



# The Adoption Option

Adoption Won't Reduce Abortion but It Will Expand Women's Choices

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Jessica Arons October 2010



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## Parenting with Dignity: A Series Exploring Real Supports for Pregnant Women

*In the debate over finding “common ground” on abortion, much has been made of the fact that, when asked why they chose to have an abortion, many women say, “I can’t afford another child right now.” Given this response, some have suggested that providing additional supports to pregnant women might help reduce the abortion rate. The thinking goes that if women feel the economic obstacles are too great to carry a pregnancy to term—especially an unintended pregnancy—then policies that ease those burdens may help a woman ultimately have a child that she wants to have. An alternative line of thinking suggests that if a woman is trying to decide between abortion and carrying to term, additional supports may tip the balance and lead her to choose having the child.*

*The Center for American Progress continues to believe that, per the public health data, widespread access to contraception is the most effective method available for reducing unintended pregnancy, especially when coupled with medically accurate sex education. Unintended pregnancy is, after all, the proximate cause of the vast majority of abortions. We also believe that the government should not be in the business of promoting one moral viewpoint over another, nor should it try to persuade individuals to make particular health care decisions that have no bearing on public health outcomes.*

*Nevertheless, we do believe in taking a comprehensive approach to addressing reproductive health needs and we feel that it is an important policy objective in its own right to provide better supports to pregnant women, regardless of any potential subsequent effect on the abortion rate. We will therefore be examining, through a series of issue briefs, a variety of meaningful ways in which we can better address the needs of pregnant women.*

*When a woman says she can’t afford a child, she is not just thinking of the nine months of pregnancy, the first few months after the child is born, or even the first few years of life. She is most likely thinking about the next 18 years—or beyond—and how she will clothe, bathe, feed, house, nurture, and educate another human being for that entire period of time.*

*She may already have one or more children to care for—indeed 6 out of every 10 women who have abortions are already mothers. She may be the primary caretaker for a disabled or elderly member of her family. She may want a family one day but feel economically or emotionally unprepared to start one now. She may have a partner who is willing to help raise a child or not. She may be working, unemployed, or trying to finish her education so she can better support herself and her loved ones. If working, she may have secure employment or she may be one sick day away from a pink slip. She may be in perfect health, have a chronic illness, struggle with addiction, or suffer intimate partner violence. She may have health insurance or she may be uninsured. She might consider adoption or think it is out of the question.*

*In short, a multitude of factors may affect her decision to continue or terminate a pregnancy. And “I can’t afford a child right now” can encompass a number of these factors. Diapers and formula are clearly not sufficient. Systematic changes to health care, the workplace, the adoption system, and others are necessary to have a real effect on the lives of pregnant women.*

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# Executive summary

Adoption is an institution of critical importance for children, adoptive parents, birth parents, and society. It provides parents for children whose biological parents have voluntarily relinquished their parental rights or had them terminated. It is a way for people to bring a child into their lives. It can establish a legal relationship between a parent and a nonbiological child, such as a stepchild or foster child. And adoption offers an option for pregnant women to place children in a home they cannot provide themselves.

Yet adoption is a pregnancy option that few women choose nowadays. The number of all never-married women who place their children for adoption has hovered around 1 percent and has been statistically zero for black, never-married women for the past 20 years.<sup>1</sup> A 2004 study found that one-third of women with an unplanned pregnancy consider adoption but only half of those women take any action in that direction.<sup>2</sup>

The data on domestic infant adoptions are surprisingly hard to come by, in part because the numbers are so low that they are difficult to track.<sup>3</sup> Annual estimates range from approximately 6,800 to 22,291 unrelated domestic infant adoptions in recent years.<sup>4</sup> But the official number is around 14,000, according to the Department of Health and Human Services' Child Welfare Information Gateway.<sup>5</sup>

The Evan B. Donaldson Adoption Institute, a leading authority on adoption and apparently the only organization to provide a comprehensive overview of the birth-parent experience, notes that domestic infant adoption is usually the first thing that comes to mind when Americans discuss adoption, but it is in fact the least common type of adoption.<sup>6</sup> When combined with public, intercountry, and kinship adoptions, the number of adoptions ranges from approximately 127,000 to 135,000 each year.<sup>7</sup> Stepparent adoptions aside, the Institute estimates that domestic infant adoptions account for 15 percent of all adoptions compared to 59 percent from the child welfare system and 26 percent from other countries.

Many who oppose abortion—and some who support abortion rights but wish to seek common ground on the heated topic—continue to focus on promoting adoption as a viable method for addressing unintended pregnancy and reducing the abortion rate in this country. Yet the low adoption numbers stand in sharp contrast to the other two options women have available to them when considering what to do with an unexpected or medically complicated pregnancy—abortion or parenting.

There are more than 6 million pregnancies in the United States each year, almost half of which are unintended.<sup>8</sup> Of those, approximately 4 in 10 end in abortion, resulting in roughly 1.2 million abortions in 2005.<sup>9</sup> In 2001, the latest year for which data are available, 44 percent of the 3.1 million unintended pregnancies that year ended in birth.<sup>10</sup> We estimate therefore that approximately 1.4 million women who experience an unintended pregnancy choose to carry their pregnancy to term and raise the child themselves.

