

# Intestate Succession Rights of Adopted Children: Should the Stepparent Exception Be Extended

Lisa A. Fuller

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## NOTE

### INTESTATE SUCCESSION RIGHTS OF ADOPTED CHILDREN: SHOULD THE STEPPARENT EXCEPTION BE EXTENDED?

#### INTRODUCTION

Since the enactment of the first American adoption statute in 1851,<sup>1</sup> adoption has become socially acceptable and widely practiced.<sup>2</sup> The goal of American adoption law is to promote the best interests of the child.<sup>3</sup> Adoption practices and laws are discretionary, giving caseworkers and judges the ability to promote the welfare of the particular child involved in an adoption proceeding.<sup>4</sup> When an infant is adopted by strangers,<sup>5</sup> adoption law defines the child's best interests as requiring the complete substitution of the adoptive family for the natural<sup>6</sup> family.<sup>7</sup> This "fresh start"<sup>8</sup> enables the adoptive family to integrate without disruption or interference from the natural family.<sup>9</sup>

Succession law, by contrast, is a system of fixed rules and is largely nondiscretionary.<sup>10</sup> Its primary goals are to distribute intestate estates according to the probable intentions of the typical decedent and to promote certainty of titles.<sup>11</sup> Traditionally, consanguinity, or blood relationships, determined inheritance

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<sup>1</sup> 1851 Mass. Acts 815. See *infra* notes 48-49 and accompanying text.

<sup>2</sup> Emilio S. Binavince, *Adoption and the Law of Descent and Distribution: A Comparative Study and a Proposal for Model Legislation*, 51 CORNELL L.Q. 152, 153 (1966); Leo A. Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 749 (1956); Fred L. Kuhlmann, *Intestate Succession By and From the Adopted Child*, 28 WASH. U. L.Q. 221, 247 (1943); Jan E. Rein, *Relatives by Blood, Adoption and Association: Who Should Get What and Why (The Impact of Adoptions, Adult Adoptions, and Equitable Adoptions on Intestate Succession and Class Gifts)*, 37 VAND. L. REV. 711, 712 (1984); see also *Adoption in America, 1981: Hearing Before the Senate Comm. on Labor and Human Resources, 97th Cong., 1st Sess. 6* (1981) (statement of Sen. Jepson) (estimating that 150,000 adoptions occur annually); NATIONAL COMMITTEE FOR ADOPTION, ADOPTION FACTBOOK 69 (1989) [hereinafter ADOPTION FACTBOOK] (indicating that the number of adoptions reached a peak of 175,000 in 1975 and have declined to 104,088 in 1986).

<sup>3</sup> See *infra* text accompanying note 51.

<sup>4</sup> See *infra* text accompanying note 51.

<sup>5</sup> See *infra* text accompanying notes 60, 62.

<sup>6</sup> The terms "natural" and "biological" generally "designate the parents who have actually produced the child." JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 16 (1979).

<sup>7</sup> See *infra* text accompanying notes 53-54.

<sup>8</sup> See *infra* note 54 and accompanying text.

<sup>9</sup> See *infra* text accompanying note 56.

<sup>10</sup> See *infra* text accompanying notes 105, 298.

<sup>11</sup> See *infra* text accompanying note 105.

rights.<sup>12</sup> Because states assumed that an intestate decedent intended distribution of his estate only to his blood relatives, succession law has been slow to reflect adoption law's goal of completely substituting the adoptive family for the adoptee's blood relations.<sup>13</sup>

Nevertheless, today's intestacy statutes do reflect this traditional adoption policy by severing adoptees' inheritance rights from and through their natural parents.<sup>14</sup> Many statutes, however, provide for an exception in the case of stepparent or other relative adoption.<sup>15</sup> These "stepparent exceptions" generally provide that in the case of a stepparent or other natural relative adoption, a child's inheritance rights from and through the biological parents remain intact. Such exceptions reflect a belief that stepparent adoptions involve factual circumstances and policy concerns which differ from those involved in the traditional infant adoption by strangers.<sup>16</sup> Children in stepparent adoptions are likely to maintain con-

<sup>12</sup> See *infra* note 107 and accompanying text.

<sup>13</sup> See *infra* text accompanying notes 115-40, 141-51; see also Stephen B. Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443, 510-14 (1971) (suggesting that the hesitancy to change the preference for blood relations was not just based on historical preference, but also resulted from conflicting views regarding the nature of adopted children and from negative judicial reaction to the changes in form, function, and the concept of family that were occurring in late 19th-century America).

<sup>14</sup> See *infra* text accompanying notes 141-62.

<sup>15</sup> See *infra* text accompanying notes 229-92. This Note focuses on the stepparent exception; however, many other complex issues exist, which, though beyond the scope of this Note, should be considered when analyzing the impact of adoption of succession law. According to one commentator,

[i]n dealing with the impact of adoption on intestate succession, a well considered statute should resolve the following questions: (1) Can the adoptee and the adopter inherit from each other? (2) Can the adoptee inherit through the adopter from the adopter's kindred? (3) Can the adopter's kindred inherit from and through the adoptee? (4) Should the adoptee's former ability to inherit from his biological parents and their kindred retained or abolished? (5) Should the former ability of the biological parents and their kindred to inherit from the adoptee be retained or abolished? (6) Should any of these questions be answered differently in relative adoption cases when the adopter is either a stepparent or a blood relative of the adoptee? (7) How should these questions be answered with respect to inheritance by, from, and through the descendants of the adoptee? (8) Should these questions be answered differently with respect to inheritance by, from, and through a person who is adopted as an adult? (9) Assuming some inheritance rights are preserved between an adoptee and his biological kindred, should an individual adopted by a blood relative—for example, a natural grandparent—be allowed to inherit from and through the adopter in two capacities, once as an adoptive and once as a natural relative? (10) In the case of successive adoptions, should mutual inheritance rights be recognized between the adoptive child and both sets of adoptive relatives?

Rein, *supra* note 2, at 718. See also 7 RICHARD R. POWELL, *THE LAW OF REAL PROPERTY* § 998[4] (Patrick J. Rohan rev. ed. 1991).

<sup>16</sup> See *infra* text accompanying notes 184-213. This Note will use the term "traditional adoption" to refer to the adoption of an infant by strangers and the term "non-traditional adoption" to refer to open adoptions (where the natural parents or other

tact with biological relatives and, as a result, the fresh start policy is inappropriate.<sup>17</sup>

Recent developments in adoption law, such as the increased number of older children adoptions,<sup>18</sup> the emergence of open adoptions<sup>19</sup> and postadoption visitation cases,<sup>20</sup> and changes concerning the confidentiality of adoption,<sup>21</sup> also involve continued contact with biological relatives. Research suggests that in these nontraditional adoption arrangements, as well as in stepparent and other relative adoptions, continuity of relationships with the natural family may serve the child's best interests.<sup>22</sup> Therefore, states not only should enact stepparent exceptions but also should extend these exceptions to analogous situations.

Although many state statutes contain a stepparent exception, little consistency or uniformity exists regarding the structure and scope of such exceptions. This inconsistency is unfortunate because relative adoptions, including stepparent adoptions, constitute a large number of the adoptions that take place each year.<sup>23</sup> Because so many adoptions are affected and because these adoptions involve different concerns than traditional adoptions, relative or stepparent adoptions warrant separate treatment by state legislatures.<sup>24</sup> Legislatures should implement an approach to the stepparent exception which best complements and furthers the modern goals of adoption and succession law.<sup>25</sup>

This Note examines the stepparent exception in detail. Part I reviews the history of adoption and examines recent developments in adoption law.<sup>26</sup> Part II reviews the treatment of adopted children

natural relatives maintain some contact with the child after adoption), adoptions of older children, and other unusual adoption situations. This terminology is similar to that suggested by the National Committee For Adoption (NCFA). However, NCFA uses the term "traditional" or "confidential" to refer to infant adoptions, even if birthparents have the opportunity to participate in decisionmaking or child care planning, as long as confidentiality is preserved. NCFA uses the term "experimental" to refer to other open adoptions. ADOPTION FACTBOOK *supra* note 2, at 111.

<sup>17</sup> See *infra* text accompanying notes 62-83.

<sup>18</sup> See *infra* text accompanying notes 62-68.

<sup>19</sup> "Open adoptions" are arrangements which provide for continued contact with biological relatives. See *infra* notes 82-86 and accompanying text.

<sup>20</sup> See *infra* notes 90-91 and accompanying text.

<sup>21</sup> See *infra* notes 92-101 and accompanying text.

<sup>22</sup> See *infra* notes 69-80 and accompanying text.

<sup>23</sup> See *infra* notes 164-65 and accompanying text.

<sup>24</sup> Rein, *supra* note 2, at 728; Timothy Hughes, Note, *Intestate Succession and Stepparent Adoptions: Should Inheritance Rights of an Adopted Child be Determined by Blood or by Law?*, 1988 WIS. L. REV. 321, 341 (1988); Barbara C. Quissel, Note, *Adoption—Intestate Succession—The Denial of a Stepparent Adoptee's Right to Inherit from an Intestate Natural Grandparent*: In Re Estate of Holt, 13 N.M. L. REV. 221, 222 n.5 (1983).

<sup>25</sup> See *infra* text accompanying notes 103-62.

<sup>26</sup> See *infra* notes 31-102 and accompanying text.

under intestacy statutes, both historically and currently.<sup>27</sup> Part III evaluates the policy arguments for and against exceptions for stepparent and other relative adoptions and examines the various approaches states have taken when enacting these exceptions. Part III also determines the extent to which these approaches further the goals of adoption and succession law<sup>28</sup> and concludes that Pennsylvania's discretionary approach, which makes the preservation of inheritance rights contingent on the natural relative maintaining a family relationship with the child, reaches the most desirable results.<sup>29</sup> Finally, Part IV suggests modifications to the Pennsylvania approach to further the goals of adoption and succession law.<sup>30</sup>

## I

### ADOPTION LAWS AND PRACTICES

Understanding the historical development of adoption, and recent developments in adoption practices, is critical to understanding the treatment of adopted children under past and present succession laws.<sup>31</sup> Traditionally, the "typical" adoption involved adoption of an infant by strangers, and adoption practices and laws have developed in light of this traditional scenario.<sup>32</sup> However, the nature of adoption has changed over the years. Today, the "typical" adoption involves the adoption of an older child by a stepparent, other relatives, or perhaps foster parents.<sup>33</sup> Not surprisingly, given the changing nature of adoption, some authorities have suggested that adoption practices should change in order to further the best interests of the child in such situations.<sup>34</sup>

#### A. History of Adoption

Adoption law, unlike most American laws, did not derive from English common law.<sup>35</sup> Although informal adoption practices exist-

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<sup>27</sup> See *infra* notes 103-62 and accompanying text.

<sup>28</sup> See *infra* notes 163-292 and accompanying text.

<sup>29</sup> See *infra* notes 284-92 and accompanying text.

<sup>30</sup> See *infra* notes 293-99 and accompanying text.

<sup>31</sup> For brief treatment of this topic, see Binavince, *supra* note 2, at 154-55; Kublmann, *supra* note 2, at 222-24; Rein, *supra* note 2, at 714-17. For more detailed treatment, see Huard, *supra* note 2, at 743-53; Presser, *supra* note 13. For a judicial summary of the history of adoption, see *Hockaday v. Lynn*, 98 S.W. 585 (Mo. 1906).

<sup>32</sup> See Sol Lovas, *When is the Family Not a Family? Inheritance and the Taxation of Inheritance Within the Nontraditional Family*, 24 IDAHO L. REV. 353, 358 (1987-88); Rein, *supra* note 2, at 728; Susan F. Koffman, Comment, *Stepparent Adoption: A Comparative Analysis of Law and Policies in England and the United States*, 7 B.C. INT'L & COMP. L. REV. 463, 476 (1984).

<sup>33</sup> See *infra* notes 62-68 and accompanying text.

<sup>34</sup> See *infra* notes 69-102 and accompanying text.

<sup>35</sup> Adoption has ancient roots. The Babylonian Code of Hammurabi and the laws of Greece, Egypt, and Rome all recognized adoption. Huard, *supra* note 2, at 743-44.

ted,<sup>36</sup> England did not legally recognize adoption until the Adoption of Children Act in 1926.<sup>37</sup> One informal adoption practice, known as "putting out," involved sending a child to live with another family for more objective discipline and training.<sup>38</sup>

A similar practice developed in America, where the "putting out" system was modified and used for the placement of orphans with relatives.<sup>39</sup> Children with no relatives were apprenticed if old enough, or were placed with almshouses for sustenance and education until they could be apprenticed or placed with a family.<sup>40</sup> Although little effort was made to find suitable homes for these children, a few were fortunate enough to be placed with caring families who wanted to formalize the arrangement.<sup>41</sup> These families had to obtain private decrees, which usually involved only changing the child's name. Occasionally, however, these decrees specified that the adoptees would receive inheritance rights from the adoptive parents.<sup>42</sup>

During the nineteenth century when the industrial revolution brought urban poverty and numerous immigrants, many of these informal child placement systems broke down.<sup>43</sup> Child placement or-

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However, the fullest accounts of ancient adoption practice come from Rome. *Id.* at 744; Presser, *supra* note 13, at 446. Roman adoption had two purposes: to prevent extinction of a particular family line and to insure a male heir to perpetuate ceremonial worship of ancestors. Ruth-Arlene Howe, *Adoption Practice, Issues, and Laws 1958-1983*, 27 *FAM. L.Q.* 173, 174-75 (Summer 1983). Adopted persons, therefore, were usually adult males, and the focus was on the needs of the adoptive family, not on those of the adoptee. Huard, *supra* note 2, at 743-45; Kuhlmann, *supra* note 2, at 222; Presser, *supra* note 13, at 445-48. Originally Roman law severed all of the adoptee's ties, including inheritance rights, to his natural family. See Huard, *supra* note 2, at 743-45. However, later Roman law provided that the adoptee retained inheritance rights from his natural father. Howe, *supra* at 174-75; Presser, *supra* note 13, at 446. Nevertheless, the purpose of adoption was still to benefit the adopter. This emphasis on the needs of the adopter continued in civil law countries long after religious overtones faded. Binavince, *supra* note 2, at 154; Kuhlmann, *supra* note 2, at 222; Rein, *supra* note 2, at 714.

<sup>36</sup> For a discussion of these informal practices, as well as the reasons that the common law did not incorporate adoption, see Binavince, *supra* note 2, at 155 n.11 and accompanying text; Huard, *supra* note 2, at 745-47; Presser, *supra* note 13, at 448-55.

<sup>37</sup> 16 & 17 Geo. 5, ch. 29 (Eng.).

<sup>38</sup> Presser, *supra* note 13, at 453-56.

<sup>39</sup> See Rein, *supra* note 2, at 715.

<sup>40</sup> See Presser, *supra* note 13, at 457-59, 472. For a detailed discussion of various functions served by apprenticeships, see MICHAEL GROSSBERG, *GOVERNING THE HEARTH* 259-68 (1985).

<sup>41</sup> See Presser, *supra* note 13, at 458-61; Rein, *supra* note 2, at 715 n.14.

<sup>42</sup> Presser, *supra* note 13, at 461-64; Rein, *supra* note 2, at 715-16.

<sup>43</sup> Rein, *supra* note 2, at 716. See also GROSSBERG, *supra* note 40, at 271 ("A favorable climate for the institution of adoption emerged in mid-nineteenth century America as a result of the problems associated with other forms of child placement, the gradual refinement of nurture-based custody law, confusion over inheritance rights, and the everpresent plight of homeless, neglected, and delinquent children."). For a detailed analysis of the changing economic and social conditions during this time and the effect of such changes on child placement activities, see Presser, *supra* note 13, at 447-89.

ganizations were overwhelmed with homeless children and many children were exploited as cheap labor.<sup>44</sup> Eventually this exploitation attracted the attention of Christian reformers,<sup>45</sup> and religious placement agencies began to place young children in homes where they would be treated as family members, not servants.<sup>46</sup> With an increase in the number of families seeking formal arrangements, legislatures began to pass general adoption statutes.<sup>47</sup>

Massachusetts enacted the first American adoption statute in 1851,<sup>48</sup> and in the next twenty-five years, twenty-four states enacted similar statutes, most modeled after the Massachusetts statute.<sup>49</sup> The language of these early statutes indicates that the purpose of adoption was to promote the welfare of the child.<sup>50</sup> This focus on the welfare of the child has continued to the present. For example, modern adoption statutes provide that the applicable standard for adoption decisions is the "best interests of the child."<sup>51</sup> In addition, these statutes usually require the consent of the natural parents, investigation of the potential home and screening of the prospective parents, a probationary trial period, and a final judicial decree before an adoption is approved.<sup>52</sup>

For the past century, society's view of the adoptee's best interests has required the child's complete assimilation into the adoptive family.<sup>53</sup> All ties to biological parents and other relatives must be

<sup>44</sup> Rein, *supra* note 2, at 716. See also HOMER FOLKS, *THE CARE OF DESTITUTE, NEGLECTED, AND DELINQUENT CHILDREN* 64-69 (1971).

