chinese rulers, not Wei Jingsheng; on the Iranian rulers, not Salman Rushdie. When a government cracks down on a writer claiming that free expression by citizens would generate chaos, this is merely an assumption of what problem this action might cause. An entire classification of people -- adoptees -- cannot be responsible for, or denied their rights because of, the possibility of shame or discomfort that might cause some particular individuals. When it comes to human rights, individuals are entitled to a presumption of innocence. If it can be proven that a riot ensued solely as a direct result of someone reading a specific book; or if in fact it can be proven that a specific individual was directly harmed because of an adoptee's actions, then existing laws need to prevail to remedy and deal with that legally and justly.

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