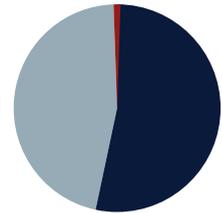
Abortion has not caused the low rates of adoption in recent years; rather the low placement rates are a direct result of more single women choosing to parent on their own. Both adoption and abortion rates have fallen in tandem while births to unwed mothers have risen. Even the National Council For Adoption—a prominent, federally funded adoption lobbying group with ties to conservative Christian adoption networks—acknowledges that “[b]irths to unmarried women increased from 1996, while the rate of infant adoption placements by unmarried women decreased.”<sup>11</sup>

Abortion certainly played some role in the initial decline of the adoption rate when it fell from 19.2 percent for white women in 1973 when *Roe v. Wade* was decided to 3.2 percent 15 years later.<sup>12</sup> But it is the decreasing stigma of single motherhood that accounts for the low adoption rate now.<sup>13</sup> Unmarried pregnant women also are more likely to be in their 20s than their teens these days, and they may therefore feel better prepared to keep their babies and raise them themselves.

It should be clear then, as the Guttmacher Institute has pointed out,<sup>14</sup> that promoting adoption is not an effective strategy for reducing the abortion rate—if that is one’s goal. Indeed, some portion of women who choose adoption never consider abortion, in which case those adoption choices have no effect on the abortion rate whatsoever.<sup>15</sup>

Even so, ensuring that adoption remains an ethical and effective option for women facing an unintended pregnancy is a worthwhile goal independent of its potential

### Results of unintended pregnancy, annual estimates



**1.4 million women choose to keep the child**

**1.2 million women choose abortion**

**14,000 women choose adoption**

Source: Guttmacher Institute, “National Reproductive Health Profile: Pregnancies, Births and Abortions,” available at <http://www.guttmacher.org/datacenter/profiles/US.jsp> (last accessed October 6, 2010).

influence on the abortion rate. The adoption system in place today has undergone significant changes in the past few decades but the public's impressions of that system are not well-formed and are often based on outdated stereotypes. Moreover, abuses in the present system continue to occur and must be curbed. Reforms are necessary to ensure respect for women's rights, improved outcomes for children, and increased reliability for adoptive parents.

Adoption involves balancing multiple interests—those of the birth mother, the birth father, the adoptive parent or parents, and the child being placed for adoption. Yet most policy initiatives primarily focus on adoptive parents, addressing ways to streamline the system and make it more accessible and affordable for them. Too little attention has been paid to the needs of the pregnant woman considering adoption.

Policymakers should fully consider the interests of all parties to an adoption before implementing any reforms, but in this series we are exploring how to provide better supports for pregnant women and will focus specifically on them. Specifically, we recommend:

**More information about the adoption decision.** To best serve the needs of women considering adoption, more research must be done to explore the pressures, motivations, and barriers surrounding that decision, as well to compare the long-term well-being of women who choose abortion, adoption, and parenting.

**Fully informed, voluntary pregnancy decisions.** States should require that women pursuing adoption be offered nondirective counseling with a qualified professional and an opportunity to consult with independent legal counsel. Congress also should work to ensure that women have access to unbiased and accurate information so that they can make well-informed decisions about their pregnancies.

**Adequate relinquishment and revocation protections.** States should impose a waiting period of at least 72 hours between childbirth and the time a woman can consent to place a child for adoption and grant birth parents a minimum of one week to revoke their consent to relinquishment without having to give a specific reason. These rules ideally would be uniform in order to discourage agencies or adoptive parents from cherry-picking states with more favorable laws. States should also ensure that birth parents are entitled to a copy of all relinquishment paperwork as well as a copy of the child's original birth certificate.

**Better supports for open adoption agreements.** States should recognize the benefits of open adoption arrangements and ensure that birth parents are informed of available mechanisms to implement those agreements. States should also guarantee that affordable clinical mediation services are available when disputes arise over the terms of an open adoption arrangement.

**Improved postadoption services.** States and adoption agencies should ensure that birth mothers have access to affordable or no-cost postadoption counseling services throughout their lives, but especially in the two years following a placement.

**Awareness about the modern adoption system.** More information about what adoption entails today and the women who typically choose adoption would help to educate the public and demystify the process so that we can dispense with outdated stereotypes about birth mothers and the adoption process. Congress should provide grants to establish national public education campaigns to accurately inform the public about adoption and its potential benefits for all involved.

We remain committed to the idea that supporting pregnant women by providing the socioeconomic resources needed to parent, to obtain safe abortion care, and to place a child for adoption will serve to expand women's options, increase their self-determination, and improve the health and well-being of all families.

## International adoption

International adoption has increased as domestic adoption has fallen, with the most dramatic expansion occurring in the 1990s. There were only 6,536 international adoptions in 1992, yet five years later that number climbed to 13,620, and it surpassed 16,000 by the end of the decade.<sup>16</sup> The Donaldson Institute estimates that international adoptions account for approximately 26 percent of total nonsteparent adoptions, while domestic infant adoptions comprise only 15 percent.

Questions about power and privilege have arisen in international adoption, just as they have in the domestic context. Scandals related to claims of baby-selling, lack of screening, and “orphans” with living parents have led many countries to impose tighter restrictions on foreign adoptions or to close themselves off from foreign adoption

altogether. These developments, combined with new standards enacted in the Hague Convention—a U.N. document that governs intercountry adoption—mean that the number of foreign children available for American adoptive parents has steadily decreased in the past few years. The State Department issued only 12,753 visas for children adopted abroad in 2009.<sup>17</sup>

Increased difficulties with international adoption may put renewed pressure on the domestic adoption system and provide an even greater need for more protections here. But it is more likely that we will see our society's newfound reliance on fertility treatments,<sup>18</sup> including domestic and foreign surrogacy arrangements, increase even further in the coming years.

# The evolution of the domestic adoption system

Adoption has informally existed for centuries in most human cultures. As The Adoption History Project has observed, “Since ancient times ... children have been transferred from adults who would not or could not be parents to adults who wanted them for love, labor, and property.”<sup>19</sup> Often economically motivated, early adoptive arrangements in the United States were not always brokered with the best interests of the children or biological parents in mind.