<sup>45</sup> Presser, *supra* note 13, at 480-82; Rein, *supra* note 2, at 716.

<sup>46</sup> Presser, *supra* note 13, at 482-88.

<sup>47</sup> Presser, *supra* note 13, at 477, 488-89; Rein, *supra* note 2, at 716 n.21.

<sup>48</sup> 1851 Mass. Acts 815. See Presser, *supra* note 13, at 465; Rein, *supra* note 2, at 716; see also Huard, *supra* note 2, at 748 (discussing the dispute over which state enacted the first adoption statute and concluding that the Massachusetts statute is generally regarded as the first comprehensive statute).

<sup>49</sup> Howe, *supra* note 35, at 176; Presser, *supra* note 13, at 443, 465-70; Jamil S. Zainaldin, *The Emergence of a Modern American Family Law: Child Custody, Adoption, and the Courts, 1796-1851*, 73 Nw. U. L. REV. 1038, 1043 (1979).

<sup>50</sup> Binavince, *supra* note 2, at 155; Howe, *supra* note 35, at 177; Huard, *supra* note 2, at 748-49; Kuhlmann, *supra* note 2, at 223; Rein, *supra* note 2, at 717. See, e.g., 1851 Mass. Acts 816 (granting the probate judge the authority to approve an adoption when satisfied that the petitioners are "of sufficient ability to bring up the child, and furnish suitable nurture and education."). This focus on the welfare of the child contrasted sharply with the ancient adoption laws, which emphasized the needs of the adoptive family. See *supra* note 35.

<sup>51</sup> See, e.g., ALA. CODE § 26-10A-25(b)(6) (West Supp. 1991); see also Katharine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family has Failed*, 70 VA. L. REV. 879, 890 (1984); Howe, *supra* note 35, at 176-77, 185; Huard, *supra* note 2, at 749-50.

<sup>52</sup> See, e.g., ALA. CODE § 26-10A-25 (West Supp. 1991); see also Howe, *supra* note 35, at 178; Rein, *supra* note 2, at 717.

<sup>53</sup> Sanford N. Katz, *Rewriting the Adoption Story*, 5 FAM. ADVOC. 9 (Summer 1982); Kuhlmann, *supra* note 2, at 248; Rein, *supra* note 2, at 717, 729.

severed to give the child a "fresh start" as a member of a new family.<sup>54</sup> This fresh start permits the adoptive family to integrate without disruption or interference from the biological family,<sup>55</sup> and reduces any stigma or rejection that the adopted child might experience.<sup>56</sup>

To accomplish complete separation from the natural family, "secrecy has been the hallmark of the adoptive process."<sup>57</sup> Most states seal adoption records and alter birth certificates to preserve birth parent confidentiality and to prevent the natural relatives from interfering with the adoptive family.<sup>58</sup> In addition, past adoption practices attempted to imitate nature by placing adoptees with families possessing similar physical characteristics.<sup>59</sup>

During the time that these practices developed, most adoptions occurred when an unwed mother relinquished custody of her child for adoption, often the only socially acceptable alternative.<sup>60</sup> However, adoption practices and society's views of adoption have changed during the past twenty-five years.<sup>61</sup> The next section examines the tremendous impact these changes have had on adoption law and the treatment of adopted children under intestacy statutes.

<sup>54</sup> Katz, *supra* note 53, at 10; Rein, *supra* note 2, at 717. For judicial recognition of the fresh start policy, see *In re Estates of Donnelly*, 502 P.2d 1163, 1166 (Wash. 1972) ("The question at bench should . . . be decided in the context of the broad legislative objective of giving the child a 'fresh start' by treating him as the natural child of the adoptive parent, and severing all ties with the past."); *Crumpton v. Mitchell*, 281 S.E.2d 1, 5 (N.C. 1981):

[T]he legislature contemplated that upon a final order of adoption a complete substitution of families would take place with the adopted child becoming the child of his adoptive parents and a member of their family; likewise, the legal relationship with the child's natural parents and family would . . . be completely severed.

<sup>55</sup> Bartlett, *supra* note 51, at 894; Rein, *supra* note 2, at 717, 729.

<sup>56</sup> Rein, *supra* note 2, at 717.

<sup>57</sup> Howe, *supra* note 35, at 190.

<sup>58</sup> *Id.* at 190-91; Rein, *supra* note 2, at 729; Debra D. Poulin, *The Open Adoption Records Movement: Constitutional Cases and Legislative Compromise*, 26 J. FAM. L. 395, 397-98 (1987-88).

<sup>59</sup> For the past century, our adoption laws and practices have followed the Roman legal tradition of attempting to make law mirror biology. This tradition was based on the notion that the adopted child, by physical appearance alone, could have been the birth child of the adoptive parents. The adoptive parents were supposed to be people who, by appearance and age, could have conceived the infant. Thus, adoption laws were designed to imitate nature.

Katz, *supra* note 53, at 9. See also GOLDSTEIN ET AL., *supra* note 6, at 23 ("Adoptive parents frequently wish that the adopted child will grow up in their own image, an attitude which may be reflected in statutory and adoption agencies' attempts to have children 'matched' with prospective adopters so far as physical features, social background, and possible hereditary endowment are concerned.")

<sup>60</sup> Katz, *supra* note 53, at 9.

<sup>61</sup> Howe, *supra* note 35, at 173.

## B. Recent Developments in Adoption

In recent years, the number of "traditional" adoptions—where an unwed mother relinquishes custody of her infant for adoption by strangers—has declined, while adoptions of older children have increased.<sup>62</sup> This is partly attributed to other societal changes, such as the greater availability of birth control and abortion,<sup>63</sup> and less social stigma for unwed mothers who choose to keep their children.<sup>64</sup> As a result, these changes have decreased the number of infants available for adoption.<sup>65</sup> In addition, rising rates of divorce and remarriage<sup>66</sup> have increased the number of stepparent adop-

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<sup>62</sup> See Katz, *supra* note 53, at 9.

<sup>63</sup> JEROME SMITH & FRANKLIN I. MIROFF, *YOU'RE OUR CHILD: THE ADOPTION EXPERIENCE* 4 (1987); Brigitte M. Bodenheimer, *New Trends and Requirements in Adoption Law and Proposals for Legislative Change*, 49 S. CAL. L. REV. 10, 13 (1975); Howe, *supra* note 35, at 180-81; Judy E. Nathan, Note, *Visitation After Adoption: In the Best Interests of the Child*, 59 N.Y.U. L. REV. 633, 635 (1984).

<sup>64</sup> SMITH & MIROFF, *supra* note 63, at 4; see also Carol Amadio & Stuart L. Deutsch, *Open Adoption: Allowing Adopted Children to "Stay in Touch" with Blood Relatives*, 22 J. FAM. L. 59, 71 (1983-84); Bodenheimer, *supra* note 63, at 13; Howe, *supra* note 35, at 180-81. The National Committee For Adoption has identified nine social trends that not only have affected the potential number of adoptable children, but also caused adoption to be viewed as a less favorable option. These are: (1) the decision of more single mothers to parent their babies; (2) the decreased stigma of out-of-wedlock childbearing; (3) the increased number of households headed by women (providing role models for pregnant teenagers and possibly causing these teenagers not to consider adoption seriously); (4) the legalization of abortion; (5) continued infertility, which has resulted in the number of prospective adoptive couples greatly outnumbering the number of adoptable children; (6) the Title IX requirement that schools offer "mainstream" schooling to pregnant young women (resulting in less privacy and greater reluctance to consider adoption because many women are unwilling to return to school after childbirth without a baby); (7) state requirements of notification to the putative father about the mother's intention to relinquish custody of the baby; (8) an inadequate number of comprehensive maternity homes; and (9) the new wave of adoption agencies and services that occurred during the 1980s. ADOPTION FACTBOOK, *supra* note 2, at 12-14. See also Paul Taylor, *Unwed White Mothers Seem Much Less Likely Now to Offer Babies for Adoption*, N.Y. TIMES, Mar. 1, 1992, at A11 (noting that the number of adoption relinquishments by white mothers has continued to decline even though the number of abortions has leveled off, and concluding that "the principal cause of the decline in adoptions is not legal but cultural. It reflects the destigmatization of out-of-wedlock child-rearing in a society where 27 percent of all children are born out of wedlock, four times the percentage of just 25 years ago.').

<sup>65</sup> Bodenheimer, *supra* note 63, at 13; Nathan, *supra* note 63, at 635. For a discussion of other effects of the decreasing number of available infants, see Bodenheimer, *supra* note 63, at 15-16 ("The situation is fraught with danger for children who run the risk of becoming 'commodities' on the market or pawns shifted around to satisfy agency waiting lists. . . ."); Howe, *supra* note 35, at 181 ("Prospective adoptive parents now were faced with interminably long waits or were offered older children with 'special needs'. . . .").

<sup>66</sup> See Bodenheimer, *supra* note 63, at 13. Recent research predicts that approximately two-thirds of all first marriages will end in divorce. See Teresa C. Martin & Larry L. Bumpass, *Recent Trends in Marital Disruption*, 26 DEMOGRAPHY 37, 49 (1989). In addition, approximately one out of three persons who marry has been previously married. U.S. DEP'T OF HEALTH & HUMAN SERV., PUB. NO. 89-01923, REMARRIAGES AND SUBSEQUENT DIVORCES—UNITED STATES 1-2 (1989). See also STATISTICAL ABSTRACT OF THE

tions, which usually involve older children.<sup>67</sup> Finally, the number of foster children adoptions, which also involve older children, has also increased.<sup>68</sup>

Accompanying these changes in adoption practices is a growing recognition that a fresh start, with its corresponding severance of ties to the natural family, may not always be in the best interests of an older child.<sup>69</sup> Older children have memories of their natural families<sup>70</sup> and are likely to have established "affection relations" with them.<sup>71</sup> Some researchers have concluded that "actual sever-

UNITED STATES 85 (1989) (45.8% of all marriages in 1985 involved persons remarrying). For statistics on stepparent adoptions, see *infra* note 164.

<sup>67</sup> See Nathan, *supra* note 63, at 635 n.20; see also Quisell, *supra* note 24, at 230. But see David L. Chambers, *Stepparents, Biologic Parents, and the Law's Perceptions of "Family" after Divorce*, in *DIVORCE REFORM AT THE CROSSROADS* 118-19 (Stephen D. Sugarman & Herma H. Kay eds., 1990) (noting that little is known about the impact or pattern of stepparent adoptions and that "[w]e do not even know whether stepparent adoptions are increasing in frequency.").

<sup>68</sup> Bodenheimer, *supra* note 63, at 37; Howe, *supra* note 35, at 188-89; see also Katz, *supra* note 53, at 9; Nathan, *supra* note 63, at 635; see generally *Barriers to Adoption: Hearings Before the Senate Comm. on Labor and Human Resources*, 99th Cong., 1st Sess. (1985) (discussing the adoption policies and practices which keep children trapped in foster care even though they are legally free for adoption); *U.S. Children and Their Families: Current Conditions and Recent Trends, 1987, A Report Together With Additional Views of the U.S. House of Representatives Select Comm. on Children, Youth, and Families*, 100th Cong., 1st Sess. 25 (1987) (In 1984 over a quarter of a million children were in foster or substitute care. Approximately 19,000-21,000 children were adopted during the year. Of these, 11% were less than one year old; 41% were between one and five years old; 34% were between 6 and 12 years old; 12% were between 13 and 18 years old; less than 1% were 19 years of age or older).

<sup>69</sup> As explained by one authority,

[a]pplicants need to face the fact that this experience is different in many ways from that of adopting a baby, that the emotional factors are different both for themselves and for the child. In order to guide and support both parents and children, the caseworker needs to come to grips with this essential difference, and to broaden his own concept of adoption as something that may include a structure vastly different from that of infant adoption.

Velma Bell, *Special Considerations in the Adoption of the Older Child*, 40 SOC. CASEWORK 327, 333 (1959). See also Bartlett, *supra* note 51, at 905-11 (also discussing the different considerations involved in the adoption of older children).

<sup>70</sup> See Bell, *supra* note 69, at 329 ("Most important of all the differences between adopting an infant and adopting an older child . . . is the older child's involvement with his past life."); see also Katz, *supra* note 51, at 10. In some cases, the memories may not be of natural relatives, but of previous caretakers, such as foster parents. Some have suggested that ties to these caretakers should be continued as well. See Bartlett, *supra* note 51, at 881-83.

<sup>71</sup> An "affection relation" refers to a child's psychological relationship with an important person in her life. It serves as a prototype for all future interpersonal relationships. Note, *Alternatives to "Parental Right" in Child Custody Dispute Involving Third Parties*, 73 YALE L.J. 151, 160-62 (1963); see also GOLDSTEIN ET AL., *supra* note 6, at 17-20 (discussing psychological parent-child relationships). In explaining the concept of a "psychological parent," one authority stated that

[w]hether any adult becomes the psychological parent of a child is based thus on day to day interaction, companionship and shared experiences.

ance of an older child's emotional bonds with natural relatives can psychologically harm her and make it more difficult for her to develop psychological relationships with members of her adoptive family."<sup>72</sup> As a result, many suggest that the child's best interests require continued contact with these natural relatives.<sup>73</sup>

Although the traditional assumption is that such contact will disrupt the adoptive family,<sup>74</sup> research has shown that "[f]ar from undermining the adoptive relationship, his keeping in touch with his relatives often strengthens it; the child knows that his adopting parents accept not only him but that which belongs to him and thus acceptance has a broader, surer meaning."<sup>75</sup> Children who maintain contact with natural relatives experience greater feelings of permanence and stability, and as a result are more confident and better able to adjust to new surroundings and new parents.<sup>76</sup>

Other researchers, however, have observed that at least with respect to stepparent adoptions, "almost no information is available about actual paterus of [such adoptions] in this country or about the impact of adoption on the relationships between stepparents and children."<sup>77</sup> Because "distressingly little" is known about these adoptions,<sup>78</sup> and no social consensus on the appropriate role of stepparents exists,<sup>79</sup> at least one researcher has suggested that it is premature to draft laws regulating these relationships.<sup>80</sup>

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The role can be fulfilled either by a biological parent or by an adoptive parent or by any other caring adult—but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be.

*Id.* at 19.

<sup>72</sup> Nathan, *supra* note 63, at 661; *see also* GOLDSTEIN ET AL., *supra* note 6, at 18 ("Such primitive and tenuous first attachments form the base from which any further relationships develop.").

<sup>73</sup> Bartlett, *supra* note 51, at 902, 905, 907-08; *see also* GOLDSTEIN ET AL., *supra* note 6, at 31-32 ("Continuity of relationships, surroundings, and environmental influence are essential for a child's normal development."); JUDITH S. WALLERSTEIN & JOAN B. KELLY, *SURVIVING THE BREAKUP* 307-11 (1980) (five year study of children after divorce indicates that contact with both parents helps children adjust psychologically); Emily B. Visher & John S. Visher, *Legal Action is No Substitute for Genuine Relationships*, 4 *FAM. ADVOC.* 35, 36 (1981) ("[A]djustment of children to the remarriage and acceptance of a stepparent are more likely to be facilitated if contact with both biological parents is maintained."). *But see* Nicholas Zill, *Behavior, Achievement, and Health Problems Among Children in Stepfamilies: Findings From a National Survey of Child Health*, in *IMPACT OF DIVORCE, SINGLE PARENTING, AND STEPPARENTING ON CHILDREN* 363 (E. Mavis Hetherington & Josephine D. Arasteh eds., 1988) (finding limited support for the hypothesis that stepchildren who had regular contact with noncustodial biological parents would experience less difficulties).

<sup>74</sup> Bartlett, *supra* note 51, at 908.

<sup>75</sup> Bell, *supra* note 69, at 333-34; *see also* Bartlett, *supra* note 51, at 909.

<sup>76</sup> Nathan, *supra* note 63, at 661-62; *see also* Bartlett, *supra* note 51, at 909-10 (discussing the psychological benefits of continued contact).

<sup>77</sup> Chambers, *supra* note 67, at 102, 118.

<sup>78</sup> *Id.* at 119.

<sup>79</sup> *Id.* at 126.

<sup>80</sup> *Id.* at 129.

In relative and stepparent adoptions, the adoptee usually maintains at least minimal contact with his natural relatives.<sup>81</sup> In recent years, unusual arrangements designed to maintain this contact in other adoption situations have emerged.<sup>82</sup> Adoption arrangements that provide for contact between the child and his natural family are generally referred to as "open adoptions."<sup>83</sup>

Open adoptions can occur by informal arrangement between natural and adoptive families or by formal agreements sanctioned by the courts.<sup>84</sup> Not all open adoptions are alike. Some arrangements provide only that the natural family will receive photographs and regular reports about the child.<sup>85</sup> Other arrangements provide for regular contact between the child and his natural relatives.<sup>86</sup>

Open adoption is more acceptable when it maintains pre-existing ties with natural relatives, because this gives the child a sense of continuity and permanence.<sup>87</sup> However, open adoptions some-

<sup>81</sup> See Katz, *supra* note 53, at 10.

<sup>82</sup> In addition to the psychological benefit of maintaining contact with natural relatives, proponents of open adoption suggest that these arrangements benefit the adoptee in other ways. For example, traditional adoption law forces a court either to approve an adoption, thereby severing all ties to the natural family, or deny an otherwise desirable adoption in order to preserve such ties. See Nathan, *supra* note 63, at 646-47, 656; see also Amadio & Deutsch, *supra* note 64, at 60; cf. Bodenheimer, *supra* note 63, at 43-44, 49 (suggesting that judges should have the authority to decree custody or guardianship when adoption is denied to relieve them "of the often agonizing choice between adoption and return to a parent"). Open adoption, on the other hand, provides the court with the opportunity to approve an adoption and preserve contact with natural relatives thereby giving the child a sense of permanency. The opportunity to maintain contact with the child may also encourage natural parents to consent to an adoption when they might not otherwise. Natural parents who realize that they are unable to care for the child properly but who are unwilling to sever all contact, may consent to an open adoption instead of placing the child in foster care. See Amadio & Deutsch, *supra* note 64, at 63; Nathan, *supra* note 63, at 659.

<sup>83</sup> "Open adoption" is a concept of the 1980s that represents a new idea about adoption. It is the antithesis of the Roman ideal—it does not seek to imitate nature and makes no attempt to be a fiction. The essence of open adoption is to provide the child with the opportunity to maintain ties with his or her biological family.

Katz, *supra* note 53, at 10; see also Amadio & Deutsch, *supra* note 64, at 60.

<sup>84</sup> See Amadio & Deutsch, *supra* note 64, at 60; Katz, *supra* note 53, at 10; see also MODEL STATE ADOPTION ACT § 104(c) (1980); Official Comments, 45 FED. REG. 10,654 (1980) ("Nothing in this Act shall be construed to prevent the adoptive parents, the birth parents and the child from entering into a written agreement, approved by the court, to permit continuing contact of the birth relatives with the child or his adoptive parents."). Later versions of the Model Act deleted the reference to open adoptions. Amadio & Deutsch, *supra* note 64, at 61 n.6.

<sup>85</sup> ADOPTION FACTBOOK, *supra* note 2, at 111; Amadio & Deutsch, *supra* note 64, at 84.

<sup>86</sup> ADOPTION FACTBOOK, *supra* note 2, at 111; Amadio & Deutsch, *supra* note 64, at 84.

<sup>87</sup> See Nathan, *supra* note 63, at 665 (discussing visitation after adoption and stating that "[t]he goal of visitation is to encourage and preserve a relationship, not to start a new one.").

times preserve contact in traditional adoptions when no relationship currently exists between the adoptee and the natural relatives.<sup>88</sup> In such cases, open adoption is controversial "because it challenges the basic goal of adoption—to accomplish a complete transplant of a child from the birth family to the adoptive family."<sup>89</sup> Nevertheless, courts have approved open adoptions, which permit continued contact between siblings.<sup>90</sup> In addition, courts have awarded visitation rights to grandparents even, in a few rare cases, over the objections of the adoptive parents.<sup>91</sup>

Finally, adoption laws concerning confidentiality have also changed. "Sealed record statutes prohibit anyone, including the adoptee, the adoptive parents and the birth parents, from obtaining access to adoption records."<sup>92</sup> An individual can petition the court to open the records for good cause, but most courts are reluctant to grant such requests.<sup>93</sup> The purpose of this strict confidentiality is not only to protect the adoptee and adoptive parents from intrusion

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<sup>88</sup> See ADOPTION FACTBOOK, *supra* note 2, at 111 and Amadio & Deutsch, *supra* note 64 (both describing open adoption arrangements in which contact is maintained between the child and his natural relatives, even when the child is adopted as an infant).

<sup>89</sup> Katz, *supra* note 53, at 10.

<sup>90</sup> Amadio & Deutsch, *supra* note 64, at 66; see *In re Adoption of Anthony*, 448 N.Y.S.2d 377, 380-81 (N.Y. Fam. Ct. 1982) (finding that an adopted child's continued contact, including visitation, with his natural siblings was necessary to further the best interests of the child). For detailed discussions on post-adoption visitation, see Bartlett, *supra* note 51, at 933-39; Phyllis C. Borzi, Note, *Statutory Visitation Rights of Grandparents: One Step Closer to the Best Interests of the Child*, 26 CATH. U. L. REV. 387 (1977); Miriam B. Chaloff, Note, *Grandparents' Statutory Visitation Rights and the Rights of Adoptive Parents*, 49 BROOKLYN L. REV. 149 (1982); Nathan, *supra* note 63.

<sup>91</sup> Amadio & Deutsch, *supra* note 64, at 67-68; Bartlett, *supra* note 51, at 938. Almost all states have enacted statutes enabling grandparents and other relatives to petition for visitation rights. See Nathan, *supra* note 63, at 638. Initially, these statutes authorized visitation only after the death of a natural parent. See *id.* at 639; Chaloff, *supra* note 90, at 165-66. However, some courts have held that an adoption statute, which usually severs all ties to the natural family, does not automatically override the visitation statute. See Nathan, *supra* note 63, at 642-43. These courts will grant visitation rights after adoption if it is in the best interests of the child. *Id.* at 645. The court's decision often turns on the willingness of the adoptive parents to agree to visitation. *Id.* at 645-46. However, the court in *In re Adoption of Children by F.*, 406 A.2d 986 (N.J. 1979), granted visitation to the natural father even though the natural mother and stepfather did not agree to such visitation. Similarly, in *People ex rel. Sibley v. Sheppard*, 429 N.E.2d 1049, 1052 (N.Y. 1981), the New York Court of Appeals concluded that "[p]ermitting grandparent visitation over the adoptive parents' objection does not unconstitutionally impinge upon the integrity of the adoptive family." See also *People ex rel. Simmons v. Sheridan*, 414 N.Y.S.2d 83 (N.Y. Sup. Ct. 1979), *aff'd*, 429 N.E.2d 1049 (N.Y. 1981); *Roquemore v. Roquemore*, 80 Cal. Rptr. 432 (Cal. 1969) (court should not have dismissed grandparents' petition for visitation rights without allowing them the opportunity to show that visitation was in the best interests of the child.).

<sup>92</sup> Poulin, *supra* note 58, at 396.

<sup>93</sup> *Id.* See also Melissa Arndt, Comment, *Severed Roots: The Sealed Adoption Records Controversy*, 6 N. ILL. U. L. REV. 103, 105, 116-21 (1986).

and interference, but also to protect the privacy of the natural parents.<sup>94</sup>

In recent years, adoptees have raised constitutional challenges to sealed records laws and pushed state legislatures to address their concerns.<sup>95</sup> These challenges claim that sealed records:

- (1) violate the fourteenth amendment by infringing a fundamental right (i.e., impair the right of privacy, which includes the right to know one's origins); (2) violate the equal protection clause by creating a suspect class (i.e., deprive adoptees of an information right that non-adoptees have); (3) violate the first amendment penumbral right to receive information (i.e., prevent adoptees from obtaining birth information); and (4) violate the thirteenth amendment (i.e., impose a statutory barrier to birth parent information, a "badge or incident" of slavery).<sup>96</sup>

Courts have rejected all of these challenges.<sup>97</sup>

Adoptees have also lobbied state legislators for adoption law reform. As a result of these efforts, more than twenty states have established the Voluntary Mutual Consent Adoption Registry.<sup>98</sup> Adoptees and natural parents can register their desire to meet each other. When matches are made, meetings are arranged or identifying information is released.<sup>99</sup>

The open records movement is controversial, and approximately twenty states still adhere to the strict confidentiality rule.<sup>100</sup> Nevertheless, adoptees continue to strive for change in this area. The states that relax confidentiality requirements usually do so for adoptees that have reached the age of majority.<sup>101</sup> Nevertheless, to the extent that this movement results in contact between adoptees

<sup>94</sup> Poulin, *supra* note 58, at 397; *see also* ADOPTION FACTBOOK, *supra* note 2, at 44; Arndt, *supra* note 93, at 105.

<sup>95</sup> Poulin, *supra* note 58, at 395. Two forces caused change in this area of law. The first force was a group of "highly visible individuals" who founded support groups such as the Adoptees Liberty Movement Association (ALMA), which pursued constitutional challenges, and Concerned United Birthparents (CUB), which lobbied state legislatures. The second force emerged from the field of social work, and proposed that nonidentifying information be provided to adopted adults and that meetings be arranged between adoptees and natural parents when such a meeting was mutually desired. 14 FAM. L. REP. 3017 (1988).

<sup>96</sup> Poulin, *supra* note 58, at 398 (citations omitted).

<sup>97</sup> *Id.* at 398-99 (footnotes omitted); *see also* Arndt, *supra* note 93, at 109-10.

<sup>98</sup> ADOPTION FACTBOOK, *supra* note 2, at 44; 14 FAM. L. REP. 3019 (1988).

<sup>99</sup> ADOPTION FACTBOOK, *supra* note 2, at 44. Several states have laws that provide for a search for the natural parent in order to obtain consent for a meeting. 14 FAM. L. REP. at 3019. A few states provide for open records and allow an adoptee to obtain his original birth certificate on demand. ADOPTION FACTBOOK, *supra* note 2, at 55 (indicating that, as of 1988, Alabama, Alaska, and Kansas had such provisions). Finally, approximately twenty states adhere to traditional sealed records laws. *Id.*

<sup>100</sup> *See* ADOPTION FACTBOOK, *supra* note 2, at 55.

<sup>101</sup> *Id.* at 44.

and their natural parents, it indicates a relaxation of the fresh start policy.

Although open adoption and post-adoption visitation arrangements are still unusual, and widespread relaxation of strict confidentiality of adoption records has not yet occurred, it appears that such developments will continue. Unusual arrangements may become more popular, particularly if sociological and psychological research continues to indicate that these practices further the adoptees' best interests.<sup>102</sup> Thus, legislatures contemplating changes to the adoption statutes, including intestacy provisions, should thoroughly and sensitively evaluate these issues.

## II

### TREATMENT OF ADOPTED CHILDREN UNDER INTESTACY STATUTES

Commentators regard the development of intestate succession legislation concerning the rights of adopted children as "spasmodic and piecemeal"<sup>103</sup> and "sadly disorganized."<sup>104</sup> This haphazard development is not surprising because legislation concerning adoptees' inheritance rights requires reconciliation of two areas of law—succession and adoption law. Succession law is a system of fixed rules designed to dispose of a decedent's estate according to the probable intentions of the typical decedent, while simultaneously promoting certainty of titles, facilitating estate administration, and achieving uniformity at a low cost.<sup>105</sup> Because the actual intent of an intestate decedent is unknown, courts and legislatures have had to infer intent when establishing the rules of succession law.<sup>106</sup>

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<sup>102</sup> Borzi, *supra* note 90, at 399 (noting that psychologists concerned with preserving the child's pre-existing relationships are "advocating a complete reevaluation of the standards used in child placement and custody decisions").

<sup>103</sup> Kuhlmann, *supra* note 2, at 227.

<sup>104</sup> Rein, *supra* note 2, at 720; *see also* POWELL, *supra* note 15, at 90-84 ("The result is a disconcerting and wholly unjustifiable lack of uniformity in the laws of the states."); Paul A. Kiefer, Comment, *Intestate Succession, Sociology and the Adopted Child*, 11 VILL. L. REV. 392, 395 (1966) ("Granting the statutory right of inheritance from the adoptive parents and relatives to the adopted child and the consequent denial of the child's right to inherit from his natural parents and relatives has been a very slow and confused process."). For a contrary view, see Huard, *supra* note 2, at 750 ("The effect of adoption and the problem of inheritance by and from the adopted child are, in most places, no longer subject to doubt. The disposition of these and other questions has been attended with a surprising degree of uniformity from state to state.").

<sup>105</sup> *See* UNIF. PROB. CODE § 1-102, 8 U.L.A. 24-25 (1983); Binavince, *supra* note 2, at 157; Mary L. Fellows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RES. J. 319, 323-24; *see generally* MAX RHEINSTEIN & MARY ANN GLENDON, *THE LAW OF DECEDENT'S ESTATES* 24 (1971) ("[T]he legislative will ought to coincide with the probable wishes of the majority of people who die intestate.").

<sup>106</sup> Fellows et al., *supra* note 105, at 321, 324.

Historically, courts and legislatures assumed that the typical decedent desired a distribution of the intestate estate based on principles of consanguinity.<sup>107</sup>

By contrast, adoption law, which seeks to promote the best interests of the child,<sup>108</sup> is highly discretionary and court approval depends upon the particular circumstances of each case.<sup>109</sup> In a traditional adoption, courts promote the child's best interests by completely substituting the adoptive family for the natural family.<sup>110</sup> As a result, intestacy statutes, which define a decedent's intended heirs by blood relationships, appear at odds with adoption statutes, which are designed to promote these interests by severing all ties with blood relatives.<sup>111</sup>

Over the years lawmakers and judges have acknowledged that an intestate decedent probably would distribute his estate to those heirs with whom he had an affective relationship, rather than to all relatives with whom he had a blood tie, even though the two often coincide.<sup>112</sup> As a result of this changing viewpoint, courts and legislators now recognize adoptees' inheritance rights from and through the adoptive family, and sever inheritance rights from and through the natural family.<sup>113</sup> Although state definitions of adoptee inheritance rights are varied and inconsistent, state laws have progressed and general trends have developed.<sup>114</sup>

<sup>107</sup> See Presser, *supra* note 13, at 511; Richard J. Snyder, Note, *Adopted Children: Inheritance Through Intestate Succession, Wills and Similar Instruments*, 42 B.U. L. REV. 210, 210 (1962) ("It was said 'Solus Deus Facit Haerdum, Non Homo,' God alone makes the heir, not man.") (footnote omitted); see also *Hockaday v. Lynn*, 98 S.W. 585, 587 (Mo. 1906) (superseded by statute) ("[I]t may be said that laws of descent and distribution, barring the one incident of a husband and wife's rights by marriage, are universally built on, and around, the idea of blood kinship. Inheritance flows naturally with the blood.") (citation omitted).

<sup>108</sup> See *supra* note 51 and accompanying text.

<sup>109</sup> See Bodenheimer, *supra* note 63, at 16-19 (discussing the variety of potentially conflicting interests among the parties involved in an adoption proceeding and the courts' efforts to balance these interests). See also Howe, *supra* note 35, at 185.

<sup>110</sup> See *supra* notes 53-56 and accompanying text.

<sup>111</sup> See Rein, *supra* note 2, at 713; see *infra* note 120 and accompanying text.

<sup>112</sup> Justice Loevinger of the Minnesota Supreme Court has expressed this acknowledgement as follows:

We have come to realize that it is not the biological act of begetting offspring—which is done even by animals without any family ties—but the emotional and spiritual experience of living together that creates a family. The family relationship is created far more by love, understanding, and mutual recognition of reciprocal duties and bonds, than by physical genesis.

*Will of Patrick v. Northern City Nat'l Bank of Duluth*, 106 N.W.2d 888, 890 (Minn. 1960) (footnote omitted); cf. Rein, *supra* note 2, at 713.

<sup>113</sup> See *infra* notes 115-62 and accompanying text.

<sup>114</sup> For more detailed discussion of the historical development of the law in this area, see Binavince, *supra* note 2; Kuhlmann, *supra* note 2, Presser, *supra* note 13, at 492-514; Rein, *supra* note 2.