Indeed, the program credited with ushering in our foster care system involved “Orphan Trains” that shipped homeless and displaced children from East Coast cities to Midwestern farms.<sup>20</sup> The people who operated this and similar programs tended to think they had children’s best interests in mind, but they often had open disdain for immigrant Catholic, Jewish, and other “socially undesirable” families and deliberately sought to sever ties among parents and children.<sup>21</sup>

This “child saving” mentality later manifested itself in the 1950s and 1960s in the Indian Adoption Project, which resulted in a massive, decade-long campaign to relocate Native-American children from reservations to white adoptive homes.<sup>22</sup> This effort stood out as the one exception to an otherwise universal policy of “race-matching” that governed adoptions at that time. It is estimated that more than one-quarter of all Native-American children were removed from their families and placed into white adoptive homes, foster homes, and orphanages by the time the Indian Child Welfare Act was enacted in 1978 to reverse the policy.<sup>23</sup> Tribal authorities now control the process and make it almost impossible to adopt a Native-American child. But child rescue narratives still echo in many child welfare and transnational adoption campaigns today.

In contrast, African-American children and their birth parents were denied requested adoption and placement services by agencies throughout much of the 20th century largely because of their race.<sup>24</sup> Orphaned black children were instead relegated to substandard “colored” asylums or classified as juvenile delinquents

in order to qualify for care. When adoption services were eventually extended to African Americans, segregation was strictly enforced with the rationale that race-matching was best for both the children and their adoptive families.

Several programs were established beginning in the 1950s to increase the adoption rates of children of color, but these children were quickly categorized as “hard to place” and barriers remained for prospective adoptive parents of color. Institutionalized discrimination in the formal adoption system led many communities of color to rely on traditions of informal adoption instead, including kinship care.<sup>25</sup> Even today, adoptive parents are seven times more likely to exhibit a preference for a non-African-American baby than for an African-American one.<sup>26</sup>

Our modern adoption system began to develop in the industrial age during the late 1800s and early 1900s in response to a large uptick in orphans and abandoned children following the Civil War, as well as high levels of immigration.<sup>27</sup> Yet a strong desire for infants did not arise until the period after World War I, spurred by a drop in population from the influenza epidemic and the war itself. The development of infant formula, which made caring for an infant much easier as a practical matter, also acted as a catalyst. Social workers and agencies had increasingly become involved in the adoption process by this time.

Yet, the stigma of adoption continued: Agencies reacted by trying to “match” adoptive parents and children—by race, ethnicity, appearance, and even religion—in an attempt to mimic the biological family, and parents often did not tell their children they had been adopted. Even so, the desire for adoptable infants only grew and outstripped the number of infants in need of an adoptive home by the mid-1950s. The greater availability of contraception and abortion coupled with an increased acceptance of single motherhood led to a sharp decline in the amount of available newborns over the next few decades. At the same time, infertility rates climbed and agencies extended adoption services to nontraditional adoptive parents, such as unmarried individuals and same-sex couples, creating even more pressure on the adoption system.

The nature of adoptions changed during this time as well. Adoption became a largely confidential process with sealed birth and adoption records starting in the 1930s.<sup>28</sup> These “closed” adoptions effectively kept the child and biological family from finding, or even knowing about, each other. This trend was influenced by the social mores of the time when secrecy in adoption was thought to protect the “triad”—the birth family, adoptee, and adoptive family—from the stigma

associated with an unintended pregnancy, “bad blood,” infertility, and illegitimacy. Critiques of closed adoptions in the 1970s led agencies to experiment with different levels of “open” adoption, which allow for the exchange of information among the parties directly or through an intermediary and the potential for ongoing contact.

Infant adoption practices have come a long way from the covert arrangements of past generations. The modern domestic adoption system has grown quite complex and offers several different arrangements. In addition to open and closed adoptions, there are also agency, private, and foster care adoptions, as well as intrastate and interstate adoptions. Many women use a facilitator to coordinate an adoption and connect with prospective adoptive parents—a process that essentially allows a birth mother to choose which family will adopt her child.

## Adoption glossary

**Open adoption:** The parties exchange identifying information and the birth parents can keep in touch with the adoptive parents and the adoptee throughout the child’s life.

**Semi-open adoption:** The parties exchange nonidentifying information and keep in touch through an adoption agency, assisting attorney, or other intermediary.

**Closed adoption:** The parties’ confidentiality is legally protected and the courts seal all records.

**Designated or identified adoption:** The birth mother chooses the individual or couple who will adopt her child and designates the placement of the child.

**Agency adoption:** Licensed organizations that screen prospective adoptive parents make and supervise the placement of children in adoptive homes until the adoption is finalized.

**Independent or private adoption:** A nonlicensed third party, frequently a lawyer, arranges the placement privately, or the agreement occurs between the birth family and adoptive parents directly.

# Birth mothers

Birth mothers remain the least understood and perhaps the most stigmatized participants in the adoption system, but the low number of women who choose to relinquish a child for adoption has made it difficult to track their motivations or learn more about them. There is little research that broadly examines who these women are, what factors shape their decisions, or how adoption affects the rest of their lives. This lack of information leads to an inaccurate, two-dimensional perception of birth mothers based on myths and stereotypes that prevail in the general public and among some adoption professionals. It also contributes to the failure of public policy to fully safeguard birth mothers' rights or address their needs.

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## Who are the women who place their children for adoption?