### A. Inheritance Rights Between the Adoptee and the Adoptive Family

Early adoption statutes usually vested adoptive parents with the same rights and obligations toward the adoptee that they would have if the child were their biological child.<sup>115</sup> In addition, the statutes usually relieved the natural parents of these rights and duties.<sup>116</sup> These early statutes, however, did not specify the effect that adoption would have on inheritance rights.<sup>117</sup> "To the extent that express provisions were inserted in the early statutes, they were, with few exceptions, conciliatory and conservative—designed to make certain that the time-honored course of intestate succession among blood relatives would not be disrupted by the innovation."<sup>118</sup> As the court noted in the 1925 case, *Dodson v. Ward*,<sup>119</sup> "[w]e are confronted with the task of considering the statutes of descent and distribution and determining how far we may read into that statute the provisions of the statute of adoption."<sup>120</sup>

Most early courts viewed adoption as an abrogation of the common law and strictly construed adoption statutes, thereby limiting their application.<sup>121</sup> Thus, unless the statute expressly created inheritance rights from the adoptive parents and severed inheritance rights from the natural parents, these courts adhered to traditional succession law based on consanguinity.<sup>122</sup> As a companion argument, early courts emphasized the contractual aspect of adoption. They held that the parties involved could determine the inheritance

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<sup>115</sup> See *In re Darling's Estate*, 159 P. 606 (Cal. 1916) (interpreting CAL. CIV. CODE, §§ 227-29); Binavince, *supra* note 2, at 159-60.

<sup>116</sup> See Binavince, *supra* note 2, at 160.

<sup>117</sup> See Kuhlmann, *supra* note 2, at 226; Presser, *supra* note 13, at 469.

<sup>118</sup> Kuhlmann, *supra* note 2, at 225; see also GROSSBERG, *supra* note 40, at 275.

<sup>119</sup> 240 P. 991 (N.M. 1925).

<sup>120</sup> *Id.* at 993. The goals of adoption and succession law can conflict with each other. See Hughes, *supra* note 24, at 343 ("[T]he objective of intestacy statutes, which is to pass property in accordance with a decedent's wishes, can be at cross-purposes with the modern objectives of adoption, which hold paramount the successful integration of the adoptee into the adoptive family."); see also Quissell, *supra* note 24, at 224 (noting that "the underlying conflict . . . has not changed").

<sup>121</sup> Binavince, *supra* note 2, at 158; Kuhlmann, *supra* note 2, at 233; Presser, *supra* note 13, at 491-94. Today, although some courts still adhere to a strict constructionist policy, many courts consider these statutes to be remedial and thus construe them liberally. See Rein, *supra* note 2, at 722.

<sup>122</sup> See *Hockaday v. Lynn*, 98 S.W. 585, 587 (Mo. 1906) (superseded by statute) ("[I]t may stand assumed as sound law that consanguinity is so fundamental in statutes of descents and distributions that it may only be ignored by construction when courts are forced so to do, either by the terms of express statutes or by inexorable implication."); *Dodson v. Ward*, 240 P. 991, 993 (N.M. 1925) ("[L]egislation repudiating or eliminating blood relationship from the descent of property would be so abhorrent to every incident of our home and family life as to meet with general disapproval. The courts should depart from this elemental guidship only when forced to do so by an inexorable statutory demand."); Presser, *supra* note 13, at 492; Rein, *supra* note 2, at 713.

rights as part of the contract, however, they could not affect the rights of those not party to the "adoption contract," such as grandparents and other relatives.<sup>123</sup>

Gradually state legislatures inserted express statutory provisions that departed from the traditional principle of consanguinity.<sup>124</sup> First, statutes provided for inheritance rights between the child and the adoptive parents.<sup>125</sup> The philanthropic motives of the adoptive parents and the affective ties between the parties justified legislatures' recognition of inheritance rights between the child and adoptive parents.<sup>126</sup> Initially these rights were not reciprocal; the child could inherit from the adoptive parent, but the adoptive parent could not inherit from the child.<sup>127</sup> This reluctance to recognize reciprocal rights resulted from a desire to protect the child from predatory adoption<sup>128</sup> and from a belief that reciprocal inheritance rights wrongly enriched the adoptive parents.<sup>129</sup>

When states did recognize the adopter's right to inherit from the child, statutes often provided that the adopter could only inherit that property which the child had obtained from the adoptive family by gift, bequest, or devise, while other property passed to the natural family.<sup>130</sup> Alternatively, statutes provided that the adopter inherited all property except that which the child had received from the natural family by gift, bequest or devise.<sup>131</sup> Today, most jurisdictions recognize reciprocal inheritance rights between the child and his adoptive parents without restriction.<sup>132</sup>

In addition, most states now recognize reciprocal inheritance rights between the child and the relatives of the adoptive parents.<sup>133</sup>

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<sup>123</sup> See Binavince, *supra* note 2, at 160-61; Hallie E. Still-Caris, Note, *Legislative Reform: Redefining the Parent-Child Relationship in Cases of Adoption*, 71 IOWA L. REV. 265, 270-71 (1985); *Eddins v. Williams*, 279 N.W. 244, 245 (S.D. 1938). Other courts broadly interpreted the language of the adoption statutes as establishing inheritance rights between the adoptee and his adoptive parents. These courts focused on provisions indicating that the child was to be treated as the biological child of the adopters. Viewed together with the provision that relieves the natural parents of all rights and obligations, these courts believed that inheritance rights were part and parcel of the adoption process. See Binavince, *supra* note 2, at 159-60.

<sup>124</sup> See Kuhlmann, *supra* note 2, at 226.

<sup>125</sup> See *id.* at 224-26.

<sup>126</sup> See Binavince, *supra* note 2, at 161.

<sup>127</sup> See *id.* at 159, 161.

<sup>128</sup> See Kuhlmann, *supra* note 2, at 225.

<sup>129</sup> See Binavince, *supra* note 2, at 159-61.

<sup>130</sup> See Kuhlmann, *supra* note 2, at 226, 228 n.40, 231; Kiefer, *supra* note 104, at 400-01.

<sup>131</sup> See Kiefer, *supra* note 104, at 400.

<sup>132</sup> See 7 POWELL, *supra* note 15, at 90-85 to 90-86.

<sup>133</sup> See Rein, *supra* note 2, at 720; see also Annotation, *Right of Adopted Child to Inherit From Kindred of Adoptive Parent*, 43 A.L.R.2d 1183, 1189-1201 (1955). One author suggests that 25 states have achieved complete substitution of the adoptive family for the

This is a logical outgrowth of the recognition of the adopter's inheritance rights. The adopted child is likely to receive the same love and attention from these relatives as a child born to those same parents.<sup>134</sup> However, some states still expressly restrict this type of inheritance, treating the adoptee as the child of his adoptive parents, but not as the relative of the adopter's kindred.<sup>135</sup> Other statutes are ambiguous or fail to address the issue, leaving it open to judicial interpretation.<sup>136</sup> Some courts construe unclear statutes liberally to allow inheritance rights between an adopted child and his adopted parents' relatives.<sup>137</sup> Such an approach comports with the modern goal of adoption to completely substitute the adoptive family for the natural family. However, other courts have construed such statutes narrowly.<sup>138</sup>

Courts adopting the latter approach often resort to the same strict construction of the statutes and contractual analysis used

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natural family. See Quissell, *supra* note 24, at 229 n.50. However, another author has suggested that the "statutes are so rife with gaps and exceptions that this listing is not totally accurate." Rein, *supra* note 2, at 720 n.36.

<sup>134</sup> See Rein, *supra* note 2, at 721-22; Still-Caris, *supra* note 123, at 271.

<sup>135</sup> Rein, *supra* note 2, at 720-21; see, e.g., VT. STAT. ANN. tit. 15, § 448 (1989) ("[T]here shall be no right of inheritance between the person adopted and his issue on the one hand and predecessors in line of descent and collateral kin of the person or persons making the adoption on the other hand."). Until recently, the South Dakota statute was silent on this issue. However, as a result of legislation in 1990, "[a]ny adopted child has the same right to inherit by intestate succession from any person related to the adoptive parent, in any degree of kindred, as if the adopted child were the natural child of the adoptive parent." S.D. CODIFIED LAWS ANN. § 29-1-5.1 (Supp. 1991). Previously the state supreme court held that an adoptee could not inherit from his adoptive grandfather through his predeceased father. *Eddins v. Williams*, 279 N.W. 244 (S.D. 1938). The court used a contractual analysis and held that the adoption contract could bind only the adoptee, the adoptive parents, and the natural parents. The court affirmed this view in *In re Estate of Edwards*, 273 N.W.2d 118 (S.D. 1978) (niece of adoptive mother cannot inherit through the mother of the adoptee). The new statute apparently overrules *Eddins* because it states that an adoptee can inherit from other relatives. The statute may also overrule *In re Edwards* because although the statute does not state that relatives of the adoptive parents can inherit from the child, a court could infer that the legislature intended to create reciprocal inheritance rights. In Tennessee, an adoptee can inherit from and through his adoptive parents. The adoptive parents' lineal and collateral kindred, however, can only inherit from and through the adoptee that property that the adoptee acquired after his adoption. TENN. CODE ANN. § 36-1-126 (1984).

<sup>136</sup> For example, South Dakota's statute is silent on this issue. For a discussion of this statute, see *supra* note 135.

<sup>137</sup> See Kuhlmann, *supra* note 2, at 235-36; Rein, *supra* note 2, at 722. As early as 1919, the court in *In re Masterson's Estate* noted that, although some courts adhered to strict statutory construction, "the prevailing tendency of the more modern authorities is in the direction of a liberal construction." 183 P. 93, 94 (Wash. 1919), citing *Batcheller-Durkee v. Batcheller*, 97 A. 378 (R.I. 1916).

<sup>138</sup> For a discussion of the narrow contractual approach used by South Dakota courts, see *supra* note 135. For a discussion of a similar approach used by Utah courts, see generally R. S. Erickson, Note, *Intestate Succession and Adoption in Utah: A Need for Legislation*, 1969 UTAH L. REV. 56 ("[T]he Utah legislature rescued adopted children from the court by enacting UPC § 2-109" in 1978); Rein, *supra* note 2, at 722 n.48.

under the early adoption statutes.<sup>139</sup> Commentators have criticized this narrow analysis as contravening the traditional goals of adoption and the principle that courts should construe remedial legislation broadly.<sup>140</sup> However, despite the restrictions on inheritance rights within the adoptive family that still exist in a few states, the general trend has been toward fully recognizing reciprocal inheritance rights from and through the adoptee and the adoptive parents.

### B. Inheritance Rights Between the Adoptee and the Natural Family

The same reverence for blood relationships that made it difficult to recognize inheritance rights within the adoptive family made it even more difficult for early courts and legislatures to sever inheritance rights within the natural family. Some statutes expressly preserved the adoptee's right to inherit from his natural relatives;<sup>141</sup> in fact, only a few states expressly deprived the child of this right.<sup>142</sup> Where statutes were incomplete or ambiguous, courts again relied on strict construction of the statutes to permit this right.<sup>143</sup> Therefore, the earliest statutes generally granted additional inheritance rights to the adoptee from his adoptive family, but did not sever any pre-existing rights from his natural family.<sup>144</sup>

The first changes occurred when courts preserved the child's right to inherit from his natural parents, but denied the reciprocal right of the natural parent to inherit from the child.<sup>145</sup> This re-

<sup>139</sup> See *supra* text accompanying notes 121-23.

<sup>140</sup> See Kuhlmann, *supra* note 2, at 235-36; Rein, *supra* note 2, at 722. In addition, Rein criticizes the idea that parents who adopt a child are "foisting" a potential heir on relatives who did not consent to the adoption. Rein states that "[t]hese arguments ignore the fact that a child's birth always imposes a potential heir on the relatives of his biological parents, yet no one would suggest that the child should not inherit from his blood relatives because they had not consented to his conception." *Id.* at 721; see also Binavince, *supra* note 2, at 185-86. Furthermore, such criticism ignores the fact that these same relatives could inherit from the adoptee should the adoptee predecease them, if reciprocal inheritance rights were recognized. Binavince, *supra* note 2, at 115-16. Finally, "[i]f the relatives have reason to oppose the child's taking in their estate, they are not without effective remedy; the right of testation affords ample protection." *Id.* at 185.

<sup>141</sup> See Kuhlmann, *supra* note 2, at 229.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 237. For cases upholding the adoptee's right to inherit from natural relatives in the absence of statutory language expressly denying this right, see *In re Penfield's Estate*, 81 F. Supp. 622 (D.D.C. 1949); *In re Tilliski's Estate*, 61 N.E.2d 24 (Ill. 1945); *In re Sauer*, 257 N.W. 28 (Ms. 1934); but see *In re Darling*, 159 P. 606 (Cal. 1916) (superseded by statute) (right to inherit from natural parents is severed; however, adoptee can inherit from natural grandparents because the statute does not address the relationship between the adoptee and the grandparents).

<sup>144</sup> See Kuhlmann, *supra* note 2, at 225-27, 237-38.

<sup>145</sup> See Binavince, *supra* note 2, at 164-65; Quissell, *supra* note 24, at 226.

flected a belief that the child did not consent to the adoption and should not be deprived of any inheritance rights.<sup>146</sup> The natural parents, on the other hand, did consent to the adoption, in essence giving up their rights. In addition, as courts and legislatures recognized the adopter's right to inherit from the child, they also began to *prefer* the adoptive parents over the natural parents when providing for inheritance from an adopted child,<sup>147</sup> thus recognizing the adoptive parents who cared for and supported the child.<sup>148</sup>

Following similar logic, courts and legislatures initially maintained the child's right to inherit from other natural relatives and those relatives' right to inherit from the child.<sup>149</sup> These relatives, like the child, did not consent to the adoption and, therefore, the usual rules of succession law would not be altered.<sup>150</sup> As a result, these relatives could inherit from the child even though the natural parents could not. As the trend toward severance continued, however, legislatures terminated the child's right to inherit from these relatives, as well as the reciprocal right of the natural relatives to inherit from the child.<sup>151</sup>

This trend toward severance reflects the traditional complete substitution of the adoptive family for the natural family.<sup>152</sup> The Revised Uniform Adoption Act and the Uniform Probate Code both reflect this fresh start approach. Each provides for inheritance

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<sup>146</sup> In *Sledge v. Floyd*, 104 So. 163 (Miss. 1925), the court stated that [w]e do not think the statute intended to deprive children of their rights to inherit from their natural parents and blood relatives. To do so would raise grave questions where a child having expectations should be adopted against its consent or without its power to consent during the tender years of minority and thus be deprived of benefits.

*Id.* at 165. See also *In re Benner*, 166 P.2d 257, 258 (Utah 1946) ("His natural parent, by his consent to his adoption, loses his right to inherit from his natural son. But no one consents for the innocent and helpless subject of the transfer that he shall lose the right to inherit from his natural parent . . .") (quoting *Sorenson v. Churchill*, 212 N.W. 488, 489 (S.D. 1927)).

<sup>147</sup> See *Kuhlmann*, *supra* note 2, at 241.

<sup>148</sup> See *id.*

<sup>149</sup> See *Binavince*, *supra* note 2, at 170-71.

<sup>150</sup> See *In re Benner's Estate*, 166 P.2d 257, 258 (Utah 1946); *Sorenson v. Churchill*, 212 N.W. 488 (S.D. 1927); see also *Rein*, *supra* note 2, at 723 n.51. In jurisdictions where more distant relatives were permitted to inherit from the child, courts developed special rules regarding the distribution of property. Some courts decreed that the adoptive parents were the heirs of first choice. When the adoptive parents predeceased the child, however, the natural relatives inherited according to the usual rules of succession. Other courts distributed the child's estate between the adoptive family and the natural family according to the source of the property. See *Binavince*, *supra* note 2, at 171.

<sup>151</sup> See 7 POWELL, *supra* note 15, at 90-89.