Just as the laws, policies, and practices guiding domestic adoptions have changed over time, so have the women who choose adoption. Birth mothers in recent history were primarily unmarried, white adolescents who, because of societal mores and pressures, were forced to hide their pregnancies from virtually everyone, drop out of school, reside in maternity homes until the birth of their child, and return home pretending that nothing had happened.<sup>29</sup>

But the women who place their babies for adoption today tend to be in their early- to mid-20s—only one-fourth of women who choose adoption are under the age of 20—and/or women who already have children they are raising or have placed for adoption.<sup>30</sup> Yet the stereotype of the careless and irresponsible pregnant teen continues to pervade the public's perception of these women—as seen in the hit movie “Juno”—and most of the available research from the last few decades still focuses on unmarried teens.<sup>31</sup>

That research shows that teens who relinquish their babies tend to have higher incomes, higher education levels, higher future academic and career goals, and a strong adoption preference voiced by the birth father and/or the teen's mother.

In fact, one study found that the birth father's preference for adoption was the strongest factor in the birth mother's consistency in her adoption decision. Those who had lived in a maternity home or who had a personal experience with adoption were also more likely to relinquish.

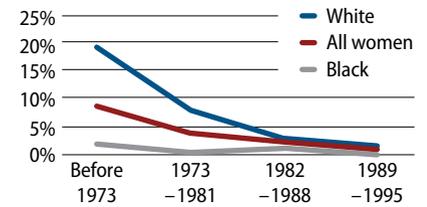
White women have always been more likely than women of color to choose formal adoption. Yet the difference in placement rates among white and black women has decreased as infant adoption rates have declined—in large part due to the dramatic drop among white women. (The numbers are too low to track placement rates by women of other races.) Women who select adoption are more racially diverse now than in the past, but white women are still more likely to place their child for formal adoption than women of color.<sup>32</sup>

Never-married women are, unsurprisingly, the most likely to choose adoption. No data are available on the percentage of married and formerly married women who have chosen adoption.

Other characteristics of women who choose placement include:

- Young women from conservative cultural or religious backgrounds who face strong taboos against out-of-wedlock pregnancy, shaming and shunning by family members, and possibly even violence from male relatives if the pregnancy is discovered
- Recent immigrants, especially those without documentation
- Victims of rape and incest
- Women experiencing extremely difficult circumstances such as poverty, domestic violence, substance abuse, mental illness, developmental delays, severe health problems, or other disabilities
- Women who have had prior children removed by the child welfare system
- Women expecting a child with a disability, who feel unprepared to adequately parent a child with special needs or who come from a culture that believes a child with a disability will bring shame on the family<sup>33</sup>

### Percent of infants relinquished for adoption by never-married women under 45 years



Source: Child Welfare Information Gateway, "How Many Children Were Adopted in 2000 and 2001? -- Highlights," *Numbers and Trends* (August 2004), available at [http://www.childwelfare.gov/pubs/s\\_adoptedhighlights.cfm](http://www.childwelfare.gov/pubs/s_adoptedhighlights.cfm).

## The unadopted: Our biased foster-care system

While African-American infants are rarely placed for adoption, many older black children may languish in the foster care system for years. They are four times as likely as white children to be in the child welfare system, according to scholar Dorothy Roberts.<sup>34</sup> Black children constituted fewer than 20 percent of all children in the United States in 2000 but made up 40 percent of the foster care system. Roberts posits that this disparity “reflects a political choice to address the startling rates of child poverty in communities of color by punishing parents instead of tackling poverty’s societal roots.” Women of color are judged more harshly than white mothers at every phase of the child welfare process, including in reporting, investigation, substantiation, placement, service provision, and permanency decisions.<sup>35</sup>

Roberts also notes that, “The U.S. child welfare system is and always has been designed to regulate poor families,” and it is often impossible to “disentangle [parental neglect and child maltreatment] from the conditions of poverty.” Instead of providing at-risk families with the resources and interventions they need to obtain stability and remain intact, certain policies fast-track the termination of parental rights while others fail to adequately protect vulnerable children from violence and neglect and get them into a stable and safe environment.

Children’s safety must be our paramount concern, and there are certainly times when a child may need to be removed from the home or a parent’s rights must be terminated in order to protect a child. But we are misallocating our resources in following short-sighted policies and selectively enforcing them. As the Rebecca Project for Human Rights has noted, “It is far more costly and emotionally detrimental to separate parent and child as a matter of general policy. Instead, placements in comprehensive long-term treatment and alternative sentencing [for substance abusing parents] should be prioritized.”<sup>36</sup>

We need earlier and more effective interventions, such as those promoted by Casey Family Programs,<sup>37</sup> to prevent families from reaching a crisis point and to manage the crises that do arise. Several areas are critical to strengthening at-risk families, including: home visitation programs; programs to improve parenting skills; family-friendly substance abuse treatment programs; domestic violence interventions; better educational and job opportunities; and adequate and affordable housing and child care. Moreover, better access to adoption resources and abortion care would reduce the likelihood of a woman choosing to parent by default when she does not want to or does not feel prepared to do so.

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### Psychological effects of relinquishment

Political opponents of abortion have made numerous claims that pregnancy termination has serious psychological effects. Such research has been thoroughly debunked,<sup>38</sup> but it does not negate the fact that many women experience normal feelings of regret, loss, or sadness at some point following their abortion. Placing a child for adoption can likewise have emotional consequences. An unplanned pregnancy can be a stressful event, and it makes sense that a woman may look back at that time as emotionally difficult, regardless of what decision she ultimately makes.

It is common practice for crisis pregnancy centers and antiabortion advocates to paint a picture of adoption as a cure-all for what they insist will be negative emotions and guilt following an abortion or the difficulty of parenting. But what

little research exists on birth mothers reveals that they are also likely to experience some level of grief, worry, and sadness following the relinquishment of a child—especially those who underwent a closed adoption.

The research on those who choose adoption is limited and riddled with methodological problems, including self-selected samples, retrospective recollection of experiences, no standardized metrics, and a lack of appropriate comparison groups. And there are no definitive studies about what experiences result in the best outcomes for birth parents in terms of peace of mind and satisfaction with their decision. That said, it appears that a significant portion of women who placed children for adoption in circumstances that were closed, secretive, surrounded in shame, and sometimes coerced have experienced chronic, unresolved grief.<sup>39</sup>

A study that focused on the experiences of birth mothers who participated in more recent open adoptions, on the other hand, found that approximately two-thirds reported a feeling of peace about their decision and were very certain they would make the same decision again.<sup>40</sup> Being able to choose the adoptive family appeared to be the practice with the most beneficial outcomes in terms of lower levels of grief, regret, worry, and sadness, as well as higher levels of relief and peace. Some amount of contact with the adoptive family after placement—receiving pictures and letters was more than four times as common as making phone calls or visits—also resulted in better outcomes.

The only longitudinal study on open adoptions, the Minnesota/Texas Adoption Research Project, similarly found that birth mothers in fully open adoptions—where the parties knew each others' identities—experienced significantly higher grief resolution when compared to those who underwent closed adoptions.<sup>41</sup> Yet the poorest grief resolution occurred when adoptive parents did not honor agreements for ongoing information. A literature review of multiple studies noted that although “the research is conflicting on the use of open versus closed adoption, it is agreed that women experiencing both types experience grief.”<sup>42</sup>

Women who chose parenting were more likely to report satisfaction with their decision than those who chose adoption (91 percent vs. 78 percent), but the reverse was true in terms of overall life satisfaction, including work, finances, quality of relationship with a partner, and future outlook.<sup>43</sup> However, the differences in the latter outcomes were attributed more to post-birth marital and fertility status and the fact that women who chose placement were less likely to be living in pov-

erty rather than to the decision to keep or relinquish a first child. There apparently have been no studies comparing women who have chosen adoption and those who have chosen abortion.

## What about the fathers?

This report may focus on birth mothers, but we cannot ignore the interests of birth fathers. While a woman ultimately must decide whether to end a pregnancy or carry to term, the child's father has rights that come into play once she has decided to give birth. Men are entitled to be informed of the fact that they have a child that may be placed for adoption—barring circumstances that involve rape, violence, coercion, or other factors that would endanger the woman's or child's well-being. The presumption has never been but ought to be that the father may want to raise the child himself. The treatment of putative fathers—the presumed or named biological father—has generally been based on sexist stereotypes that deny men and their families an important constitutional right with potentially lifelong consequences.<sup>44</sup>

Historically, men only had paternal rights if they were married to the mother. But the law changed over time to acknowledge that a biological father who had created a “substantial relationship” with the child by committing to raising or supporting it could establish

a legal relationship even though he wasn't married to the mother. Still, the reality is that only a minority of infant adoptions involve the father. A man typically must enroll with a putative father registry<sup>45</sup> or acknowledge paternity within a certain timeframe in order to receive notice of adoption proceedings, but he is often not aware of such requirements or even that the child exists. This has resulted in some high-profile cases that overturned adoptions or awarded damages.<sup>46</sup>

Involving the biological father opens the door for him to provide emotional support to the biological mother even if they are no longer romantically involved, information to the adoptive parents about the child's medical and family history, and finality to the process by ensuring that both birth parents have consented to the adoption. The creation of a national registry would streamline the notification process for fathers and alleviate some of the problems in the current system where complications arise if proceedings occur in a different state from where a father is registered.

# The adoption process

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## Counseling

Counseling is an extremely important component of an ethical adoption system. All women—and men, when involved—have the right to be fully informed of all their options, provided with accurate information and relevant referrals, and have any misconceptions or concerns completely addressed. Yet only about half of state adoption laws mention counseling and some mandate it while others only assert that birth parents should be aware of its availability.<sup>47</sup>

Women considering adoption, like those considering abortion, need to have the opportunity to sit down with a trained counselor and explore their emotions and each option—adoption, abortion, or parenting—without coercion, pressure, or bias. Yet unlike the abortion decision, which occurs under more time-limited circumstances, the adoption decision may require ongoing counseling, as a woman’s feelings may change throughout her pregnancy or after delivery. Indeed, many women who consider adoption ultimately choose parenting.

The critical requirement is that the counseling be nondirective, meaning that the options are presented without any one being overemphasized or neglected.<sup>48</sup> The goal of an ethical counseling program is to avoid steering a client in a particular direction and to help her understand the choices available to her, clarify her values and feelings, think through the implications of her decision, and develop coping mechanisms. The Donaldson Institute notes that ethical adoption agencies work hard to ensure that they do not bias a client’s decision, including scrubbing their language of anything that might indicate a preference or opinion—for example, calling their programs “options counseling” instead of “adoption counseling.”

Another key component of an ethical program is to offer independent legal counsel. A woman considering adoption can always consult with an attorney about her rights and responsibilities surrounding adoption, but many do not and often are

not required to do so. Even when they do, the lawyers may work for the adoption agency or the adoptive parents. This is a clear conflict of interest that the American Bar Association's ethics committee has explicitly condemned.<sup>49</sup>

There may be a variety of reasons why few women choose adoption, but the daunting complexity of the adoption system and confusion about the process surely pose a deterrent to some women. Laws governing infant adoption differ from state to state and federal laws also affect many procedures connected to the adoption process.<sup>50</sup> Agencies should provide a woman considering adoption with full disclosure about all relevant laws in the state where relinquishment may take place.

She also should be reminded at every phase of the process that she has the right to change her mind up until the date her relinquishment becomes legally irrevocable, that she has no obligation to relinquish her child regardless of any financial support or other resources she may have received, and that she can request temporary care of the child following delivery if she needs additional time to make up her mind.