<sup>152</sup> See *supra* text accompanying notes 53-56.

rights through the adoptive family only, except in the case of stepparent adoptions.<sup>153</sup>

In some states the severance of inheritance rights from the natural family is absolute. Statutes in these states provide that the child can inherit from and through the adoptive line only.<sup>154</sup> Other states have not followed this trend and have statutes that expressly preserve the child's right to inherit from and through his natural parents.<sup>155</sup> In states where statutes are silent on this issue, courts have regularly recognized inheritance rights from natural relatives.<sup>156</sup>

Preserving the child's inheritance rights from his natural family<sup>157</sup> when an infant is adopted by strangers contravenes the trend toward severance, and commentators have criticized these statutes and cases for hindering the fresh start policy.<sup>158</sup> Commentators have also criticized the preservation of natural family inheritance rights as impractical because most states seal adoption records to protect the confidentiality of the natural parents, making it nearly impossible for the adoptee and the natural family to locate each other.<sup>159</sup> Finally, preserving inheritance rights can result in dual in-

<sup>153</sup> REV. UNIF. ADOPTION ACT § 14, 9 U.L.A. 58-59 (1988); UNIF. PROB. CODE § 2-114, 8 U.L.A. 66-67 (1983). The Uniform Probate Code was revised in 1990. The applicable provision in the pre-1990 version was § 2-109. Although both the RUAA and UPC recognize an exception for stepparent adoptions, they do not address these exceptions in the same way. See *infra* text accompanying notes 240-53.

<sup>154</sup> See, e.g., MICH. COMP. LAWS ANN. §§ 700.110 (West 1980), 710.60 (West Supp. 1991); WASH. REV. CODE ANN. §§ 11.04.085 (West 1987), 26.33.260 (1986); other states have stepparent exceptions which preserve inheritance rights from the natural parent married to the adopting stepparent. In essence, these are not "exceptions" at all because a court is unlikely to deny inheritance rights between a child and a custodial parent. For a list of these statutes, see *infra* note 242.

<sup>155</sup> 20 PA. CONS. STAT. ANN. § 2108 (Supp. 1990) (preserving inheritance rights from natural kin, other than the natural parent, where that kin maintained a family relationship with the adoptee); R.I. GEN. LAWS §§ 15-7-16, 15-7-17 (1988); S.D. CODIFIED LAWS ANN. §§ 25-6-16, 25-6-17 (1984) (as interpreted in *Sorenson v. Churchill*, 212 N.W. 488 (S.D. 1927)); TEX. PROB. CODE ANN. § 40 (West Supp. 1991); VT. STAT. ANN. tit. 15 § 448 (1989); WYO. STAT. § 2-4-107 (1980).

<sup>156</sup> See *supra* note 143 and accompanying text; see also Binavince, *supra* note 2, at 165 ("the prevailing view still is to recognize this right"); Knhlmann, *supra* note 2, at 237; Rein, *supra* note 2, at 723.

<sup>157</sup> Although statutes and cases preserve the child's right to inherit from the natural family, this right usually is not reciprocal. In states where natural parents are entitled to inherit from the child, this inheritance is usually limited to property acquired from the natural parents. See Binavince, *supra* note 2, at 165. For a discussion of these "source statutes" as originally applied to adoptive parents, see *supra* text accompanying notes 130-31.

<sup>158</sup> See Binavince, *supra* note 2, at 165 ("[T]he existence of this right is inconsistent with the child's complete assimilation to the adoptive family."); Kuhlmann, *supra* note 2, at 248-49; see also Rein, *supra* note 2, at 723-25 (suggesting that contact through intestacy proceedings could cause premature disclosure of the child's adoption and result in the child feeling divided loyalties).

<sup>159</sup> See Rein, *supra* note 2, at 724; see also *In re Estates of Donnelly*, 502 P.2d 1163, 1167 (Wash. 1972) (noting that due to the changed birth certificates, grandparents

heritance for adopted children because they will inherit not only from adoptive but also natural families.<sup>160</sup> Natural children of the adoptive parents do not have this advantage and may resent the adoptee's increased inheritance.<sup>161</sup>

Despite these general trends toward recognizing inheritance rights from and through the adoptive family, and toward severing all ties between the child and the natural family, nonuniformity and inconsistency persist. Another issue that states approach differently is stepparent and relative adoptions. Many states make an exception for stepparent adoptions and preserve inheritance rights between the child and the natural family.<sup>162</sup>

### III

#### EXCEPTIONS FOR STEPPARENT AND OTHER RELATIVE ADOPTIONS

In-family adoptions, also called relative adoptions, typically occur as follows: (1) An orphaned child is adopted by a blood relative, usually a grandparent; (2) a young unwed mother lets her parents adopt and raise her illegitimate child; (3) one biological parent dies while still married to the other, and the surviving biological parent eventually marries a new spouse who adopts the child; or (4) following divorce of the biological parents the custodial parent remarries and the stepparent adopts the child with the consent of, or after the death of, the noncustodial parent.<sup>163</sup>

More than half of the adoptions each year are relative adoptions,<sup>164</sup> and an overwhelming percentage of these adoptions are stepparent

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"have no assurance that they will know the new name or residence of the adopted child" and that in the typical situation, an estate administrator "will be unable to locate—much less to identify—the post-adoption grandchild"). However, the practice of confidentiality has been criticized and is less strict than it once was. Such changes indicate relaxation, and perhaps eventual reversal of the fresh start policy. See *supra* notes 92-101 and accompanying text.

<sup>160</sup> Dual inheritance results when an adoptee inherits from both adoptive and natural families or when the adoptee is related to the same decedent in both adoptive and natural relationships. See *infra* text accompanying notes 211-28.

<sup>161</sup> See Rein, *supra* note 2, at 726; Still-Caris, *supra* note 123, at 280. Commentators have also noted the sometimes bizarre results of dual inheritance. See, e.g., Binavince, *supra* note 2, at 165-69; Kuhlmann, *supra* note 2, at 238-39; and Rein, *supra* note 2, at 724-27 (all criticizing courts that have permitted a twice-adopted child to inherit from both sets of adoptive parents).

<sup>162</sup> See generally Annotation, *Right of Adopted Child to Inherit From Intestate Natural Grandparent*, 60 A.L.R.3d 631, 642 (1974) (discussing statutes that have stepparent exceptions).

<sup>163</sup> Rein, *supra* note 2, at 728.

<sup>164</sup> In 1975, a total of 104,000 adoptions were completed in the 42 jurisdictions reporting statistics. WILLIAM MEEZAN, U.S. DEP'T OF HEALTH AND HUMAN SERV., PUB. NO. (OHDS) 80-30288, *ADOPTION SERVICES IN THE STATES* 4 (1980). Jurisdictions reported the relationship between the petitioner and child for 101,000 of the adoptions.

adoptions.<sup>165</sup> Because relative adoptions involve significantly different factual circumstances, and thus implicate different policy considerations than those involved in traditional adoptions,<sup>166</sup> it is not surprising that the practices that further the best interests of the child also differ.

States have recognized the different considerations involved in stepparent adoptions by enacting exceptions to the traditional adoption policy of severing inheritance rights from the natural parents. These "exceptions" preserve the rights of the stepparent adoptee to inherit from his natural parents.

Perhaps the best way to demonstrate the effect of a stepparent exception is by examining a typical situation to which an exception would apply. In *Estates of Donnelly*,<sup>167</sup> the administratrix petitioned the Washington court to determine heirship to her father's estate and to declare that his granddaughter, the administratrix' niece, could not inherit from his estate.<sup>168</sup> The decedent, John J. Donnelly, and his wife, Lily, had two children, a daughter, Kathleen M., and a son, John J., Jr. John J., Jr. had one child, a daughter, Jean Louise Donnelly, born October 28, 1945. John J., Jr. died less than one year after Jean's birth on July 9, 1946. Jean's mother, Faith Louise Donnelly, married Richard Roger Hansen approximately two years later. Shortly after this marriage, Richard adopted Jean Louise with consent of her natural mother. Jean Louise lived with her mother and adoptive father and used the name Hansen until her marriage.<sup>169</sup>

Lily Donnelly died in 1964, leaving all of her property to her husband. John J. Donnelly, Sr., died on September 15, 1970. He left a will dated October 16, 1932, in which he devised all of his property to his wife. He made no provisions for the distribution of his property in the event that his wife predeceased him. His daughter, Kathleen, was named administratrix.<sup>170</sup> The trial court decided that Jean Louise could inherit from her natural grandfather through

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63% (64,000) of the adoptions were relative adoptions. Of these, 85% (57,000) of the adoptions were stepparent adoptions. *Id.* 1975 was the last year in which federal adoption statistics were compiled. ADOPTION FACTBOOK, *supra* note 2, at 59-60. The National Committee For Adoption has tabulated statistics for 1982 and 1986. *Id.* Adoptions by related petitioners constituted 63% of all adoptions in 1975; 64% in 1982; and 51% in 1986. *Id.* at 99.

<sup>165</sup> See *supra* note 164.

<sup>166</sup> See *infra* text accompanying notes 194-99; see also Rein, *supra* note 2, at 728 (noting different context of relative adoptions.); Hughes, *supra* note 24, at 340 (noting that total severance in an in-family adoption situation may be "imprudent.").

<sup>167</sup> 502 P.2d 1163 (Wash. 1973).

<sup>168</sup> *Id.* at 1164.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

her deceased natural father, John J., Jr.<sup>171</sup> The daughter, Kathleen, appealed to the Court of Appeals, which affirmed,<sup>172</sup> and subsequently to the Washington Supreme Court, which reversed the decision of the trial court.<sup>173</sup>

The court first concluded that both the daughter and the granddaughter were "issue" of the grandfather and, under normal circumstances, would share the estate as dictated by the descent and distribution statutes.<sup>174</sup> The court then proceeded to determine whether Jean Louise was divested of her statutory inheritance right by virtue of another Washington statute which provided that "[a] lawfully adopted child shall not be considered an 'heir' of his natural parents's for purposes of this title."<sup>175</sup> The court noted that previously it had held that the legislative intent was clear, and an adopted child could not inherit a share of the natural parent's estate by intestate succession.<sup>176</sup> Thus, the question became whether the statute also precluded an adoptee from representing the natural parent and thereby inheriting from the natural grandparent.<sup>177</sup>

In deciding the issue the court noted that Washington's adoption statute divested the natural parent "of all legal rights and obligations in respect to the child" and provided that the child "shall be . . . the child, legal heir, and lawful issue of his or her adopter or adopters, entitled to all rights and privileges, including the right of inheritance . . . and subject to all the obligations of a child . . . begotten in lawful wedlock."<sup>178</sup> Reading the probate and domestic relations statute together, the court found that the legislative purpose was clear and that the issue "should . . . be decided in the context of the broad legislative objective of giving the adopted child a 'fresh start' by trusting him as the natural child of the adoptive parent, and severing all ties with the past."<sup>179</sup> The court concluded that "the legislature intended to remove an adopted child from his natural bloodline for purposes of intestate succession."<sup>180</sup>

The court did not consider whether Jean Louise and her grandparents had maintained contact. However, it did note that grandparents are not entitled to notice of adoption proceedings and that adoption records are confidential; therefore, natural grandparents

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171 *Id.*

172 *Id.*

173 *Id.* at 1168.

174 *Id.* at 1165.

175 *Id.*

176 *Id.* (citing *In re Estate of Wiltermood*, 472 P.2d 536 (Wash. 1970)).

177 *Id.* at 1165.

178 *Id.* at 1166.

179 *Id.*

180 *Id.*

cannot ensure that they will maintain contact with the adoptee.<sup>181</sup> In fact, according to the court, in a typical "out of family" adoption situation, the administrator of a deceased natural grandparent's estate often will be unable to locate—much less identify—the post-adoption grandchild.<sup>182</sup>

In most states recognizing stepparent exceptions, Jean Louise Iverson would have inherited from her grandfather in *Estates of Donnelly*. However, had Jean Louise been adopted after the divorce of her natural parents instead of after the death of her natural father, the result would have differed in several states. This difference reflects the states' varied views on the policies involved in stepparent adoptions.

Most states limit these exceptions to stepparent adoptions.<sup>183</sup> But since the same rationales apply to *all* relative adoptions, states should extend these stepparent exceptions to encompass a broad range of relative adoptions. Following is a review of the arguments for and against these exceptions.

#### A. Policy Considerations

In the traditional stranger-infant adoption, policy considerations call for complete severance of ties to the natural family.<sup>184</sup> Severance prevents natural relatives from interfering with the adoptive family and makes it socially and psychologically easier for the child to bond with his new family.<sup>185</sup> Severance also protects the confidentiality of the natural parents because sealed adoption records make it virtually impossible for the child and his natural family to locate each other.<sup>186</sup> Moreover, complete severance of these inheritance rights helps to insure that the child's adoption will not be prematurely revealed, which could cause psychological damage.<sup>187</sup>

Succession law has not only complemented and furthered the modern goals of adoption law,<sup>188</sup> but it has also furthered its own policies. A parent who voluntarily relinquishes a child for adoption and maintains no future contact with that child, probably would not intend for the adoptee to inherit from him should he die intes-

<sup>181</sup> *Id.* at 1167.

<sup>182</sup> *Id.*

<sup>183</sup> See *infra* notes 229-92 and accompanying text.

<sup>184</sup> See *supra* notes 53-56.

<sup>185</sup> See *supra* notes 55-56.

<sup>186</sup> See Rein, *supra* note 2, at 729; see also *supra* note 58 and accompanying text. For a discussion of recent changes to confidentiality laws, see *supra* note 92-101 and accompanying text.

<sup>187</sup> See Rein, *supra* note 2, at 724.

<sup>188</sup> See 7 POWELL, *supra* note 15, at 90-83 to 90-85; Hughes, *supra* note 24, at 345-49.

tate.<sup>189</sup> Similarly, other natural relatives probably would not intend that the child share in their intestate estates.<sup>190</sup> Therefore, severance prevents unfair surprise and frustration of the decedent's probable intentions. Severance also reduces the costs of administering estates because natural relatives will not have to search for an adopted heir whose name and whereabouts are unknown.<sup>191</sup>

Complete severance also decreases the dual inheritance problem.<sup>192</sup> Without complete severance, the adoptee would inherit from two families, a result that seems unfair to nonadopted children, whose shares might be decreased, as well as to the natural relative, who may have died intestate without even knowing of the child's existence or anticipating that the child would share in the estate.<sup>193</sup> These reasons support the fresh start policy and the practice of complete severance of ties in traditional adoptions.

However, these reasons do not apply to relative adoptions in general, or to stepparent adoptions in particular.<sup>194</sup> Typically, the child's adoption is known to all natural family members, and the need to preserve confidentiality does not exist.<sup>195</sup> In addition, the adoptee normally maintains contact with his natural relatives as a

<sup>189</sup> Anne W. French, Note, *When Blood Isn't Thicker Than Water: The Inheritance Rights of Adopted-out Children in New York*, 53 BROOK. L. REV. 1007, 1042 (1988)

It is questionable, however, whether a divorced parent who surrenders his or her child for adoption, and then proceeds to carry on a new life, perhaps remarrying and possibly having other children, would wish this adopted-out child to share in his or her estate, depriving the new family of property rights.

<sup>190</sup> *Id.* (criticizing New York law for allowing adoptee to inherit from such relatives). Indeed, these relatives may not even know of the child's existence.

<sup>191</sup> See Hughes, *supra* note 24, at 343 ("Tracing the adopted child as an heir to such an estate is extremely difficult if not impossible."); Quissell, *supra* note 24, at 230; Still-Caris, *supra* note 123, at 275.

<sup>192</sup> See Rein, *supra* note 2, at 725-26.

<sup>193</sup> French, *supra* note 189, at 1042; Hughes, *supra* note 24, at 338-39. For a fuller discussion of the dual inheritance problem, see *infra* notes 211-28 and accompanying text.

<sup>194</sup> See Rein, *supra* note 2, at 728, 730; Hughes, *supra* note 24, at 340; Quissell, *supra* note 24, at 230-31; Still-Caris, *supra* note 123, at 275-76.

<sup>195</sup> See Rein, *supra* note 2, at 730; Hughes, *supra* note 24, at 340-42; Quissell, *supra* note 24, at 230-31; Still-Caris, *supra* note 123, at 275-76. When explaining the 1975 technical amendments to the UPC which preserved inheritance rights from the natural family, Professor Wellman noted the different circumstances involved in stepparent adoptions. Professor Wellman stated:

[w]e think that it's desirable to have adoptions terminate relations to natural parents when the adopted person is an orphan and disconnected from all natural parents. We think that when there is in the picture as the spouse of the new adopting parent one of the child's own natural parents, everybody is aware of the child's source—the relatives are aware, and there is no need statutorily now—awkwardly now, we suggest, to try to come in and sever that old relationship.

Cathy J. Jones, *Stepparent Adoption and Inheritance: A Suggested Revision of Uniform Probate Code Section 2-109*, 8 W. NEW ENG. L. REV. 53, 64 (1986) (quoting National Conference of

matter of course, eliminating the need to prevent interference with the adoptive family.<sup>196</sup> Finally, in most stepparent adoptions, the child is older and has memories of his natural family.<sup>197</sup> Severing these ties may cause psychological damage and actually inhibit the child's bonding with his adoptive family.<sup>198</sup> Preserving ties to the natural family gives a child a sense of permanence and continuity, which facilitates the child's assimilation into his new family.<sup>199</sup> Thus, the adoption policy considerations that call for a fresh start and complete severance are inoperative in cases of relative adoptions.