These protections not only ensure the ethics and integrity of the institution of adoption, but they also ultimately lead to greater certainty and peace of mind for adoptive parents. A woman will be much less likely to seek to overturn an adoption when the child is older if she is fully informed about her options, has been adequately prepared for the realities of adoption, and has been provided with every opportunity to change her mind early in the process.

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## Coercion

Abortion opponents often trumpet the possibility that partners, parents, or even medical professionals may coerce a woman into an abortion. Yet abortion clinics routinely screen for coercion and will not perform an abortion unless they are sure it is what the woman actually wants. The adoption process should similarly guard against coercion. A woman may face interference with an adoption plan and pressure from the biological father or family members to keep the child when she wants to pursue adoption. And an exposé in the *Nation* last year revealed that coercion to relinquish a child is still rampant in certain sectors of the adoption field.<sup>51</sup>

Fueled in part by a particular political and religious agenda, as well as financial interests, a network of socially conservative crisis pregnancy centers,<sup>52</sup> adoption agencies, and maternity homes have pressured vulnerable women to place their children for adoption. It is unclear to what extent such coercion is systematic ver-

sus intermittent—to be sure, some agencies may have good intentions and follow ethical practices—but the *Nation* observed that “[f]ar more than other adoption agencies, conservative Christian agencies demonstrate a pattern and history of coercing women to relinquish their children.”

The Adoption Access Network, in contrast, is a coalition of pro-choice adoption agencies and abortion providers that works hard to ensure that women facing unintended pregnancy have full access to all of their options, including abortion, parenting, and adoption.<sup>53</sup> They train abortion clinics to provide adoption counseling, provide referrals to trustworthy adoption resources that value openness and diversity, and guarantee women comprehensive, unbiased services and patient-centered advocacy throughout the process.

Coercion can come from adoption professionals, from family members or male partners, or from extended social networks. It can range from subtle signals, such as referring to the pregnant woman as the “birth mother” before she has made a final decision, to more overt pressures, such as moving her to a maternity home in another state where she is alienated from her support network of family and friends and where adoption laws are more lenient.<sup>54</sup>

Coercion comes primarily in two forms—emotional and financial. According to the *Nation*’s coverage, the Family Research Council characterized relinquishment as the “mature” or “responsible” thing to do and advised crisis pregnancy centers to tell pregnant women that adoption will redeem them for their “failures” or “selfishness” in order to overcome resistance and increase adoption rates. CPCs may also make financial threats, such as telling women in a maternity home who change their minds that they must pay for their spot or that they will be denied funds to return home.

Women participating in an open adoption may be pressured to be compliant and pleasant or else risk being shut out. And some women have fallen prey to bait and switch tactics, where they are promised an open adoption but told only after relinquishment that such arrangements are not “legal” in the state where the adoption took place.

Unethical adoption practices are harmful not only to biological parents, but also to adoptive parents who may be completely unaware that their child was obtained through deceptive practices that may call into question the legality of the adoption. Rooting out dishonest tactics would increase the reliability of the adoption system for all involved.

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## Relinquishment and revocation

Contrary to conventional wisdom, not all states impose waiting periods on the relinquishment of a child for adoption following childbirth, nor do all states provide for a period of time in which a birth mother can revoke, or take back, her consent to relinquish her child. But such safeguards are needed in order to protect the interests of all parties involved in an adoption.

According to the Donaldson Institute, at least 28 states specify the earliest point at which consent to relinquish parental rights can be given following the birth of a child.<sup>55</sup> These waiting periods range from 12 hours post-delivery to up to five days. Two states, Alabama and Hawaii, allow consent to be given during pregnancy, but with time allowed for revocation subsequent to the birth. The most common legally imposed waiting period between birth and relinquishment is 72 hours.

Only 17 states and the District of Columbia provide for a period of time following relinquishment—from 3 to 30 days—in which the birth mother can revoke consent for any reason.<sup>56</sup> A few more states allow revocation under certain circumstances. But relinquishment is irrevocable at signing in most states. A birth parent usually must prove fraud, duress, or that the revocation is in the best interest of the child in order to overturn an adoption once it is final.

Birth mothers may be unaware of their rights or may face pressure to follow through with their decision even when relinquishment is not automatically binding. And when they contest an adoption, birth parents often face a high hurdle in proving that the child's best interests would be served by removing him or her from the custody of the adoptive parents who are typically more affluent and more stable.

According to the Donaldson Institute, “It is in [birth parents’] best interest to have a period of time following childbirth to think about how and whether they want to proceed with an adoption. ... a significant number of parents planning for adoption decide to parent instead after birth.” A woman who has just given birth is inevitably in a period of high stress—not the best time to make irrevocable, life-changing decisions. She will be flooded with hormones that are known to promote maternal bonding, she may have drugs in her system that cloud her judgment, she may feel physically and/or emotionally overwhelmed, and the child may seem more real to her after its birth.

The Institute recommends that state laws require a minimum of four to seven days before birth parents can consent to relinquishment, followed by several weeks for revocation.<sup>57</sup> This approach would give biological parents sufficient time to allow the physical and emotional effects of childbirth to subside and to make a reasoned decision.

That may seem like a significant amount of time by our current standards, but it pales in comparison to the safeguards imposed by some other countries. Throughout most of Europe and under the European Convention on the Adoption of Children, consent cannot become final until approximately six weeks after the birth of the child.<sup>58</sup>

We must take into account the interests of the adoptive parents and the child, but a revocation that occurs when a child is only a few weeks old is certainly less disruptive to all involved than a challenge to the adoption years later by a biological mother who believes she gave up her child under duress.