Complete severance in cases of relative adoptions does not further the goals of succession law. Because the child and the natural family remain in contact, a deceased natural parent or other relative would probably have expected and desired that the child share in the intestate estate.<sup>200</sup> Continued contact also makes it easy for family members to locate one another; therefore, costs of estate administration are not significantly increased. Since the only reason for succession law to depart from the traditional principle of consanguinity was to further the fresh start policy, some commentators argue that no deviations should be made where that policy is not implicated.<sup>201</sup>

Others argue that the continuation of affective ties and contact between the child and his natural family does not necessarily mean that the preservation of inheritance rights is appropriate. While acknowledging that the considerations underlying the fresh start policy are not fully implicated in stepparent adoptions, these commentators argue that more general adoption policy considerations are still relevant and justify severance of natural family inheritance rights.<sup>202</sup> For example, even though contact may continue between the child and his natural family, this contact may be disruptive to the new family unit.<sup>203</sup> Severing all legal obligations, there-

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Commissioners on Uniform State Laws, *Proceedings on the Uniform Probate Code 6-7* (Tent. Draft Aug.).

<sup>196</sup> See Rein, *supra* note 2, at 730; French, *supra* note 189, at 1039; Hughes, *supra* note 24, at 340-42; Quissell, *supra* note 24, at 230-31; Still-Caris, *supra* note 123, at 275-76.

<sup>197</sup> See *supra* notes 67, 70-71 and accompanying text.

<sup>198</sup> See *supra* notes 72-73 and accompanying text.

<sup>199</sup> See *supra* text accompanying notes 74-76.

<sup>200</sup> See Rein, *supra* note 2, at 730 ("In cases in which natural associations and emotional bonds remain, continuing ties of inheritance may make sense."); cf. French, *supra* note 189, at 1041-42 (suggesting that no reason exists to sever inheritance rights in stepparent adoptions that occur after the death of a natural parent).

<sup>201</sup> See Still-Caris, *supra* note 123, at 274-79.

<sup>202</sup> See Hughes, *supra* note 24, at 341-44.

<sup>203</sup> See *id.* at 342; but see Visher & Visher, *supra* note 73, at 37 ("Even though maintaining contact with a biological parent may be awkward for the adults involved, it is generally to the psychological advantage of the child."); Nathan, *supra* note 63, at 666

fore, is in the best interests of the child because it discourages potentially intrusive contact by the natural family.<sup>204</sup>

In the case of a stepparent adoption that occurs with the consent of a relinquishing natural parent, commentators argue that such consent indicates that the relinquishing parent no longer considers the child as his own.<sup>205</sup> However, maintaining inheritance rights prevents a complete termination of rights and obligations.<sup>206</sup> "Hence, to give full effect to the implications of a legal adoption, adoptee inheritance rights from the relinquishing natural bloodline must be terminated."<sup>207</sup>

Some commentators also suggest that severance in relative adoptions does further the goals of succession law. They challenge the assumption that the child and the natural family will, in fact, maintain contact with each other.<sup>208</sup> In many cases, either the adoptive or natural family may move away and as a result, they will lose contact with each other.<sup>209</sup> In cases where no contact continues between the child and the natural family, severance of inheritance rights not only facilitates quick and efficient estate administration, eliminating the need to search for heirs, but also promotes certainty of titles.<sup>210</sup>

Finally, complete severance eliminates the possibility of dual inheritance.<sup>211</sup> As one commentator noted,

[d]ual inheritance occurs when inheritance through the natural bloodline is not severed, and the adopted child inherits from both adopted and natural family lines. Usually the question of dual inheritance arises from one or two fact patterns. The first is where a relative, such as a grandparent, adopts the child of deceased parents, then the relative dies intestate, and the child inherits in the dual capacity of adopted child and natural grandchild [thereby receiving a double share]. The second is where an adopted child is not expressly denied the right to inherit from both natural and

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(suggesting that contact may be disruptive for the parents, but beneficial for the child, and that disruptive contact "does not always endanger the integrity of the adoptive family").

<sup>204</sup> See Hughes, *supra* note 24, at 342.

<sup>205</sup> See *id.* at 343.

<sup>206</sup> See *id.* at 342.

<sup>207</sup> *Id.* at 342-43; see also Rein, *supra* note 2, at 730 ("The preservation of the child's relationship with a parent who has voluntarily relinquished the child for adoption or abandoned him in some manner seems wrong.").

<sup>208</sup> See French, *supra* note 189, at 1042; Hughes, *supra* note 24, at 343.

<sup>209</sup> See Hughes, *supra* note 24, at 343. This loss of contact can occur when the adoption takes place after the death or divorce of the natural parents.

<sup>210</sup> See *id.* at 343.

<sup>211</sup> See Rein, *supra* note 2, at 725-26.

adopted parents by statute [and thereby inherits from three family lines].<sup>212</sup>

Even those in favor of maintaining inheritance rights in relative adoptions recommend that legislatures enact provisions to eliminate dual inheritance.<sup>213</sup>

The problem of dual inheritance is best illustrated by the following example, which distinguishes between the "third family line" and "double share" types of dual inheritance and the differences between statutes that sever all inheritance rights to the natural family and those that make an exception for relative adoptions.<sup>214</sup>

Imagine that both parents of a child, Sam, die in an accident and Sam is adopted by his paternal aunt and her husband. In a state that follows the modern trend and severs all inheritance rights from the natural family, Sam will still inherit from his natural paternal line, only now he will inherit as the child of the paternal aunt, not as the child of his natural father.<sup>215</sup> However, Sam will not inherit from his natural maternal line, despite the affective ties and contact that will probably continue with his natural maternal relatives.<sup>216</sup> Instead, he will inherit through his paternal aunt's husband, or the adoptive paternal line.<sup>217</sup> No dual inheritance occurs because Sam only inherits from two family lines.

In a state that maintains inheritance rights from the natural family, the result is much different. Sam will now inherit from his natural maternal and paternal lines, as well as through his adoptive paternal line. Therefore, Sam will inherit from three family lines.<sup>218</sup>

The problem is more complicated if Sam is adopted by his paternal grandparents and they later die intestate. Unless the legisla-

<sup>212</sup> Quissell, *supra* note 24, at 231 (footnotes omitted); *see also* Binavince, *supra* note 2, at 166-72; Annotation, *supra* note 162, at 643-46.

<sup>213</sup> *See* Rein, *supra* note 2, at 730; Still-Caris, *supra* note 123, at 280 ("Since adoption attempts to place an adoptee in the position of a birth child, not in a more desirable or less desirable position, the adoptee should not receive two shares.").

<sup>214</sup> The "third family line" type of dual inheritance usually occurs in stranger adoptions in states which still adhere to the consanguinity theory and have not yet progressed toward complete severance of all ties to the natural family. However, as this example makes clear, this type of dual inheritance also occurs in relative adoptions. For a similar example in which grandparents adopt their grandchild, *see* Rein, *supra* note 2, at 728-29.

<sup>215</sup> *See* Rein, *supra* note 2, at 729.

<sup>216</sup> *See id.*; *see also* *In re* Estate of Holt, 622 P.2d 1032 (N.M. 1981) (child adopted by stepfather after noncustodial father's death denied right to inherit from natural paternal grandmother); *In re* Estates of Donnelly, 502 P.2d 1163 (Wash. 1972) (child adopted by stepfather denied right to inherit from natural paternal grandfather); *In re* Estate of Topel, 145 N.W.2d 162 (Wis. 1966) (child adopted by stepfather after noncustodial father's death denied right to inherit from natural paternal grandfather). The *Topel* decision was later overruled by statute. *See* WIS. STAT. ANN. § 851.51(2)(b) (West 1991). For an analysis of the *Holt* decision, *see* Quissell, *supra* note 24.

<sup>217</sup> *See* Rein, *supra* note 2, at 729.

<sup>218</sup> *See id.* at 728-30; Hughes, *supra* note 24, at 343; Quissell, *supra* note 24, at 231.

ture<sup>219</sup> or the court<sup>220</sup> restricts dual inheritance, Sam will inherit from his grandparents as an adopted child and as a grandchild representing his deceased father.<sup>221</sup> Allowing Sam to inherit the double share seems unfair to any other natural heirs, whose intestate share will be decreased. This type of dual inheritance will seem especially unequitable to Sam's adoptive siblings, who will inherit only one share from their parents as compared to Sam's two shares.

Stepparent exceptions that allow an adopted child to inherit from his natural family always result in dual inheritance. The adoptee will inherit from three family lines. But this type of dual inheritance is not objectionable. Because of the affective ties and continued contact between the child and the natural relatives after a stepparent adoption, the probable intentions of the natural relatives would be to allow the child to share in the intestate estate.<sup>222</sup> However, dual inheritance is objectionable when an adoptee is related to the decedent in both an adoptive and natural relationship.<sup>223</sup> While the decedent would probably intend for the adoptee with whom he has maintained an affective relationship to share in the estate, it is unlikely that the decedent would intend for the adoptee to receive two shares of the estate. This "double share" type of dual inheritance is also unfair to other heirs because it decreases their shares in the estate.<sup>224</sup>

States react in various ways to "double share" dual inheritance; some allow the adoptee to inherit from the same decedent in two capacities;<sup>225</sup> others restrict the adoptee to the larger of the two pos-

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<sup>219</sup> See Rein, *supra* note 2, at 728-30; Hughes, *supra* note 24, at 343; Quissell, *supra* note 24, at 231. See *infra* notes 225-27 and accompanying text.

<sup>220</sup> See *Billings v. Head*, 111 N.E. 177, 177 (Ind. 1916) ("[I]t was not the legislative purpose that an adopted grandchild should ever inherit more of its adopting parent's estate than would one of his natural children, and where, as here, the heir occupies a dual capacity, it cannot inherit both as grandchild and adopted child."); *Morgan v. Reed*, 62 A. 253, 256 (Pa. 1905) ("The act . . . intended to put the adopted child on the same footing as actual children, if such there should be, but not on any more favorable footing.").

<sup>221</sup> See Rein, *supra* note 2, at 728-30; Hughes, *supra* note 24, at 343; Quissell, *supra* note 24, at 231. See also *In re Bartram's Estate*, 198 P. 192 (Kan. 1921); *In re Benner's Estate*, 166 P. 2d 257 (Utah 1946).

<sup>222</sup> See Rein, *supra* note 2, at 731; Hughes, *supra* note 24, at 343; Quissell, *supra* note 24, at 232. However, dual inheritance resulting from a state's failure to sever inheritance rights from the natural relatives in the case of a traditional adoption is objectionable. In a traditional adoption, no affective ties exist between the natural relatives and the adoptee. Preserving inheritance rights would frustrate the probable intentions of the deceased natural relative.

<sup>223</sup> See *supra* text accompanying note 222.

<sup>224</sup> In addition, while it seems likely that the decedent would want the adoptee to share in the estate, it seems unlikely that the decedent would want the adoptee to inherit in dual capacities.

<sup>225</sup> See *supra* note 221 and accompanying text.

sible shares;<sup>226</sup> and some specify whether the adoptee inherits in the natural or adoptive relationship.<sup>227</sup> These variations stem from a difference in opinion as to whether dual inheritance is a problem. "The underlying issue is whether recognition of an adoptee's inheritance from both natural and adopted bloodlines affords the adopted child preferential treatment."<sup>228</sup>

## B. Various Approaches Toward Exceptions in Cases of Stepparent and Other Relative Adoptions

When drafting legislation on the inheritance rights of adopted children, legislatures must reach a result that furthers the goals of both adoption and succession law.<sup>229</sup> Unfortunately, some legislatures will view these stepparent and other relative adoptions exceptions as a residual, outdated adherence to consanguinity.<sup>230</sup> Under this view, these exceptions frustrate the goals of adoption by preventing the adoptee from getting a fresh start in his new family.<sup>231</sup> They also frustrate the goals of succession law by creating uncertainty of titles and hindering estate administration.<sup>232</sup>

A better view of these exceptions sees them as necessary to further the goals of a different type of adoption.<sup>233</sup> That is, states enacting such exceptions should realize that relative and stepparent adoptions involve different factual circumstances and policy considerations, which may require the preservation of inheritance rights to further the goals of adoption law.<sup>234</sup> In addition, these exceptions further the goals of succession law by preventing frustration of the decedent's probable intentions where actual contact and affective ties continue between the adoptee and the natural family.<sup>235</sup>

A legislature that desires to create an exception for stepparent and other relative adoptions must decide how to approach such ex-

<sup>226</sup> HAW. REV. STAT. § 560:2-114 (1988); IND. CODE ANN. §§ 29-1-2-8, 29-1-2-9 (Burns 1989); N.D. CENT. CODE § 30.1-04-03.1 (Supp. 1991). This is also the position of the Uniform Probate Code. UNIF. PROB. CODE § 2-113, 8 U.L.A. 76 (Supp. 1991).

<sup>227</sup> New York specifies that the adoptee inherits the share based on the natural relationship, unless the decedent is also the adopter, in which case the adoptee inherits pursuant to the adoptive relationship. N.Y. DOM. REL. LAW § 117(e) (McKinney 1988). In Illinois and Rhode Island, the adoptee inherits pursuant to the adoptive relationship only: ILL. ANN. STAT. ch. 110 1/2, para. 2-4 (Smith-Hurd Supp. 1991); R.I. GEN. LAWS § 15-7-16(b) (1988).

<sup>228</sup> Quissell, *supra* note 24, at 232.

<sup>229</sup> See *supra* text accompanying notes 103-62.

<sup>230</sup> Some commentators also view the exceptions in this way. See, e.g., Hughes, *supra* note 24, at 350-51.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> See *supra* text accompanying notes 194-99.

<sup>234</sup> See *supra* text accompanying notes 194-99.

<sup>235</sup> See *supra* text accompanying notes 200-01.

ceptions. The approach selected should be one which best implements the goals of both adoption and succession law. The remainder of this Part will describe and evaluate the various approaches to the stepparent exception to determine the extent to which each furthers the goals of adoption and succession law.

Several approaches to stepparent and other relative adoptions exist, illustrating the lack of uniformity that pervades this area of law. The majority of states that recognize stepparent exceptions follow either the Revised Uniform Adoption Act (RUAA) approach or the Uniform Probate Code (UPC) approach.<sup>236</sup> Both the RUAA and the UPC follow the trend towards complete substitution of the adoptive family for the natural family in traditional adoptions, but each makes an exception in stepparent adoptions.<sup>237</sup> A few states have responded to stepparent adoptions with unusual solutions, some of which also cover other relative adoptions.<sup>238</sup>

Stepparent adoptions occur in three typical fact patterns. These are:

(1) a natural parent dies while the parents are married to each other, the surviving natural parent remarries, and the new spouse adopts the child; (2) the natural parents are divorced, the natural parent with custody of the child remarries, the other natural parent dies, and then the stepparent adopts the child . . . (3) the natural parents are divorced, the parent with custody of the child remarries, the stepparent with the consent of the other [noncustodial] natural parent adopts the child, and then the other [noncustodial] natural parent dies.<sup>239</sup>

State approaches vary regarding which of the preceding fact situations warrant an exception.

### 1. *The Revised Uniform Adoption Act and the Uniform Probate Code*

The RUAA provides that a final decree of adoption relieves the natural parents of all rights and obligations toward the adoptee and "terminate[s] all legal relationships between the adopted individual and his [natural] relatives, including his natural parents, so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance."<sup>240</sup> In addition, the decree cre-

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<sup>236</sup> REV. UNIF. ADOPTION ACT § 14, 9 (Part I) U.L.A. 58-59 (1988); UNIF. PROB. CODE § 2-114, 8 U.L.A. 76-77 (Supp. 1991). The applicable provision in the pre-1990 UPC cases was § 2-109.

<sup>237</sup> See *infra* text accompanying notes 240-53.

<sup>238</sup> See *infra* text accompanying notes 254-92.

<sup>239</sup> Quissell, *supra* note 24, at 233. Some stepparent exceptions, like the UPC's, preserve inheritance rights in the third fact pattern even though the other natural parent has not died. See *infra* text accompanying notes 245-52.

<sup>240</sup> REV. UNIF. ADOPTION ACT § 14(a)(1), 9 U.L.A. 58 (1988).

ates the relationship between the adoptee and the adoptive family "as if the adopted individual were a legitimate blood descendant of the [adoptive parents] for all purposes including inheritance."<sup>241</sup> These provisions effectively recognize the complete substitution of the adoptive family for the natural family.

However, the RUAA provides an exception to the complete severance of inheritance rights from the natural parents. First, the RUAA provides that a stepparent adoption has no effect on the relationship between the child and the natural parent married to the adopting stepparent.<sup>242</sup> Second, the RUAA states that "if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption."<sup>243</sup> This second provision applies in fact patterns one and two above.<sup>244</sup>

<sup>241</sup> *Id.* § 14(a)(2).

<sup>242</sup> *Id.* § 14(a)(1). Even without such a provision, a court probably would not deny the child's right to inherit from the custodial natural parent. The relationship between the child and the custodial natural parent would not be severed by the adoption of the child by the stepparent. See Rein, *supra* note 2, at 729 n.73. In essence, this provision is not a true "exception" to the severance of inheritance rights. Nevertheless, it is the most common response that states make to stepparent adoptions. In the following states it is the only "exception" in cases of stepparent adoptions: ARIZ. REV. STAT. ANN. §§ 8-117(B), 14-2109(1) (1975); ARK. STAT. ANN. § 9-9-215(a)(1) (1991); DEL. CODE ANN. tit. 12, § 508(1) (1987), tit. 13, § 920(c) (1981); D.C. CODE ANN. § 16-312(a) (1989); HAW. REV. STAT. §§ 560:2-109(1) (1988); LA. CIV. CODE ANN. art. 214.6 (West Supp. 1991); MD. EST. & TRUSTS CODE ANN. §§ 1-207(a) (1991); MD. FAMILY LAW CODE ANN. § 5-308(b)(3) (1984); MO. ANN. STAT. §§ 453.090(1) (Vernon 1986), 474.060(1) (West Supp. 1991); NEB. REV. STAT. §§ 30-2309(1) (1989), 43-110 (1988), 43-111 (1988); NEV. REV. STAT. ANN. § 127.160 (Michie 1986); N.H. REV. STAT. ANN. § 170-B:20(II) (1990); N.M. STAT. ANN. § 45-2-109(A) (Michie 1989); N.C. GEN. STAT. § 29-17(e) (1984); OKLA. STAT. ANN. tit. 10, § 60.16(B) (West Supp. 1992); S.C. CODE ANN. §§ 20-7-1770, 62-2-109(1) (Law. Co-op Supp. 1991); UTAH CODE ANN. § 75-2-109(1)(a) (1978); W. VA. CODE § 48-4-11 (1986).

<sup>243</sup> REV. UNIF. ADOPTION ACT § 14(b), 9 U.L.A. 59 (1988). Several states statutes reach a similar result. Some of these states have adopted or generally follow the RUAA. Other states have adopted or follow the UPC. Nevertheless, on this issue, the result reached in the following states is the same as that reached under the RUAA: ALASKA STAT. § 25.23.130(b) (1991); GA. CODE ANN. § 19-8-19(b) (Michie 1991); IOWA CODE ANN. § 633.223(3) (West Supp. 1990); MINN. STAT. ANN. § 259.29(1)(a) (West 1982), 524.2-109(1) (West Supp. 1992); N.D. CENT. CODE §§ 14-15-14(2) (1991), 30.1-04-09 (2-109) (Supp. 1989); OHIO REV. CODE ANN. § 3107.15(B) (1989); WIS. STAT. ANN. §§ 48.92 (West 1987), 851.51(2)(b) (West 1991).

<sup>244</sup> See *supra* text accompanying note 239. Idaho has modified the RUAA provision by preserving inheritance rights from and through the deceased natural parent only if that parent died *while still married* to the other natural parent. IDAHO CODE § 15-2-109(a) (1979). Other states preserve inheritance rights only if the stepparent married the natural parent *after the death* of the other natural parent. That is, the natural parents do not have to be married at the time of death in order for the child to maintain inheritance rights from the deceased natural parent. CONN. GEN. STAT. § 45-64a(8) (West Supp. 1989); FLA. STAT. ANN. §§ 63.172(2) (West 1985 & West Supp. 1991), 732.108 (West

The RUAA does not extend the exception to other relative adoptions, nor does it include a provision restricting dual inheritance.

The UPC also recognizes the complete substitution of the adoptive family for the natural family by providing that "an adopted person is the child of an adopting parent and not of the natural parents."<sup>245</sup> The UPC stepparent exception provides that the "adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendent of the child to inherit from or through the other natural parent."<sup>246</sup> Thus, the UPC preserves inheritance rights from and through both natural parents when the stepparent adoption occurs after divorce, as well as after death—that is, in all three of the fact patterns above. The UPC does not extend the exception to other relative adoptions.<sup>247</sup> However, the UPC does restrict dual inheritance by providing that "[a] person who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share."<sup>248</sup>

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Supp. 1990); MASS. GEN. L. ch. 210, § 210.7 (1988); OR. REV. STAT. § 112.175(2)(b) (1990).

<sup>245</sup> UNIF. PROB. CODE § 2-109, 8 U.L.A. 66 (1983). The applicable provision in the pre-1990 version of the Uniform Probate Code was section 2-109.

<sup>246</sup> *Id.* At one time the applicable UPC provision merely stated that the "adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and *that* parent." In 1975, several technical amendments were made and the word "that" changed to "either." See Jones, *supra* note 195, at 64. As a result of this technical change, the adoptee's inheritance rights from both natural parents remain intact in cases of stepparent adoptions. The current version of the UPC, adopted in 1990, reaches the same result. The adoptee continues to inherit from both the natural parents as well as the stepparent. However, the 1990 UPC does establish a different rule regarding the noncustodial natural parent. The "noncustodial natural parent and that noncustodial natural parent's family do not have a right to inherit from or through the adopted individual." UNIF. PROB. CODE § 2-114 Cmt. (1990). Several states follow the UPC by preserving the adoptee's inheritance rights from both natural parents after a stepparent adoption. See ALA. CODE §§ 26-10A-29 (West Supp. 1991), 43-8-48(1) (1991); ILL. ANN. STAT. ch. 110 1/2, para. 2-4(a) (West Supp. 1991); ME. REV. STAT. ANN. tit. 18-A, § 2-109(1) (West 1981 & West Supp. 1990); MONT. CODE ANN. §§ 40-8-125 (1991), 72-2-213(1) (1991); VA. CODE ANN. § 64.1-5.1(1) (1991).

<sup>247</sup> Professor Jones suggests that the rationale for preserving inheritance rights from the natural parents in stepparent adoptions—that no hold for secrecy exists since the child's adopted status is well known—could easily extend to other relative and even non-relative adoptions. Jones, *supra* note 195, at 66 n.56.

<sup>248</sup> UNIF. PROB. CODE § 2-114, 8 U.L.A. 72 (1983). This provision is attributed in part to the change in § 2-109(1)'s wording from "that" to "either," discussed *supra* at note 246. See also Jones, *supra* note 195, at 64-65 n.50 (noting that prior to 1975, a provision restricting dual inheritance was not needed because the child's inheritance rights from or through a noncustodial natural parent were terminated upon adoption. The 1975 change which serves these inheritance rights made a provision restricting dual inheritance necessary); Rein, *supra* note 2, at 730 n.77 (pointing out that, in a UPC state, the only case that might produce dual inheritance is that in which the adopting steppar-

The RUAA exception is too narrow to further the goals of adoption for two reasons: (1) it fails to recognize that natural relatives, including the natural parent, may maintain contact after a divorce as well as after the death of a natural parent<sup>249</sup> and (2) it does not extend to other relative adoptions.<sup>250</sup> Thus, the RUAA approach furthers the goals of adoption only in a limited number of situations.

The UPC exception is broader than the RUAA's because it preserves inheritance rights from natural relatives in stepparent adoptions that occur after a divorce, as well as after the death of a natural parent.<sup>251</sup> However, the UPC, like the RUAA, fails to preserve inheritance rights in other relative adoptions, thereby frustrating the goals of adoption in such situations.

Neither approach clearly furthers the goals of succession law in a majority of cases. Both the RUAA and the UPC assume that contact will continue in all cases of stepparent adoptions occurring after the death of a natural parent.<sup>252</sup> Such an "all or nothing" approach is as likely to frustrate as it is to further the goals of succession law. The UPC makes a broader assumption that contact will continue in all stepparent adoptions occurring after the divorce of the natural parents.<sup>253</sup> This merely expands the potentially troublesome categories because, while the UPC preserves inheritance rights in more cases where affective ties might continue, it also preserves these rights in more cases where such ties may not continue.

## 2. *Other Statutory Approaches to Stepparent and Other Relative Adoptions*

A few states have enacted unusual provisions dealing with stepparent and other relative adoptions. Like the RUAA and UPC, these states recognize the adoptive family as a complete substitute for the natural family, except in cases of stepparent adoptions. However,

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ent is a relative, such as a sibling, of the deceased natural parent). The applicable provision in the pre-1990 version of the Uniform Probate Code is § 2-114.

<sup>249</sup> See Jones, *supra* note 195, at 80-87 (noting desirability of maintaining the adoptee's inheritance rights from a noncustodial natural parent who consented to the child's adoption by the stepparent after the natural parents were divorced).

<sup>250</sup> Rein, *supra* note 2, at 731 (noting that the RUAA approach is too narrow because it does not apply to other relative adoptions).

<sup>251</sup> See *supra* text accompanying notes 245-47. The UPC has received praise and criticism for expecting and encouraging continued contact between a child and his natural relatives after a natural parent has relinquished his or her parental rights. For criticism of this aspect of the UPC approach, see *supra* text accompanying notes 205-10; Hughes, *supra* note 22, at 346. For a favorable critique, see Jones, *supra* note 195, at 80-87; Still-Caris, *supra* note 123, at 275-78.

<sup>252</sup> See *supra* text accompanying notes 240-48.

<sup>253</sup> See *supra* text accompanying notes 245-48.

each of these states approaches the exception differently. Some extend the stepparent exception to other relative and even nonrelative adoptions in limited circumstances. For example, Alaska, which generally follows the RUAA, states that "the decree of adoption [may] specifically provide[] for continuation of inheritance rights."<sup>254</sup> Thus, the Alaska exception could extend to other relative or even nonrelative adoptions.

Similarly, Maine, which follows the UPC, provides that the "child will also inherit from the natural parents and their respective kin if the adoption decree so provides."<sup>255</sup> The official comment to the statute indicates that inheritance from the natural family is normally inappropriate; however, situations exist "where such inheritance rights would seem appropriate and where the preservation of confidentiality would not be important."<sup>256</sup> The comment indicates that such a situation occurs when friends or relatives adopt teenagers whose parents have died.<sup>257</sup> Thus, Maine preserves inheritance rights from the natural family in relative adoptions and even nonrelative adoptions where appropriate. Maine has also adopted the UPC's provision restricting dual inheritance to a single share, whichever is larger.<sup>258</sup>

New Jersey uses a discretionary approach. The applicable statute states that "[f]or good cause, the court may in the judgment provide that the rights of inheritance from or through a deceased parent will not be affected or terminated by the adoption."<sup>259</sup> New Jersey's approach is narrower than those of Alaska and Maine because it does not follow the RUAA or UPC in automatically preserving inheritance rights from the natural family in cases of stepparent adoptions. In New Jersey, the discretionary provision is the only means of preserving inheritance rights from the natural family.

Further, New Jersey limits the discretion given to the court. Although the judge approving the adoption may preserve inheritance rights between the adoptee and the natural relatives, he may do so only when the adoption occurs after the death of a natural

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254 ALASKA STAT. §§ 13.11.045(a) (Supp. 1991), 25.23.130 (Supp. 1990).

255 ME. REV. STAT. ANN. tit. 18-A, § 2-109(1) (West 1981).

256 ME. REV. STAT. ANN. tit. 18-A, § 2-109(1), Maine Comment (1979).

257 *Id.*

258 ME. REV. STAT. ANN. tit. 18-A, § 2-114 (1964). However, Maine has added to this provision the following language: "[i]n cases where such an heir would take equal shares, he shall be entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provisions of this section." The comment indicates that the added language is designed to prevent an heir from bargaining with two groups of heirs to determine under which of the two lines of relationship he would take his share. *Id.*

259 N.J. STAT. ANN. § 9:3-50(a) (West Supp. 1991).

parent.<sup>260</sup> The statutory language, however, permits the court to recognize exceptions under circumstances similar to those suggested in the official comment to the Maine statute.<sup>261</sup> Therefore, the New Jersey exception, like the Alaska and Maine exceptions, can extend beyond stepparent adoptions to other relative adoptions and possibly to nonrelative adoptions in limited circumstances.

The discretionary approaches of Alaska, Maine, and New Jersey serve the best interests of the child by allowing the judge to maintain the child's inheritance rights from his natural family when granting the adoption. Such discretion proves beneficial in unusual situations like that suggested by the official comment to the Maine statute, where teenagers are adopted by friends after the parents' deaths.<sup>262</sup> Because these exceptions can apply to other relative and nonrelative adoptions, as well as stepparent adoptions, they are broader than the RUAA and UPC exceptions. However, judges are unlikely to make great use of these exceptions, particularly in Maine, where the official comment to the statute states that the preservation of inheritance rights from the natural family is normally inappropriate.<sup>263</sup>

Because Alaska follows the RUAA approach and Maine follows the UPC approach, these exceptions suffer from the same shortcomings in furthering the goals of succession law as discussed above.<sup>264</sup> However, given the judicial discretion permitted under the Alaska and Maine statutes, these provisions may work well in the situation where teenagers are adopted by friends after their parents' deaths.<sup>265</sup> Unfortunately, these discretionary provisions may not work as well in other situations. Like the legislatures drafting these stepparent exceptions, judges do not know whether the child and the natural relatives will, in fact, maintain contact with each other. Because judges are unlikely to use these exceptions frequently, these provisions have little effect on the problems of succession law in this area.

In New Jersey, the discretionary provision is the only means of maintaining inheritance rights from the natural family.<sup>266</sup> By not automatically maintaining inheritance rights in cases of stepparent or other relative adoptions, New Jersey eliminates the frustration of

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<sup>260</sup> *Id.*

<sup>261</sup> That is, when both parents die in an accident and family friends adopt the children, the New Jersey statute would permit the judge to preserve inheritance rights from other natural relatives when granting the adoption decree.

<sup>262</sup> ME. REV. STAT. ANN. tit. 18-A, § 2-109(1), Maine Comment (1979).

<sup>263</sup> See *supra* text accompanying note 256.

<sup>264</sup> See *supra* text accompanying notes 249-53.

<sup>265</sup> See *supra* text accompanying notes 256-57.

<sup>266</sup> See *supra* text accompanying note 259.

decedents' probable intentions where ties do not continue between the child and the natural relatives. Yet notwithstanding this provision, New Jersey fails to preserve inheritance rights in cases where such ties do continue. Thus, New Jersey has solved one problem at the expense of another.

Indiana adopts a somewhat different approach. It maintains the child's inheritance rights from the natural parent who is married to the stepparent "as though the child had not been adopted, and from the child's adopted parent as though the child were the natural child."<sup>267</sup> However, Indiana does not preserve inheritance rights from the noncustodial natural parent under any circumstances. Indiana also preserves inheritance rights from natural relatives in other relative adoptions. Specifically,

if a person who is related to a child within the sixth degree adopts such child, such child shall upon the occasion of each death in the child's family have the right of inheritance through the child's natural parents or adopting parents, whichever is greater in value in each case.<sup>268</sup>

Indiana's approach is defective in two ways. First, although this approach furthers the goals of nontraditional adoptions by maintaining inheritance rights in cases of other relative adoptions, it frustrates these same goals by not maintaining inheritance rights in stepparent adoptions. Ideally exceptions should include all relative adoptions. However, since stepparent adoptions constitute the majority of relative adoptions,<sup>269</sup> if one type is recognized and not the other, the exception would have a greater effect if it recognized stepparent adoptions.

Second, the Indiana exception is too broad to further the goals of succession law effectively. Indiana presumes that contact with all natural relatives will continue in all cases of relative adoptions. Thus, Indiana's exception will always frustrate the decedent's intentions where no associations continue between the child and the natural relatives after a relative adoption, but will never frustrate those intentions when ties do continue.