## Surrogacy: The other birth mothers

The advent of assisted reproductive technologies is allowing people to create children and families in ways never imagined in earlier times. And as surrogacy has become a more common option, it has created some interesting parallels to adoption and raised some difficult questions.<sup>59</sup> Indeed, one could easily argue that surrogacy has become a substitute for adoption in many instances and that surrogacy has increased in large part because adoption rates have dropped.

A woman who decides to place a child for adoption and a woman who agrees to be a surrogate share several features in common. They both carry a pregnancy to term and hand the child over to others to raise. Both women share the unique role of being the one woman who gestated and delivered a particular child. Both can be provided with some financial assistance or compensation for certain expenses, but neither can be paid for agreeing to relinquish a baby. And both are likely to have less education and affluence than the people who will raise the child. But that may be where the similarities end.

The traditional birth mother has a genetic relationship to that child. The surrogate birth mother may, as well, but donated eggs increasingly are used instead. The traditional birth mother likely became pregnant unintentionally; the surrogate birth mother intentionally became pregnant under a negotiated agreement and a supervised medical procedure.

These differences mean that these women may have very different experiences with and feelings about birthing and relinquishing a child. These women also may be subject to different sets of stereotypes and assumptions by others. But their experiences may be similar enough that they might identify with each other more than they do with other women. Studies that compare their experiences and reactions would likely prove informative.

# Postadoption

A number of logistical and emotional needs can arise after an adoption. Parties to an open adoption may need mechanisms to implement adoption agreements or interventions to settle disputes. Closed adoption may raise a question of access to birth records or medical information, as well as concerns about confidentiality. And a birth mother, as well as others involved, may have ongoing counseling needs regardless of the type of adoption.

As with relinquishment and revocation laws, states have not dealt consistently with open adoption laws. Some states recognize them as legally binding contracts while others only mention them without establishing enforcement mechanisms. Some apply to all adoptions while others only address specific types of adoptions such as child welfare adoptions, stepparent adoptions, or agency adoptions. Agencies in states with no such laws may not be required to tell the interested parties that their agreements for ongoing contact are not enforceable. To be fair, the adoptive parents are the legal parents once an adoption has been finalized and do have the right to change their minds about how to raise their child, which may make enforcement of open adoption contracts impossible in some situations.

Yet there are many benefits to having the parties prospectively determine their commitments to one another and to the adopted child. All parties to an open adoption would benefit from a process that enables them to clarify their respective roles and responsibilities, manage their expectations, build trust over time, and know when their agreements carry the weight of law. But a birth mother should receive complete counseling about which aspects of the agreement can or cannot be enforced so that she will have reasonable expectations going forward, as there are potentially devastating consequences when such agreements are unilaterally terminated.

If such agreements break down, clinical mediation conducted by therapists with a background in adoption and family affairs can be an effective tool to help facilitate relationships and an important alternative to adversarial litigation.<sup>60</sup> It can be used to resolve any disputes that arise, as well as prevent a tension from escalating to the point of litigation. It is a process that is flexible enough to acknowledge

the multiple adults in a child's life and to respect each of their special roles and responsibilities with regard to the child. The parties can also return to mediation whenever they are in need of additional assistance.

In closed adoptions it may be enough to put a birth mother at ease by simply letting her have a copy of the birth certificate and relinquishment paperwork, or by leaving open the possibility of reuniting with her child once the latter has become an adult. Yet the Child Welfare League of America found that some birth mothers are unable to get a copy of the paperwork following a relinquishment.<sup>61</sup> Instead it may go to her attorney or to her parents if she is a minor. And only 25 percent of surveyed agencies say they are equipped to help make a reunion match when the birth mother or the adoptee requests it.

Protections also are needed for the minority of women who want their identity to remain secret and who do not wish to be contacted. Twenty-one states had established “mutual consent registries” as of 2000 that attempt to balance the interests of birth parents who have been guaranteed confidentiality with adoptees' rights to obtain their birth information.<sup>62</sup> These states permit opening sealed adoption records only when both parties agree to it. Thirteen more states have “search and consent” laws that allow the state or an adoption agency to find a birth parent and seek their consent to provide identifying information to the adoptee. But five states have an open records law, passed at the urging of adoptee activists, which allows adoptees to obtain their original birth certificates. Oregon's was upheld over a court challenge brought by birth mothers.<sup>63</sup>

A birth mother may experience a variety of feelings after placement regardless of whether the adoption was open or closed. The Child Welfare Information Gateway has identified several potential responses to a relinquishment, including grieving the loss of the child; grieving secondary losses, such as the loss of a relationship with the birth father that may have occurred; guilt and shame; identity issues; and long-term issues around forming and maintaining relationships.<sup>64</sup> This is not to say that every woman who places a child will experience these difficulties, but there can be serious potential outcomes that may need to be addressed through counseling.

Agencies find that postadoption services are needed primarily in the first two years following a placement and again with search and reunion efforts when a child turns 18.<sup>65</sup> More investment in and attention to such services would help improve the well-being and long-term adjustment of women who have relinquished a child.

## Conclusion and recommendations

As a threshold matter, we must ask whether it is a legitimate policy goal to seek to increase the adoption rate. After all, in an ideal world where every woman had the resources necessary to plan wanted pregnancies, cope with unexpected pregnancies, and end unwanted or medically complicated pregnancies, even fewer women would likely choose to have a child and place it for adoption. As Professor Laura Briggs has noted, “As movements for reproductive freedom have had increased success, adoption has become rarer.”<sup>66</sup>

Women who choose abortion often choose it not just because they do not want to or because they do not feel ready to parent that child, but also because they do not want to be pregnant. Adoption does not solve that problem for the obvious reason that the woman must continue the pregnancy. And women who choose to continue the pregnancy and parent have implicitly decided that it is in their own and their child’s best interests to raise the child themselves.