Florida also recognizes other relative adoptions. Florida follows the RUAA approach except it preserves inheritance rights from a deceased natural parent only if the stepparent married the custo-

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<sup>267</sup> IND. CODE ANN. § 29-I-2-8 (Burns 1989). This restriction on dual inheritance is reinforced by IND. CODE ANN. § 29-I-2-9 (Burns 1989) which states that "a person who is related to the intestate through two [2] lines of relationship, though under either one alone he might claim as next of kin, shall, nevertheless, be entitled to only one [1] share which shall be the share based on the relationship which would entitle him to the larger share." See also *Billings v. Head*, III N.E. 177 (Ind. 1916).

<sup>268</sup> IND. CODE ANN. § 29-I-2-8 (Burns 1989).

<sup>269</sup> See *supra* note 164 and accompanying text.

dial natural parent after the death of the other natural parent.<sup>270</sup> In addition, the statute states that “[a]doption of a child by a close relative . . . has no effect on the relationship between the child and the families of the deceased natural parents.”<sup>271</sup> Florida defines “close relative” as a brother, sister, grandparent, aunt, or uncle of the child.<sup>272</sup> By maintaining inheritance rights only when the stepparent marries the natural parent after the death of the other natural parent, Florida’s exception furthers the goals of adoption in even fewer circumstances than the RUAA. However, by maintaining inheritance in cases of adoptions by close relatives, the Florida exception furthers the goals of adoption law in more situations than the RUAA.

Florida’s approach will further the goals of succession law when, in fact, the adoptee maintains contact with his natural relatives. Florida assumes that such contact will continue in all adoptions occurring after the death of a natural parent. When such contact does not occur, the approach will frustrate the goals of succession law.

New York’s statute is more comprehensive.<sup>273</sup> New York preserves an adoptee’s inheritance rights in cases of stepparent adoptions, whether they occur after death or divorce, as well as in cases of other relative adoptions.<sup>274</sup> The adoptee inherits from the natural family “if (1) the decedent is the adoptive child’s natural grandparent or is a descendant of such grandparent, and (2) an adoptive parent (i) is married to the child’s natural parent, (ii) is the child’s natural grandparent, or (iii) is descended from such grandparent.”<sup>275</sup>

New York also restricts dual inheritance; however, unlike the UPC, it does not allow the child to inherit under the relationship which results in the larger share.<sup>276</sup> Instead, the statute provides that an adoptee related to a decedent by both natural and adoptive relationships inherits “only under the natural relationship unless the decedent is also the adoptive parent, in which case the adoptive child shall then be entitled to inherit pursuant to the adoptive relationship only.”<sup>277</sup>

<sup>270</sup> FLA. STAT. ANN. § 732.108(1)(b) (West Supp. 1991).

<sup>271</sup> FLA. STAT. ANN. § 732.108(1)(c) (West Supp. 1991). Another Florida statute indicates that this latter exception only applies when a close relative adopts the child upon the death of both natural parents. FLA. STAT. ANN. § 63.172(2) (West Supp. 1991).

<sup>272</sup> FLA. STAT. ANN. § 63.172(2) (West Supp. 1991).

<sup>273</sup> For detailed analysis of New York law in this area, see French, *supra* note 189.

<sup>274</sup> N.Y. DOM. REL. LAW § 117.1(e) (Consol. 1979 & Supp. 1990).

<sup>275</sup> *Id.*

<sup>276</sup> See *supra* text accompanying note 248.

<sup>277</sup> N.Y. DOM. REL. LAW § 117.1(e) (Consol. 1979 & Supp. 1990). See also RECOMMENDATION OF THE LAW REVISION COMM’N TO THE 1986 LEGISLATURE RELATING TO IN-

The New York approach furthers the goals of adoption by preserving inheritance rights in cases of stepparent adoptions occurring after death or divorce, as well as in adoptions by close relatives.<sup>278</sup> The only adoptions not covered by this exception are those occurring when a more distant relative adopts the child, or when friends adopt a child after the death of both parents.

Like the approaches of the UPC and Florida, New York's exception may or may not further the goals of succession law. The UPC and both states assume that contact will continue in all adoptions covered by the exception. Like the UPC and Florida, New York has not solved the problem but merely expanded the categories involved.

A more complex approach also exists in California. California probate law preserves the adoptee's inheritance rights from his natural relatives if two conditions are met:

- (1) [t]he natural parent and adopted person lived together at any time as parent and child, or the natural parent was married to or was cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child [and] (2) [t]he adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.<sup>279</sup>

This exception preserves inheritance rights in cases of stepparent adoptions occurring after the death of, or relinquishment of parental rights by, a natural parent as long as the parent and child had lived together at one time. This exception also applies to other relative and nonrelative adoptions occurring after the death of a natural parent as long as the parent and child had lived together.

A separate provision of California adoption law also bears on the stepparent exception. California provides the following notice to natural parents consenting to stepparent adoptions: "[i]f you or your child lived together at any time as parent and child, the adoption of your child by a stepparent does not affect the child's right to inherit your property or the property of other blood relatives."<sup>280</sup> The statute does not provide for any notice to the other natural relatives.

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HERITANCE RIGHTS OF CHILDREN ADOPTED OUT OF A CLASS BY PERSONS RELATED TO THEM BY BLOOD OR BY MARRIAGE, STATE OF NEW YORK LAW REVISION COMMISSION REPORTS, RECOMMENDATIONS, AND STUDIES (1986) (citing N.Y.S.B.A., *Estate and Trust Admin. Comm.'s Response to the Law Revision Comm'n's Sponsored Bills S. 8325-A. 1031* (March 6, 1984)—*Inheritance Rights of Adopted Children*, Sept. 11, 1984, at 3-4). The commission thought that most people would want the child to take in the natural relationship. This provision also prevents the use of relative adoptions to alter the shares of distributees or beneficiaries. *See id.*

<sup>278</sup> *See supra* text accompanying notes 273-75.

<sup>279</sup> CAL. PROB. CODE § 6408 (West Special Pamphlet 1991).

<sup>280</sup> CAL. CIV. CODE § 227.44 (West Special Pamphlet 1991).

The California approach furthers the goals of adoption by recognizing that contact often continues between the child and the natural family, and by preserving inheritance rights that occur after the death of, or relinquishment by, a natural parent, if the parent and child lived together at any time.<sup>281</sup> Though the statute does not specifically refer to other relative adoptions, the effect of the statutory language is to preserve the child's inheritance rights from the natural family when relatives adopt the child after the death of a natural parent. Unlike the New York exception, the California exception also permits the preservation of inheritance rights from the natural family where friends adopt children after the deaths of both parents.

California's approach, like most of the others, assumes that contact will continue in all adoptions that meet the statutory requirements. When this statutory prediction is accurate, the exception furthers the goals of succession law. However, when contact does not continue, the exception frustrates those same goals. Relinquishing natural parents receive notification, which prevents any unfair surprise; however, other natural relatives receive no such notice.<sup>282</sup> When contact does not continue, the intentions of these decedents may be frustrated.

Finally, Pennsylvania has a very different approach to stepparent and other relative adoptions. Pennsylvania provides that a stepparent adoption has no effect on the relationship between the child and the natural parent married to the adopting stepparent.<sup>283</sup> However, the noncustodial natural parent's relationship with the child is conclusively terminated by the adoption.<sup>284</sup>

In addition, the statute creates an exception for relationships between the child and other natural relatives. The statute states that the adopted child is considered the child of the adoptive parents and not of the natural parents "except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person."<sup>285</sup> The 1976 Official Comment states that this is a "limited exception" which "recognizes that family relationships frequently continue for grandparents and

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<sup>281</sup> See *supra* text accompanying notes 279-80.

<sup>282</sup> See *supra* text accompanying note 280.

<sup>283</sup> If a natural parent marries the adopting parent, "the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of *such* natural parent." 20 PA. CONS. STAT. ANN. § 2108 (Supp. 1990) (emphasis added). The 1947 Official Comment to this statute states that this provision only applies to the natural parent who is married to the adopting stepparent. 20 PA. CONS. STAT. ANN. § 2108 (Supp. 1990) Official Cmt. (1947).

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

others where an adoption may have occurred after the death or divorce of a parent.”<sup>286</sup> This exception could apply to stepparent, other relative, and possibly nonrelative adoptions, as long as the deceased natural kin had maintained the requisite family relationship with the child.

By permitting an adoptee to inherit from a natural relative whenever a familial relationship is maintained between them, Pennsylvania furthers the goals of adoption law. Although the Official Comment to the statute states that this is a “limited exception,” the language would preserve inheritance rights in relative and nonrelative adoptions, as well as stepparent adoptions.<sup>287</sup> The goals of adoption law are frustrated, however, because Pennsylvania never permits the child to inherit from a noncustodial natural parent.<sup>288</sup> Thus, Pennsylvania fails to recognize that a family relationship can exist between the natural parent and the child after an adoption. In addition, because this exception is not limited to stepparent and other relative adoptions, it may frustrate the goals of traditional adoptions by encouraging potentially intrusive contact by natural relatives.<sup>289</sup>

The Pennsylvania approach also more successfully promotes the goals of succession law because it tailors these exceptions to fit the particular circumstances better than any of the other approaches. The family relationship requirement insures that an adoptee only shares in the decedent’s estate when it comports with the probable intention of the decedent. In addition, this requirement insures that the adoptee and natural relatives are easily located, thereby promoting certainty of titles. However, by never permitting the child to inherit from a noncustodial natural parent, Pennsylvania frustrates the decedent’s probable intentions where that parent did maintain a family relationship with the child.

The Pennsylvania approach is unusual because it introduces discretion into succession law, thereby altering its traditional system of fixed rules. Critics fear that such discretion will result in unpredictable and nonuniform results.<sup>290</sup> Further, critics speculate that administrative costs will increase as potential heirs battle with estate administrators over the definition of “family relationship.”<sup>291</sup> Nevertheless, only the Pennsylvania approach recognizes that “no single rule will produce fair results on the question of adopted child

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286 20 PA. CONS. STAT. ANN. § 2108 (Supp. 1990) Official Cmt. (1976).

287 20 PA. CONS. STAT. ANN. § 2108 (Supp. 1990) Official Cmt. (1947).

288 *Id.*

289 *See supra* text accompanying notes 53-56.

290 *See French, supra* note 189, at 1039.

291 *See Lovas, supra* note 32, at 369 n.112.

inheritance rights in all cases or even in a large majority of cases."<sup>292</sup> Only Pennsylvania recognizes that affective ties often, but not always, continue between the child and the natural relatives after stepparent and other relative adoptions.

#### IV

#### SUGGESTED STATUTORY CHANGES

Although the Pennsylvania exception is generally satisfactory, certain modifications are necessary to improve this approach. First, the exception should only apply to stepparent and other relative adoptions. Currently, the statute does not include such a limitation, and as a result, invites potentially intrusive contact by the natural family in traditional adoptions. Limiting the exception will insure that the statute furthers the goals of both traditional and nontraditional adoptions.

Second, the exception should preserve the adoptee's inheritance rights from his natural parent when that parent has maintained a family relationship with the child. This requirement of a family relationship insures that a child will not inherit from a parent who relinquishes custody and no longer considers the child as his own. However, where contact is maintained between the child and the natural parent, the child will share in the intestate estate. Either way, the result will implement the decedent's probable intentions.

Third, Pennsylvania should include a discretionary provision similar to those of Alaska, Maine, and New Jersey, permitting the judge to grant the adoption decree to preserve the adoptee's inheritance rights.<sup>293</sup> This provision is necessary in unusual situations similar to that suggested by the official comment to the Maine statute<sup>294</sup>—where both natural parents of older children die and friends of the parents adopt the children.

Finally, the Pennsylvania approach should restrict dual inheritance. A child who is related to a decedent by both natural and adoptive relationships should inherit the share based on the adoptive relationship.<sup>295</sup> This approach is more equitable to other heirs

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<sup>292</sup> Margaret M. Mahoney, *Stepfamilies in the Law of Intestate Succession and Wills*, 22 U.C. DAVIS L. REV. 917, 937 (1989) (suggesting that states enact an approach similar to that of Pennsylvania in order to grant inheritance rights to stepchildren).

<sup>293</sup> See *supra* text accompanying notes 254-61.

<sup>294</sup> ME. REV. STAT. ANN. tit. 18-A, § 2-109(1), Maine Cmt. (1979). See text accompanying notes 256-57.

<sup>295</sup> For a list of states that take this approach, see *supra* note 227; see also Jones, *supra* note 195, at 94 noting that

[t]he principle of treating the adopted and natural children of the adoptive stepparent equally requires . . . that the adopted child be treated the same as a natural child, whether or not that treatment would give the adopted child a larger or smaller share of the decedent's or testator's

and eliminates the resentment of family members that might result if the adoptee could inherit either from both relationships or from the relationship that results in the largest inheritance.<sup>296</sup>

This modified Pennsylvania approach will encounter opposition by those opposed to the introduction of discretion into the area of succession law.<sup>297</sup> As Professor Glendon has noted, succession law is "the traditional stronghold of fixed rules."<sup>298</sup> However, the amount of discretion involved in this modified Pennsylvania approach is minimal and will be counterbalanced by the more accurate implementation of the probable intentions of the decedent and the assurance that certainty of titles and ease of estate administration will result.<sup>299</sup> Further, the introduction of limited discretion into succession law is acceptable and perhaps inevitable when reconciling two bodies of law—adoption law, which is highly discretionary—and succession law, which is largely nondiscretionary and rule-bound.

### CONCLUSION

State intestacy law regulating the succession rights of children adopted by stepparents or other relatives is decidedly nonuniform and inconsistent. Given the importance of this issue, and the large number of adoptions involved, state legislatures should re-evaluate

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estate than had the child not been adopted "but recommending in her model statute that the child take the larger share in order to protect "the property rights of those individuals which could be disrupted by an adoption over which they had no authority to grant or withhold consent".

<sup>296</sup> *But see* Jones, *supra* note 195, at 94 (noting that either approach can result in animosity between adopted and natural children).

<sup>297</sup> The introduction of discretion into succession law has already occurred to a limited extent. "The doctrine of equitable adoption, for example, requires the courts to inquire into facts surrounding the 'adoptive' parent-child relationship in order to determine whether a contract to adopt, and other elements of the doctrine, have been established." Mahoney, *supra* note 292, at 936 (suggesting the use of a discretionary approach in order to grant inheritance rights to stepchildren). Equitable adoptions occur when a family takes in an unrelated child at a young age and raises the child as if he were their own. Often these children grow up believing that they are the biological or adopted child of the foster parents. Sometimes the foster parents try to adopt the child but are unsuccessful because of a legal impediment. Upon the death of the last surviving foster parent, the child learns that he has no inheritance rights. *See* Rein, *supra* note 2, at 766-70. "To correct the injustice that would result were the intestacy laws woodenly applied, most jurisdictions grant equitable relief . . . permitting [the child] to take the child's share he would have inherited had the foster parent legally adopted him." *Id.* at 767.

<sup>298</sup> Mary Ann Glendon, *Fixed Rules and Discretion in Contemporary Family Law and Succession Law*, 60 TUL. L. REV. 1165, 1185 (1986).

<sup>299</sup> Further, additional modifications to this approach may appease such critics. For example, the statute could provide, as does the California statute, that inheritance rights from the natural family are preserved only if the natural parent lived with the child at one time. Such a requirement may provide an objective means of ensuring that affective ties exist.

and revise their laws in this area in order to better effectuate the goals of both modern adoption law and modern succession law.

As legislatures rethink the law in this area, they should recognize that relative adoptions in general, and stepparent adoptions in particular, involve factual circumstances and policy concerns different from those involved in a typical adoption. Although little empirical data on the patterns and impact of stepparent adoptions exists, making absolute conclusions impossible, research has indicated that the differences between traditional and relative adoptions are real and important, and that adoption practices should differ accordingly.

In a traditional adoption, legislators should promote the modern policy of a fresh start for adoptees, and should continue the trends toward recognizing the adoptive family as a complete substitute for the natural family. In such cases, the inheritance rights from and through the natural parents should be completely severed. This severance will foster the adoptee's assimilation into the adoptive family and prevent frustration of an intestate decedent's probable intentions.

However, in the case of a relative adoption, including stepparent adoptions, neither preservation nor severance of inheritance rights from and through the natural parents should occur automatically. Instead, inheritance rights should be contingent on maintaining a familial relationship between the natural family and the adoptee. Consistent with the goals of modern adoption law, this approach recognizes continued ties only when they are in the child's best interests. This approach would also further the goals of modern succession law by preserving inheritance rights only in situations where the decedent probably intended that the adoptee would share in the intestate estate.

*Lisa A. Fuller*†

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