It is not the proper role of government to persuade or coerce a woman to give her child to others to raise, nor is it acceptable for the government to coerce a woman to continue a pregnancy against her will. We should be wary of any programs that would propose increasing the number of infants available for adoption at the expense of pregnant women’s interests.

That said, there will always be some number of unintended pregnancies and thus circumstances where some women will decide that placing a child for adoption is the best option for them. We should therefore ensure that our adoption system is better able to meet the needs of birth mothers and is as fair as possible to all involved.

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### [More information about the adoption decision](#)

It is impossible to offer solutions that might lead to women pursuing and choosing adoption without knowing more about why women are so much more likely to choose parenting or abortion instead. If there are women who would choose to place

an infant for adoption but do not due to real or perceived barriers, then their decisions merit exploration into whether women who chose to parent or abort considered adoption, and if so, why they did not choose it.

We also need more studies on the effects of modern-day relinquishments on birth parents in order to address any ongoing needs as well as determine whether some types of adoption arrangements are more optimal than others. And we need studies that assess the well-being of women who chose adoption, abortion, and parenting, not just comparisons of two of the three groups. But regardless of what the research says about the outcomes of these choices, each woman must still have the right to make whatever decision she chooses for herself.

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### Fully informed, voluntary pregnancy decisions

States should mandate that women who are thinking of placing a child for adoption be offered nondirective counseling with a trained and qualified professional. The counseling should fully inform a woman of all her pregnancy options, including the various types of adoption arrangements that exist and the resources available to assist her for any option she may choose.

States also should require that each woman considering adoption be offered the opportunity to consult with independent legal counsel to ensure she fully understands her rights and responsibilities should she choose adoption. States should furthermore ban pressure tactics utilized by dishonest adoption agencies and facilitators and establish mechanisms for compliance.

Congress also should work to ensure that women have access to unbiased and accurate information so that they can make well-informed decisions about their pregnancies. Rep. Carolyn Maloney (D-NY) introduced the “Stop Deceptive Advertising for Women’s Services Act” in the 109th Congress, which aims to hold crisis pregnancy centers to truth-in-advertising standards, and Sen. Robert Menendez (D-NJ) introduced a similar bill the next year. Congress could broaden such legislation to ensure that adoption agencies and maternity homes also cannot engage in deceptive practices.

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### Adequate relinquishment and revocation protections

States should impose a waiting period between childbirth and the time a woman can consent to place a child for adoption that lasts no fewer than 72 hours. State laws

should also grant birth parents a minimum of one week to revoke their consent to relinquishment without having to give a specific reason. Ideally, states would adopt uniform rules to discourage forum shopping—cherry-picking among states with more favorable laws—and American standards would be brought into alignment with international norms. States also should ensure that birth parents are entitled to a copy of all relinquishment paperwork, as well as a copy of the child’s original birth certificate.

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### Better supports for open adoption agreements

States should recognize the benefits of open adoption arrangements and ensure that birth parents are informed of which mechanisms are available to implement those agreements and which are not. In addition, states should guarantee that affordable clinical mediation services are available when disputes arise over the terms of an open adoption arrangement. The more consistent these laws are, the fewer incentives there will be for forum shopping or for enticing birth mothers to cross state lines.

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### Improved postadoption services

States and adoption agencies should ensure birth mothers have access to affordable or no-cost postadoption counseling services throughout their lives, but especially in the two years following a placement. Most adoption agencies try to provide counseling free of charge, but they must rely on multiple sources of funding—including government payments, private donations, and charges to adoptive parents—and these services sometimes go unfunded or underfunded as a result. Government at all levels could do more through tax credits and grants to ensure there is a dedicated funding stream for postadoption counseling and to streamline the funding sources to make it easier for agencies to provide these services.

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### Awareness about the modern adoption system

As long as outdated stereotypes about birth mothers and the adoption process persist, many in our society will continue to view adoption negatively. More information about what adoption entails today and the women who typically choose adoption will help to educate the public and demystify the process. Previous

attempts to address this issue included the Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act, introduced by Reps. Tim Ryan (D-OH) and Rosa DeLauro (D-CT). This proposed bill contained a provision that would provide grants to establish national information campaigns to educate the public about adoption. Such campaigns would promote accurate and positive information about adoption and its potential benefits for all involved.

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Our culture needs to continue to change to recognize that there is no one path for pregnant women and that not every birth will or should result in a woman parenting that child. We have lessened the stigma of single parenthood, but we have not lessened the stigma of placing a child for adoption. Rather than seeing such women as selfish or irresponsible, we need to recognize their actions as compelled by love and concern for the well-being of the child.

It is highly unlikely, given the social mores that exist today, that adoption will ever become a viable alternative to abortion—at least, not without incentives at a level that would be inherently coercive. But that does not obviate our duty to ensure that women who consider adoption have all the supports necessary to make a fully informed decision, to place a child for adoption according to terms that are fair and serve all parties' interests, and to feel satisfied that they made the best possible decision for their offspring and for themselves.

Adoption almost inevitably starts with a sad situation—an unwanted pregnancy, a difficult decision, and stress for the birth mother. But this situation can, and often does, have a happy ending: a flourishing child in a loving home, a caring adult or couple enjoying the opportunities and challenges of parenthood they might otherwise not have been able to have, and a birth mother who knows that she made her own choice and the best decision for herself and her child.

This is the happy ending that public policies around adoption should pursue. Policies that seek to reduce the abortion rate or to increase the number of children available for adoption may be well-intended but are misguided. Instead, we need policies that promote the rights and well-being for all the parties involved, including and not least of all, the birth mother.

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